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CRIMINAL CASE LAW DIGEST

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FIRST DISTRICT

CASE #1

CONSTITUTIONALITY OF STATUTE (Cyberstalking): This defendant’s conviction of Cyberstalking was not based on an unconstitutional statute.

People v. Brian Crawford, 2019 IL APP (1st) 160184, (1st Dist., July 25, 2019) Stalking - - Affirmed.

FACTS: Following a bench trial, Crawford was found guilty of stalking (720 ILCS 5/12-7.3(a)(1)) and cyberstalking (*id.* § 12-7.5(a)(2)). The trial court merged the counts and sentenced defendant on the cyberstalking count to two years in prison. On appeal, defendant contended the appellate court should vacate his conviction because the cyberstalking statute under which he was convicted is facially unconstitutional. He argued that subsection (a) of the statute (1) violated due process because it allowed a felony conviction for the mere negligent infliction of emotional distress and (2) violated the first amendment because it was an overbroad prohibition on speech.

APPEAL: The Appellate Court held that: (a) the cyberstalking statute required knowledge as the mental state for the course of conduct element; (b) the cyberstalking statute did not criminalize innocent behavior; (c) the cyberstalking statute was rationally related to the legislature's goal of protecting victims; (d) the defendant's text messages to his ex-girlfriend telling her that she was “gone die” constituted “true threats” to support his conviction for cyberstalking; and (e) the threat provision of the offense of cyberstalking did not violate the First Amendment.

CASE ANALYSIS

ISSUE: CONSTITUTIONALITY OF STATUTE (Stalking): Was this defendant’s conviction of Stalking based on an unconstitutional statute? (No).

RULE #A: Under the legislature's police power, it has wide discretion to fashion penalties for criminal offenses, but this discretion is limited by the constitutional guarantee of substantive due process, which provides that a person may not be deprived of liberty without due process of law.

RULE #B: A statute violates due process if it potentially subjects wholly innocent conduct to criminal penalty without requiring a culpable mental state beyond mere knowledge. **RULE #C:** “Innocent conduct,” for purposes of due process, is conduct wholly unrelated to the legislature's purpose in enacting the criminal law. **RULE #D:** When a statute does not implicate a fundamental right, the test for determining whether the statute complies with substantive due process is the rational basis test.

RULE #E: Under the rational basis test, a statute will be upheld if it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable. **RULE #F:** The First Amendment generally prevents the government from proscribing speech or expressive conduct because of disapproval of the ideas expressed. **RULE #G:** Content-based laws targeting speech based on its communicative content are presumed invalid under the First Amendment.

RULE #H: Under the true threat exception to the constitutional guarantee of free speech, a speaker need not actually intend to carry out the communicated threat; instead, the prohibition on true threats protects individuals from fear of violence, the disruption that fear engenders, and the possibility that the threatened violence will occur. **RULE #I:** “Intimidation,” in the constitutionally proscribable sense of the word pursuant to the First Amendment, is a type of “true threat,” where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.

RULE #J: Under the overbreadth doctrine, a statute is considered overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep. **RULE #K:** Under the overbreadth doctrine, a party may challenge a statute as facially unconstitutional, even if that party's conduct would not fall within the amendment's protection.

RULE #L: The purpose for allowing a challenge under the overbreadth doctrine is to avoid the potential chilling effect that overbroad statutes have on the exercise of protected speech; however, the overbreadth doctrine is to be used sparingly. **RULE #M:** In addressing a facial overbreadth challenge to a statute on appeal, the first task is to determine whether the statute reaches constitutionally protected speech.

RULE #N: Person acts with the mens rea of “knowledge” if he or she is consciously aware that his or her conduct is practically certain to cause the prohibited result.

FINDING: (A) The Cyberstalking statute required knowledge as the mental state for the course of conduct element for that offense. **WHY:** *The statute did not indicate a clear legislative purpose for imposing absolute immunity such that a mental state for the course of conduct element could be implied; and the language paralleled the stalking statute which supported the conclusion that knowledge was the required mental state.* 720 Ill. Comp. Stat. Ann. 5/12-7.3(a),

5/12-7.5(a). **(B)** The cyberstalking statute did not criminalize innocent behavior in violation of the due process clause. **WHY:** The statute criminalized knowingly engaging in a course of conduct of two or more threats, that is, expressing an intent to inflict evil, injury, or damage, when he or she knew the conduct would cause a reasonable person to suffer significant mental suffering. 720 Ill. Comp. Stat. Ann. 5/12-7.5(a). **(C)** The cyberstalking statute was rationally related to the legislature's goal of protecting victims from violent attacks which occurred after the prohibited acts of sending electronic threats, as required by the due process clause. **WHY:** The statute allowed the police to act before the victim was actually injured and prevented the terror produced by harassing actions. **(D)** The defendant's text messages to his ex-girlfriend telling her that she was "gone die," "I will f*** murder u," and "it's not a matter of 'if' I catch u but 'when' and when i do, uts gone be ugly and I'm already prepared to jail for doing it" constituted "true threats" to support conviction for cyberstalking. **WHY:** The defendant meant to communicate a serious expression of intent to commit an act of unlawful violence at his ex-girlfriend. 720 Ill. Comp. Stat. Ann. 5/12-7.5(a). **(E)** The threat provision of the cyberstalking statute, criminalizing two or more nonconsensual communications to someone that a defendant knew or should have known would cause a reasonable person to fear for his or safety, fit into the threat exception to the constitutional guarantee of free speech, and thus did not violate the first amendment. **WHY:** The offense did not require a defendant to have a mental state of intentionality that the recipient would understand the communication as a threat.

RESULT: The defendant's conviction for Cyberstalking was affirmed.

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CASE #2

- 1) **DUE PROCESS (Confrontation):** The defendant's due process rights may have been violated when a certified document was introduced to show that he had never been issued a FOID card, but the defendant forfeited any complaint by acquiesced to the introduction of the document.
- 2) **FEES AND FINES (Corrections):** The appellate court declined to consider the defendant's objections concerning his fees and fines.
- 3) **SEARCH AND SEIZURE (Reasonable Suspicion):** The conduct of the defendant was sufficient to justify the arresting Officer's act of stopping this defendant.

People v. Jamal Johnson, 2019 IL APP (1st) 161104, (1st Dist., July 25, 2019) Denial of Motion to Suppress - - Affirmed.

FACTS: Following a bench trial, Johnson was convicted of one count of aggravated unlawful use of a weapon and sentenced to 13 months' imprisonment. On appeal, he argued that (1) the trial court erred in denying his motion to quash arrest and suppress evidence because police officers conducted an unreasonable stop and search in violation of Terry v. Ohio, 392 U.S. 1, (1968), (2) his right of confrontation was violated when the People used a certified document to show he did not have a Firearm Owner's Identification (FOID) card, and (3) his fines and fees order failed to offset certain charges with presentence credit.

APPEAL: The Appellate Court held that: (a) the defendant was seized under the Fourth

Amendment when he allowed the law enforcement officer to conduct a pat-down search; (b) the Officers had reasonable suspicion that the defendant was committing, or was about to commit, a crime, justifying a *Terry* stop; (c) the officers had a reasonable apprehension of danger, justifying a pat-down search under *Terry*; (d) the defendant acquiesced in the entry of a state police certification showing he did not have a firearm owner's identification (FOID) card, precluding his argument that the admission of the certification violated his right to confrontation; and (e) the defense counsel's decision not to object to the admission of the certification was sound trial strategy, and thus did not amount to ineffective assistance of counsel. *One Justice filed a dissenting opinion.*

CASE ANALYSIS

ISSUE #1: SEARCH AND SEIZURE (Reasonable Suspicion): Was the conduct of the defendant sufficient to justify the arresting Officer act of stopping this defendant? **(Yes).**

RULE #1a: Reasonableness under the Fourth Amendment right to be free from unreasonable searches and seizures generally requires a warrant supported by probable cause. **RULE #1b:** Police officer may conduct a brief, investigatory stop of a person under the Fourth Amendment where the officer reasonably believes that the person has committed, or is about to, commit a crime. **RULE #1c:** When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others, officer may conduct a pat-down search to determine whether the person is in fact carrying a weapon. **RULE #1d:** Whether an investigatory stop is valid is a separate question from whether a search for weapons is valid. **RULE #1e:** Fourth Amendment is not implicated until a seizure occurs. **RULE #1f:** Person is "seized" under Fourth Amendment right to be free from unreasonable searches and seizures only when, by means of physical force or a show of authority, his freedom of movement is restrained. **RULE #1g:** "Seizure" occurs under Fourth Amendment right to be free from unreasonable searches and seizures if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. **RULE #1h:** *Terry* stop must be justified at its inception, and viewed as a whole, the situation confronting the police officer must be so far from the ordinary that any competent officer would be expected to act quickly. **RULE #1i:** In justifying the particular intrusion occasioned by a *Terry* stop, police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. **RULE #1j:** To justify *Terry* stop, police officer's suspicion must amount to more than an inarticulate hunch but need not rise to the level of suspicion required for probable cause. **RULE #1k:** Unprovoked flight in the face of a potential encounter with police may raise enough suspicion to justify the ensuing pursuit and investigatory stop under *Terry*. **RULE #1l:** When determining the validity of a *Terry* stop, court must consider the totality of the circumstances. **RULE #1m:** Purpose of a limited search under *Terry* is the protection of the police officer and others in the vicinity, not to gather evidence. **RULE #1n:** When conducting a search under *Terry*, officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. **RULE #1o:** Officer conducting search under *Terry* must be able to point to specific, articulable facts which, when taken together with natural inferences, reasonably warrant the intrusion. **RULE #1p:** Perfectly reasonable apprehension of danger justifying search under *Terry* may arise long before police officer is possessed of adequate information to justify taking a person into custody for the purpose of prosecuting him for a crime. **RULE #1q:** Although court must apply an objective standard when determining whether search under *Terry* was justified, testimony of a police officer as to his subjective feelings is one of the factors that

may be considered in the totality of the circumstances known to the officer at the time of the frisk.

FINDING #1: (A) The defendant was “seized” pursuant to the Fourth Amendment right to be free from unreasonable searches and seizures when he allowed a law enforcement officer to conduct a pat-down search while the defendant was on top of the squad car. (B) The police officers had reasonable suspicion that the defendant was committing, or was about to commit, a crime, and thus the officers were justified in conducting a *Terry* stop. **WHY:** *The defendant was present in a high-crime area late at night; he retreated upon seeing the officers while holding his waistband; and the defendant leapt onto the hood of the police vehicle, which suggested aggression and potential danger to the officers or others.* (C) The police officers had a reasonable apprehension of danger, justifying a pat-down search under *Terry*. **WHY:** *An Officer saw the defendant grab onto his front waistband and continue walking briskly, which was a gesture common for people who were trying to hold onto and conceal a weapon, and the defendant ran from police and jumped on top of their squad car.*

ISSUE #2: DUE PROCESS (Confrontation): Were the defendant’s due process rights violated when a certified document was introduced to show that the defendant had never been issued a FOID card? (**Perhaps, but the defendant forfeited any complaint by acquiesced to the introduction of the document.**).

RULE #2a: Rule of “invited error,” or acquiescence, prevents a party from complaining of error which that party induced the court to make or to which that party consented. **RULE #2b:** When defendant procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, he cannot contest the admission on appeal. **RULE #2c:** Defendant cannot contest admission of allegedly improperly admitted evidence on appeal when he procures, invites, or acquiesces in the admission of the evidence because, by acquiescing in rather than objecting to the admission of allegedly improper evidence, defendant deprives the state of the opportunity to cure the alleged defect. **RULE #2d:** Because invited errors are not subject to plain-error review, appellate court must determine whether defendant invited the alleged error at trial before considering defendant's plain-error argument. **RULE #2e:** Because a decision to stipulate to certain state evidence remains one of trial strategy within defense counsel's sound judgment, defense counsel's agreement to stipulate does not implicate defendant's right under either the federal or state constitution to confront and cross-examine the witnesses against him. **RULE #2f:** Defense counsel may waive defendant's right of confrontation as long as defendant does not object and the decision to stipulate is a matter of trial tactics and strategy.

FINDING #2: (A) Review of whether defendant's right of confrontation under Sixth Amendment and state constitution was violated when state used state police certification to show defendant did not have a firearm owner's identification (FOID) card in trial for aggravated unlawful use of a weapon was de novo, where the defendant acquiesced in the certification's entry into evidence. **WHY:** *The question of whether the certification's admission implicated the defendant's constitutional right of confrontation did not involve any disputed facts; the certification and any comments about it at trial were before the reviewing court, and the trial court did not have opportunity to consider the question.* 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(C). (B) The defendant acquiesced in the entry of the state police certification showing he did not have a firearm owner's identification (FOID) card, which precluded him from arguing on appeal that the admission of the certification violated his right to confrontation under

Sixth Amendment and state constitution. **WHY:** The defense counsel did not object to the admission of the certification or when the certification was mentioned during the People's closing argument; nothing prevented the counsel from raising an objection to the admission of the certification; and the defense counsel did not mention the certification, dispute whether the People proved beyond a reasonable doubt that the defendant lacked a FOID card, or raise the claimed error in a posttrial motion. (C) The defense counsel's decision not to object to the admission of the state police certification showing he did not have a firearm owner's identification (FOID) card was sound trial strategy, and thus the decision did not amount to ineffective assistance of counsel. **WHY:** There was nothing indicating that the defendant possessed a valid FOID card or that the certification was in error; the defense counsel did not argue at trial that the defendant in fact possessed a valid FOID card; and the testimony regarding the defendant's failure to possess a FOID card would only have emphasized the unlawfulness of his conduct.

ISSUE #3: FEES AND FINES (Corrections): Should the appellate court consider the defendant's objections concerning his fees and fines? (No. Pursuant to new Supreme Court Rule 472, the case is remanded back to the trial court for reconsideration.)

FINDING #3: The appellate court concluded that remand of this case to the trial court was required to allow the defendant to file a motion raising any alleged errors regarding fines and fees pursuant to the court rule adopted during the pendency of this appeal, setting forth the procedure in criminal cases for correcting sentencing errors in the imposition or calculation of fines and fees and requiring the reviewing court to remand to allow the party to file a motion pursuant to rule in appeals in which the party has attempted to raise sentencing errors covered by the rule for the first time on appeal.

RESULT: The trial court's order denying this defendant's motion to suppress was affirmed and the case was remanded with directions.

XX

CASE #3

DUE PROCESS (Judicial Conduct): The trial court erred by viewing a video of the defendant's traffic stop outside of her presence.

People v. Nancy Lucas, 2019 IL APP (1st) 160501, (1st Dist., July 9, 2019) Battery, DUI and Resisting a Peace Officer - - Reversed and Remanded.

FACTS: Lucas was convicted of misdemeanor battery, misdemeanor resisting a peace officer, operating an unsafe vehicle, driving under the influence of alcohol (DUI), and negligent driving in Cook County circuit court. She was sentenced to 24 months' conditional discharge. On appeal she contended that the trial court violated her right to due process when, during the bench trial, it viewed a video of her traffic stop outside her presence.

APPEAL: On rehearing, the Appellate Court held that: the defendant did not meaningfully waive her right to be present while the judge viewed a video of her traffic stop, and (b) the defendant was denied due process by not being present when the court viewed the squad car

video of the traffic stop in chambers. One Justice filed a dissenting opinion.

CASE ANALYSIS

ISSUE: DUE PROCESS (Judicial Conduct): Did the trial court err by viewing a video of the defendant’s traffic stop outside of her presence? **(Yes).**

RULE A: A defendant's due-process right to be present at all critical stages of the proceeding is not absolute; rather, a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if her presence would contribute to the fairness of the procedure. **RULE B:** Whether a defendant's absence affects the trial's fairness, and thus violates her due-process right to be present at all critical stages of the proceedings, depends on an assessment of the whole record; the analysis turns on the nature of the hearing from which the defendant has been excluded. **RULE C:** “Waiver” is the intentional relinquishment or abandonment of a known right or privilege. **RULE D:** A defendant's attorney has no power to waive a client's right to be present at all critical stages of the proceedings. **RULE E:** Guilty pleas directly result in a defendant's conviction, and presence in the courtroom provides an important element in the constitutional conception of trial; if that much is true for a guilty plea, it must be at least equally true for the evidentiary portion of a trial. **RULE F:** As a matter of routine practice, defendants do not make their decisions about whether they wish to testify until after the State has presented its evidence and rested; this is the moment when the defendant is best informed to decide on testifying. **RULE H:** To determine whether or not to testify, a defendant must be aware of all of the State's evidence; perhaps the State's case appears so facially insufficient that it will fail on its own, so testifying would be too great a risk, or perhaps the State's case appears facially plausible, and the defendant will want to provide his or her own version of events to rebut it. **RULE I:** The right to testify belongs exclusively to a defendant, not her lawyer.

FINDING: **(A)** The defendant did not meaningfully waive her right to be present while the judge viewed a video of her traffic stop, which led to the charges against her, including resisting a police officer. **WHY:** *Although the court informed the defendant that it would be viewing the video in chambers without her presence, neither the court nor the defense counsel informed her that she had a right to be present during the presentation of the video evidence, but rather, she was merely informed that she would not be present.* **(B)** The defendant was denied due process by not being present when, during her bench trial on charges including resisting a police officer, the trial court viewed the squad car video of the traffic stop in chambers. **WHY:** *The video of the traffic stop involved a significant portion of the evidence against the defendant and the court relied on the video in finding her guilty, but despite the significance of the evidence presented and the proceeding itself, the defendant was not afforded the opportunity to confront the evidence against her and aid in her defense.*

RESULT: The defendant’s convictions for Battery, DUI and Resisting a Peace Officer were reversed and the case remanded for a retrial.

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CASE #4

DUE PROCESS (Bail): The defendant was not denied due process when the trial court denied

his motion to set bail.

People v. Larenz Simmons, 2019 IL APP (1st) 191253, (1st Dist., July 26, 2019) Denial of Bail
- - Affirmed.

FACTS: Simmons was charged by indictment with one count of armed robbery with a firearm. The trial court denied his motion for bail pending trial. Simmons filed a motion for review of the bail denial, pursuant to Illinois Supreme Court Rule 604(c) (eff. July 1, 2017).

APPEAL: The Appellate Court held that: (a) any deficiencies in the defendant's motion for bail were not so serious as to warrant the dismissal of his appeal, and (b) the trial court did not abuse its discretion in denying bail to the defendant charged with armed robbery with a firearm.

CASE ANALYSIS

ISSUE: DUE PROCESS (Bail): Was the defendant denied due process when the trial court denied his motion to set bail? **(No)**.

RULE #A: In an appeal under the rule governing appeals from bail orders before conviction, the Appellate Court must rely upon the limited materials listed in the rule and provided by counsel, along with an uncertified transcript of the hearing on the defendant's motion to set his bail; the rule does not otherwise address what, if any, materials from the trial court a party may provide or the Appellate Court may consider. **RULE #B:** An abuse of discretion occurs when the circuit court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would agree with the position adopted by the trial court. **RULE #C:** The Code of Criminal Procedure reflects a strong preference that bail be available to criminal defendants. **RULE #D:** A defendant may be denied bail in certain instances enumerated in the Illinois Constitution and by statute. 725 Ill. Comp. Stat. Ann. 5/110-4(a).

FINDING: (A) Any deficiencies in the defendant's motion for bail, including a failure to a state financial condition or provide specific information regarding his residence or employment history, were not so serious as to warrant the dismissal of his appeal of the trial court's bail denial, and therefore the Appellate Court would review the substance of the defendant's motion for review. **WHY:** *The defendant—who was only 21 years old at time of the hearing—likely had little or no assets and his residence history (starting at age 11) very likely coincided with his mother's address.* **(B)** The trial court did not abuse its discretion in denying bail to the defendant charged with armed robbery with firearm. **WHY:** *The defendant and a co-offender each a drew gun on an unarmed individual; the defendant admitted placing a loaded firearm against the victim but noted that he “only” pointed a weapon at the victim's waist, whereas his co-offender pointed a weapon at the victim's head; the defendant's minimum sentence if convicted would be 21 years' imprisonment, which would provide a substantial motivation to flee; the defendant purportedly made an inculpatory statement to the police after his arrest, which, if admissible, would weigh heavily in favor of his conviction; the defendant had a prior juvenile adjudication for weapons possession, and he had failed to appear at a hearing on a reckless conduct charge.* 725 Ill. Comp. Stat. Ann. 5/110-5(a).

RESULT: The trial court's order denying bail for this defendant was affirmed.

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CASE #5

REASONABLE DOUBT (Unlawful Possession of a Firearm by a Street Gang Member):

The People failed to present sufficient evidence to support this defendant's conviction for the Unlawful Possession of a Firearm by a Street Gang Member.

People v. Anterius Beck, 2019 IL APP (1st) 161626, (1st Dist., June 18, 2019) Unlawful Possession of a Firearm by a Street Gang Member and 10 counts of Aggravated Unlawful Use of a Weapon (AUUW) - - Affirmed in Part; Reversed in Part; Case Remanded for Resentencing. **MODIFIED UPON DENIAL OF REHEARING – July 16, 2019.**

FACTS: Following a bench trial, Beck was convicted of unlawful possession of a firearm by a street gang member and 10 counts of aggravated unlawful use of a weapon (AUUW), for which he was sentenced to five years' imprisonment. On appeal, Beck argues that (i) the State failed to present sufficient evidence to establish that the Black P. Stones are a street gang as defined by the Illinois Street-gang Terrorism Omnibus Prevention Act (Act) (740 ILCS 147/10)); (ii) section 24-1.8 (a)(1), (b) of the Criminal Code of 2012 (720 ILCS 5/24-1.8(a)(1), (b)), under which he was convicted, is unconstitutional because it impermissibly criminalizes a defendant's status in violation of the eighth amendment; and (iii) the admission of a "certification" by the State to prove that he did not have a Concealed Carry License and Firearm Owner's Identification Card violated his sixth amendment right to confrontation.

APPEAL: On denial of rehearing, the Appellate Court held that: (a) the police officer witness was not qualified to testify as an expert, and therefore his testimony was insufficient to support a conviction for possession of a firearm by a street gang member; (b) the defendant acquiesced to the admission of a certified letter, and therefore forfeited appellate review of whether the admission of the letter constituted clear error; (c) the defense counsel's decision to not object to the certification letter was a strategic decision, and therefore was not ineffective assistance; and (d) remand of this case was required to determine the sentence for the defendant's conviction of 10 counts of aggravated unlawful use of a weapon (AUUW) after the reversal of his conviction for the unlawful possession of a firearm by a street gang member.

CASE ANALYSIS

ISSUE #1: REASONABLE DOUBT (Unlawful Possession of a Firearm by a Street Gang Member): Did the People fail to present sufficient evidence to support this defendant's conviction for the Unlawful Possession of a Firearm by a Street Gang Member? **(Yes).**

RULE #1a: A challenge to the sufficiency of the evidence requires appellate courts to view the trial evidence in the light most favorable to the prosecution and inquire whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **RULE #1b:** An expert on gangs may opine on the ultimate issue of whether an organization is a street gang engaged in a course or pattern of criminal activity without testifying to specific dates or incidents. **RULE #1c:** While both experts and lay witnesses may opine as to an ultimate issue in a case, a lay witness's opinion cannot be based on scientific, technical, or other specialized knowledge within the scope of rule of evidence which prescribes the subject matter of expert testimony. **RULE #1d:** A witness's opinion regarding whether a particular organization is a "street gang" within the meaning of the Streetgang Terrorism Omnibus Prevention Act is one

that requires specialized knowledge, as defined under rule of evidence prescribing the subject matter of expert testimony. 740 Ill. Comp. Stat. Ann. 147/10.

FINDING #1: **(A)** The Officer was not qualified as an expert, and therefore his testimony, that the organization that the defendant belonged to was a “streetgang” within the meaning of the Streetgang Terrorism Omnibus Prevention Act, was insufficient to support his conviction for possession of a firearm by a street gang member. **WHY:** *The officer testified that the purported street gang controlled the trade of narcotics and weapons, but the Officer's only qualifications were that he had eight years of experience as a gang officer.*

ISSUE #2: **EVIDENCE (Hearsay):** Did the defendant forfeit any complaint about the introduction of a certified letter in this case? **(Yes).**

RULE #2a: A notarized, certified letter alleging a defendant's lack of a firearm owner's identification card is testimonial in nature and, as such, a defendant is entitled to confront the author of the letter under the confrontation clause. **RULE #2b:** While the plain error doctrine ordinarily exempts a defendant from the consequences of a procedural default, it is not applicable to a defendant who acquiesces in the complained-of error. **RULE #2c:** A party cannot complain of error which that party induced the court to make or to which that party consented; the rationale behind this rule is that it would be manifestly unfair to allow a party a second trial upon the basis of error which that party injected into the proceedings. **RULE #2d:** A confrontation clause violation does not amount to structural error under requirement, that an error be so serious that it affected the fairness of trial and challenged the integrity of the judicial process, of plain error review.

FINDING #2: The defendant acquiesced to the admission of a certified letter, and therefore forfeited appellate review of his claim that the admission of the letter, offered to prove that the defendant had never been issued a firearm owner's identification card or concealed carry license in this prosecution for unlawful possession of a firearm by a street gang member and unlawful use of a weapon, violated the Confrontation Clause. **WHY:** *The defendant did not object to the admission of the certified letter either at trial or in a posttrial motion.*

ISSUE #3: **COUNSEL (Effectiveness):** Did the defendant’s attorney provide ineffective assistance by failing to object to the introduction of the certified letter? **(No).**

RULE #3a: To establish ineffective assistance of counsel, a defendant must show the conduct of defense counsel fell below an objective standard of reasonableness and, but for counsel's deficient performance, a reasonable probability exists the outcome of the trial would have been different. **RULE #3b:** If on an ineffective assistance of counsel claim, court determines that a defendant has failed to satisfy one prong of the *Strickland* analysis, courts need not consider whether he can satisfy the remaining prong.

FINDING #3: The defense counsel's decision to not object to the certification letter to prove that defendant had never been issued a firearm owner's identification card or concealed carry license was a strategic decision, and therefore was not ineffective assistance, in prosecution for unlawful possession of a firearm by a street gang member and 10 counts of aggravated unlawful use of a weapon. **WHY:** *The defense counsel's theory of the case was that an officer witness was*

incredible and there was no evidence that a gun recovered from the defendant was operable; there was no reason to highlight the defendant's failure to possess the card or license; and there was no indication that the defendant actually had such a card or license for the firearm. 740 Ill. Comp. Stat. Ann. 147/10.

ISSUE #4: SENTENCING (Remandment): Should this case be remanded so that the defendant can be resentenced? (Yes).

FINDING #4: Remand was required to determine the sentence for the defendant's conviction of 10 counts of aggravated unlawful use of a weapon (AUUW) after the reversal of conviction for unlawful possession of a firearm by a street gang member. **WHY:** The defendant's conviction for unlawful possession of a weapon by a street gang member and his (unsentenced) convictions for AUUW were intimately related to each other, arising from the same act, and the trial court was clear that it was not sentencing the defendant for the AUUW offenses because it was merging them into the more serious possession offense. 720 Ill. Comp. Stat. Ann. 5/24-1.8(a)(1); 740 Ill. Comp. Stat. Ann. 147/10.

RESULT: The defendant's convictions for Unlawful Possession of a Firearm by a Street Gang Member and 10 counts of Aggravated Unlawful Use of a Weapon (AUUW) were affirmed in part; reversed in part; and the case was remanded for resentencing.

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CASE #6

SEARCH AND SEIZURE (Probable Cause): The arresting Officer did not have probable cause to arrest this defendant, who was standing in the parking lot of a gas station, for drinking alcohol on a "public way."

People v. Alvin Brown, 2019 IL APP (1st) 161204, (1st Dist., July 23, 2019) Denial of Motion to Suppress - - Reversed and Remanded.

FACTS: The arresting officer saw Brown taking a drink of beer while standing in a gas station parking lot and arrested him for violating the Chicago Municipal Code which prohibits drinking on a "public way." Chicago Municipal Code § 8-4-030. Brown had in his pocket a controlled substance and was later tried and convicted for possessing it. Brown argued that because his arrest was without probable cause, his motion to quash arrest and suppress evidence should have been granted.

APPEAL: The Appellate Court held that: (a) the gas station parking lot, on which this defendant was drinking beer, was not a "public way," and thus, the defendant could not be convicted of violating the city municipal code, which prohibited drinking on a public way, and (b) the Officers' mistaken belief that the gas station parking lot, on which the defendant was drinking beer, was a "public way" within the meaning of the city municipal code was unreasonable, and thus, the officer lacked probable cause to arrest the defendant. **One Justice filed a dissenting opinion.**

CASE ANALYSIS

ISSUE: SEARCH AND SEIZURE (Probable Cause): Did the arresting Officer have probable cause to arrest this defendant, who was standing in the parking lot of a gas station, for drinking alcohol on a “public way?” (No).

RULE #A: Whether stop is reasonable depends on totality of circumstances. **RULE #B:** When determining if stop is reasonable, courts view the underlying facts objectively from the perspective of a reasonable officer at the time that the situation confronted him. **RULE #C:** Fourth Amendment requires government officials to act reasonably, not perfectly, and gives those officials fair leeway for enforcing the law. **RULE #D:** Fourth Amendment tolerates only reasonable mistakes, and those mistakes, whether of fact or of law, must be objectively reasonable; subjective understanding of the officer is irrelevant.

FINDING #1: (A) The gas station parking lot, on which this defendant was drinking beer, was not a “public way,” and thus, the defendant could not be convicted of violating the city municipal code, prohibiting drinking on a public way. **WHY:** *The municipal code defined “public way” as any sidewalk, street, alley, highway or other public thoroughfare, and the gas station parking lot could not be categorized as a sidewalk, street, alley, or highway; and the phrase “public thoroughfare,” contained in the municipal code, did not include gas station or convenience store parking lots.* **(B)** In this prosecution of the defendant for violating the city municipal code, prohibiting drinking on a public way, the People abandoned their position regarding a “public way,” as argued in the trial court, and waived this point on appeal. **WHY:** *The People acknowledged that the gas station parking lot, on which the defendant was drinking beer, by definition, was not a “public way” as contemplated by the municipal code; the People’s brief conceded that the arresting officers’ belief that the defendant committed crime was mistaken; and in oral argument, the People conceded the parking lot was not a “public way” as defined in the municipal code.* **(C)** The Officers’ mistaken belief that the gas station parking lot, on which the defendant was drinking beer, was a “public way” within the meaning of the city municipal code, prohibiting drinking on public way, was unreasonable, and thus, the Officer lacked probable cause to arrest the defendant. **WHY:** *The Officer lacked a reasonably objective basis for believing that the defendant was on a public way; and drinking beer on private property was not illegal in the city for individuals at least 21 years old.* **(D)** The glossary definition of “public way” in the city police department directives was not a piece of evidence, and instead, the directives provided context for what the police officer was expected to know, and could be the subject of judicial notice, for purposes of determining whether the Officer’s mistaken belief that the gas station parking lot, on which the defendant was drinking beer, was a “public way” within the meaning of the city municipal code, prohibiting drinking on public way, was reasonable, such that the Officer had probable cause to arrest the defendant. **WHY:** *The definitions of “public way” in the municipal code and in the police department’s own directives needed no clarification, in that both were specific and unambiguous.*

RESULT: The trial court’s order denying this defendant’s motion to suppress evidence was reversed.

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SECOND DISTRICT

CASE #1

CONSTITUTIONALITY OF STATUTE (Sentence Enhancements): The defendant’s 15-year sentence enhancement violated the proportionate-penalties clause of the Illinois Constitution.

People v. Todd Allgood, 2019 IL APP (2nd) 160810, (2nd Dist., July 10, 2019) Aggravate Criminal Sexual Assault and Aggravated Kidnapping - - Affirmed in Part; Vacated in Part; case remanded.

FACTS: Allgood appealed his convictions of aggravated criminal sexual assault while armed with a firearm (720 ILCS 5/12-14(a)(8)) and aggravated kidnapping while armed with a firearm (id. § 10-2(a)(6)). He contended that the 15-year sentencing enhancements for those offenses, added by Public Act 91-404, § 5 (eff. Jan. 1, 2000) (amending 720 ILCS 5/10-2, 12-14), violated the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) and required the reversal of his convictions.

APPEAL: The Appellate Court held that defendant was entitled to resentencing under statutes as they existed prior to enactment of statute providing for sentencing enhancements.

CASE ANALYSIS

ISSUE: CONSTITUTIONALITY OF STATUTE (Sentence Enhancements): Did the 15-year sentence enhancement violate the proportionate-penalties clause of the Illinois Constitution? (Yes).

FINDING: This defendant, who was convicted of aggravated criminal sexual assault while armed with a firearm and aggravated kidnapping while armed with a firearm, was entitled to resentencing under the statutes as they existed prior to the enactment of the statute providing for sentencing enhancements for those offenses. **WHY:** The enhancements were found to violate the proportionate-penalties clause; the statute created both an enhancement and a substantive kidnapping offense and thus that sentence could not be severed; and the sexual assault sentence had to be reevaluated in light of the defendant's cumulative sentence. 720 ILCS 5/10-2(b); 730 ILCS 5/5-8-1(a)(3); S.H.A. 720 ILCS 5/12-14(d)(1)

RESULT: This defendant’s convictions for Aggravate Criminal Sexual Assault and Aggravated Kidnapping were affirmed in part; vacated in part; and the case remanded for resentencing.

XX

CASE #2

1) **CONSTITUTIONALITY OF STATUTE (Unauthorized Videotaping):** The Unauthorized Videotaping Statute did not violate the defendant’s First Amendment and Due Process rights.

2) **STATUTORY CONSTRUCTION (Unauthorized Videotaping):** This statute prohibited

the unauthorized videotaping of a person in the defendant's own home.

People v. Daniel A. Maillet, 2019 IL APP (2nd) 161114, (2nd Dist., July 1, 2019) Unauthorized Videotaping - - Affirmed.

FACTS: Following a bench trial, Maillet was found guilty of two counts of unauthorized video recording. Count I alleged that he knowingly made a video recording of B.P., who was under the age of 18 at the time, in B.P.'s residence, without her consent, in violation of section 26-4(a-5) of the Criminal Code of 2012 (Code) (720 ILCS 5/26-4(a-5)). Count II alleged that, he knowingly made a video recording of B.P., without her consent, while B.P. was in a restroom, in violation of section 26-4(a) of the Code. The trial court merged count II into count I and sentenced defendant to 30 months' probation and 50 hours of community service. Maillet appealed, contending that his conviction rests upon the trial court's erroneous construction of sections 26-4(a) and 26-4(a-5) and that both sections are unconstitutional on first amendment and due process grounds.

APPEAL: The Appellate Court held that: (a) the rule of lenity did not apply to the statute prohibiting unauthorized video recording in another person's residence without that person's consent; (b) the statute prohibiting unauthorized video recording of another person without consent in a restroom included restrooms in a person's own residence; (c) the statutes prohibiting unauthorized video recording of another person without consent in a restroom or in that other person's residence were not overbroad under the First Amendment; and (d) the statutes prohibiting unauthorized video recording of another person without consent in a restroom or in that other person's residence did not violate substantive due process.

CASE ANALYSIS

ISSUE #1: CONSTITUTIONALITY OF STATUTE (Unauthorized Videotaping): Did this statute violate the defendant's First Amendment and Due Process rights? (No).

RULE #1a: Pursuant to the rule of lenity, ambiguous criminal statutes will generally be construed in a defendant's favor. **RULE #1b:** The rule of lenity is subordinate to a court's obligation to determine the legislative intent and should not be applied so rigidly as to defeat the legislative intent. **RULE #1c:** There is a strong presumption that a statute is constitutional, and the party challenging its constitutionality bears the burden of clearly establishing that it violates the constitution. **RULE #1d:** Appellate Court has a duty to construe a statute in a manner that upholds its constitutionality, if reasonably possible. **RULE #1e:** Invalidating a statute on First Amendment overbreadth grounds is "strong medicine" and should be done sparingly and only as a last resort. **RULE #1f:** A law may be invalidated as overbroad under the First Amendment only if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep. **RULE #1g:** The first step in an analysis under the First Amendment overbreadth doctrine is to interpret the challenged statute, because it is impossible to determine whether a statute reaches too far without first knowing what the statute covers. **RULE #1h:** A content-neutral regulation will be sustained under the First Amendment overbreadth doctrine if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests. **RULE #1i:** A particular application of an otherwise valid statute to constitutionally protected conduct can of course be the subject of an as-applied challenge, but the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible

to an overbreadth challenge under the First Amendment. **RULE #1j:** Under the banner of its police power, the legislature has wide discretion to fashion penalties for criminal offenses, but this discretion is limited by the constitutional guarantee that a person may not be deprived of liberty without due process of law. **RULE #1k:** When a statute is challenged as violative of substantive due process and the statute does not affect a fundamental constitutional right, the appropriate test for determining its constitutionality is the highly deferential rational-basis test. **RULE #1l:** Under the rational-basis test, a statute subject to a substantive due process challenge will be sustained if it bears a reasonable relationship to a public interest to be served, and the means adopted are a reasonable method of accomplishing the desired objective. **RULE #1m:** Under the First Amendment overbreadth doctrine, a party may bring a facial challenge against a statute, even though it is not unconstitutional as applied to that particular party, because the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression.

FINDING #1: (A) The statutes prohibiting unauthorized video recording of another person without consent in a restroom or in that other person's residence did not potentially punish a significant amount of wholly innocent conduct not related to their purpose, and, therefore, the statutes did not violate substantive due process. **WHY:** *The statutes were narrowly suited to their purpose of protecting personal privacy, and the statutes required criminal knowledge that the offender's actions were likely to invade another person's substantial privacy interests.* 720 Ill. Comp. Stat. Ann. 5/26-4(a-5), 26-4(a). (B) The statutes prohibiting unauthorized video recording of another person without consent in a restroom or in that other person's residence were not overbroad under the First Amendment. **WHY:** *The statutes were content neutral; the protection of a person's expectation of privacy in a restroom or in own home were important governmental interests; and the prohibition of nonconsensual video recording in those areas was substantially related to those governmental interests.* (D) A person has a heightened expectation of privacy in a restroom, tanning bed, tanning salon, locker room, changing room, or hotel bedroom and in that person's residence. **WHY:** *The protection of that expectation of privacy is an important governmental interest, and the prohibition of nonconsensual video recording in those areas is substantially related to that governmental interest.*

ISSUE #2: STATUTORY CONSTRUCTION (Unauthorized Videotaping): Did this statute prohibit the unauthorized videotaping of a person in the defendant's home? (Yes).

RULE #2: Under statutes prohibiting unauthorized video recording of another person without consent in a restroom or in that other person's residence, consent may be express or implied and the State must prove that a defendant knew that the person he or she was recording did not expressly or impliedly consent.

FINDING #2: (A) The statute prohibiting unauthorized video recording of another person in that other person's residence without that person's consent applied even if the other person's residence was also the defendant's residence. **WHY:** *The plain language of the statute clearly and unambiguously referred only to the victim's residence, and the legislature could have but did not include language to except a situation in which the other person's residence was also the defendant's residence.* 720 Ill. Comp. Stat. Ann. 5/26-4(a-5). (B) The statute prohibiting unauthorized video recording of another person without consent in a restroom included restrooms in a person's own residence. **WHY:** *The plain language of the statute did not say "public restroom," and the legislature could have easily included that word.*

RESULT: The defendant’s conviction for Unauthorized Videotaping was affirmed.

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CASE #3

- 1) **DUE PROCESS (Double Jeopardy):** The People did not violate the defendant’s double jeopardy rights by prosecuting him after they amended his charges.
- 2) **DUE PROCESS (Plea Bargain):** The defendant was not denied the benefit of his plea bargain.
- 3) **OFFENSES (One Act – One Crime):** The defendant was improperly convicted of both Aggravated Battery and Aggravated Domestic Battery.

People v. Roger C. O’Brien, 2019 IL APP (2nd) 170030, (2nd Dist., July 18, 2019) Aggravated Battery and Aggravated Domestic Battery - - Affirmed in Part; Vacated in Part, Case Remanded.

FACTS: O'Brien appealed from his convictions of aggravated battery (720 ILCS 5/12-3.05(a)(4)) and aggravated domestic battery (id. § 12-3.3(a)). He argued on appeal that (1) the prosecution was barred by the prohibition against double jeopardy, (2) the prosecution deprived him of the benefit of a plea agreement with the People, and (3) one of his convictions must be vacated pursuant to the one-act, one-crime rule.

APPEAL: The Appellate Court held that: (a) amending the defendant’s indictment to correct a statutory citation under which the defendant was charged was permissible, and thus there was no double jeopardy violation by a trial on the amended indictment after the defendant withdrew his guilty plea; (b) the defendant was not deprived of the benefit of bargain underlying his guilty plea; and (c) the defendant's convictions of both aggravated battery and aggravated domestic battery were barred by one-act, one-crime rule. *One Justice filed a dissented opinion.*

CASE ANALYSIS

ISSUE #1: DUE PROCESS (Double Jeopardy): Did the People violate the defendant’s double jeopardy rights by prosecuting him after they amended his charges? **(No).**

RULE #1a: Prohibition against double jeopardy protects the accused against (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. **RULE #1b:** When determining whether a prosecution violated the prohibition against double jeopardy, the first step in the analysis is to determine when jeopardy attached in the first proceeding. **RULE #1c:** When a defendant pleads guilty, jeopardy attaches when the trial court accepts the plea. **RULE #1d:** Once jeopardy has attached, the double jeopardy clause forbids further prosecution if the initial prosecution terminated improperly. **RULE #1e:** As a general rule, a defendant's withdrawal of his or her guilty plea does not improperly terminate the prosecution in which the plea was entered, for double jeopardy purposes. **RULE #1f:** Because the Double Jeopardy Clause of the United States Constitution does not relieve a defendant from the consequences of his voluntary choice, double jeopardy does not apply to the original counts in an indictment when a defendant

has withdrawn or successfully challenged his plea of guilty to lesser charges. **RULE #1g:** A significant qualifier in the analysis of a defendant's withdrawal of his or her guilty plea for purposes of double jeopardy is that the defendant must withdraw or challenge his plea voluntarily. **RULE #h:** A formal amendment to an indictment may be made between the entry of a guilty plea and sentencing.

FINDING #1: Trial court did not act improperly when it permitted the People to amend the aggravated battery indictment to correct its statutory citation under which the defendant was charged, and therefore the defendant's trial on the amended indictment after he withdrew his guilty plea did not violate the prohibition against double jeopardy. **WHY:** *The indictment was amended to reflect correct statutory citation and permitting defendant to withdraw his plea ameliorated any prejudice resulting from the incorrect statutory citation.*

ISSUE #2: DUE PROCESS (Plea Bargain): Was the defendant denied the benefit of his plea bargain? (No);

FINDING #2: The defendant was not deprived of the benefit of his bargain underlying his guilty plea, following the People amending his indictment to charge him under a statutory citation making him ineligible to be sentenced to probation, and therefore the defendant was not entitled to restoration of his guilty plea to aggravated battery with the possibility of probation. **WHY:** *The defendant's agreement with the People was only that specific charges would be dismissed, and the People kept up their end of the bargain.* 720 Ill. Comp. Stat. Ann. 5/12-3.05(d)(1).

ISSUE #3: OFFENSES (One Act – One Crime): Was the defendant properly convicted of both Aggravated Battery and Aggravated Domestic Battery? (No).

FINDING #3: The defendant's convictions of both aggravated battery and aggravated domestic battery were barred by one-act, one-crime rule, and therefore the case would be remanded to trial court to determine which conviction to vacate. **WHY:** *Both convictions were based on the same physical act.*

RESULT: The defendant's convictions for Aggravated Battery and Aggravated Domestic Battery were affirmed in part; vacated in part, and the case remanded.

XX

CASE #4

- 1) **DUE PROCESS (Evidence):** The trial court may have erred in consider inadmissible evidence of another incident, but the defendant forfeited any complaint by failing to object.
- 2) **DUE PROCESS (Notice):** The erred in conducting a trial on a case that was only set for a status hearing.
- 3) **EVIDENCE (Test Results):** The test results from a sample of the defendant's urine was properly admitted into evidence.

4) **REASONABLE DOUBT (Various Traffic Offenses)**: The People presented sufficient evidence to support this defendant's convictions for various traffic offenses.

People v. Lawrence J. Lenz, 2019 IL APP (2nd) 180124, (2nd Dist., July 24, 2019) Various Traffic Offences - - Affirmed in Part; Vacated in Part, Case Remanded.

FACTS: Following a two-day bench trial, the trial court convicted Lenz on all counts in two separate cases. The cases arose from two separate traffic incidents that occurred on the same day. On appeal, defendant argued for the vacatur of his convictions in his first case, because that case was set for status, not trial, and therefore his due process rights were violated when the trial court adjudicated the counts. As for the second case, the defendant argued that (1) the court erred when it allowed, and relied on, testimony concerning the first case; (2) the court erred in admitting the results of chemical testing of his urine; and (3) the evidence was insufficient to support his convictions.

APPEAL: The Appellate Court held that: (a) the defendant lacked notice and a meaningful opportunity to present a defense at his trial for leaving the scene of accident involving damage to a vehicle, failure to reduce speed to avoid accident, and failure to provide information after damaging an unattended vehicle; (b) jeopardy did not attach to the defendant's convictions; (c) the defendant forfeited any claim that the various convictions arising from his traffic incident were tainted with inadmissible testimony; (d) the defendant's claim that the trial court erred in admitting the results of his urine test would be reviewed under a de novo standard, rather than an abuse of discretion; (e) the leak of his urine sample did not prejudice the defendant nor render the results unreliable; (f) there was sufficient evidence, outside of the defendant's out-of-court statements, that the offenses of disobeying a traffic-control device and failing to reduce speed to avoid an accident occurred; and (g) there was sufficient evidence that the defendant was under the influence of a drug or a combination of drugs when he drove his vehicle on the date of the offense.

CASE ANALYSIS

ISSUE #1: DUE PROCESS (Notice): Did the err in conducting a trial on a case that was only set for a status hearing? **(Yes)**.

RULE #1a: A fundamental component of due process is that a defendant cannot be convicted without notice and a meaningful opportunity to defend. **RULE #1b**: The traditional rule is that jeopardy attaches in a bench trial when the first witness is sworn, and the trial court begins to hear evidence.

FINDING #1: (A) The defendant lacked notice and a meaningful opportunity to present a defense at his bench trial for charges of leaving scene of accident involving damage to vehicle, failure to reduce speed to avoid accident, and failure to provide information after damaging unattended vehicle, and therefore the trial was a violation of his due process rights. **WHY**: *The defendant's case for these charges was set for a status hearing, not a trial.* **(B)** Jeopardy did not attach to this defendant's convictions. **WHY**: *The People's evidence only obliquely referred to incident from which the convictions arose, which was consistent with the parties' understanding that they were not set for trial on those dates, but, rather charges from a separate traffic incident that occurred on the same day was scheduled for trial.*

ISSUE #2: DUE PROCESS (Evidence): Did the trial court err in considering inadmissible evidence of another incident? (**Perhaps, but the defendant forfeited any complaint by failing to object.**).

RULE #2a: Vague and general claims are insufficient to avoid forfeiture of the issue. **RULE #2b:** The failure to specifically raise an alleged error in a written posttrial motion results in the waiver of the issue, as general allegations of error do not alert the trial court to alleged errors that can be corrected at the trial court level. **RULE #2c:** The defendant bears the burden of showing that his case meets the requirements of the plain-error doctrine. **RULE #2d:** A defendant obviously cannot satisfy the burden of showing that his case meets the requirements of the plain-error doctrine if he does not even invoke the doctrine.

FINDING #2: The defendant forfeited any claim that his various convictions arising from a traffic incident were tainted with inadmissible testimony. **WHY:** *The defendant did not properly preserve his claim of error in a posttrial motion and merely asserted in his posttrial motion that he was denied due process of law, and he did not argue for plain-error review.*

ISSUE #3: EVIDENCE (Test Results): Were the test results from a sample of the defendant's urine improperly admitted into evidence? (**No**).

RULE #3a: The results of a chemical test are inadmissible in a driving under the influence (DUI) prosecution if the collection and testing of the sample did not comply with provisions of Vehicle Code and the regulations promulgated under its authority. 625 Ill. Comp. Stat. Ann. 5/11-501.2(a); Ill. Admin. Code tit. 20, § 1286.330. **RULE #3b:** In a driving under the influence (DUI) prosecution, substantial compliance with the collection and testing standards for a chemical test is acceptable unless the process of judging the degree of compliance requires the trial court to venture into an area beyond its expertise. **RULE #3c:** If substantial compliance the collection and testing standards for a chemical test is the appropriate standard under the circumstances, then a deviation from provisions of Vehicle Code and associated regulations will disqualify test results from admission only if the deviation renders the results unreliable or prejudices the defendant. 625 Ill. Comp. Stat. Ann. 5/11-501.2(a); Ill. Admin. Code tit. 20, § 1286.330.

FINDING #3: Following the defendant's arrest on suspicion of driving under the influence (DUI), a leak of his urine sample did not prejudice him nor render the results of the urine test unreliable, and therefore the results were admissible at his trial. **WHY:** *The defendant failed to rebut a forensic scientist's critical testimony that there was no evidence of contamination of the sample.*

ISSUE #4: REASONABLE DOUBT (Various Traffic Offenses): Did the People fail to present sufficient evidence to support this defendant's convictions for various traffic offenses? (**No**).

RULE #4a: Simply stated, the "corpus delicti" of an offense is the commission of a crime. **RULE #4b:** In criminal proceedings, the State must prove beyond a reasonable doubt the following two propositions: (1) a crime was committed, the corpus delicti, and (2) the identity of the person who committed the crime. **RULE #4c:** Generally, the State cannot prove the corpus

delicti solely through the defendant's admission, confession or out-of-court statement and must also provide independent corroborating evidence. **RULE #4d:** The failure to specifically raise an alleged error in a written posttrial motion results in the waiver of the issue, as general allegations of error do not alert the trial court to alleged errors that can be corrected at the trial court level. **RULE #4e:** The independent corroborating evidence required to prove the corpus delicti need only tend to prove, generally, the commission of an offense. **RULE #4f:** The independent corroborating evidence required to prove the corpus delicti is not required to be identical to the details of the defendant's admission; instead, only some consistency between the two is required tending to confirm and strengthen the defendant's admission. **RULE #4g:** Sufficient corroboration for the purpose of proving corpus delicti exists where the evidence tends to connect the defendant with the crime. **RULE #4h:** When the sufficiency of the evidence in support of a criminal conviction is challenged on appeal, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. **RULE #4i:** To prove a charge under section of the Vehicle Code governing driving while under the influence, the State must establish that the defendant (1) drove or was in actual physical control of a vehicle (2) while under the influence of any drug or combination of drugs (3) to a degree that rendered him incapable of safely driving. 625 Ill. Comp. Stat. Ann. 5/11-501(a)(4). **RULE #4j:** The language of section of the Vehicle Code governing driving while under the influence does not require proof of a specific drug, and the Appellate Court will not interpolate such a more exacting standard. **RULE #4k:** The opinion of an officer regarding whether a person is under the influence of drugs is circumstantial evidence that may be considered sufficient provided that the officer has the relevant skills, experience or training to render such an opinion. **RULE #4l:** A driving under the influence (DUI) charge can be proved without direct evidence of intoxication, such as chemical testing.

FINDING #4: There was sufficient evidence introduced, outside of the defendant's own out-of-court statements, that the defendant's offenses occurred, to support his convictions for the offenses. **WHY:** *Although there was no eyewitness testimony about the defendant's driving on the day of the offense, there was testimony that the collision damaged front end of his vehicle and the driver's side of the other driver's pickup truck, and the condition of vehicles sufficiently confirmed and strengthened the defendant's out-of-court statements about the accident.* 625 Ill. Comp. Stat. Ann. 5/11-305(a); 625 Ill. Comp. Stat. Ann. 5/11-601(a).

RESULT: The defendant's convictions for Various Traffic Offences affirmed in part; vacated in part, and the case remanded for further proceedings.

XX

THIRD DISTRICT

CASE #1

1) **CONSTITUTIONALITY OF STATUTE (DUI):** This defendant's Cannabis DUI conviction was not based on an unconstitutional statute.

2) **SENTENCES (Excessive):** This defendant's 12-year sentence for Aggravated DUI involving

a death was not excessive.

People v. Daniel Carl Minor, 2019 IL APP (3rd) 180171, (3rd Dist., July 23, 2019)
Aggravated DUI - - Affirmed.

FACTS: Minor pleaded guilty to aggravated driving under the influence (DIU) causing a death and driving while his license was suspended. The charges and convictions arose from a single-vehicle accident in which the vehicle Minor was driving left the road and his passenger was ejected and killed. Subsequent blood tests revealed that Minor had cannabinoids in his system. The trial court sentenced Minor to 12 years' imprisonment. He appealed the constitutionality of the DUI statute and the length of his sentence.

APPEAL: The Appellate Court held that: (a) the pre-amended DUI statute, which was in effect at time the defendant pled guilty, was constitutional, and (b) the defendant's 12-year sentence for aggravated DUI was not excessive or based on improper factors.

CASE ANALYSIS

ISSUE #1: CONSTITUTIONALITY OF STATUTE (DUI): Was this defendant's Cannabis DUI conviction based on an unconstitutional statute? **(No)**;

RULE #1a: Test for constitutionality of legislation that does not affect fundamental right is the rational basis test, under which statute is upheld when it bears reasonable relationship to public interest to be served, and the means adopted are reasonable method of accomplishing the desired objective. **RULE #1b:** Criminal statutes that can punish innocent conduct violate due process because they are not designed to achieve their purpose. **RULE #1c:** Driving under the influence (DUI) statute is designed to keep impaired drivers off the road. 625 Ill. Comp. Stat. Ann. 5/11-501(a). **RULE #1d:** To convict defendant of driving under the influence (DUI), State needed only to establish that defendant used controlled substance prior to driving, given that it was unlawful to possess any amount of a controlled substance under pre-amended DUI statute, providing that person should not drive when there is any amount of drug in person's breath, blood, or urine resulting from unlawful use of cannabis.

FINDING #1: **(A)** The pre-amended driving under the influence (DUI) statute, which was in effect at the time the defendant pled guilty and which provided that a person should not drive when there is any amount of drug in the person's breath, blood, or urine resulting from unlawful use of cannabis, was constitutional. **WHY:** The statute penalized people who drove with cannabis in their systems and was a reasonable means to accomplish its objective; the fact that DUI statute was amended after the defendant's conviction did not necessitate the conclusion that the pre-amended version of the statute was unconstitutional; and the pre-amended DUI statute was in accord with the scientific limitations of the time concerning the ability to detect an amount of cannabis within the driver's system. 625 Ill. Comp. Stat. Ann. 5/11-501(a)(6). **(B)** The pre-amended driving under the influence (DUI) statute, providing that a person should not drive when there is any amount of drug in person's breath, blood, or urine resulting from unlawful use of cannabis, did not require the People to establish proof of impairment, only that there was cannabis in the defendant's system.

ISSUE #2: SENTENCES (Excessive): Was this defendant’s 12-year sentence for Aggravated DUI involving a death excessive? (No).

RULE #2a: Court considers the following factors in fashioning sentence: nature and circumstances of offense and defendant's personal history, including age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment and education. **RULE #2b:** Victim impact evidence may be considered in deciding sentence.

FINDING #2: (A) It was not improper for a sentencing court to consider charges for resisting and possession of cannabis, which were ultimately dismissed, when sentencing a defendant for aggravated driving under the influence (DUI), involving cannabis. 625 Ill. Comp. Stat. Ann. 5/11-501(a)(6). (B) The defendant's 12-year sentence for aggravated driving under the influence (DUI) was not excessive or based on improper factors. **WHY:** *The defendant did not acknowledge that he was driving on a suspended license and should not have been behind the wheel; the sentencing range for aggravated DUI, a Class 2 felony, was 3 to 14 years' imprisonment; and the defendant's sentence was within that statutory range.* 625 Ill. Comp. Stat. Ann. 5/11-501(a)(6), 5/11-501(d)(1)(F), 5/11-501(d)(2)(G)(i).

RESULT: The defendant’s Aggravated DUI conviction was affirmed.

XX

CASE #2

DUE PROCESS (Trial Procedure): The defendant’s due process rights were not violated when the trial court allowed the defendant’s jury to view digital recordings in the courtroom in the presence of an Assistance State’s Attorney and two bailiffs.

People v. Valerie A. Parker, 2019 IL APP (3rd) 170108, (3rd Dist., July 26, 2019) Aggravated DUI - - Affirmed.

FACTS: Parker appealed her conviction for aggravated driving under the influence of alcohol (DUI). Specifically, she argued that plain error occurred “where an Assistant State's Attorney and two court bailiffs were present when the jury viewed evidence during deliberations outside of the presence of the parties and the court.”

APPEAL: The Appellate Court held that trial court's action of directing assistant state's attorney and two court bailiffs to enter jury room and set up DVD for jury was not improper. *Two Justices filed specially concurring opinions.*

CASE ANALYSIS

ISSUE: DUE PROCESS (Trial Procedure): Were the defendant’s due process rights violated when the trial court allowed the defendant’s jury to view digital recordings in the courtroom in the presence of an Assistance State’s Attorney and two bailiffs? (No).

RULE A: The primary purpose of the rule that jury deliberations should remain private and secret is to protect the jurors from improper influence. **RULE B:** The presence of a third-party during jury deliberations impinges on the privacy and secrecy of deliberations, but it does not

warrant reversal if no harm resulted from the intrusion.

FINDING: The trial court's action of directing assistant state's attorney and two court bailiffs to enter the jury room and set up a DVD player for the jury did not constitute plain error at this trial for aggravated driving under the influence of alcohol (DUI). **WHY:** *The assistant state's attorney and the bailiffs entered the jury room for the limited purpose of setting up the DVD as requested by the jury, and both parties were present while the court discussed the jury's request and the court's proposed procedure of having an assistant state's attorney set up the DVD in jury room.*

RESULT: The defendant's conviction for Aggravated DUI was affirmed.

XX

CASE #3

1) **DUE PROCESS (Confrontation):** The defendant was denied his right to confront witnesses when the trial court limited his cross-examination of a police witness.

2) **DUE PROCESS (Trial Procedure):** The trail court erred by allowing the defendant's jury to view digital recordings in the courtroom in the presence of the parties and the trial judge.

3) **PROSECUTOR CONDUCT (Improper Argument):** Were the arguments of the prosecutor improper? (Yes and No).

People v. James A. Pacheco, 2019 IL APP (3rd) 150880, (3rd Dist., July 23, 2019) Aggravated Assault; Aggravated Fleeing and Alluding; and DUI - - Reversed, Case Remanded.

FACTS: Pacheco pled guilty to criminal damage to property. Following a jury trial, he was also convicted of aggravated assault, aggravated fleeing or attempting to elude a peace officer, and driving under the influence of alcohol (DUI). On appeal, he argued (1) the trial court erred in replaying video and audio recordings in the courtroom in the presence of the parties and trial judge rather than in the jury room during jury deliberations, (2) the trial court violated defendant's right to confrontation by limiting his cross-examination of a police officer, (3) the trial court abused its discretion in granting the People's motion in limine to bar defense counsel from questioning two police officers about their failure to write police reports, (4) the prosecutor engaged in prosecutorial misconduct during closing argument, and (5) defendant is entitled to monetary credit for time spent in presentence custody in the amount of \$1410.

APPEAL: The Appellate Court held that: (a) the trial court's procedure in having a deliberating jury watch a videotape of the defendant's encounter with the police in the presence of the parties, the attorneys, the judge, and the court staff constituted structural error; (b) the defense counsel's "fair enough" remark, in response to the judge's explanation of the viewing procedure, merely constituted a failure to object, and not an affirmative agreement to the procedure; (c) the defendant's cross-examination questions for the officer regarding potential negative employment consequences should have been permitted under the confrontation clause; (d) the error in preventing the defendant from cross-examining the testifying officer regarding the officer's potential negative employment consequences was not harmless beyond reasonable doubt; and (e) the defendant should have been permitted to cross-examine the officers regarding their failure to

write police reports. *One Justice filed a concurred opinion. One Justice filed a dissented opinion.*

CASE ANALYSIS

ISSUE #1: DUE PROCESS (Trial Procedure): Did the trial court err by allowing the defendant's jury to view digital recordings in the courtroom in the presence of the parties and the trial judge? **(Yes).**

RULE #1a: Improper influence on jurors may include third parties exerting a chilling effect on the jury or improperly communicating with the jury, either verbally or through body language. **RULE #1b:** Jury intrusions are reviewed for prejudicial impact. **RULE #1c:** In context of jury intrusion, the parties and their attorneys are not neutral entities. **RULE #1d:** In context of jury intrusion, the parties and their attorneys have a substantial interest in the outcome of the litigation. **RULE #1e:** In context of jury intrusion, while the trial judge is a neutral entity, it is reasonable to presume that the presence of a judge would be innately intimidating to an average citizen and juror. **RULE #1f:** A "structural error," warranting automatic reversal, is a systemic error which serves to erode the integrity of the judicial process and undermine the fairness of the defendant's trial. **RULE #1g:** "Waiver" is the intentional relinquishment of a known right, whereas "forfeiture" is the failure to make a timely assertion of a known right.

FINDING #1: (A) The trial court procedure in having the deliberating jury watch a videotape of the defendant's encounter with the police in the presence of the parties, the attorneys, the judge, and the court staff chilled the jury deliberations and constituted a structural error which undermined the integrity of the judicial process, requiring the reversal of the defendant's conviction for aggravated assault, aggravated fleeing or attempting to elude peace officer, and driving under influence of alcohol (DUI). **(B)** The defense counsel's "fair enough" remark, in response to the judge's statement that the attorneys, the defendant, the judge, and the court staff, would be present in the courtroom while the deliberating jury viewed the videos of the encounter, merely constituted a failure to object to having the recordings played in the courtroom, and not an affirmative agreement to it, and thus the issue of jury interference was not waived, and a plain error review of the decision to show the recordings in this way.

ISSUE #2: DUE PROCESS (Confrontation): Was the defendant denied his right to confront witnesses when the trial court limited his cross-examination of a police witness? **(Yes).**

RULE #2a: A defendant states a confrontation clause violation by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness. **RULE #2b:** Under the confrontation clause, a defendant has the right to inquire into a witness' bias, interest, or motive to testify falsely during cross examination. **RULE #2c:** Under the confrontation clause, the court should afford a defendant the widest latitude to establish the witness' bias or hostile motivation during cross examination. **RULE #2d:** Where a court denies a defendant the right of effective cross-examination under the confrontation clause, the correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. **RULE #2e:** Where a court denies a defendant the right of effective cross-examination under the confrontation clause, the inquiry is whether the defendant would have been convicted regardless of the error. **RULE #2f:** In context of a court's error in denying a defendant the right of effective cross-examination

under the confrontation clause, whether the error is harmless depends upon a host of factors, all readily accessible to reviewing courts including the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case. **RULE #2g:** The scope of a defendant's cross-examination is limited to the subject of direct examination and any permissible matter which affects the witness's credibility. **RULE #2h:** The court enjoys discretion to impose reasonable limits on a defendant's cross-examination of a witness to assuage concerns about harassment, prejudice, jury confusion, witness safety, or repetitive and irrelevant questioning. **RULE #2i:** While the court enjoys discretion to impose reasonable limits on a defendant's cross-examination, that discretion must be exercised in such a way as to allow the defendant wide latitude in establishing bias, motive or interest by a witness. **RULE #2j:** Evidentiary motions, such as motions in limine, are generally directed to the trial court's discretion, and reviewing courts will not disturb a trial court's evidentiary ruling absent an abuse of discretion.

FINDING #2: (A) The defendant's intended cross examination questions for a police officer, regarding any potential negative consequences to the officer's employment if the officer's shooting of the defendant's vehicle was determined to be unjustified, went to the officer's potential bias or motive to testify falsely, and thus the questions should have been permitted under the confrontation clause. **WHY:** *The defense counsel planned to ask the officer during cross examination whether he would lose his job if he improperly used deadly force and argued that the officer's potential fear of losing his job could have provided the officer with a motive to testify falsely.* **(B)** The confrontation clause error in preventing the defendant from cross-examining a testifying officer regarding the officer's potential negative employment consequences was not harmless beyond reasonable doubt. **WHY:** *The officer's testimony that the defendant accelerated his vehicle toward the officer prior to the shooting was crucial to the prosecution's case and was not cumulative; the testimony was not directly corroborated by any other evidence at trial; and the video recording of the encounter did not show the defendant or the officer's locations or actions prior to the shooting.* **(C)** The police officers' failure to write police reports following this incident involving an officer shooting at the defendant's vehicle was relevant to their credibility as witnesses, and thus the defendant should have been permitted to cross-examine the officers regarding their failure to write reports, even though the officers testified at a hearing on a motion to suppress that the officers were not permitted by police department policy to write reports on incidents in which they discharged firearms. **WHY:** *The department policy itself could have indicated a lack of transparency and supported the inference that the officers' testimony lacked credibility.*

ISSUE #3: PROSECUTOR CONDUCT (Improper Argument): Were the arguments of the prosecutor improper? **(Yes and No).**

RULE #3: The state's closing argument should be limited to commenting on the evidence and all inferences reasonably yielded by the evidence.

FINDING #3: The appellate court held that some of the Prosecutor's challenged remarks were improper. **WHY:** *The prosecutor's comment that defense counsel had a "fantasy" as to the law and the evidence improperly denigrated defense counsel. Also, the prosecutor's remark that there was "not one piece of evidence that exonerate[d]" defendant was improper. The Court held that*

the defendant was not required to present any exonerating evidence; it was the People's burden to present sufficient evidence to prove the defendant guilty beyond a reasonable doubt.

RESULT: The appellate court reversed the defendant's convictions for Aggravated Assault; Aggravated Fleeing and Alluding; and DUI and remanded the case for retrial.

XX

CASE #4

1) **OFFENSES (One Act – One Crime):** The defendant was improperly convicted of two counts of Aggravated Battery where both charges arose from the same physical act.

2) **REASONABLE DOUBT (Aggravated Battery):** Sufficient evidence was introduced to support this defendant's aggravated battery conviction.

3) **REASONABLE DOUBT (Child Abduction):** The defendant was improperly convicted of Child Abduction where she argued that she had no notice of the custody order she violated.

People v. Sandra P. Magana-Ortiz, 2019 IL APP (3rd) 170123, (3rd Dist., July 26, 2019)
Aggravated Battery and Child Abduction - - Affirmed in Part; Reversed in Part, Case Remanded.

FACTS: Magana-Ortiz appealed from her convictions for aggravated battery and child abduction. In this appeal she argued (1) the People failed to prove her guilty of child abduction beyond a reasonable doubt, (2) they also failed to prove her guilty of aggravated battery beyond a reasonable doubt, and (3) one of her aggravated battery convictions must be vacated because the convictions both derive from a single physical act.

APPEAL: The Appellate Court held that: (a) the evidence in this case was insufficient to establish that the defendant had actual knowledge of the custody order; (b) the evidence was, however, sufficient to establish that the defendant, with her vehicle, made physical contact with the pregnant victim; and (c) the defendant's two aggravated battery convictions violated the one-act, one-crime rule.

CASE ANALYSIS

ISSUE #1: REASONABLE DOUBT (Child Abduction): Was the defendant properly convicted of Child Abduction where she argued that she had no notice of the custody order she violated? **(No);**

RULE #1: In a challenge to the sufficiency of the evidence in a bench trial, 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; while this standard affords the fact-finder's decision great deference, that decision is not conclusive.

FINDING #1: The evidence was insufficient to establish that the defendant had actual knowledge of the custody order, which granted sole custody of the defendant's child to the father, as to support her conviction for child abduction, although the defendant took the child without the father present. **WHY:** *The evidence indicated that the defendant was not served with notice*

of the custody order; the defendant did not have knowledge that any such order had validly been issued; the defendant did not know what the terms of the order were; and the defendant was not present for the hearing that preceded the order's entry. 720 Ill. Comp. Stat. Ann. 5/10-5(b)(1).

ISSUE #2: REASONABLE DOUBT (Aggravated Battery): Was sufficient evidence introduced to support this defendant's aggravated battery conviction? **(Yes);**

FINDING #2: The evidence was sufficient to establish that the defendant, with her vehicle, made physical contact with a pregnant victim, as to support her conviction for aggravated battery. **WHY:** The evidence indicated that defendant put vehicle in drive and drove away while victim clung to side of vehicle, victim's location could have made defendant aware that any movement of vehicle could have caused victim to fall, movement of defendant's vehicle caused victim to fall, and victim suffered bruises and abrasions to her leg. 720 Ill. Comp. Stat. Ann. 5/12-3.05(c), 5/12-3.05(d)(2).

ISSUE #3: OFFENSES (One Act – One Crime): Could the defendant properly be convicted of two counts of Aggravated Battery where both charges arose from the same physical act? **(No).**

FINDING #3: The defendant's two aggravated battery convictions violated the one-act, one-crime rule. **WHY:** The defendant's aggravated battery convictions derived from the same physical act of making physical contact of an insulting or provoking nature by dragging the victim from the motor vehicle.

RESULT: The defendant's convictions for Aggravated Battery and Child Abduction were affirmed in part; reversed in part; and the case remanded.

XX

CASE #5

1) **SENTENCING (Aggravation):** The trial court did not err in considering a fact inherent in this defendant's offense as a factor in aggravation.

2) **TRIAL PROCEDURE (Jurors):** The trial court did not err in removing a juror from the defendant's jury midtrial.

People v. William Grant, 2019 IL APP (3rd) 170185, (3rd Dist., July 11, 2019) Home Invasion - - Affirmed.

FACTS: After a jury trial, Grant was convicted of home invasion (720 ILCS 5/19-6(a)(1)) and was sentenced to 24 years in prison. He appealed his conviction and sentence, arguing that the trial court erred in (1) granting the People's midtrial request to remove the lone African American juror from the jury for cause and (2) considering a fact inherent in the crime of which he was convicted as a factor in aggravation in his sentencing.

APPEAL: The Appellate Court held that: (a) a race-neutral reason existed for the removal of the lone African American juror from this jury for cause, and (b) in sentencing, the trial court gave

insignificant weight to the threat of force, a fact inherent in the crime, as a factor in aggravation.

CASE ANALYSIS

ISSUE #1: TRIAL PROCEDURE (Jurors): Did the trial court err in removing a juror from the defendant's jury midtrial? (No).

RULE #1a: Although a defendant has no right to a jury composed in whole or in part of persons of his own race, he does have the right to be tried by a jury whose members are selected using nondiscriminatory criteria. **RULE #1b:** Because the Fourteenth Amendment Equal Protection Clause protects an accused throughout the proceedings used to bring him to justice, the State may not draw up its jury lists pursuant to neutral procedures but then resort to discrimination in other parts of the selection process. **RULE #1c:** An equal protection claim arises when a charge is made that similarly situated individuals were treated differently without a rational relationship to a legitimate State purpose. **RULE #1d:** To establish an equal-protection claim of racial discrimination in jury selection, a purpose to discriminate must be present, which may be proven by systematic exclusion of eligible jury persons of the proscribed race or by unequal application of the law to such an extent as to show intentional discrimination. **RULE #1e:** The burden is on the defendant to establish racial discrimination in jury selection. **RULE #1f:** When a violation of substantive due process is alleged, the appropriate inquiry is whether the individual has been subjected to the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice. **RULE #1g:** Substantive due process requires, among other things, that there be an overall balance—a level playing field—between the prosecution and the defense in a criminal trial. **RULE #1h:** Substantive due process does not mandate that the rights or advantages granted to the prosecution and the defense be in absolute symmetry at every stage of a criminal proceeding, only that the overall total balance between each side be designed to achieve the goal of a fair trial. **RULE #1i:** For the purposes of substantive due process, a shift at just one stage of a criminal trial as to the rights or advantages granted to each side might so skew the balance of rights or advantages in favor of the prosecution that it deprives the defendant of the right to a fair trial.

FINDING #1: In this home invasion trial, a race-neutral reason existed for the removal of lone African American juror from jury for cause, and therefore, the defendant was not deprived of equal protection or due process when the trial court granted the People's midtrial request to remove the juror. **WHY:** *The juror had fallen asleep during the presentation of evidence; although another juror was seen "nodding off," that juror's conduct was not at the level of the removed juror and was thus not similarly situated; and the trial court conducted a proper inquiry as to whether the juror had fallen asleep, including obtaining input from the People, the defendant's attorney, and the victim advocate, checking to determine if juror's actions had been recorded by security cameras, and considering its own observations.*

ISSUE #2: SENTENCING (Aggravation): Did the trial court err in considering a fact inherent in this defendant's offense as a factor in aggravation? (No).

RULE #2a: In general, although a trial court has broad discretion when imposing a sentence, it may not consider a factor that is inherent in the offense of which defendant has been convicted as an aggravating factor in sentencing defendant for that offense. **RULE #2b:** A trial court considering a factor that is inherent in the offense of which defendant has been convicted as an

aggravating factor in sentencing defendant for that offense would constitute an improper double enhancement. **RULE #2c:** The rule prohibiting double enhancements is based on the rationale that the legislature obviously already considered the factors inherent in the offense when setting the range of penalties for that offense and that it would be improper, therefore, to consider those factors once again as a justification for imposing a greater penalty. **RULE #2d:** The defendant bears the burden to establish that a sentence was based on an improper consideration. **RULE #2e:** On appeal, a reviewing court will not vacate a sentence that was based upon an improper factor and remand for resentencing if the reviewing court can determine from the record that the weight placed on the improperly considered aggravating factor was so insignificant that it did not lead to a greater sentence.

FINDING #2: In sentencing defendant following his conviction for home invasion, trial court gave insignificant weight to threat of force, a fact inherent in the crime, as a factor in aggravation. **WHY:** *Although the trial court mentioned the factor as being one of three factors it was considering in aggravation, it was clear from the trial court's comments, especially those that the trial court made in denying the defendant's motion to reconsider his sentence, that the trial court's focus on the aggravating factors in sentencing was upon defendant's criminal history and his prior felony convictions.*

RESULT: The defendant's Home Invasion conviction was affirmed.

XX

CASE #6

TRIAL PROCEDURE (Dismissal): The trial court did not have the authority to dismiss this defendant's case based upon its order granting the defendant's motion to suppress.

People v. William Atchison, 2019 IL App (3rd) 180183, (3rd Dist., July 3, 2019) Dismissal of Case - - Reversed and Remanded.

FACTS: The People appealed following the trial court's dismissal of a charge of driving while under the influence of alcohol (DUI) against Atchison. They argued that the court, which dismissed that charge after granting a motion to suppress, was without authority to take such action.

APPEAL: The Appellate Court held that: (a) the trial court's finding of lack of probable cause for the arrest did not operate as a dismissal of the DUI charge; (b) the People were not required to establish probable cause to proceed on the misdemeanor DUI charge; (c) the People's false assertion in its certificate of impairment that the suppression ruling rendered it unable to proceed to trial did not deny this defendant his due process rights; and (d) the People were not judicially estopped from proceeding to trial. *One Justice filed a specially concurring opinion.*

CASE ANALYSIS

ISSUE: TRIAL PROCEDURE (Dismissal): Did the trial court have the authority to dismiss this defendant's case based upon its order granting the defendant's motion to suppress? **(No).**

RULE #A: A trial court is authorized to dismiss criminal charges prior to trial only for the

reasons set forth in the statute governing motions to dismiss or where there has been a clear denial of due process which prejudiced the defendant. 725 Ill. Comp. Stat. Ann. 5/114-1. **RULE #B:** The operative concern when considering the effect of a pretrial dismissal of charges on a subsequent prosecution is whether the dismissal is tantamount to an acquittal, as opposed to a dismissal for mere technical insufficiency. **RULE #C:** Due process of law is satisfied when one present in court is convicted of a crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards, notwithstanding any invalidity of the original arrest. **RULE #D:** An illegal arrest does not necessitate dismissal of the case where evidence still exists to convict the defendant. **RULE #E:** As a legal arrest is not a prerequisite to prosecution, a finding that an arresting officer lacked probable cause to arrest a defendant does not act to bar further prosecution or as an effective dismissal of the charges. **RULE #F:** The Illinois Constitution only requires probable cause, found via indictment or preliminary hearing, in felony cases. **RULE #G:** Neither the Illinois Constitution nor the criminal code requires the People to demonstrate probable cause, either through an indictment or at a preliminary hearing, where they are prosecuting a misdemeanor charged via a criminal complaint. 725 Ill. Comp Stat. Ann. 5/111-2(a), (b), 5/109-3(a), 5/109-3.1. **RULE #H:** The People are not required to establish probable cause to proceed on a misdemeanor charge, and thus, its failure to do so is not grounds for dismissal of the charge. **RULE #I:** The doctrine of “judicial estoppel” applies in a judicial proceeding when litigants take a position, benefit from that position, and then seek to take a contrary position in a later proceeding. **RULE #J:** A party must have succeeded in the first proceeding and received some benefit from taking its position in order for judicial estoppel to prevent it from taking a contrary position in a later proceeding.

FINDING: (A) The trial court's finding that this law enforcement officer lacked probable cause to arrest the defendant did not operate as a dismissal of his driving while under the influence of alcohol (DUI) charge, and, thus, did not bar a subsequent prosecution for DUI based on same incident. **WHY:** *The People could introduce evidence unknown to the arresting officer and sufficient to support the elements of offense, including observations by the emergency medical technicians (EMTs) who interacted with the defendant before his arrest; conversations between the EMTs and the defendant; and receipts from the defendant's dinner.* (B) The People were not required to establish probable cause to proceed on misdemeanor charge of driving while under the influence of alcohol (DUI), and, thus, any lack of probable cause did not constitute a prejudicial denial of the defendant's due process rights that would authorize the dismissal of the DUI charge. (C) The trial court's finding that the law enforcement officer lacked probable cause to arrest the defendant for driving under the influence of alcohol (DUI) did not constitute a finding that the People lacked probable cause to charge or further to prosecute the defendant for DUI. (D) The People's false assertion, made in its certificate of impairment filed after the trial court suppressed evidence resulting from the arrest of the defendant for DUI, that they would be unable to proceed to trial without the suppressed evidence did not result in a prejudicial denial of the defendant's due process rights, as would bar the continuation of the prosecution, even if the false assertion constituted prosecutorial misconduct. **WHY:** *The People were entitled to bring an appeal based on the averment that the suppression substantially impaired rather than completely undermined its ability to prosecute the case.* (E) The People were not judicially estopped from proceeding to trial on a charge of DUI after filing a certificate of impairment claiming that the trial court's suppression of evidence stemming from the defendant's arrest rendered them unable to proceed to trial. **WHY:** *The People was unsuccessful on appeal and did not gain any benefit from claiming it was unable to proceed rather than substantially impaired.*

RESULT: The trial court's order dismissing this case was reversed.

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FOURTH DISTRICT

CASE #1

1) **CONSTITUTIONALITY OF STATUTE** (Threatening a Public Official): The Threatening a Public Official statute was not unconstitutionally overbroad.

2) **EVIDENCE** (Other Bad Acts): The trial court erred in allowing evidence of the defendant's prior threats into evidence.

3) **REASONABLE DOUBT** (Threatening a Public Official): The People failed to present sufficient evidence to support this defendant's conviction of Threatening a Public Official? (Yes).

People v. Adam C. Smith, 2019 IL APP (4th) 160641, (4th Dist., July 24, 2019) Threatening a Public Official and Direct Criminal Contempt of Court - - Affirmed in Part; Reversed in Part.

FACTS: Due to a voicemail left on a Judge's answering machine, the People charged Smith with threatening a public official. During the pendency of that case (case No. 15-CF-1355), the trial court found Smith in direct criminal contempt. After the jury found him guilty of threatening a public official, the court sentenced him to 30 days in the county jail for direct criminal contempt. At the sentencing hearing, the court again found Smith in direct criminal contempt for actions he had taken since the last contempt ruling and sentenced him to 180 days in jail as a sanction. The court sentenced Smith to 10 years in prison for threatening a public official. Smith filed appeals in all three cases. These appeals were consolidated for purposes of review. On appeal, Smith raised the following issues: (1) the People failed to prove beyond a reasonable doubt defendant intended to communicate a threat of unlawful violence to a public official; (2) section 12-9(a) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/12-9(a)) is unconstitutionally overbroad, violating the first amendment and section 2 of article I of the Illinois Constitution; (3) the trial court erred by allowing the People to introduce other-crimes evidence, which denied him a fair trial; (4) he was denied his statutory right to a speedy trial when the court granted the People's motion to continue the case; (5) the court erred by allowing him to proceed pro se at trial without first substantially complying with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984); (6) the court erred by not ordering, sua sponte, a hearing on his fitness, even though he had earlier been found fit to stand trial; (7) the court abused its discretion in summarily convicting him of direct criminal contempt; and (8) the court imposed an excessive sentence.

APPEAL: The Appellate Court held that: (a) the probative value of an inmate-request slips, admitted as other-crimes evidence to identify the defendant, was substantially outweighed by the danger of undue prejudice; (b) The inmate-request slips, admitted to establish identity through modus operandi, were not sufficiently similar to the alleged threatening voicemail; (c) the

probative value of the inmate-request slips, admitted as other-crimes evidence to establish state of mind, was substantially outweighed by the danger of undue prejudice; (d) the evidence on intent was closely balanced, and thus it was plain error for the trial court to admit the prejudicial inmate-request slips; (e) the defendant's voicemail message to a judge did not constitute a "true threat" of violence to support his conviction for threatening a public official; and (f) the defendant had the mental capacity to understand what he was doing when he engaged in conduct for which the trial court held him in contempt. *One Justice filed a dissenting opinion.*

CASE ANALYSIS

ISSUE #1: CONSTITUTIONALITY OF STATUTE (Threatening a Public Official): Was the Threatening a Public Official statute unconstitutionally overbroad? **(No).**

RULE #1a: While content-based laws targeting speech based on its communicative content are presumed to be invalid as violative of the freedom of speech protections under the First Amendment, certain categories of speech do not fall within the protections of the First Amendment, including true threats of violence. 720 Ill. Comp. Stat. Ann. 5/12-9(a). **RULE #1b:** If the state charges an individual with threatening a public official, the threat of violence must be a true threat, or else the prosecution will violate the freedom of speech protections of the First Amendment. **RULE #1c:** "True threat," as element of offense of threatening a public official, encompasses statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. **RULE #1d:** In communicating a true threat, as element of offense of threatening a public official, the speaker need not actually intend to carry out the threat. **RULE #1e:** Prohibition on true threats, as element of offense of threatening a public official, protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. **RULE #1f:** "Intimidation," in the constitutionally proscribable sense of the word under the First Amendment, providing for freedom of speech, is a type of "true threat," as element of offense of threatening a public official, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. **RULE #1g:** When assessing the nature of a threat within the context of offense of threatening a public official, the question is not whether the speaker intends to act on the threat of violence; instead, speaker must recognize the threatening nature of his or her comments.

FINDING #1: Although the offense of threatening a public official requires only knowledge, the First Amendment, in protecting the freedom of speech, allows a state to punish an alleged threat of violence only if it is a true threat, and thus, because a true threat is intentional, not merely knowing, offense of threatening a public official is interpreted as requiring intentionality.

ISSUE #2: EVIDENCE (Other Bad Acts): Did the trial court err in allowing evidence of the defendant's prior threats into evidence? **(Yes).**

RULE #2a: Evidence of other crimes may be relevant to prove modus operandi, intent, identity, motive, or absence of mistake. **RULE #2b:** When other-crimes evidence is offered, it is incumbent upon the trial judge to weigh the relevance of the evidence to establish the purpose for which it is offered against the prejudicial effect the introduction of such evidence may have upon the defendant. 725 Ill. Comp. Stat. Ann. 5/115-7.3(c)(1)-(3). **RULE #2c:** Even when other-

crimes evidence is offered for a permissible purpose and not solely for propensity, such evidence will not be admitted if its prejudicial impact substantially outweighs its probative value. **RULE #2d:** The erroneous admission of other-crimes evidence carries a high risk of prejudice and will ordinarily require reversal if the erroneously admitted evidence was so prejudicial as to deny the defendant a fair trial, that is, the erroneously admitted evidence must have been a material factor in the defendant's conviction such that without the evidence the verdict likely would have been different. **RULE #2e:** Other-crimes evidence may be used only when the other crime has some threshold similarity to the crime charged; it is this similarity which increases the relevance of the evidence and ensures that it is not being used solely to establish the defendant's criminal propensities. **RULE #2f:** The degree of similarity required to introduce other-crime evidence under the modus-operandi or common-design exceptions is higher than for any of the other exceptions. **RULE #2g:** Absent sufficient evidence of similarities between prior bad acts and charged offense, collateral offenses should not be admitted to show modus operandi. **RULE #2h:** Where a prior bad act is the same or substantially similar to the offense for which a defendant is on trial, the potential for overwhelming prejudice is even greater. **RULE #2i:** To introduce other-crimes evidence under the modus operandi exception, there must be a high degree of identity between a charged offense and the other-crime evidence. **RULE #2j:** When admitting other-crimes evidence, a trial court must weigh whether the undue prejudice of the evidence outweighs its probative value. **RULE #2k:** In weighing the probative value of other-crimes evidence against undue prejudice, as the probative value of evidence decreases, the prejudicial impact inherent in other-crimes evidence weighs more in comparison.

FINDING #2: (A) The probative value of inmate-request slips, admitted as substantive other-crimes evidence to identify the defendant as the speaker on the alleged threatening voicemail, was substantially outweighed by the danger of undue prejudice, although identity was technically an issue since the defendant, as a self-represented litigant, refused to acknowledge having made the phone call. **WHY:** *There was little question as to the identity of the voicemail caller as the court clerk, who first heard the voicemail message, believed the caller to be the defendant, and when questioned by a police detective, the defendant provided his telephone number, which matched the caller's number reflected in the voicemail message.* **(B)** The inmate-request slips, admitted as substantial other-crimes evidence to establish identity through modus operandi, were not sufficiently similar to the alleged threatening voicemail, and thus were not admissible, even though the voicemail and the inmate-request slips were similar in that the caller and the defendant directed their comments at the same judge, alleged that the judge was corrupt, and used foul language. **WHY:** *The inmate-request slips included religious references while the voicemail did not, and the voicemail message was left without the caller identifying himself while the inmate-request slips were signed by the defendant.* **(C)** The probative value of inmate-request slips, admitted as substantive other-crimes evidence to establish defendant's state of mind at the time of alleged threatening voicemail, was substantially outweighed by danger of undue prejudice. **WHY:** *There were dramatically different circumstances under which the voicemail and inmate-request slips were generated and there was nothing in the slips that lent itself to an inference they were indicative of the defendant's state of mind at the time of the telephone call.* **(D)** The evidence on intent in this case was closely balanced, and thus it was plain error for the trial court to admit prejudicial inmate-request slips, as other-crimes evidence. **WHY:** *With the alleged threatening voicemail alone, the jury had an ambiguous statement with no other evidence indicating whether it was a true threat or not, and there was no evidence supporting the inference the slips were in relation to the telephone call and substantial evidence they were intended to address the situation then before the defendant.*

ISSUE #3: REASONABLE DOUBT (Threatening a Public Official): Did the People fail to present sufficient evidence to support this defendant’s conviction threatening a Judge? (Yes).

RULE #3a: When considering the sufficiency of the evidence to convict a defendant of a crime, an appellate court will affirm the conviction if any rational trier of fact could have found the state proved all the elements of the crime beyond a reasonable doubt, viewing the evidence in a light most favorable to the prosecution. **RULE #3b:** When reviewing whether a communication constitutes a threat to inflict physical harm, as element of offense of threatening a public official, a reviewing court should look at the totality of the circumstances to determine the subjective component of the analysis in ascertaining the intent of defendant. **RULE #3c:** For purposes of offense of threatening a public official, a person expressing a dream for revenge is not the same as an expression that the person intends to undertake physical retaliation or commit violence. 720 Ill. Comp. Stat. Ann. 5/12-9.

FINDING #3: The defendant's voicemail message to a judge did not constitute a “true threat” of violence to support a conviction for threatening a public official. **WHY:** *The message contained no explicit threat of violence and was ambiguous in seeking to convey the defendant's belief that the judge was corrupt, and the defendant's tone was relatively calm.*

ISSUE #4: Did the People present evidence to support this defendant’s conviction for Criminal Contempt? (Yes).

RULE #4a: Criminal contempt of court is conduct which is calculated to embarrass, hinder, or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute. **RULE #4b:** Direct criminal contempt occurs in the presence of the court. **RULE #4c:** Before citing a person with contempt, a court must find that the alleged contemnors conduct was willful. **RULE #4d:** An individual's intent may be inferred from the surrounding circumstances and the character of the party's conduct. **RULE #4e:** Direct criminal contempt may be found and punished summarily if all the elements are before the court and within the judge's knowledge. **RULE #4f:** Contempt may not be summarily imposed if the record shows a substantial question as to the defendant's mental capacity to commit contempt; in that situation, a defendant must be given a hearing and a right to present a defense.

FINDING #4: The defendant had the mental capacity to understand what he was doing when he engaged in the conduct for which the trial court held him in contempt, even though a psychiatrist who evaluated the defendant as part of a fitness evaluation noted that the defendant would likely file bizarre motions and interrupt the trial court proceedings. **WHY:** *The defendant was found to be fit to stand trial, and he was able to control his behavior as evidenced by his conduct during voir dire and the trial.*

RESULT: The defendant’s convictions for Threatening a Public Official and Direct Criminal Contempt of Court were affirmed in part and reversed in part.

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FIFTH DISTRICT

CASE #1

CONFESSIONS AND ADMISSIONS (Counsel): The defendant invoked his right to counsel when speaking with these police officers.

People v. Anthony Firestine, 2019 IL APP (5th) 180264, (5th Dist., July 26, 2019) Suppression of Statement - - Affirmed.

FACTS: Firestine was charged with several offenses in connection with an incident in which two of his brothers were shot. He admitted to the police that he shot one of his brothers in the foot. He also admitted firing five additional shots but told police that he did not know whether any of those bullets hit his other brother. He claimed that all six shots were intended as warning shots. Firestine filed a motion to suppress his statement, arguing that, after he invoked his right to counsel, the investigating officer continued to ask him questions. The trial court granted his motion. The People appealed, arguing that Firestine made only a limited invocation of his right to counsel by stating, “I don't want to answer that question without my lawyer.”

APPEAL: The Appellate Court held that the defendant's invocation of his right to counsel, by stating that he did not want to answer “that question” without his lawyer, was an unlimited request for counsel.

CASE ANALYSIS

ISSUE: CONFESSIONS AND ADMISSIONS (Counsel): Did the defendant invoke his right to counsel when speaking with these police officers? (Yes).

RULE #A: The Fifth Amendment to the United States Constitution protects any individual from being compelled in any criminal case to be a witness against himself, a protection that is applicable during custodial interrogation by the police. **RULE #B:** *Miranda* warnings are intended to ensure that a suspect knows that he may choose not to talk to law enforcement officers, to talk only with counsel present, or to discontinue talking at any time. **RULE #C:** Requirement that officers stop questioning a suspect who invoked his right to counsel until counsel is present allows the suspect to control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation. **RULE #D:** Once a suspect in custody has invoked his right to counsel, all questioning must cease until counsel is present unless the suspect initiates further discussion. **RULE #E:** A valid waiver of the right to counsel, after the right has been asserted, cannot be established by showing only that the suspect responded to further police-initiated custodial interrogation. **RULE #F:** Rule that all questioning must cease once a suspect invokes right to counsel is a rigid, bright-line rule. **RULE #G:** Rule that all questioning must cease once a suspect invokes right to counsel exists to prevent police officers from “badgering” a suspect or engaging in conduct designed to wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance. **RULE #H:** Rule that all questioning must cease once a suspect invokes right to counsel is applicable only if the suspect actually invokes his right to counsel; to do so, a suspect must express his desire for the presence of counsel sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. **RULE #I:** If the suspect's statement invoking right to counsel is ambiguous or equivocal in light of the circumstances, the *Edwards* rule that all questioning must cease does not apply, and the officers

may continue questioning the suspect. **RULE #J:** Whether a suspect has unambiguously invoked his right to counsel is an objective inquiry. **RULE #K:** Statements obtained in violation of *Miranda* and its progeny are presumptively non-voluntary. **RULE #L:** Statements obtained in violation of *Miranda* and its progeny may not be admitted into evidence. **RULE #M:** The People bear the burden of proving that a defendant's incriminating statements were voluntary. **RULE #N:** In reviewing ruling on motion to suppress evidence on basis of a *Miranda* violation, Appellate Court reviews the trial court's factual findings to determine whether they are against the manifest weight of the evidence. **RULE #O:** Any discrepancies between video of police interview of suspect and the officer's testimony about the interview more than a year later must be resolved in favor of what the video shows. **RULE #P:** A suspect may make a limited or selective invocation of his right to counsel. **RULE #Q:** A suspect's request for counsel should be given a broad, rather than a narrow, interpretation. **RULE #R:** Once a suspect unambiguously and unequivocally invokes his right to counsel, police must not question him concerning any matter unless the suspect has unambiguously and unequivocally placed that matter outside the scope of his invocation of his right to counsel.

FINDING: The defendant's invocation of his right to counsel, by stating that he did not want to answer "that question" without his lawyer, was an unlimited request for counsel. **WHY:** *The defendant refused to answer the first question he was asked about the incident in which his brothers were shot, which would make clear to a reasonable police officer that he did not wish to discuss that incident further without an attorney, and the defendant's invocation was not accompanied by an affirmative statement that there were any topics he was willing to discuss.*

RESULT: The trial court's order suppressing the defendant's statements to the police was affirmed.

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CASE #2

- 1) **COUNSEL (Effectiveness):** The defendant's attorney did not provide ineffective assistance by failing to object to his jury viewing a videotape of the defendant's interrogation.
- 2) **JURY SELECTION (Implied Bias):** The trial court did not err in declining to remove a juror because she was related to a police officer who interviewed the defendant.
- 3) **TRIAL PROCEDURE (Evidence):** The trial court did not commit reversible error by allowing the jury to view evidence during their deliberations in the presence of a clerk and the bailiff.

People v. David W. Ryder, 2019 IL APP (5th) 160027, (5th Dist., July 11, 2019) Criminal Sexual Assault and Aggravated Criminal Sexual Abuse - - Affirmed.

FACTS: Ryder appealed his convictions and sentences for the offenses of predatory criminal sexual assault, victim under age 13 (count I and count II), and aggravated criminal sexual abuse, victim under age 13 (count III and count IV).

APPEAL: The Appellate Court held that: (a) the implied bias doctrine did not apply to automatically disqualify the sister of a law enforcement officer who participated in the

defendant's interviews from serving on this jury; (b) the trial judge was not required to sua sponte remove such juror; (c) the defendant received a fair trial, and thus was not entitled to prevail on an ineffective assistance of counsel claim; (d) the defendant failed to establish that allowing his jury to view video evidence of the defendant's interview with police officers in front of the court clerk and the bailiff constituted clear and obvious error; (e) the defendant failed to establish that the counsel's failure to object to the trial judge permitting a jury to view such evidence in front of the clerk and a bailiff constituted ineffective assistance; (f) the jury's act of beginning to re-watch a video before the judge had decided what, if anything, the jury was permitted to view did not constitute error; and (g) the defendant failed to establish that any juror was not present when the jury began to re-watch the video.

CASE ANALYSIS

ISSUE #1: Could the People object to the appellate court's plain error review of the defendant's allegations on appeal? **(No).**

FINDING #1: The People forfeited any objection to a plain error review of the defendant's convictions for predatory criminal sexual assault, victim under age 13, and aggravated criminal sexual abuse, victim under age 13. **WHY:** *Although the People alleged that the defendant failed to meet its burden of persuasion, as necessary for a plain error review, they provided no case law in support of that argument, and instead of arguing that the defendant was not entitled to such review, the People presented argument as to why the defendant's claim should fail on its merits.*

ISSUE #2: JURY SELECTION (Implied Bias): Should the trial court have removed a juror because she was related to a police officer who interviewed the defendant? **(No).**

RULE #2: Implied bias doctrine did not apply to automatically disqualify sister of law enforcement officer who participated in defendant's interviews, and who was present in video interview that was played for jury, from serving on jury in prosecution for predatory criminal sexual assault, victim under age 13, and aggravated criminal sexual abuse, victim under age 13.

FINDING #2: The trial judge was not required to sua sponte remove a juror, whose brother participated in the defendant's interviews and was present in a video interview played for the jury, for cause. **WHY:** *The defendant waived the opportunity to object to the juror when his counsel declined to challenge the juror for cause or to question her regarding her relationship with her brother, and imposing a sua sponte duty on judges would give the defendants incentive to game the jury selection process by remaining silent at trial, and then alleging errors regarding the propriety of the judge's decision following conviction.*

ISSUE #3: COUNSEL (Effectiveness): Did the defense attorney provide ineffective assistance by failing to object to the juror? **(No).**

RULE #3a: When the Appellate Court examines whether counsel's performance was so seriously deficient as to fall below an objective standard of reasonableness, as necessary for defendant to prevail on ineffective assistance claim, its judicial scrutiny of a counsel's performance is highly deferential, requiring a defendant to overcome a strong presumption that

the challenged actions of counsel were the product of sound trial strategy. **RULE #3b:** Defense counsel's conduct during jury voir dire involves matters of trial strategy that generally are not subject to scrutiny under an ineffective assistance of counsel claim. **RULE #3c:** In order to prevail on ineffective assistance of counsel claim, defendant's burden is not to show that a different verdict was likely in the absence of counsel's shortcomings; instead, the Appellate Court asks if, in the presence of the alleged shortcomings, the defendant received a fair trial, which in the context of ineffective assistance claims means a trial resulting in a verdict worthy of confidence.

FINDING #3: (A) The defendant received a fair trial, and thus was not entitled to prevail on an ineffective assistance of counsel claim, even assuming his counsel's performance was deficient. **WHY:** Although the defendant alleged there was conflicting testimony about where the child victim slept, that there was no physical evidence of vaginal penetration, and that the defendant's partial admissions did not necessarily mean evidence was not closely balanced, the victim unequivocally testified that she slept on the outside of bed, and contrary testimony of the defendant's daughter was opposite of what the daughter told an interviewer; the doctor who examined the victim testified that the results were not inconsistent with the victim's report of the defendant's sexual contact; and the defendant never claimed innocence or that his confessions were false; the admissions were supported by the evidence, and the defendant conceded that he was not mistreated by the police and that he signed a Miranda waiver.

ISSUE #4: TRIAL PROCEDURE (Evidence): Did the trial court commit reversible error by allowing the jury to view evidence during their deliberations in the presence of a clerk and the bailiff? **(No).**

FINDING #4: (A) The defendant failed to establish that allowing his jury to view video evidence of his interview with police officers in front of court clerk and bailiff constituted clear and obvious error, and thus that he was entitled to plain error review of his convictions. **WHY:** Although the defendant alleged that allowing his jury to view the video in the presence of the clerk and a bailiff allowed for possible influence of the jury, neither the clerk nor the bailiff was representative of one of the parties or had a stake in outcome of case; when the trial judge announced his intention to have the clerk and the bailiff present, the defense counsel did not object, and the trial judge admonished the jury not to deliberate while watching the video. **(B)** The defendant forfeited for appellate review any argument that the defense counsel's failure to object to the trial judge allowing his jury to view video evidence of the defendant's interview with the police officers in front of the court clerk and a bailiff constituted ineffective assistance of counsel. **WHY:** The defendant failed to raise such argument on appeal and regardless of whether such failure constituted deficient performance, the defendant could not demonstrate that he was prejudiced by it, and to extent the counsel agreed to the procedure by choosing not to take issue, despite being given explicit opportunity to do so, the doctrine of invited error prohibited the defendant from challenging such procedure on appeal. **(C)** The jury beginning to re-watch the video evidence before the trial judge had decided what, if anything, the jury was permitted to view did not constitute error, and thus the defendant was not entitled to a plain error review. **WHY:** Once the trial judge learned the jury had begun to watch, he repeatedly questioned the jurors to ensure that they had begun videotape at the beginning, which was in conformance with the ruling he had made outside of their presence, and thus determined that the jury had not acted in a manner inconsistent with that ruling; and the judge was presumably ready to address the matter if the jury had acted inconsistently. **(D)** The defendant failed to

establish that any juror was not present when his jury began to re-watch the video, and thus the defendant was not entitled to a plain error review of his convictions. **WHY:** Although the defendant alleged that one of the jurors was in the restroom when the viewing began, the trial judge expressed awareness that the juror had left, and there was no reason to believe that the judge would not have made a record if such juror had not returned by the time the viewing began; and, given that the jury had showed no reluctance to send notes to the trial judge earlier in the proceedings, there was no reason to believe the jury would not have alerted the judge if the juror had not been present, and no such records were made. (E) Even if allowing jury to re-watch video of defendant's interview with police in presence of court clerk and bailiff had constituted error, it did not rise to level of structural error, as necessary to entitle defendant to plain error review of convictions for predatory criminal sexual assault and aggravated criminal sexual abuse.

RESULT: The defendant's convictions for Criminal Sexual Assault and Aggravated Criminal Sexual Abuse were affirmed.

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ADDITIONAL PUBLISHED OPINIONS FOR JULY OF 2019

1. **People v. Fernando Higuera Jr., 2019 IL App (3rd) 180730, (3rd Dist., July 3, 2019)** Forfeiture of Bond - - Appeal Dismissed.

FACTS: Higuera pled guilty to driving while license suspended (625 ILCS 5/6-303). He subsequently failed to appear at his sentencing hearing. The trial court ordered the forfeiture of defendant's bond as well as a bench warrant. The circuit clerk sent a notice to Higuera informing him that his bond of \$1500 had been ordered forfeited and that the forfeiture would be vacated if he appeared within 30 days and showed good cause why judgment should not be entered on the forfeiture. At a hearing, the trial court ordered that judgment be entered on the forfeiture of his bond. Higuera was arrested three years later. At that hearing, defense counsel asked the court to vacate the bond forfeiture. The People objected, insisting that the court was without jurisdiction to do so. The court disagreed, asserting that until a final sentencing order was issued in Higuera's criminal case, it retained jurisdiction. In the ensuing sentencing order, the court wrote, "vacate all bond forfeitures." The People filed a motion to reconsider, again arguing that the court lacked jurisdiction. The court denied the motion, and the People appealed.

ISSUE: TRIAL PROCEDURE (Jurisdiction): Did the trial court have the jurisdiction to hear the defendant's complaint concerning the three-year-old forfeiture of his bond? (No).

2. **People v. Eric D. Walker, 2019 IL APP (3rd) 170374, (3rd Dist., July 11, 2019)** Dismissal of PCP - - Affirmed.

FACTS: Walker pled guilty to aggravated battery and was subsequently sentenced to a term of three years' imprisonment. He filed a pro se postconviction petition alleging, inter alia, that defense counsel had been ineffective for failing to share and discuss discovery documents with him. The trial court dismissed the petition as frivolous and patently without merit. On appeal, he argued that the dismissal was erroneous.

ISSUE: POST-CONVICTION PETITION (Dismissal): Did the trial court err in dismissing this defendant's PCP after the defendant argued that his counsel provided ineffective assistance by failing to

share and discuss discovery documents with him? (No).

3. In re J.S., 2019 IL App (1st) 190059, (1st Dist., July 12, 2019) Adjudication of Wardship - - Affirmed.

FACTS: Cynthia S. appealed the trial court's determination that it had jurisdiction to rule on the People's petition for adjudication of wardship under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (750 ILCS 36/201). On appeal, she contended the trial court erred in finding it had jurisdiction where she had established her residency in Indiana when J.S. was born.

ISSUE: JUVENILE LAW (Jurisdiction): Did the trial court have jurisdiction to rule in this case? (Yes).

4. People v. Refugio Blancas, 2019 IL APP (1st) 171127, (1st Dist., July 16, 2019) Petition to Withdraw - - Appeal Dismissed.

FACTS: The only question formally presented by Blancas's appeal is whether his appointed appellate counsel should be permitted to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551, 107 S. Ct. 1990, 95 L.Ed.2d 539 (1987).

ISSUE: APPELLATE JURISDICTION (Petition to Withdraw): Did the appellate court have jurisdiction to hear this appeal? (No).

5. In re J.C., 2019 IL App (1st) 182226, (1st Dist., July 23, 2019) Termination of Parental Rights - - Affirmed.

FACTS: C.F. appealed the involuntary termination of her parental rights with respect to her daughter, J.C., following a hearing in which she was found unfit under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.*) and the Adoption Act (750 ILCS 50/1(D) (West 2016)). C.F. did not challenge the trial court's termination of parental rights findings but argued solely that the court erred in denying her motion to compel nine-year-old J.C. to testify at the termination hearing.

ISSUE: JUVENILE LAW (Termination of Parental Rights): Did the trial court err in terminating the parental rights of the mother of this child? (No).

6. People v. Michael C. Barefield, 2019 IL APP (3rd) 160516, (3rd Dist., July 30, 2019) Dismissal of PCP - - Reversed and Remanded.

FACTS: Barefield appealed the dismissal of his petition for relief from judgment filed under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401). He argued that his conviction for armed habitual criminal should be vacated because his prior conviction for aggravated unlawful use of a weapon (AUUW) was void *ab initio* and could not serve as a predicate offense. He also argued that his two convictions for AUUW under different case numbers should be vacated because they are also void *ab initio*.

ISSUE: POST-CONVICTION PETITION (Dismissal): Did the trial court err in dismissing this defendant's PCP after the defendant argued that his prior convictions were void and could not support his conviction for being an armed habitual criminal? (Yes).

INDEX OF PUBLISHED OPINIONS FOR THE MONTH OF JULY OF 2019

Title Citation. Date.

1. **People v. Daniel A. Maillet, 2019 IL APP (2nd) 161114, (2nd Dist., July 1, 2019)** Unauthorized Videotaping - - Affirmed. **ISSUES: 1) CONSTITUTIONALITY OF STATUTE (Unauthorized Videotaping)**: Did this statute violate the defendant's First Amendment and Due Process rights? (No). 2) **STATUTORY CONSTRUCTION (Unauthorized Videotaping)**: Did this statute prohibit the unauthorized videotaping of a person in the defendant's home? (Yes). **Page 16.**

2. **People v. Fernando Higuera Jr., 2019 IL App (3rd) 180730, (3rd Dist., July 3, 2019)** Forfeiture of Bond - - Appeal Dismissed. **ISSUE: TRIAL PROCEDURE (Jurisdiction)**: Did the trial court have the jurisdiction to hear the defendant's complaint concerning the three-year-old forfeiture of his bond? (No). **Page 41.**

3. **People v. William Atchison, 2019 IL App (3rd) 180183, (3rd Dist., July 3, 2019)** Dismissal of Case - - Reversed and Remanded. **ISSUE: TRIAL PROCEDURE (Dismissal)**: Did the trial court have the authority to dismiss this defendant's case based upon its order granting the defendant's motion to suppress? (No). **Page 31.**

4. **People v. Nancy Lucas, 2019 IL APP (1st) 160501, (1st Dist., July 9, 2019)** Battery, DUI and Resisting a Peace Officer - - Affirmed. **ISSUES: 1) DUE PROCESS (Judicial Conduct)**: Did the trial court err by viewing a video of the defendant's traffic stop outside of her presence? (Yes). **Page 9.**

5. **People v. Todd Allgood, 2019 IL APP (2nd) 160810, (2nd Dist., July 10, 2019)** Aggravate Criminal Sexual Assault and Aggravated Kidnapping - - Affirmed in Part; Vacated in Part; case remanded. **ISSUE: CONSTITUTIONALITY OF STATUTE (Sentence Enhancements)**: Did the 15-year sentence enhancement violate the proportionate-penalties clause of the Illinois Constitution? (Yes). **Page 15.**

6. **People v. David W. Ryder, 2019 IL APP (5th) 160027, (5th Dist., July 11, 2019)** Criminal Sexual Assault and Aggravated Criminal Sexual Abuse - - Affirmed. **ISSUES: 1) JURY SELECTION (Implied Bias)**: Should the trial court have removed a juror because she was related to a police officer who interviewed the defendant? (No); 2) **COUNSEL (Effectiveness)**: Did the defense attorney provide ineffective assistance by failing to object to the juror? (No); 3) **TRIAL PROCEDURE (Evidence)**: Did the trial court commit reversible error by allowing the jury to view evidence during their deliberations in the presence of a clerk and the bailiff? (No). **Page 38.**

7. **People v. Eric D. Walker, 2019 IL APP (3rd) 170374, (3rd Dist., July 11, 2019)** Dismissal of PCP - - Affirmed. **ISSUE: POST-CONVICTION PETITION (Dismissal)**: Did the trial court err in dismissing this defendant's PCP after the defendant argued that he counsel provided ineffective assistance by failing to share and discuss discovery documents with him? (No). **Page 41.**

8. **People v. William Grant, 2019 IL APP (3rd) 170185, (3rd Dist., July 11, 2019)** Home Invasion - - Affirmed. **ISSUES: 1) TRIAL PROCEDURE (Jurors)**: Did the trial court err in removing a juror from the defendant's jury midtrial? (No); 2) **SENTENCING (Aggravation)**: Did the trial court err in considering a fact inherent in this defendant's offense as a factor in aggravation? (No). **Page 29.**

9. **In re J.S., 2019 IL App (1st) 190059, (1st Dist., July 12, 2019)** Adjudication of Wardship - - Affirmed. **ISSUE: JUVENILE LAW (Jurisdiction)**: Did the trial court have jurisdiction to rule in this case? (Yes). **Page 42.**

10. **People v. Refugio Blancas, 2019 IL APP (1st) 171127, (1st Dist., July 16, 2019)** Petition to Withdraw - - Appeal Dismissed. **ISSUE: APPELLATE JURISDICTION (Petition to Withdraw)**:

Did the appellate court have jurisdiction to hear this appeal? (No). Page 42

11. **People v. Anterius Beck, 2019 IL APP (1st) 161626, (1st Dist., ~~June 18, 2019~~)** Unlawful Possession of a Firearm by a Street Gang Member and 10 counts of Aggravated Unlawful Use of a Weapon (AUUW) - - Affirmed in Part; Reversed in Part; Case Remanded for Resentencing. **MODIFIED UPON DENIAL OF REHEARING – July 16, 2019. ISSUE: REASONABLE DOUBT (Unlawful Possession of a Firearm by a Street Gang Member)**: Did the People fail to present sufficient evidence to support this defendant's conviction for the Unlawful Possession of a Firearm by a Street Gang Member? (Yes). Page 11.

12. **People v. Roger C. O'Brien, 2019 IL APP (2nd) 170030, (2nd Dist., July 18, 2019)** Aggravated Battery and Aggravated Domestic Battery - - Affirmed in Part; Vacated in Part, Case Remanded. **ISSUES: 1) DUE PROCESS (Double Jeopardy)**: Did the People violate the defendant's double jeopardy rights by prosecuting him after they amended his charges? (No); **2) DUE PROCESS (Plea Bargain)**: Was the defendant denied the benefit of his plea bargain? (No); **3) OFFENSES (One Act – One Crime)**: Was the defendant improperly convicted of both Aggravated Battery and Aggravated Domestic Battery? (No). Page 18.

13. **People v. James A. Pacheco, 2019 IL APP (3rd) 150880, (3rd Dist., July 23, 2019)** Aggravated Assault; Aggravated Fleeing and Alluding; and DUI - - Reversed, Case Remanded. **ISSUES: 1) DUE PROCESS (Trial Procedure)**: Did the trial court err by allowing the defendant's jury to view digital recordings in the courtroom in the presence of the parties and the trial judge? (Yes); **2) DUE PROCESS (Confrontation)**: Was the defendant denied his right to confront witnesses when the trial court limited his cross-examination of a police witness? (Yes); **3) PROSECUTOR CONDUCT (Improper Argument)**: Were the arguments of the prosecutor improper? (Yes and No). Page 25.

14. **People v. Daniel Carl Minor, 2019 IL APP (3rd) 180171, (3rd Dist., July 23, 2019)** Aggravated DUI - - Affirmed. **ISSUES: 1) CONSTITUTIONALITY OF STATUTE (DUI)**: Was this defendant's Cannabis DUI conviction based on an unconstitutional statute? (No); **2) SENTENCES (Excessive)**: Was this defendant's 12-year sentence for Aggravated DUI involving a death excessive? (No). Page 23.

15. **In re J.C., 2019 IL App (1st) 182226, (1st Dist., July 23, 2019)** Termination of Parental Rights - - Affirmed. **ISSUE: JUVENILE LAW (Termination of Parental Rights)**: Did the trial court err in terminating the parental rights of the mother of this child? (No). Page 42.

16. **People v. Alvin Brown, 2019 IL APP (1st) 161204, (1st Dist., July 23, 2019)** Denial of Motion to Suppress - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Probable Cause)**: Did the arresting Officer have probable cause to arrest this defendant, who was standing in the parking lot of a gas station, for drinking alcohol on a "public way?" (No). Page 14.

17. **People v. Adam C. Smith, 2019 IL APP (4th) 160641, (4th Dist., July 24, 2019)** Threatening a Public Official and Direct Criminal Contempt of Court - - Affirmed in Part; Reversed in Part. **ISSUES: 1) REASONABLE DOUBT (Threatening a Public Official)**: Did the People fail to present sufficient evidence to support this defendant's conviction threatening a Judge? (Yes); **2) CONSTITUTIONALITY OF STATUTE (Threatening a Public Official)**: Was the Threatening a Public Official statute unconstitutionally overbroad? (No); **3) EVIDENCE (Other Bad Acts)**: Did the trial court err in allowing evidence of the defendant's prior threats into evidence? (Yes). Page 33.

18. **People v. Lawrence J. Lenz, 2019 IL APP (2nd) 180124, (2nd Dist., July 24, 2019)** Various Traffic Offences - - Affirmed in Part; Vacated in Part, Case Remanded. **ISSUES: 1) DUE PROCESS (Notice)**: Did the err in conducting a trial on a case that was only set for a status hearing? (Yes); **2) DUE PROCESS (Evidence)**: Did the trial court err in consider inadmissible evidence of another incident?

(Perhaps, but the defendant forfeited any complaint by failing to object.); 3) **EVIDENCE (Test Results)**: Were the test results from a sample of the defendant's urine improperly admitted into evidence? (No). 4) **REASONABLE DOUBT (Various Traffic Offenses)**: Did the People fail to present sufficient evidence to support this defendant's convictions for various traffic offenses? (No). **Page 20.**

19. **People v. Jamal Johnson, 2019 IL APP (1st) 161104, (1st Dist., July 25, 2019)** Denial of Motion to Suppress - - Affirmed. **ISSUE: 1) SEARCH AND SEIZURE (Reasonable Suspicion)**: Was the conduct of the defendant sufficient to justify the arresting Officer act of stopping this defendant? (Yes); 2) **DUE PROCESS (Confrontation)**: Were the defendant's due process rights violated when a certified document was introduced to show that the defendant had never been issued a FOID card? (Perhaps, but the defendant forfeited any complaint by acquiesced to the introduction of the document.); 3) **FEES AND FINES (Corrections)**: Should the appellate court consider the defendant's objections concerning his fees and fines? (No. Pursuant to new Supreme Court Rule 472, the case is remanded back to the trial court for reconsideration.) **Page 6.**

20. **People v. Brian Crawford, 2019 IL APP (1st) 160184, (1st Dist., July 25, 2019)** Stalking - - Affirmed. **ISSUE: CONSTITUTIONALITY OF STATUTE (Stalking)**: Was this defendant's conviction of Stalking based on an unconstitutional statute? (No). **Page 2.**

21. **People v. Anthony Firestine, 2019 IL APP (5th) 180264, (5th Dist., July 26, 2019)** Suppression of Statement - - Affirmed. **ISSUE: CONFESSIONS AND ADMISSIONS (Counsel)**: Did the defendant invoke his right to counsel when speaking with these police officers? (Yes). **Page 37.**

22. **People v. Valerie A. Parker, 2019 IL APP (3rd) 170108, (3rd Dist., July 26, 2019)** Aggravated DUI - - Affirmed. **ISSUE: DUE PROCESS (Trial Procedure)**: Were the defendant's due process rights violated when the trial court allowed the defendant's jury to view digital recordings in the courtroom in the presence of an Assistance State's Attorney and two bailiffs? (No). **Page 24**

23. **People v. Sandra P. Magana-Ortiz, 2019 IL APP (3rd) 170123, (3rd Dist., July 26, 2019)** Aggravated Battery and Child Abduction - - Affirmed in Part; Reversed in Part, Case Remanded. **ISSUES: 1) REASONABLE DOUBT (Child Abduction)**: Was the defendant properly convicted of Child Abduction where she argued that she had no notice of the custody order she violated? (No); 2) **REASONABLE DOUBT (Aggravated Battery)**: Was sufficient evidence introduced to support this defendant's aggravated battery conviction? (Yes); 3) **OFFENSES (One Act – One Crime)**: Could the defendant properly be convicted of two counts of Aggravated Battery where both charges arose from the same physical act? (No). **Page 28.**

24. **People v. Larenz Simmons, 2019 IL APP (1st) 191253, (1st Dist., July 26, 2019)** Denial of Bail - - Affirmed. **ISSUE: DUE PROCESS (Bail)**: Was the defendant denied due process when the trial court denied his motion to set bail? (No). **Page 10.**

25. **People v. Michael C. Barefield, 2019 IL APP (3rd) 160516, (3rd Dist., July 30, 2019)** Dismissal of PCP - - Reversed and Remanded. **ISSUE: POST-CONVICTION PETITION (Dismissal)**: Did the trial court err in dismissing this defendant's PCP after the defendant argued that his prior convictions were void and could not support his conviction for being and armed habitual criminal? (Yes). **Page 42.**



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