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CRIMINAL CASE LAW QUARTERLY

**WINTER ISSUE– 2018
(Oct-Dec 2017 Cases)**

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19. **In re Omar F., 2017 IL App (1st) 171073, (1st Dist., October 25, 2017)** Adjudication of Delinquency - - Affirmed in Part; Reversed and Remanded in Part. **ISSUE: REASONABLE DOUBT (Armed Robbery)**: Did the People fail to present sufficient evidence to support this defendant's adjudication of delinquency based upon Armed Robbery? (No).

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CASE ANALYSIS

1. **People v. Michael Fein, 2017 IL APP (1st) 152091, (1st Dist., December 19, 2017)** Theft from the Person - - Affirmed.

ISSUE: REASONABLE DOUBT (Theft): Did the People introduce sufficient evidence to support this defendant's theft conviction? (Yes).

FACTS: Following a jury trial, Fein was convicted of theft from a person by obtaining unauthorized control over certain property (720 ILCS 5/16–1(a)(1)(A)) and sentenced to 10 years' imprisonment. On appeal, he argued (1) the evidence was insufficient to prove beyond a reasonable doubt that he committed theft by obtaining unauthorized control over the victim's property, (2) the trial court erred by failing to conduct a proper preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045 (1984), and (3) his mittimus lists the incorrect conviction and felony classification.

ARGUMENT: On appeal, Fein argued that the People failed to prove him guilty beyond a reasonable doubt of theft by obtaining unauthorized control.

FINDING: The Court held that although the jury did not find Fein guilty of armed robbery, that did not mean that it rejected the entirety of the People's case, as Fein contended. Based on the verdict, it appeared that the jury found that the evidence established beyond a reasonable doubt that Fein committed theft but not that he did so by using a gun. The trier of fact may accept as much or as little of the evidence as it finds credible and is responsible for resolving conflicts in the evidence. Accordingly, the appellate court affirmed Fein's conviction for theft by unauthorized control.

2. **People v. Marek P. Gaciarz, 2017 IL APP (2nd) 161102, (2nd Dist., December 19, 2017)** Involuntary Sexual Servitude of a Minor; Traveling to meet a Minor and Grooming - - Affirmed.

ISSUE: REASONABLE DOUBT (Involuntary Sexual Servitude of a Minor, Grooming and Traveling to meet a Minor): Did the People introduce sufficient evidence to support this defendant's convictions? (Yes).

FACTS: Following a bench trial, Gaciarz, was convicted of involuntary sexual servitude of a minor (720 ILCS 5/10–9(c)), traveling to meet a minor (720 ILCS 5/11–26(a)), and grooming (720 ILCS 5/11–25(a)). The People's evidence established that Gaciarz responded via text messages to an online advertisement for a female prostitute. The advertisement made no mention of a minor. An officer from a police department placed the advertisement as part of an undercover sting operation conducted with the assistance of special agents from the United States Department of Homeland Security. Gaciarz was arrested inside a hotel room after he exchanged money with a special agent. The People argued that Gaciarz's intent to have sex with a minor was established through his exchange of text messages in response to the advertisement. Gaciarz maintained that he intended to have sex with an adult and that he did not understand the references in the text messages to mean that he would be meeting with a minor. On appeal, Gaciarz contended that: (1) the evidence was insufficient to prove him guilty beyond a reasonable doubt; (2) the trial court erroneously allowed an incomplete video recording to be admitted into evidence; and (3) his trial counsel provided ineffective assistance by failing to inspect the video-recording equipment.

APPEAL: The Appellate Court held that: (a) the evidence supported the jury's finding of aggravated battery over the defendant's claim of self-defense; and (b) the evidence supported the jury's finding that the defendant was attempting to escape when he stabbed the murder victim, thus requiring rejection of the defendant's claim of self-defense.

ARGUMENT: The defendant argued that the People's evidence was insufficient to prove him guilty beyond a reasonable doubt. This includes an argument that his convictions were improper because the undercover sting operation did not involve an actual minor, a person pretending to be a minor, or even a picture of an actual or purported minor.

FINDING: The Court rejected the defendant's argument that the lack of evidence establishing the existence of a purported minor precluded the People from proving an essential element of the offenses in question. The defendant's text messages with an Officer provided the most compelling evidence of his culpable mental state. The advertisement, although suggestive, was insufficient to establish the defendant's intent to engage in commercial sexual activity with a minor. However, when the advertisement was combined with the text messages, a rational trier of fact could find that the essential elements of the charged crimes were proved beyond a reasonable doubt. Therefore, the Court held that the evidence in this case was sufficient to convict the defendant of involuntary sexual servitude of a minor and traveling to meet a minor.

3. **People v. Daniel J. Olaska, 2017 IL APP (2nd) 150567, (2nd Dist., December 19, 2017)** First-Degree Murder - - Affirmed.

ISSUE: REASONABLE DOUBT (First-Degree Murder): Did the People introduce sufficient evidence to support this defendant's murder convictions? (Yes).

FACTS: Olaska appealed his conviction of first-degree murder (720 ILCS 5/9–1(a)(2) (West 2012)), arising from the stabbings of two victims. Olaska made nine individual contentions of error, most of which fell into the following broad areas: (1) the sufficiency of the evidence to support his murder convictions; (2) the adequacy of the jury instructions on aggravated battery (720 ILCS 5/12–3.05(a)(1)), which was an uncharged predicate offense for the charge of felony murder (720 ILCS 5/9–1(a)(3)); and (3) the propriety of the State's examination of a police officer concerning defendant's post-arrest silence.

ARGUMENT: The defendant challenged the sufficiency of the evidence to support his conviction of the knowing murder of one victim. He also challenged the jury's (implied) finding that he committed aggravated battery against a second victim.

FINDING: (A) Evidence supported jury's finding of aggravated battery over defendant's claim of self-defense; although defendant alleged that the intoxicated victim threatened him during confrontation in bar, security camera footage appeared to depict defendant calmly sipping his drink before stabbing victim across the table, defendant made no attempt to extricate himself from the situation, security footage contradicted defendant's assertion that victim “lunged” at him, others

present persisted in trying to calm victim and remove him from the situation, and defendant could have left the table or displayed his knife as a warning. **(B)** Evidence supported jury's finding that defendant was attempting to escape after stabbing first victim in bar fight, thus requiring jury's rejection of defendant's claim of self-defense in prosecution for the knowing murder of second victim who was stabbed when he confronted defendant; after stabbing first victim, defendant disappeared into crowd, walking in the direction of bar exit, and witnesses observed defendant walking toward exit before engaging in struggle with second victim.

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

ISSUE: OFFENSES (One Act – One Offense): Could the defendant properly be convicted of both Attempted First-Degree Murder and Aggravated Criminal Sexual Assault? **(No).**

FACTS: Following a bench trial, Sandifer was convicted of first-degree murder of his three-year-old son, and attempted first-degree murder, aggravated criminal sexual assault, and aggravated domestic battery of his son's mother. The trial court sentenced Sandifer to natural life in prison for the murder, a consecutive term of 25 years' imprisonment for attempted murder, and concurrent prison terms of 18 years for sexual assault and 7 years for domestic battery. On appeal, Sandifer contended that the trial court erred when it denied his motion to suppress his statements because his severe pain and pain medication administered to him at the time of his statements rendered him unable to knowingly and intelligently waive his *Miranda* rights and make a voluntary statement. He also contended, and the People agreed, that his conviction for aggravated domestic battery must be vacated under the one-act, one-crime rule because it is based on the same physical act as the attempted murder conviction. Finally, he argued that his life sentence was excessive because it failed to take into account his nonviolent criminal history.

ARGUMENT: Defendant argued that his conviction for aggravated domestic battery must be vacated under the one-act, one-crime rule.

FINDING: The defendant's aggravated domestic battery conviction and his attempted murder conviction are both based on the same single physical act of defendant stabbing M.J. with a knife. The defendant's conviction for the less serious offense aggravated domestic battery must be vacated.

5. People v. Deotae X. Murray, 2017 IL APP (2nd) 150599, (2nd Dist., December 13, 2017) First-Degree Murder and Unlawful Possession of a Firearm by a Street Gang Member - - Affirmed.

ISSUE: REASONABLE DOUBT (Accountability): Did the People introduce sufficient evidence to support this defendant's conviction for First-Degree Murder based upon accountability? **(Yes).**

FACTS: Murray appealed his convictions of first-degree murder (720 ILCS 5/9-1(a)(2)) and unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1)), following a jury trial.

ARGUMENT: He argued that the People did not prove that he was accountable for the victim's murder.

FINDING: The appellate court determined that the jury, viewing the evidence in the light most favorable to the prosecution, could conclude beyond a reasonable doubt that defendant was guilty of the victim's murder by accountability.

People v. Angelo Bennett, 2017 IL App (1st) 151619, (1st Dist., December 11, 2017) First-Degree Murder and Attempted First-Degree Murder - - Affirmed.

FACTS: Following a bench trial, the trial court found Bennett guilty of first-degree murder and attempted first-degree murder. It also made a finding that Bennett used a firearm in the commission of both crimes. The trial court sentenced him to 45 years for the first-degree murder with the firearm enhancement and 31 years for the attempted murder with the firearm enhancement. Bennett's post-trial motions were denied and this timely appeal followed. On appeal, Bennett argued (1) the trial court erred in rejecting his claim of self-defense, (2) the trial court erred when it did not reduce his convictions because of the presence of mitigating factors, and (3) his trial counsel was ineffective for failing to successfully argue for either the affirmative defense of self-defense or the presence of mitigating factors.

ISSUE: REASONABLE DOUBT (Self-Defense): Did the People fail to present sufficient evidence to disprove that the defendant acted in self-defense? (No).

6. **People v. Marcelus Witherspoon, 2017 IL App (4th) 150512, (4th Dist., December 6, 2017)** Home Invasion - - Reversed.

ISSUE: REASONABLE DOUBT (Home Invasion): Did the consent of the occupant of the home give the defendant the authority to enter the home despite the defendant's bond condition that he not enter the home? (Yes).

FACTS: The trial court found Witherspoon guilty of home invasion. The court found that Witherspoon had entered the dwelling of another without authority because a court order prohibited him from going to or entering that particular residence. Witherspoon had argued that he had authority because the resident consented to his entry. The trial court rejected that argument and later sentenced Witherspoon to 14 years in prison. On appeal, Witherspoon argued only that the People failed to prove him guilty beyond a reasonable doubt of home invasion because a resident of the home consented to his entry.

ARGUMENT: The defendant argued that the People failed to prove him guilty beyond a reasonable doubt of home invasion because S.L. consented to his entry.

FINDING: A defendant is not guilty of home invasion when, with the resident's consent, he enters that resident's dwelling place even though his doing so is in violation of a court order.

7. **People v. Fernando Casas, Jr., 2017 IL 120797, (Ill. Sup. Ct., December 5, 2017)** Dismissal of Charge - - Appellate Decision Reversed and Remanded.

ISSUE: STATUTORY CONSTRUCTION (Violation of Bail Bond): Is the violation of a bail bond an ongoing offense for purposes of the statute of limitations? (Yes).

FACTS: Following the indictment and subsequent superseding information against Casas for violation of bail bond, the trial court dismissed the information for failure to comply with the statute of limitations, and the People appealed. The appellate court reversed, holding that the information was timely and that the violation of a bail bond was a continuing offense pursuant to section 3-8 of the Criminal Code of 2012 (720 ILCS 5/3-8). The supreme court allowed Casas's petition for leave to appeal.

APPEAL: The Supreme Court held that: (a) violation of bail bond must be considered a continuing offense in the context of the three-year statute of limitations; overruling *People v. Grogan*, 197 Ill. App.3d 18; but (b) the three-year statute of limitations began when trial court entered a judgment of conviction and imposed a 20-year sentence following defendant's trial in absentia for the underlying charge.

FINDING: (A) Violation of bail bond must be considered a continuing offense in the context of the three-year statute of limitations; overruling *People v. Grogan*, 197 Ill.App.3d 18, 143 Ill.Dec. 730, 554 N.E.2d 665. 720 Ill. Comp. Stat. Ann. 5/3-5(b), 5/3-8, 5/32-10. **(B)** Three-year statute of limitations for violation of bail bond, which was a continuing offense, began when the trial court entered a judgment of conviction and imposed a 20-year sentence following defendant's trial in

absentia for the underlying charge of manufacture or delivery of cocaine in excess of 900 grams. 720 Ill. Comp. Stat. Ann. 5/3-5(b), 5/32-10; 725 Ill. Comp. Stat. Ann. 5/110-10(a)(1).

8. People v. Antoine Harman, 2017 IL 121453, (Ill. Sup. Ct., November 30, 2017) Possession of a Controlled Substance with the Intent to Deliver - - Affirmed.

ISSUE: STATUTORY CONSTRUCTION (Possession of a Controlled Substance with the Intent to Deliver): Are the People required to prove that the building in question was operating as a school when his offense was committed? **(No).**

FACTS: Following a bench trial, Hardman was convicted of one count of possessing between 1 and 15 grams of heroin with intent to deliver within 1000 feet of a school. See 720 ILCS 570/401(c)(1), 407(b)(1). At a sentencing hearing, the trial court imposed a public defender fee of \$500. See 725 ILCS 5/113-3.1(a). Hardman appealed, arguing that the People failed to prove that he committed the offense within 1000 feet of a school, that the public defender fee was imposed without a proper hearing, and that the mittimus should be amended to reflect the correct name of the offense. The appellate court affirmed Hardman's conviction and sentence, vacated the public defender fee, remanded for a new hearing on whether the public defender fee was appropriate, and amended the mittimus. The Supreme Court allowed Hardman's petition for leave to appeal.

APPEAL: The Supreme Court held that the evidence supported finding that defendant's offense occurred within 1000 feet of a "school," within meaning of school locality enhancement.

FINDING: Evidence was sufficient to support finding that defendant's offense of possession of heroin with intent to deliver occurred within 1000 feet of a "school," within meaning of school locality enhancement; while defendant committed offense in summer, and school's name was changed at some point around start of school year, two officers who both testified as to their familiarity with neighborhood due to having worked in the area for years indicated that offense took place right next to a school, and that school's name was changed shortly after offense. 720 Ill. Comp. Stat. Ann. 570/401(c)(1), 570/407(b)(1).

9. People v. Kevin Hunter and Drashun Wilson, 2017 IL 121306, (Ill. Sup. Ct., November 30, 2017) Aggravated Vehicular Hijacking and Aggravated Battery with a Firearm - - Affirmed.

ISSUE: STATUTORY CONSTRUCTION (Juvenile Law Amendments): Should the changes to the Juvenile Court Act be applied retroactively to these defendants? **(No).**

FACTS: Following a bench trial, Hunter, who was a juvenile at the time of offense, was convicted of armed robbery, aggravated kidnapping, and aggravated vehicular hijacking, and was sentenced to concurrent terms of 21 years' imprisonment, which included a 15-year enhancement for use of a firearm. He appealed. The Appellate Court affirmed. In a separate case, Wilson, who was also a juvenile at time of offense, was convicted of attempted first-degree murder and aggravated battery with a firearm and was sentenced to the mandatory minimum 31 years' imprisonment, which included a 25-year firearm enhancement. He also appealed. The Appellate Court affirmed. Both defendants then petitioned for leave to appeal. The Supreme Court granted the defendants' petitions and consolidated their cases for review. In these consolidated appeals the Court considered the temporal reach of two legislative enactments: (1) an amendment to section 5-130(1)(a) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130), which, *inter alia*, eliminated armed robbery while armed with a firearm and aggravated vehicular hijacking while armed with a firearm from the list of automatic transfer offenses, and (2) the new juvenile sentencing provisions codified in section 5-4.5-105 of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-105), which, *inter alia*, give the trial court discretion not to impose otherwise mandatory firearm sentencing enhancements. The appellate court rejected the defendants' arguments for retroactive application of these statutes to their cases that were pending on direct review when the statutes became effective and affirmed the defendants' convictions and sentences.

APPEAL: The Supreme Court held that: (a) amendments to Juvenile Court Act that changed requirements for automatic transfer of juveniles to adult court did not apply retroactively to require remand of defendant's case, and (b) the juvenile sentencing provisions that gave courts discretion not to impose otherwise mandatory firearm enhancements would have mitigated defendants' punishment, and thus did not apply retroactively to defendants' cases.

FINDING: (A) Amendments to Juvenile Court Act that changed requirements for automatic transfer of juveniles to adult court and became effective while defendant's convictions for armed robbery, aggravated kidnapping, and aggravated vehicular hijacking were pending direct appeal did not apply retroactively to require remand to juvenile court for discretionary transfer hearing for sentencing purposes only, even though defendant was convicted of offenses that were removed from list of automatic transfer offenses; amendments became effective after defendant was convicted, no reversible error necessitated remand for further proceedings to which amendments could have applied, and retroactive application was not practicable as defendant was no longer subject to juvenile court jurisdiction due to his age. 5 Ill. Comp. Stat. Ann. 70/4; 705 Ill. Comp. Stat. Ann. 405/5-130(1)(a). **(B)** Juvenile sentencing provisions that gave courts discretion not to impose otherwise mandatory firearm enhancements, which became effective while defendants' cases were pending direct appeal, would have mitigated defendants' punishment, and thus did not apply retroactively to defendants' cases, even though temporal limitation language in subsection of provision governing mitigating factors to be considered by the court did not apply to subsection governing court's discretion not to impose firearms enhancements; retroactive application would have had effect of reducing the low end of the sentencing ranges for defendants' sentences by 15 to 25 years. 5 Ill. Comp. Stat. Ann. 70/4; 730 Ill. Comp. Stat. Ann. 5/5-4.5-105.

10. People v. Walter Relerford, 2017 IL 121094, (Ill. Sup. Ct., November 30, 2017) Stalking and Cyberstalking - - Reversed.

ISSUE: CONSTITUTIONALITY OF STATUTE (Stalking and Cyberstalking): Were portions of these offenses unconstitutionally overbroad? **(Yes).**

FACTS: Following a bench trial, Relerford, was convicted of stalking (720 ILCS 5/12-7.3(a)(1), (a)(2)) and cyberstalking (720 ILCS 5/12-7.5(a)(1), (a)(2)) and was sentenced to serve a prison term of six years. He appealed, and the appellate court declared that the provisions of the stalking and cyberstalking statutes under which the defendant was convicted are facially unconstitutional as violative of substantive due process and vacated his convictions on that ground. The Supreme Court granted the People's petition for leave to appeal as a matter of right.

APPEAL: Granting leave to appeal, the Supreme Court held that: (a) substantive due process does not categorically rule out negligence as a permissible mental state for imposition of criminal liability; (b) provisions of stalking and cyberstalking statutes facially violated constitutional right of free speech; (c) convictions of stalking and cyberstalking were not supported by the evidence; and (d) the Appellate Court lacked jurisdiction to review unsentenced convictions of stalking and cyberstalking.

FINDING: (A) Provisions of stalking and cyberstalking statutes, which criminalized two or more nonconsensual communications to or about someone that defendant knew or should have known would cause reasonable person to suffer emotional distress, facially violated constitutional right of free speech, since provisions restricted speech based on its content and did not require true threat or integral relation of speech with criminal conduct. 720 Ill. Comp. Stat. Ann. 5/12-7.3(a), 5/12-7.5(a). **(B)** Convictions of stalking and cyberstalking were not supported by the evidence; although defendant repeatedly called and emailed former coworker, published social media posts about her, waved at her through workplace window, and entered workplace uninvited, defendant never directly threatened former coworker, and defendant did not initiate nonconsensual contact with former coworker on more than one occasion. 720 Ill. Comp. Stat. Ann. 5/12-7.3, 5/12-7.5.

11. People v. Zachary Scott, 2017 IL App (4th) 150529, (4th Dist., November 30, 2017) Failure to Register as a Sex Offender - - Affirmed in part as modified and vacated in part.

ISSUE: REASONABLE DOUBT (Failure to Register as a Sex Offender): Did the People fail to present sufficient evidence to prove that the defendant lacked a fixed residence? (No).

FACTS: The People charged Scott by information with one count of failure to register as a sex offender (730 ILCS 150/3(a), 10(a)). A jury found him guilty of the charge. He filed a post-trial motion and an amended post-trial motion. At a sentencing hearing, the trial court sentenced the defendant to eight years' imprisonment. Scott appealed, contending (1) the People failed to prove him guilty beyond a reasonable doubt, (2) plain error occurred because the jury instructions failed to state all of the elements of the charge and the circuit court failed to respond to the jury's legal question, (3) he received ineffective assistance of trial counsel, (4) the circuit clerk improperly imposed fines, and (5) he did not receive a *per diem* credit.

APPEAL: The Appellate Court held that the lack of a fixed residence was not an element of the crime in the case of defendant who acquiesced to weekly reporting requirement,

FINDING: The lack of a fixed residence was not an element of the crime in defendant's prosecution for failure to register as a sex offender, where defendant had registered as a sex offender, but did not register a fixed residence, thus acquiescing to a weekly reporting requirement. 730 Ill. Comp. Stat. Ann. 150/3(a).

12. **People v. Michael Escort, 2017 IL APP (1st) 151247, (1st Dist., November 22, 2017)** First-Degree Murder - - Reversed.

ISSUE: REASONABLE DOUBT (First-Degree Murder): Did the People introduce sufficient evidence to support this defendant's First-Degree Murder conviction? (No).

FACTS: Escort was convicted of murder and sentenced to 60 years' imprisonment. He appealed arguing, *inter alia*, that he was not proven guilty beyond a reasonable doubt.

APPEAL: The Appellate Court held that evidence introduced by the People was so weak as to create a reasonable doubt on the issue of whether the defendant committed the murder.

FINDING: Evidence introduced by State was so weak as to create a reasonable doubt on issue of whether defendant committed murder, although defendant's DNA profile was found on sperm cells present on victim's vaginal swab; forensic casework supervisor's testimony that the many sperm cells present on victim's vaginal swab would indicate a more recent sexual encounter did not support conclusion that defendant had sexual relations with victim shortly before her death, given that semen could remain in woman for up to 72 hours after sexual intercourse and that there was no way of telling when DNA was deposited, and it would be pure speculation to conclude that defendant and victim had sexual relations shortly before her death or that defendant was the last person to see the victim alive.

13. **People v. Albert Davis, 2017 IL APP (1st) 142263, (1st Dist., November 20, 2017)** Residential Burglary and UUWF - - Affirmed in Part; Reversed in Part.

ISSUES: 1) REASONABLE DOUBT (Residential Burglary): Did the People introduce sufficient evidence to support this defendant's Residential Burglary conviction? (No); **2) REASONABLE DOUBT (UUWF):** Did the People present sufficient evidence to support this defendant's weapons offense? (Yes).

FACTS: Following a bench trial, Davis was convicted of residential burglary and unlawful use of a weapon by a felon, and sentenced to two concurrent terms of seven years in prison. On appeal, he argued that (1) the People failed to prove beyond a reasonable doubt his guilt for residential burglary and unlawful use of a weapon by a felon, (2) he was denied his right to the effective assistance of counsel, and (3) he was denied his right to a fair trial when the court improperly admitted hearsay testimony from a police officer in violation of his right of confrontation.

APPEAL: The Appellate Court held that: (a) evidence was insufficient to prove that defendant intended to prevent the apprehension or obstruct the prosecution of a suspect who was being chased by police, as an element of obstruction of justice; but (b) evidence was sufficient to support a finding that defendant entered apartment without authority, as an element of residential burglary charge; (c) evidence was sufficient to support defendant's conviction for unlawful use or possession of a weapon by a felon;

FINDINGS: **(A)** Evidence was insufficient to prove that defendant intended to prevent the apprehension or obstruct the prosecution of a suspect who was being chased by police, as an element of obstruction of justice, the predicate felony to a residential burglary charge, by knowingly concealing physical evidence, a handgun that had been possessed by the suspect; none of the State's witnesses ever saw defendant and the suspect interact, defendant did not appear on police officer's dashcam video footage, and none of the witnesses saw defendant holding or recovering a gun at any time. 720 Ill. Comp. Stat. Ann. 5/19-3(a); 720 ILCS 5/31-4(a)(1). **(B)** Evidence was sufficient to support a finding that defendant entered apartment without authority, as an element of residential burglary charge; while the testimony of the sole witness to defendant's unlawful entry was sometimes inconsistent, the court found it was not substantially impeached, and found her testimony that she did not know defendant prior to his entering her apartment in an apparent attempt to hide something to be credible. 720 Ill. Comp. Stat. Ann. 5/19-3(a). **(C)** Evidence was sufficient to support defendant's conviction for unlawful use or possession of a weapon by a felon; officer testified that after defendant was read his constitutional rights, he stated he observed someone running in the apartment courtyard and throw a gun, that he retrieved the gun, went into an apartment, and placed the gun in the freezer, all of which was corroborated by the circumstantial evidence, including apartment resident's testimony that defendant ran into her apartment and asked her to hide something for him. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a).

14. People v. Alexander Wood, 2017 IL App (1st) 143135, (1st Dist., November 20, 2017) Threatening a Public Official - - Reversed.

ISSUE: REASONABLE DOUBT (Threatening a Public Official): Did the defendant commit the offense of Threatening a Public Official when he left an irate message for a public defender wherein he stated that he hoped for a judge's death? **(No).**

APPEAL: The Appellate Court held that: (a) evidence was insufficient to support finding that defendant's purportedly threatening statements were true threats, as was required for conviction for threatening a public official, and (b) evidence was insufficient to support finding that defendant knew that purportedly threatening statements would be conveyed to judge, as was required for conviction for threatening a public official.

FACTS: In a fit of exasperation with his legal and financial troubles, Wood called the public defender's office and left a crude and offensive rant about how much he hated everyone involved in his legal case. He stated that he dreamed every day about revenge, and he singled out the judge presiding over his case, stating that he hoped for the judge's death and destruction. Wood was charged and convicted of threatening a public official.

FINDINGS: Evidence was insufficient to support finding that defendant's statements in voicemail that he left for public defender, that "there is not a day that goes by since I was sentenced...that I have not dreamed about revenge and the utter hate I feel for the judge" and "there's not a day that goes by that I don't pray for the death and destruction upon the judge[.]" were true threats, as was required for conviction for threatening a public official, although defendant called after-hours, from blocked number, did not leave his name, and mentioned judge by name, where statements were vague and hyperbolic, did not warn of any future harm, did not indicate defendant had means to carry out threat, and did not indicate any actual intent to carry out threat or any intent to affirmatively do anything. 720 Ill. Comp. Stat. Ann. 5/12-9(a)(1)(i). **(B)** Evidence was insufficient to support finding that defendant, who called public defender's office and left voicemail containing purportedly threatening statements about judge, knew that purportedly threatening statements would be conveyed to judge, as was required for conviction for threatening a public official; phone number for judge's chambers was listed publicly, and thus defendant had opportunity to knowingly convey threat to judge, but defendant instead called public defender, and defendant testified that he did not intend for judge to hear statements and that he specifically chose public defender because he thought he could air his grievances confidentially.

15. **In re T.J.D., 2017 IL App (5th) 170133, (1st Dist., November 16, 2017)** Denial of Petition to Terminate Sex Offender Registration - - Affirmed.

ISSUES: 1) STATUTORY CONSTRUCTION (Petition to Terminate Sex Offender Registration): Does the “no-risk” requirement of the statute authorizing the termination of sex offender status create an impossible burden? **(No)**; **2) SEX OFFENDER STATUS (Termination):** Did the trial court abuse its discretion in denying this defendant’s petition to terminate his sex offender status? **(No)**.

FACTS: T.J.D. filed a petition to terminate his sexual offender registration pursuant to section 3–5 of the Sex Offender Registration Act (Act). 730 ILCS 150/3–5. The trial court denied the petition, and the juvenile appealed. On appeal, he argued that the trial court’s interpretation of section 3–5(d) of the Act—which permits a court to terminate the sex offender registration of an adjudicated juvenile delinquent if he shows, by a preponderance of the evidence, that he poses no risk to the community—creates an impossible burden and is contrary to the legislature’s intent. 730 ILCS 150/3–5(d). He argued the trial court’s decision should be reversed and remanded with directions regarding the proper interpretation of this statute. Alternatively, he alleged the court’s decision denying his petition was against the manifest weight of the evidence.

APPEAL: The Appellate Court held that: (a) good cause existed to support issuance of decision of Appellate Court after 150 days had elapsed since filing of notice of appeal; (b) provision of Sex Offender Registration Act governing termination of registration did not create an impossible burden; and (c) registrant failed to prove by preponderance of the evidence that he posed no risk to the community.

FINDINGS: (A) Provision of Sex Offender Registration Act that permitted a court to terminate a sex offender registration of an adjudicated juvenile delinquent if he or she showed, by a preponderance of the evidence, that he or she posed no risk to the community did not create an impossible burden; although the statute created a very high burden on a registrant seeking termination of a registration, a showing of “no risk,” while under limited circumstances, was not unreasonable or impossible to obtain. 730 Ill. Comp. Stat. Ann. 3-5(d). **(B)** Registrant failed to prove by preponderance of evidence that he posed no risk to community, and therefore termination of sex offender registration stemming from juvenile sex offenses was not warranted; although registrant presented evidence that showed he made progress through his efforts in rehabilitation, including evaluations conducted by licensed sex offender evaluators, which concluded that registrant was low risk to community and recommended that he be released from his sex offender requirements, and testimony from registrant’s treatment provider, who testified that registrant had completed all of his treatment and therapy requirements, and who opined that registrant posed no risk to community, testing contained inconsistent response patterns, and evaluator noted registrant’s questionable impulse control.

16. **People v. Elisabeth M. Clark, 2017 IL App (3rd) 140987, (3rd Dist., November 1, 2017)** Escape - - Reversed.

ISSUE: STATUTORY CONSTRUCTION (Escape): Could this defendant be convicted of escape when she failed to abide by the terms of her bond by failing to return to the County Jail? **(No)**.

FACTS: Clark was convicted by the trial court of escape for her failure to report to the county jail immediately after her discharge from a halfway house as ordered as a bond condition, and sentenced to a term of 30 months’ probation. She appealed her conviction.

APPEAL: The Appellate Court held that defendant was not in custody while out on a temporary recognizance bond.

FINDING: Defendant was not in “custody” within meaning of escape statute while she was out on a temporary recognizance bond that required her entry into a halfway house, and therefore her conduct of failing to report to jail immediately after her discharge from halfway house could not support her escape conviction, where the court did not require that either jail or court personnel transport her to the halfway house, the bond conditions allowed her to leave the facility for various reasons, including work, medical needs, and 12-step meetings during her time there, the court did not

require that her movements be monitored by court or jail employees, and they were not ordered to be involved in her return to the jail. 720 Ill. Comp. Stat. Ann. 5/31-6(a).

17. People v. Jimmy Lee, 2017 IL App (1st) 151652, (1st Dist., October 31, 2017) Aggravated Battery of a Nurse - - Reversed.

ISSUE: REASONABLE DOUBT (Armed Robbery): Did the People fail to present sufficient evidence to support this defendant's conviction for Aggravated Battery of a Nurse? **(Yes).**

FACTS: Following a bench trial, Lee was convicted of aggravated battery of a nurse (720 ILCS 5/12-3.05(d) (11)) and sentenced to 27 months' imprisonment. On appeal, he maintained that the People failed to prove him guilty beyond a reasonable doubt.

APPEAL: The Appellate Court held that evidence was insufficient to support inference that defendant had requisite intent to cause bodily harm to nurse.

FINDINGS: Evidence was insufficient to establish that defendant intended to hit nurse, and thus defendant did not commit aggravated battery of a nurse; defendant was familiar with and respected staff at hospital, defendant was in distress after learning partner and son were in car accident and son did not survive, defendant attempted suicide, defendant was behaving turbulently upon being admitted to emergency room, nurse initiated contact when she attempted to remove cross from defendant's neck after defendant tried to explain its sentimental value, defendant reached hand up to prevent her from taking it, and nurse was struck inadvertently. 720 Ill. Comp. Stat. Ann. 5/12-3.05(d) (11).

18. People v. Tythia Thigpen, 2017 IL App (1st) 153151, (1st Dist., October 31, 2017) Aggravated Battery of a Peace Officer - - Affirmed.

ISSUE: REASONABLE DOUBT (Aggravated Battery): Did the People fail to present sufficient evidence to support this defendant's conviction for Aggravated Battery of a Peace Officer? **(No).**

FACTS: After a bench trial, Thigpen was convicted of aggravated battery of a peace officer and sentenced to 11 years' imprisonment. On appeal, Thigpen argued that the People failed to prove him guilty beyond a reasonable doubt because they failed to show that he knew the victim was a police officer when he struck him with a baseball bat. He also contended that they failed to prove that the officer's injury constituted great bodily harm.

APPEAL: The Appellate Court held that: (a) the evidence in this case was sufficient for the trial court to find that the defendant knew the officer was a police officer engaged in his duties when he struck him so as to support the defendant's conviction, and (b) the evidence established that the officer suffered great bodily harm so as to support the defendant's conviction.

FINDINGS: (A) Evidence was sufficient for the trial court to find that defendant knew officer was a police officer engaged in his duties when he struck him so as to support defendant's conviction for aggravated battery of a peace officer; officer was in a marked police vehicle with the sirens and emergency lights activated and he was in full police uniform, officer announced his office to defendant and ordered him to put the bat down, and when defendant did not comply, officer grabbed defendant and attempted to handcuff him. 720 Ill. Comp. Stat. Ann. 5/12-3.05(a)(3)(i), (ii). **(B)** Evidence established that officer suffered great bodily harm so as to support defendant's conviction for aggravated battery of a peace officer; after being struck in the head, blood was squirting from officer's skull and he lost consciousness, and at the hospital, officer was connected to several breathing apparatuses and numerous tubes were going across his body, and officer had slight bleeding in his brain, suffered bruised ribs, had a fractured skull.

19. **In re Omar F.**, 2017 IL App (1st) 171073, (1st Dist., October 25, 2017) Adjudication of Delinquency - - Affirmed in Part; Reversed and Remanded in Part.

ISSUE: REASONABLE DOUBT (Armed Robbery): Did the People fail to present sufficient evidence to support this defendant's adjudication of delinquency based upon Armed Robbery? (No).

FACTS: Omar F. was adjudicated delinquent for armed robbery with a firearm and, following a dispositional hearing, was sentenced to 36 months' probation with various conditions. On appeal, he argued that the People failed to prove him guilty beyond a reasonable doubt and that several conditions of his probation were unreasonable and, in the alternative, violated his constitutional rights to due process and freedom of speech and association. Specifically, he complained of the following conditions: (1) that he "stay away" from gangs, guns, and drugs, (2) that he remove "those" from his social media accounts, (3) that he stop associating with or interacting with anyone who is a gang member, and (4) that he not post or be in any photos posted to Facebook or other social media accounts with people if they are in gangs. The respondent also contends that section 5-715(2)(s) of the Juvenile Court Act of 1987 (or Act) (705 ILCS 405/5-715(2)(s)), which permitted the court to limit his contact, direct or indirect, with all gang members, is unconstitutionally vague since it fails to define "contact," does not contain a *mens rea* requirement, encompasses a broad range of legally permissible conduct, and encourages arbitrary enforcement.

APPEAL: The Appellate Court held that the evidence supported delinquency adjudication;

FINDING: Sufficient evidence supported trial court's adjudication of juvenile as delinquent for armed robbery with a firearm; victim testified that he was approached by juvenile who pointed black pistol at him and demanded that he get on ground, juvenile took victim's cell phone and gave it to another person, who ran away with it, victim identified juvenile as his attacker when he saw juvenile after police drove him to another area to speak with another victim, fact that victim could not explain how he ended up in area prior to attack was reasonable in light of testimony that he moved from Nigeria only six years ago and got off at wrong stop, and, even though gun was never recovered, victim testified that gun used to rob him was black pistol, which he had opportunity to hold after he grabbed it from juvenile in struggle. 720 Ill. Comp. Stat. Ann. 5/18-1(a), 5/18-2(a)(2).

20. **People v. Steve Smith**, 2017 IL App. (1st) 151312, (1st Dist., October 17, 2017) Robbery and Aggravated Battery of a Senior Citizen - - Affirmed in Part; Vacated in Part.

ISSUE: OFFENSES (One Act – One Crime): Could this defendant properly be convicted both of Robbery and Aggravated Battery of a Senior Citizen? (No).

FACTS: Following simultaneous but severed bench trials, Smith and codefendant Brown were convicted of robbery and aggravated battery of a senior citizen. On appeal, he contended only that his conviction for aggravated battery of a senior citizen should be vacated because it violated the one-act, one-crime doctrine where it was based on the same single physical act as his robbery conviction.

APPEAL: The Appellate Court held that conviction of aggravated battery of a senior citizen violated the one-act, one-crime principle.

FINDING: Conviction of aggravated battery of a senior citizen, along with conviction of robbery, violated the one-act, one-crime principle, where defendant's single physical act, punching the senior citizen, served as basis for both battery and use of force for robbery, without indication of another use of force to take money.

21. **People v. Randall W. Parrott**, 2017 IL App (3rd) 150545, (3rd Dist., October 5, 2017) Domestic Battery - - Affirmed.

ISSUE: REASONABLE DOUBT (Affirmative Defense): Did the People prove that the defendant did not reasonably discipline his child with a belt? (Yes).

FACTS: Parrott appealed his conviction for domestic battery, arguing that (1) the People failed to disprove his affirmative defense of reasonable discipline of his child and (2) he was denied his right to confront his accuser.

APPEAL: The Appellate Court held that: (a) there was sufficient evidence that the discipline imposed on the victim by this defendant was unreasonable to disprove the affirmative defense of reasonable parental discipline and support the defendant's conviction, and (b) the victim was available for cross-examination, and thus hearsay statements made by victim implicating defendant were admissible.

FINDING: There was sufficient evidence that discipline imposed on victim by defendant was unreasonable to disprove affirmative defense to domestic battery of reasonable parental discipline and support defendant's conviction for domestic battery, although trial court did not make express findings of fact regarding the likelihood of more injurious future punishment, the psychological effects of discipline on victim, or whether defendant lashed out in anger or calmly disciplined victim; evidence indicated that victim was six years old and was hit with a belt six or seven times for the trivial transgression of eating a biscuit, which resulted in victim having welts on his legs. 720 Ill. Comp. Stat. Ann. 5/3-2(b), 5/12-3.2(a)(1).

22. People v. Joseph Lane Heitmann, 2017 IL App (3rd) 160527, (3rd Dist., October 2, 2017) Dismissal of Petition for Judicial Review - - Affirmed.

ISSUE: STATUTORY CONSTRUCTION (FOID): Was this defendant ineligible to receive a FOID card under Federal Law? (Yes).

FACTS: Heitmann argued that granting him a FOID card is not contrary to federal law, and the FOID Card Act was unconstitutional as applied to him because it amounts to a perpetual firearm ban.

APPEAL: The Appellate Court held that: (a) the trial court could not reinstate applicant's firearms owner's identification card on the basis of the Gun Control Act's restoration of rights exemption; (b) the applicant could not seek relief under the safety valve provision of the Gun Control Act; and (c) the applicant's "as applied" constitutional challenge to the Illinois Firearms Owner's Identification Card Act and the federal Gun Control Act was premature.

FINDINGS: (A) Applicant for reinstatement of his firearm owner's identification card, which had been revoked because, under the Gun Control Act, he had been convicted of a crime of domestic violence, could not seek relief under the safety valve provision of the Gun Control Act, under which persons subject to federal firearms disabilities may apply for relief; because Congress barred the Attorney General/Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from using funds to investigate or act upon relief applications, the Supreme Court held that federal courts had been stripped of the jurisdiction to review any such claim, making the safety valve provision a nullity for persons barred from owning a firearm due to a domestic crime conviction. **(B)** Applicant's as applied constitutional challenge to the Illinois Firearms Owner's Identification Card Act and the federal Gun Control Act, under which applicant was banned from possession of firearms because of a conviction for domestic battery, was premature, when the Governor had the authority to grant pardons after conviction, and applicant had not attempted to avail himself of that potential remedy.

23. People v. Zachary Smith, 2017 IL App. (1st) 151643, (1st Dist., September 29, 2016) Armed Habitual Criminal and UUWF - - Affirmed in Part; Vacated in Part.

ISSUE: REASONABLE DOUBT (Armed Habitual Criminal and UUWF): Could the defendant's prior felony convictions be used to convict this defendant of being an Armed Habitual Criminal and of being a Felon in Possession of a Weapon? (Yes); **2) OFFENSES (One Act – One Crime):** Could this defendant properly be convicted both of being an Armed Habitual Criminal and UUWF? (No).

FACTS: Following a bench trial, Smith was convicted of being an armed habitual criminal (AHC) and for unlawful use of a weapon by a felon (UUWF). Mr. Smith was sentenced on the AHC charge to a prison term of six years, followed by three years of mandatory supervised release (MSR), and on the UUWF charge to a concurrent sentence of two years. On appeal, Smith argued that the Court must vacate his AHC conviction because one of the predicate convictions for that offense was for aggravated unlawful use of a weapon (AUUW), under a statutory provision later held by the Illinois Supreme Court to be facially unconstitutional. Alternatively, he asked the Court to correct his mittimus because—under the one-act, one-crime rule—he could not be convicted of both AHC and UUWF based on the same act of possessing a firearm.

ARGUMENT: Smith argued that his AHC conviction must be vacated because one of the two predicate convictions the People relied on to support that charge was pursuant to a statutory provision later held to be facially unconstitutional and thus void *ab initio*.

FINDINGS: **(A)** The Court found that evidence of a constitutionally invalid prior conviction to establish a predicate offense for a subsequent conviction is neither unconstitutional nor barred by the relevant statutory text. **(B)** However, Smith's convictions for AHC and UUWF are both based on the same physical act: his unlawful possession of a single firearm. Therefore, his conviction for UUWF must be vacated in accordance with the one-act, one-crime rule.

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