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## CRIMINAL CASE LAW QUARTERLY

JULY – 2017

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2. **People v. Samuel James**, 2017 IL App (1<sup>st</sup>) 143036, (1<sup>st</sup> Dist., May 22, 2017) Unlawful Possession of a Controlled Substance; Aggravated Unlawful Use of a Weapon, and Armed Violence - - Affirmed in part and vacated in part. **ISSUE: OFFENSES (One Act – One Crime)**: Was this properly convicted of Unlawful Possession of a Controlled Substance; Aggravated Unlawful Use of a Weapon, and Armed Violence? (No).

3. **People v. Donald Spivey**, 2017 IL App (1<sup>st</sup>) 123563, (1<sup>st</sup> Dist., May 17, 2017) Unlawful Use of a Weapon by a Felon (UUWF) and Aggravated Unlawful Use of a Weapon (AUUW) - - Affirmed. **ISSUE: REASONABLE DOUBT (Unlawful Use of a Weapon by a Felon)**: Did the People present sufficient evidence to support this defendant's conviction of UUWF? (Yes).

4. **People v. Edwardo Mayo**, 2017 IL App (2<sup>nd</sup>) 150390, (2<sup>nd</sup> Dist., May 16, 2017) Aggravated Criminal Sexual Abuse and Battery - - Reversed. **ISSUE: REASONABLE DOUBT (Aggravated Criminal Sexual Abuse)**: Did the People fail to introduce sufficient evidence to prove that this mentally handicapped defendant touched the victim for sexual gratification? (Yes).

5. **People v. Charles Coward**, 2017 IL App (1<sup>st</sup>) 113085, (1<sup>st</sup> Dist., May 12, 2017) First-Degree Murder and Armed Habitual Criminal - - Affirmed in Part; Reversed in Part. **ISSUES: 1) REASONABLE DOUBT (First-Degree Murder)**: Did the People present sufficient evidence to support this defendant's conviction for First-Degree Murder based upon accountability? (No); 2) **REASONABLE DOUBT (Armed Habitual Criminal)**: Did the People present sufficient evidence to support this defendant's conviction of being an Armed Habitual Criminal? (Yes).

6. **People v. Michael Fickes**, 2017 IL App (5<sup>th</sup>) 140300, (5<sup>th</sup> Dist., May 4, 2017) Unlawful Disposal of Methamphetamine Manufacturing Waste and Aggravated Participation in Methamphetamine Manufacturing - - Affirmed in Part; Conviction Reduces; Case Remanded for Resentencing. **ISSUE: REASONABLE DOUBT (Aggravated Participation in Methamphetamine Manufacturing)**: Did the People present sufficient evidence to prove that the defendant manufactured methamphetamine within 1000 feet of a church? (No).

7. People v. Marcus Austin, 2017 IL App (1<sup>st</sup>) 142737, (1<sup>st</sup> Dist., April 25, 2017) Armed Robbery, Aggravated Vehicular Hijacking and Aggravated Assault - - Affirmed. **ISSUE: REASONABLE DOUBT (Armed Robbery):** Did the People present sufficient evidence to support this defendant's Armed Robbery conviction? (Yes).

8. People v. Sara Rudell, 2017 IL App (1<sup>st</sup>) 152772, (1<sup>st</sup> Dist., April 25, 2017) Child Endangerment - - Affirmed. **ISSUE: REASONABLE DOUBT (Child Endangerment):** Did the People present sufficient evidence to support this defendant's conviction for Child Endangerment? (Yes).

9. People v. Larry Brown, 2017 IL App (1<sup>st</sup>) 142877, (1<sup>st</sup> Dist., ~~March 27, 2017~~) Burglary - - Conviction Affirmed; Order Assessing Fees Corrected. (Modified upon denial of rehearing April 24, 2017) **ISSUE: REASONABLE DOUBT (Burglary):** Did the People prove that this defendant entered this building with the intent to commit theft? (Yes).

10. People v. Tino Terrell, 2017 IL App (1<sup>st</sup>) 142726, (1<sup>st</sup> Dist., April 14, 2017) Possession of a Firearm by a Felon and numerous drug offenses - - Reversed. **ISSUE: REASONABLE DOUBT (Possession of Controlled Substances):** Did the People present sufficient evidence to prove that the defendant constructively possessed the drugs and firearms in this case? (No).

11. People v. Darnell Murphy, 2017 IL App (1<sup>st</sup>) 142092, (1<sup>st</sup> Dist., March 14, 2017) Burglary - - Affirmed. (MODIFIED UPON DENIAL OF REHEARING – APRIL 11, 2017) **ISSUE: REASONABLE DOUBT (Aggravation):** Did the People present sufficient evidence to prove that the defendant did not have permission to beside the building in question and that he intended to commit theft therein? (Yes).

12. People v. Mansur Sharirov, 2017 IL App (4<sup>th</sup>) 140578, (4<sup>th</sup> Dist., April 5, 2017) Reckless Homicide - - Reversed. **ISSUE: REASONABLE DOUBT (Reckless Homicide):** Did the People present sufficient evidence to prove that the defendant acted recklessly in causing the death of the victim? (No).

13. People v. Antonio M. Bogan, 2017 IL App (3<sup>rd</sup>) 150156, (3<sup>rd</sup> Dist., April 3, 2017) Armed Habitual Criminal - - Affirmed. **ISSUE: REASONABLE DOUBT (Armed Habitual Criminal):** Did the People present evidence to prove that this defendant possessed a firearm? (Yes).

14. People v. Kimberly J. Williams, 2017 IL App (3<sup>rd</sup>) 140841, (3<sup>rd</sup> Dist., April 3, 2017) Aggravated Battery - - Affirmed in part; and vacated in part. **ISSUE: REASONABLE DOUBT (Aggravated Battery):** Did the People prove that this defendant did not act in self-defense? (Yes); 2) **OFFENSES (One Act – One Crime):** Could this defendant properly have been convicted of two counts of Aggravated Battery after struck her victim once with a baseball bat? (No).

15. People v. Anthony Fields, 2017 IL App (1<sup>st</sup>) 110311-B, (1<sup>st</sup> Dist., March 31, 2017) Armed Robbery and Armed Habitual Criminal - - Affirmed. **ISSUES: 1) REASONABLE DOUBT (Armed Robbery):** Did the People introduce sufficient evidence to support this defendant's convictions for Armed Robbery and for being an Armed Habitual Criminal? (Yes); 2) **CONSTITUTIONALITY OF STATUTE (Sentence Enhancement):** Was this defendant's 15-year sentence enhancement unconstitutional? (No).

16. People v. Ronald Henderson, 2017 IL App (1<sup>st</sup>) 142259, (1<sup>st</sup> Dist., March 31, 2017) First-Degree Murder and Attempt Murder - - Affirmed. **ISSUE: REASONABLE DOUBT (Identity):** Did the People introduce sufficient evidence to identify this defendant as a murderer? (Yes).

17. People v. Gilbert Lozano, 2017 IL App (1<sup>st</sup>) 142723, (1<sup>st</sup> Dist., March 31, 2017) Unlawful Possess of a Firearm by a Street-Gang Member - - Reversed. **ISSUE: REASONABLE DOUBT**

**(Weapons Offense):** Did the People introduce sufficient evidence to support this defendant's conviction for being a street-gang member in possession of a firearm? **(No).**

**18. People v. Noe Gomez, 2017 IL App (1<sup>st</sup>) 142950, (1<sup>st</sup> Dist., March 23, 2017)** Failing to Register as a Sex Offender - - Reversed. **ISSUE: REASONABLE DOUBT (Sex Offender Registration):** Did the People present sufficient evidence to prove that the defendant failed to register after residing in Chicago? **(No).**

**19. People v. Benjamin Lane, 2017 IL App (1<sup>st</sup>) 151988, (1<sup>st</sup> Dist., March 23, 2017)** Reckless Conduct - - Affirmed. **ISSUE: STATUTORY CONSTRUCTION (Domestic Battery):** Is the offense of Reckless Conduct a lesser included offense of Domestic Battery in this case? **(Yes).**

### CASE ANALYSIS

**1. People v. Casey L. Brace, 2017 IL App (4<sup>th</sup>) 150388, (4<sup>th</sup> Dist., May 26, 2017)** Unlawful Possession of Methamphetamine Precursors Without a Prescription While Having a Previous Methamphetamine Conviction - - Affirmed.

**ISSUE: REASONABLE DOUBT (Unlawful Possession of Methamphetamine Precursors):** Did the People present sufficient evidence to prove that the defendant illegally possessed Methamphetamine Precursors? **(Yes).**

**FACTS:** The defendant pleaded guilty to the offense of unlawful possession of methamphetamine precursors without a prescription while having a previous methamphetamine conviction. The trial court sentenced her to one year in prison. The court granted the defendant's motion to withdraw her plea. After a stipulated bench trial, the court found the defendant guilty and re-imposed the one-year sentence. On appeal, the defendant argued that the People's evidence at her stipulated bench trial failed to prove a necessary element of the charged offense. Specifically, she argued that the People's evidence at her stipulated bench trial failed to show she lacked a prescription for pseudoephedrine.

**APPEAL:** The Appellate Court held that: (a) evidence was sufficient to support defendant's conviction for unlawful possession of methamphetamine precursors without prescription while having previous methamphetamine conviction, and (b) although the statute which criminalizes the knowing purchase or possession of methamphetamine precursors by persons with previous methamphetamine convictions contains an exception for persons with valid prescriptions, the exception is not part of the body of the offense, and thus the exception is a matter of defense.

**FINDING #1:** Evidence was sufficient to support defendant's conviction for unlawful possession of methamphetamine precursors without prescription while having previous methamphetamine conviction, where agreed statement of facts presented at stipulated bench trial indicated that defendant had previous methamphetamine conviction and that she had purchased pseudoephedrine 110 times. 720 Ill. Comp. Stat. Ann. 646/120(a). **FINDING #2:** Although the statute which criminalizes the knowing purchase or possession of methamphetamine precursors by persons with previous methamphetamine convictions contains an exception for persons with valid prescriptions for the methamphetamine precursors, the exception is not part of the body of the offense, but instead merely withdraws certain persons from the operation of the statute, and thus the exception is a matter of defense, and the State has no burden to disprove it.

**2. People v. Samuel James, 2017 IL App (1<sup>st</sup>) 143036, (1<sup>st</sup> Dist., May 22, 2017)** Unlawful Possession of a Controlled Substance; Aggravated Unlawful Use of a Weapon, and Armed Violence - - Affirmed in part and vacated in part.

**ISSUE: OFFENSES (One Act – One Crime):** Was this properly convicted of Unlawful Possession of a Controlled Substance; Aggravated Unlawful Use of a Weapon, and Armed Violence? (No).

**FACTS:** The defendant was charged with various drug- and firearm-related offenses. Following a jury trial, he was found guilty of the unlawful and knowing possession of benzylpiperazine (BZP), a controlled substance (720 ILCS 570/402); aggravated unlawful use of a weapon (AUUW), for carrying a firearm without a valid Firearm Owner's Identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C)); and armed violence, based on his possession of the BZP while armed with a firearm (720 ILCS 5/33A-2(a)). On appeal, the defendant argued that (1) the trial court abused its discretion by failing to inquire during voir dire regarding potential jurors' feelings about guns; (2) statements made by the prosecutor during closing and rebuttal arguments denied him a fair trial; (3) under the one-act, one-crime rule, his convictions for possession of a controlled substance and AUUW should be vacated; and (4) the trial court erroneously failed to order 303 days of presentence credit for sanitation work that he completed while he was incarcerated.

**APPEAL:** The Appellate Court held that the mittimus incorrectly reflected three convictions based on same conduct, and thus Appellate Court would exercise its statutory power to vacate controlled-substance and AUUW convictions and correct mittimus to reflect single conviction for armed violence

**FINDING:** Mittimus incorrectly reflected three convictions, for aggravated unlawful use of a weapon (AUUW), possession of a controlled substance, and armed violence, based on same conduct, and thus Appellate Court would exercise its statutory power to vacate controlled-substance and AUUW convictions and correct mittimus to reflect single conviction for armed violence. 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(C), 5/33A-2(a), 570/402.

3. **People v. Donald Spivey, 2017 IL App (1<sup>st</sup>) 123563, (1<sup>st</sup> Dist., May 17, 2017)** Unlawful Use of a Weapon by a Felon (UUWF) and Aggravated Unlawful Use of a Weapon (AUUW) - - Affirmed.

**ISSUE: REASONABLE DOUBT (Unlawful Use of a Weapon by a Felon):** Did the People present sufficient evidence to support this defendant's conviction of UUWF? (Yes).

**FACTS:** Following a bench trial, the defendant was found guilty of two counts of unlawful use of a weapon by a felon (UUWF) and two counts of aggravated unlawful use of a weapon (AUUW). The trial court merged the convictions and sentenced defendant to four years' imprisonment, followed by two years of mandatory supervised release (MSR), for his conviction on count two for UUWF. Initially on appeal, the appellate court vacated the defendant's UUWF conviction under count two "because 'the State did not prove an essential element of the offense where it alleged in the charging instrument and proved at trial a predicate offense that has been declared unconstitutional and void ab initio.'" People v. Spivey, 2015 IL App (1st) 123563-U, ¶¶ 21, 25 (quoting People v. McFadden, 2014 IL App (1st) 102939, ¶ 43, aff'd and rev'd in part, 2016 IL 117424). The Supreme Court denied the People's petition for leave to appeal but entered a supervisory order directing us to vacate our judgment and to reconsider the matter in light of People v. McFadden, 2016 IL 117424, to determine if a different result is warranted.

**APPEAL:** The Appellate Court held that defendant's prior conviction for AUUW satisfied predicate felony element in prosecuting defendant for UUWF.

**FINDING:** Defendant's prior conviction for aggravated unlawful use of weapon (AUUW) satisfied predicate felony element in prosecuting defendant for unlawful use of weapon by felon (UUWF), even though defendant's AUUW conviction was under statute that was later declared unconstitutional under Second Amendment in *People v. Aguilar*, 2 N.E.3d 321, 377 Ill. Dec. 405, where defendant did not clear his felon status before obtaining a firearm. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a), 5/24-1.6(a) (1, 2), 5/24-1.6(a)(3)(A).

4. **People v. Eduardo Mayo, 2017 IL App (2<sup>nd</sup>) 150390, (2<sup>nd</sup> Dist., May 16, 2017)** Aggravated Criminal Sexual Abuse and Battery - - Reversed.

**ISSUE: REASONABLE DOUBT (Aggravated Criminal Sexual Abuse):** Did the People fail to introduce sufficient evidence to prove that this mentally handicapped defendant touched the victim for sexual gratification? (Yes).

**APPEAL:** The Appellate Court held that there was not sufficient evidence that defendant, who as an adult had an IQ of 48 and the mental capacity of a three-year-old, knowingly acted for purpose of his sexual gratification or arousal when he touched victim's groin over his clothes to support finding of not not guilty.

**FACTS:** The defendant was indicted on one count of aggravated criminal sexual abuse for knowingly committing an act of sexual conduct for the purpose of his or the victim's sexual gratification or arousal, where the victim was at least 13 but under 17 years old and he was at least 5 years older than the victim (720 ILCS 5/11-1.60(d)), and one count of battery for knowingly making physical contact of an insulting or provoking nature by grabbing the victim (720 ILCS 5/12-3(a)(2)). The trial court found defendant unfit to stand trial and scheduled a discharge hearing (725 ILCS 5/104-23). Following the hearing, the court ruled that defendant was "not not guilty" as to both counts.

**FINDING:** There was insufficient evidence that the defendant, who as an adult with an IQ of 48 and the mental capacity of a three-year-old, knowingly acted for the purpose of his sexual gratification or arousal when he touched the victim's groin over his clothes to support a finding of not not guilty of aggravated criminal sexual abuse. The clinical psychologist's opinion that the defendant was a potential danger was based in part on a prior incident at his school that the psychologist read about, which did not include details concerning the incident or indicate that the defendant knowingly touched anyone for the purpose of sexual gratification. The evidence that the defendant reportedly had an erection in public park offered no specifics, and the evidence that the defendant had ordered pornography via television did not show that he understood what it was. 720 Ill. Comp. Stat. Ann. 5/11-1.60(d).

5. **People v. Charles Coward, 2017 IL App (1<sup>st</sup>) 113085, (1<sup>st</sup> Dist., May 12, 2017)** First-Degree Murder and Armed Habitual Criminal - - Affirmed in Part; Reversed in Part.

**ISSUES: 1) REASONABLE DOUBT (First-Degree Murder):** Did the People present sufficient evidence to support this defendant's conviction for First-Degree Murder based upon accountability? (No); **2) REASONABLE DOUBT (Armed Habitual Criminal):** Did the People present sufficient evidence to support this defendant's conviction of being an Armed Habitual Criminal? (Yes).

**FACTS:** Following a jury trial, the defendant was convicted of first-degree murder under a theory of accountability. Following a simultaneous bench trial outside the presence of the jury, he was also convicted of being an armed habitual criminal (AHC). Subsequently, the trial court sentenced him to 51 years of imprisonment for first-degree murder and a concurrent 20-year sentence for the AHC conviction. On appeal, the appellate court reversed both the first-degree murder conviction and the AHC conviction. The Supreme Court then issued a supervisory order directing the appellate court to reconsider that judgment in light of its decision in *People v. McFadden*, 2016 IL 117424, 406 Ill.Dec. 470, 61 N.E.3d 74.

**APPEAL:** The Appellate Court held that: (a) conviction for first-degree murder under theory of accountability was not supported by sufficient evidence, and (b) the defendant's prior conviction for aggravated unlawful use of a weapon (AUUW) could serve as predicate felony for defendant's AHC conviction, even though prior conviction was premised on statute that had been held unconstitutional.

**FINDING:** The defendant's conviction for first-degree murder under a theory of accountability was not supported by sufficient evidence. Here the victim was killed during a shooting melee that occurred at a party. The victim's killer was unknown. Further, many men at party, including but not limited to the defendant and his friends, were armed with guns. At least 28 gunshots from seven different firearms were fired. The fatal bullet struck the victim and exited his body such that it could not be traced to a particular weapon. The defendant fired shots at two other individuals, and there was no evidence that the victim was accidentally shot by the defendant's friends as part of the defendant's criminal design to shoot at those two individuals. 720 Ill. Comp. Stat. Ann. 5/5-2(c), 5/9-1(a) (1), (2).

6. **People v. Michael Fickes, 2017 IL App (5<sup>th</sup>) 140300, (5<sup>th</sup> Dist., May 4, 2017)** Unlawful Disposal of Methamphetamine Manufacturing Waste and Aggravated Participation in Methamphetamine Manufacturing - - Affirmed in Part; Conviction Reduces; Case Remanded for Resentencing.

**ISSUE: REASONABLE DOUBT (Aggravated Participation in Methamphetamine Manufacturing):** Did the People present sufficient evidence to prove that the defendant manufactured methamphetamine within 1000 feet of a church? (No).

**FACTS:** The defendant appealed his conviction, following a trial by jury for the offense of aggravated participation in methamphetamine manufacturing. He did not challenge his conviction and sentence for unlawful disposal of methamphetamine manufacturing waste. Concerning his conviction for aggravated participation in methamphetamine manufacturing, he challenged the sufficiency of the evidence, contending that because the People presented no evidence that a building, purported to be a church, operated as a place of worship on the date in question, his conviction must be reduced to simple participation in methamphetamine manufacturing, and this case must be remanded for a new sentencing hearing on that conviction. The People responded that (1) the defendant had forfeited his challenge because it is not really a sufficiency of the evidence argument but is instead a challenge for lack of proper foundation, and (2) forfeiture notwithstanding, there was adequate evidence adduced at trial from which the jury could have inferred that the St. James Lutheran Church operated as a place of worship on the date in question.

**APPEAL:** The Appellate Court, Moore, J., held that there was insufficient evidence that methamphetamine manufacturing in which defendant participated occurred within 1,000 feet of place of worship or parsonage.

**FINDING:** There was insufficient evidence in this case to prove that methamphetamine manufacturing, in which defendant participated, occurred within 1,000 feet of place of worship or parsonage. Therefore, the defendant's conviction for aggravated participation in methamphetamine manufacturing must be reduced to simple participation in methamphetamine manufacturing. No direct testimony from police officers that they were familiar with area in question on date of the offense was introduced, and there was no testimony that the building was functioning primarily as place of worship on date of the offense, other than a witness's mere use of the term "church." 720 Ill. Comp. Stat. Ann. 646/15(b) (1) (H).

7. **People v. Marcus Austin, 2017 IL App (1<sup>st</sup>) 142737, (1<sup>st</sup> Dist., April 25, 2017)** Armed Robbery, Aggravated Vehicular Hijacking and Aggravated Assault - - Affirmed.

**ISSUE: REASONABLE DOUBT (Armed Robbery):** Did the People present sufficient evidence to support this defendant's Armed Robbery conviction? (Yes).

**FACTS:** The defendant was convicted by a jury of armed robbery, aggravated vehicular hijacking, and aggravated assault. He argued on appeal that (i) after a Batson challenge, the trial court improperly collapsed the three-step procedure; (ii) the trial court erred by refusing to instruct the jury on exclusions to the definition of "firearm"; (iii) the prosecutor's closing argument improperly commented on Austin's

silence at the time of his arrest; and (iv) the evidence to sustain his conviction for armed robbery was insufficient.

**APPEAL:** The Appellate Court held that: (a) the defendant failed to establish prima facie case of discrimination that would support *Batson* claim; (b) the evidence did not support a jury instruction listing the exceptions to what constituted a firearm pursuant to statute; (c) the People's rebuttal closing argument, referring to defendant having not told police officers that gun used in robbery and hijacking was a pellet gun or toy gun, did not constitute comment on defendant's post-arrest silence and thus did not violate defendant's right to due process; and (d) the evidence was sufficient to support the defendant's conviction for armed robbery even though no weapon was ever recovered.

**FINDING:** Sufficient evidence was introduced to support the defendant's conviction for armed robbery even though no weapon was ever recovered. Three police officers testified that the defendant had a black or blue-steel handgun in his hand as he ran away, and two witnesses testified that the defendant possessed a gun.

8. **People v. Sara Rudell, 2017 IL App (1<sup>st</sup>) 152772, (1<sup>st</sup> Dist., April 25, 2017)** Child Endangerment - - Affirmed.

**ISSUE: REASONABLE DOUBT (Child Endangerment):** Did the People present sufficient evidence to support this defendant's conviction for Child Endangerment? (Yes).

**FACTS:** The defendant challenged her conviction for child endangerment after leaving her six-month-old baby alone in a car. On appeal, she argued (i) the insufficiency of the evidence undermines her conviction, (ii) her trial counsel should have been allowed to move to suppress her statements to police after trial testimony had begun, (iii) the trial court should have granted her a new trial based on newly discovered evidence, and (iv) cumulative error requires reversal.

**APPEAL:** The Appellate Court held that the evidence in this case was sufficient to support the defendant's conviction for Child Endangerment.

**FINDING:** The evidence in this case was sufficient to support this defendant's conviction for child endangerment. The evidence established that a baby had been left unattended in car for upwards of an hour.

9. **People v. Larry Brown, 2017 IL App (1<sup>st</sup>) 142877, (1<sup>st</sup> Dist., ~~March 27, 2017~~)** Burglary - - Conviction Affirmed; Order Assessing Fees Corrected. (*Modified upon denial of rehearing April 24, 2017*)

**ISSUE: REASONABLE DOUBT (Burglary):** Did the People prove that this defendant entered this building with the intent to commit theft? (Yes).

**FACTS:** Following a bench trial, the defendant was convicted of burglary and sentenced to nine years in prison. On appeal, he contended (1) the People failed to prove beyond a reasonable doubt that he intended to commit a theft, (2) the trial court denied him his right to present a defense when it excluded certain testimony, (3) his sentence was excessive, and (4) certain monetary charges should be vacated and other charges should be offset by his presentence custody credit.

**APPEAL:** The Appellate Court held that the evidence in this case was sufficient to prove the defendant intended to commit a theft when he entered the victim's house.

**FINDING:** This evidence was sufficient to prove that the defendant intended to commit a theft when he entered a house, as required to support his conviction for burglary. The defendant claimed he was attempting to acquire lawfully through adverse possession. Here, text messages indicated that the defendant knew the house was under contract and would close within a few weeks. Further, police officer testified that the defendant told him that he had purchased the house for back taxes, and a neighbor testified that he observed the defendant use a crowbar to pry open a door to the garage. 720 Ill. Comp. Stat. Ann. 5/19-1.

**10. People v. Tino Terrell, 2017 IL App (1<sup>st</sup>) 142726, (1<sup>st</sup> Dist., April 14, 2017) Possession of a Firearm by a Felon and numerous drug offenses - - Reversed.**

**ISSUE: REASONABLE DOUBT (Possession of Controlled Substances):** Did the People present sufficient evidence to prove that the defendant constructively possessed the drugs and firearms in this case? **(No).**

**FACTS:** The defendant was convicted of possession of a controlled substance following a bench trial and sentenced to 15 years' imprisonment. The dispositive issue on appeal was the sufficiency of the evidence supporting Terrell's convictions. Specifically, Terrell contended that the evidence was insufficient to establish that he constructively possessed the drugs and weapons recovered from the Apartment's hallway closet. In response, the People contended that the facts of this case demonstrated that Terrell inhabited the Apartment and therefore supported a finding that Terrell had constructive possession over the drugs and weapons.

**APPEAL:** The Appellate Court held that evidence was insufficient to support finding that defendant constructively possessed contraband found in hidden compartment of hallway closet of an apartment.

**RULE #1:** Constructive possession over contraband exists where there is no personal dominion over the contraband but the defendant has control over the area where the contraband was found. **RULE #2:** Generally, habitation of the location where contraband is found is sufficient evidence of control constituting constructive possession.

**FINDING:** This evidence was insufficient to support a finding that the defendant constructively possessed contraband, including a controlled substance, found in a hallway closet of an apartment, as would be required to support his conviction for the possession of a controlled substance. This was found to have been the case even though prescription bottles and a probation card bearing the defendant's name were found in the living room of apartment. A pat-down search of the defendant uncovered no contraband tying him to that found in closet. Further, the contraband was found in a hidden compartment within the closet. Finally, the owner of the apartment testified that he did not know who the defendant was, and the defendant was discovered sitting in a pickup truck across the street from the apartment rather than within it.

**11. People v. Darnell Murphy, 2017 IL App (1<sup>st</sup>) 142092, (1<sup>st</sup> Dist., March 14, 2017) Burglary - - Affirmed. (MODIFIED UPON DENIAL OF REHEARING – APRIL 11, 2017)**

**ISSUE: REASONABLE DOUBT (Aggravation):** Did the People present sufficient evidence to prove that the defendant did not have permission to beside the building in question and that he intended to commit theft therein? **(Yes).**

**FACTS:** Following a bench trial, the defendant was found guilty of burglary. On appeal, Murphy complained that he was not proven guilty beyond a reasonable doubt because the People failed to establish that he did not have permission to be inside the building or that he intended to commit a theft. He also contested the imposition of certain fines and fees.



**APPEAL:** The Appellate Court held that the evidence in this case was sufficient to support the defendant's conviction for burglary.

**RULE #1:** To sustain a conviction for burglary, the State must prove beyond a reasonable doubt that defendant, without authority, knowingly entered or remained within a building with intent to commit therein a felony or theft. 720 Ill. Comp. Stat. Ann. § 5/19-1(a). **RULE #2:** Burglary is accomplished the moment an unauthorized entry with the requisite intent occurs even if no subsequent felony or theft is committed; there is no requirement that a defendant successfully complete the theft.

**FINDING:** The entry into the building in question was controlled by a key or key card and limited to university employees. University employees testified that the defendant was not employed by the university. The defendant was in the building on a Sunday morning when only three employees were in the building. He was observed moving boxes and attempting to open doors, and the trial court's inference that the defendant's entry into the building on a Sunday morning showed his intent to commit a theft therein was rational. The defendant's presence in a building that was inaccessible to the public and limited to university employees with key cards or keys was sufficient to support the reasonable inference that he entered the building without authority. Therefore, the Court concluded that this evidence was sufficient to support the defendant's conviction for burglary.

**12. People v. Mansur Sharirov, 2017 IL App (4<sup>th</sup>) 140578, (4<sup>th</sup> Dist., April 5, 2017) Reckless Homicide - - Reversed.**

**ISSUE: REASONABLE DOUBT (Reckless Homicide):** Did the People present sufficient evidence to prove that the defendant acted recklessly in causing the death of the victim? **(No).**

**FACTS:** The defendant was driving a semi-tractor trailer southbound on Interstate 39 (I-39) near Hudson, Illinois, when he collided with several emergency vehicles that were responding to an earlier accident. The collision resulted in the death of a volunteer firefighter. The defendant was charged with reckless homicide (720 ILCS 5/9-3(a) and a jury convicted him of that charge. The defendant appealed, arguing, in pertinent part, that the People failed to prove him guilty beyond a reasonable doubt.

**APPEAL:** The Appellate Court held that the evidence was insufficient to support the defendant's conviction for Reckless Homicide.

**RULE #1:** Recklessness, as would support conviction of a driver for reckless homicide, may be inferred from all the facts and circumstances in the record and may be established by evidence of the physical condition of the driver and his manner of operating the vehicle. 720 Ill. Comp. Stat. Ann. § 5/9-3(a).

**RULE #2:** Evidence of excessive speed, by itself, is not sufficient to sustain a conviction of reckless homicide; instead, the evidence of excessive speed, combined with other circumstances that would indicate a conscious disregard of a substantial risk likely to cause death or great bodily harm to others such that a reasonable person would act differently under the same circumstances, is sufficient to establish reckless homicide. **RULE #3:** Proof of negligence alone cannot sustain a finding of recklessness and thus cannot support a conviction of a driver for reckless homicide.

**FINDING:** This evidence was insufficient to support the defendant's conviction for reckless homicide arising out of a collision by the defendant, a commercial truck driver, with an emergency services vehicle responding to another incident in the left lane of the highway. The People's own expert evidence indicated the defendant's speed at impact was slightly above 37 miles per hour, and the best that could be said of the People's case was that the defendant might have been inattentive for a few seconds and then failed to realize the left lane was blocked as he unsuccessfully attempted to brake his semi-truck at night on an icy highway in blowing snow.

13. **People v. Antonio M. Bogan, 2017 IL App (3<sup>rd</sup>) 150156, (3<sup>rd</sup> Dist., April 3, 2017)** Armed Habitual Criminal - - Affirmed.

**ISSUE: REASONABLE DOUBT (Armed Habitual Criminal):** Did the People present evidence to prove that this defendant possessed a firearm? (Yes).

**FACTS:** The People charged the defendant by indictment with being an armed habitual criminal (720 ILCS 5/24-1.7(a)(1)) and defacing the identification marks of a firearm (720 ILCS 5/24-5(b)). The armed habitual criminal count alleged that the “defendant possessed a firearm, to wit: a High Point firearm, after having been convicted two or more times of the offense[ ] of Armed Robbery.” The latter count alleged that the defendant possessed “a High Point handgun, upon which the manufacturer's serial number was obliterated.” The defendant appealed from his conviction and argued that the People failed to present evidence sufficient to prove that he possessed a firearm.

**APPEAL:** The Appellate Court held that: (a) circumstantial evidence in this case was sufficient to support a finding that the defendant had control over the vehicle, as was required to support an inference that he constructively possessed the handgun, as an element of his conviction for being an armed habitual criminal, and (b) the circumstantial evidence was also sufficient to support a finding that he had knowledge of the handgun, as was required to support an inference that he constructively possessed the handgun, as element of conviction for being armed habitual criminal.

**RULE #1:** The inference that a defendant had knowledge of contraband based on the defendant's control over the area in which the contraband was found, as is required to prove that the defendant constructively possessed the contraband, is not always appropriate, such as where a defendant's control.

**FINDING #1:** Circumstantial evidence was sufficient in this case to support a finding by the trier of fact that the defendant had control over a vehicle in which a handgun was found, as was required to support an inference that the defendant constructively possessed the handgun, as an element of the defendant's conviction for being an armed habitual criminal. Here the defendant was the legal owner of the vehicle, two receipts bearing the defendant's signature were found in front passenger seat, the defendant's health insurance card and a box of rifle ammunition bearing the defendant's fingerprints were found on a rear floorboard, the rifle found on the backseat was the same as the rifle seen in pictures found on the defendant's cell phone, and a crossbow with arrows was found in the trunk, while a homemade target with apparent arrow holes was found in the defendant's apartment. 720 Ill. Comp. Stat. Ann. § 5/24-1.7(a)(1).

**FINDING #2:** Circumstantial evidence was sufficient to support a finding by the trier of fact that the defendant had knowledge of a .40-caliber handgun located in a car registered in the defendant's name, as was required to support an inference that the defendant constructively possessed the handgun, as an element of the defendant's conviction for being armed habitual criminal. A stack of evidence was found on rear the driver's side floorboard, with the defendant's health insurance card on top, a .40-caliber handgun and another handgun, which were wrapped in a black sweatshirt, in middle, and a canvas bag of ammunition, including a box bearing the defendant's fingerprint, at bottom. Therefore, the sheer unlikelihood of the defendant lacking knowledge of these items in the middle of the stack gave rise to an inference that he did, in fact, know about the .40-caliber handgun. over an area is relatively brief.

14. **People v. Kimberly J. Williams, 2017 IL App (3<sup>rd</sup>) 140841, (3<sup>rd</sup> Dist., April 3, 2017)** Aggravated Battery - - Affirmed in part; and vacated in part.

**ISSUE: REASONABLE DOUBT (Aggravated Battery):** Did the People prove that this defendant did not act in self-defense? (Yes); 2) **OFFENSES (One Act – One Crime):** Could this defendant properly have been convicted of two counts of Aggravated Battery after struck her victim once with a baseball bat? (No).

**FACTS:** The People charged the defendant by indictment with two counts of aggravated battery (720 ILCS 5/12-3.05(a) (1), (f) (1)) and one count of battery (720 ILCS 5/12-3(a) (1)). Count I alleged: “[D]efendant, in committing a battery, \* \* \* without legal justification and by use of a deadly weapon, to wit: a bat, knowingly made physical contact of an insulting or provoking nature with Theresa Washington, in that said defendant struck Theresa Washington about the body with a bat.” Count II alleged: “[D]efendant, in committing a battery, \* \* \* knowingly and without legal justification caused great bodily harm to Theresa Washington, in that said defendant struck Theresa Washington about the body with a bat.” Prior to trial, defendant disclosed that she intended to raise the affirmative defense of self-defense. The case proceeded to a bench trial. The defendant then appealed from her two convictions for aggravated battery. She argued (1) the People failed to prove beyond a reasonable doubt that defendant's use of force was not justified, (2) defendant was deprived of her due process right to a fair trial, and (3) one of defendant's convictions must be vacated under the one-act, one-crime rule.

**APPEAL:** The Appellate Court held that the evidence in this case was sufficient to support finding that the defendant did not act in self-defense.

**FINDING #1:** This evidence was sufficient to support a finding that the defendant, who was convicted of aggravated battery, did not act in self-defense when she used a baseball bat in an altercation with the victim. The defendant's testimony that she feared that the victim intended to sexually assault her was not supported by the record, where the victim stated that she broke her arm, and the defendant continued to strike her with the baseball bat. The Court concluded that it was highly unreasonable for the defendant to believe that such force was necessary to prevent imminent death or great bodily harm, because the victim was unarmed and injured. 720 Ill. Comp. Stat. Ann. §§ 5/7-1(a), 5/12-3.05(a)(1). **FINDING #2:** One of the defendant's convictions for aggravated battery was subject to be vacated as a violation of the one-act, one-crime rule. The indictment alleged in one count that the defendant “knowingly made physical contact of an insulting or provoking nature with victim, in that said defendant struck victim about the body with a bat,” and a second count alleged the defendant “knowingly and without legal justification caused great bodily harm to victim, in that said defendant struck victim about the body with a bat.” Finally, the People did not attempt to apportion the offenses by providing distinct striking locations or resulting injuries.

**15. People v. Anthony Fields, 2017 IL App (1<sup>st</sup>) 110311-B, (1<sup>st</sup> Dist., March 31, 2017) Armed Robbery and Armed Habitual Criminal - - Affirmed.**

**ISSUES:** **1) REASONABLE DOUBT (Armed Robbery):** Did the People introduce sufficient evidence to support this defendant's convictions for Armed Robbery and for being an Armed Habitual Criminal? **(Yes);** **2) CONSTITUTIONALITY OF STATUTE (Sentence Enhancement):** Was this defendant's 15-year sentence enhancement unconstitutional? **(No).**

**FACTS:** Following a jury trial, the defendant was convicted of armed robbery (720 ILCS 5/18-2(a)(2)) and being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a)). The trial court imposed a 21-year sentence for armed robbery, which included a 15-year enhancement for the use of a firearm and a concurrent 10-year sentence on the conviction of being an AHC. The defendant appealed, arguing (1) the evidence was insufficient to prove him guilty beyond a reasonable doubt of either charge, (2) the 15-year enhancement of his sentence for armed robbery is unconstitutional, and (3) he received ineffective assistance of counsel. The appellate court issued an opinion modified upon denial of rehearing, affirming his armed robbery conviction but reversing the AHC conviction. *People v. Fields*, 2014 IL App (1st) 110311, 379 Ill. Dec. 103, 6 N.E.3d 180. The Illinois Supreme Court issued a supervisory order directing the appellate court to reconsider that judgment because of its decision in *People v. McFadden*, 2016 IL 117424, 406 Ill. Dec. 470, 61 N.E.3d 74.

**APPEAL:** The Appellate Court held that: (a) the eyewitness testimony of victim was sufficient to support jury's finding that identification of defendant was reliable, as required for his conviction for armed robbery; (b) the statute requiring courts to add 15 years to the term of imprisonment imposed for a

conviction for armed robbery was effectively revived by a statutory amendment, and the statute therefore does not violate the provision of the Illinois Constitution requiring proportionate penalties.

**RULE #1:** Unless vague or doubtful, eyewitness identification of an accused, even that of a single eyewitness, will sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. **RULE #1:** The factors used to assess identification testimony are: (1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation.

**FINDING #1:** Eyewitness testimony of victim was sufficient to support jury's finding that identification of defendant was reliable, as required for his conviction for armed robbery, where victim had opportunity to observe defendant both before and during robbery, victim paid attention to defendant's face, particularly after defendant told her to do so, victim's description of defendant was accurate except for defendant's height, which was accurate only relative to victim's, victim was certain of her identification immediately prior to defendant's arrest and although over four weeks elapsed between robbery and identification confrontation, time difference did not invalidate reliability of identification. 720 Ill. Comp. Stat. Ann. § 5/18-2(a)(2) (2008). **FINDING #2:** The unequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that this defendant was armed during a robbery. 720 Ill. Comp. Stat. Ann. § 5/18-2.

16. **People v. Ronald Henderson, 2017 IL App (1<sup>st</sup>) 142259, (1<sup>st</sup> Dist., March 31, 2017)** First-Degree Murder and Attempt Murder - - Affirmed.

**ISSUE: REASONABLE DOUBT (Identity):** Did the People introduce sufficient evidence to identify this defendant as a murderer? (Yes).

**FACTS:** The defendant was convicted, after a jury trial, of the attempted first-degree murder of two victims and the first-degree murder of one victim during a drive-by, and sentenced to a total of 100 years with the Illinois Department of Corrections. On this appeal, the defendant claimed: (1) that the People failed to prove him guilty beyond a reasonable doubt; (2) that the trial court erred by allowing testimony by a police officer that he issued an investigative alert for defendant's arrest after a photo array and statement by a witness who did not testify at trial; (3) that defendant was denied a fair trial when the People was permitted to introduce evidence of allegedly unrelated guns and other allegedly unrelated information; (4) that defendant was denied a fair trial by being tried jointly with codefendant Kevin Stanley when the evidence against Stanley was allegedly greater; (5) that defendant was denied a fair trial by allegedly inaccurate or misleading jury instructions; and (6) that the People committed prosecutorial misconduct during its closing arguments.

**APPEAL:** The Appellate Court held that the testimony of three eyewitnesses was sufficient to establish the defendant's identity as the driver of a van from which the victims were shot.

**FINDING #1:** The testimony of three eyewitnesses that the defendant was the driving a van from which a passenger shot three victims including a nine-year-old girl was sufficient to establish the defendant's identity as the van driver, as required to support his conviction for first-degree murder and attempted first-degree murder. This was the case even though the witnesses did not identify the defendant until a week or more after the shooting, and even if the witnesses had a motive to lie since the defendant was a rival gang member. Here all three witnesses knew the defendant prior to the shooting, one for at least ten years. Further, the defense counsel cross-examined the witnesses about the delay in their identification and their ability to view the defendant at the time of the shooting. Finally, the defendant's membership in a rival gang faction was a fact that was presented to and weighed by the jury. **FINDING #2:** Testimony by police officer that he issued an investigative alert for defendant's arrest after conducting a photo array

and receiving a statement from a witness who did not testify at trial was admissible non-hearsay in murder prosecution as a description of the police investigative process, even if jurors could have reasonably inferred, by a process of elimination, which witness had identified defendant from the array; officer was recounting steps that he had taken in the immediate aftermath of the shooting and photo array was one of the steps, officer issued an alert for three different individuals, so that witness' statement could have concerned any one of the three, and not necessarily defendant, and officer's partner testified that he was familiar with street gangs in the area, so that jury could have also reasonably inferred that it was partner's expertise and knowledge which had provided the basis for a motive and made defendant a suspect.

**17. People v. Gilbert Lozano, 2017 IL App (1<sup>st</sup>) 142723, (1<sup>st</sup> Dist., March 31, 2017) Unlawful Possess of a Firearm by a Street-Gang Member - - Reversed.**

**ISSUE: REASONABLE DOUBT (Weapons Offense):** Did the People introduce sufficient evidence to support this defendant's conviction for being a street-gang member in possession of a firearm? **(No)**.

**FACTS:** Following a jury trial, the defendant Gilbert Lozano was convicted of unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1)) The defendant appealed his conviction, arguing that the evidence was insufficient to find him guilty beyond a reasonable doubt where the People failed to present evidence that established he was a member of a "street gang" as provided by the statutory definition.

**APPEAL:** The Appellate Court held that the People failed to establish that this defendant was member of a street gang within the meaning of the statute which defined street gang, and thus the evidence in this case was insufficient to support the defendant's conviction for the unlawful possession of a firearm by street-gang member.

**FINDING:** The People failed to establish that the defendant was member of street gang within the meaning of the statute which defined street gang. Therefore, the evidence in this case was insufficient to support the defendant's conviction for unlawful possession of a firearm by street-gang member. Here the testimony at trial failed to demonstrate that the group with which the defendant was allegedly associated committed gang-related criminal offenses after the date specified in the statute, and no evidence was presented to establish that two such offenses had been committed within five years of each other, as required by the statute. 720 Ill. Comp. Stat. Ann. §§ 5/24-1.8(a)(1), 5/24-1.8(c); 740 Ill. Comp. Stat. Ann. § 147/10.

**18. People v. Noe Gomez, 2017 IL App (1<sup>st</sup>) 142950, (1<sup>st</sup> Dist., March 23, 2017) Failing to Register as a Sex Offender - - Reversed.**

**ISSUE: REASONABLE DOUBT (Sex Offender Registration):** Did the People present sufficient evidence to prove that the defendant failed to register after residing in Chicago? **(No)**.

**FACTS:** The defendant was found guilty of one count of failing to register as a sex offender under section 3(a)(1) of the Sex Offender Registration Act (Act) (730 ILCS 150/3(a)(1)). Under section 3(a)(1), a sex offender has a duty to register with the police in any municipality where he "resides or is temporarily domiciled for a period of time of 3 or more days." In this appeal, the defendant argued that the People failed to prove that he resided or was temporarily domiciled in Chicago, as the People alleged in his indictment.

**APPEAL:** The Appellate Court held that the evidence in this case was insufficient to establish that the defendant resided or was temporarily domiciled in Chicago.

**FINDING #1:** The People were required to establish this defendant's specific residence or temporary domicile in order to prove that he failed to register as a sex offender within three days of establishing a residence or temporary domicile in a municipality. 730 Ill. Comp. Stat. Ann. § 150/3(a)(1). **FINDING #2:** This evidence was insufficient to establish the defendant resided or was temporarily domiciled in Chicago, an element necessary to establish defendant failed to register as a sex offender within three days of establishing a residence or a temporary domicile in Chicago. The evidence, in the light most favorable to the People, showed that the defendant tried to register at a Chicago address at some point between July 2012 and June 2013, and that he was in Chicago on the day of his arrest. However, the Court held that no reasonable inferences could be drawn to establish the defendant's residence or temporary domicile in the city of Chicago for three days.

**19. People v. Benjamin Lane, 2017 IL App (1<sup>st</sup>) 151988, (1<sup>st</sup> Dist., March 23, 2017) Reckless Conduct - - Affirmed.**

**ISSUE: STATUTORY CONSTRUCTION (Domestic Battery):** Is the offense of Reckless Conduct a lesser included offense of Domestic Battery in this case? **(Yes).**

**FACTS:** The defendant was charged with domestic battery. After a bench trial, the court found him guilty of the uncharged offense of reckless conduct, finding that reckless conduct was a lesser-included offense of domestic battery. In this appeal, defendant argued that the trial court erred in making this finding.

**APPEAL:** The Appellate Court held that the evidence in this case was sufficient to support the defendant's conviction for reckless conduct.

**FINDING #1:** The Court held that reckless conduct constituted a lesser included offense of domestic battery. Therefore, the defendant could be convicted of reckless battery even though he was not expressly charged with the crime. The People's domestic battery charge alleged the defendant "knowingly or intentionally without legal justification caused bodily harm to [victim], a family or household member," when he "struck" the victim "about the head causing injury." The offense of reckless conduct occurs when a person "recklessly performs an act or acts that cause bodily harm to or endanger the safety of another person," and the allegation of recklessness could be inferred from an allegation of knowledge. 720 Ill. Comp. Stat. Ann. § 5/12-5(a)(1). **FINDING #2:** Here the victim testified that the defendant reached into her car window and punched her in the face, and while the defendant denied punching the victim, he stated the parties were struggling over a parking pass through the window. The Court ruled that this evidence was sufficient to support the defendant's conviction for reckless conduct. 720 Ill. Comp. Stat. Ann. §§ 5/4-6, 5/12-5(a)(1).

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