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SEARCH AND SEIZURE QUARTERLY

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IN THIS ISSUE

1. **In re Tyreke H.**, 2017 IL App (1st) 170406, (1st Dist., September 28, 2017) Denial Motion to Suppress - - Affirmed. **ISSUES:** **1) SEARCH AND SEIZURE (Detention):** Did the Officers seize this defendant when they pulled their squad car in front of his bicycle? (Yes); **2) SEARCH AND SEIZURE (Reasonable Detention):** Was the detention of this defendant reasonable? (Yes); **3) SEARCH AND SEIZURE (Frisk):** Did the Officers improperly frisk this defendant.

2. **People v. Kathleen Bianca.**, 2017 IL APP (2nd) 160608, (2nd Dist., September 28, 2017) Suppression of Evidence - - Affirmed. **ISSUE:** **SEARCH AND SEIZURE (Traffic Stop):** Did this unidentified tipster provide sufficient reasonable suspicion to justify this defendant's detention? (No).

3. **People v. Cedrick Ramsey.**, 2017 IL App (1st) 160977, (1st Dist., August 22, 2017) Aggravated Criminal Sexual Assault - - Affirmed. **ISSUE:** **SEARCH AND SEIZURE (Warrantless Search):** Did the trial court err in denying this defendant's motion to suppress evidence recovered during a warrantless search of his residence after the police had arrived in response to a 911 call? (No).

4. **People v. George Brown.**, 2017 IL App (1st) 160025, (1st Dist., August 21, 2017) Resisting a Police Officer - - Reversed and Remanded. **ISSUE:** **SEARCH AND SEIZURE (Denial of Motion to Quash Arrest):** Did the trial court err in denying the defendant's motion to suppress based upon digital evidence of the traffic stop? (No).

5. **People v. Javier Pulido.**, 2017 IL App (3rd) 150215, (3rd Dist., June 16, 2017) Denial of a Motion to Suppress - - Reversed and Remanded. **ISSUE:** **SEARCH AND SEIZURE (Detention):** Was this defendant illegally detained after he and his car were taken to a local police station to be searched? (Yes).

6. **People v. David Holmes.**, 2017 IL 120407, (Ill. Sup. Ct., July 20, 2017) Grant of Motion to Suppress - - Reversed and Remanded. **ISSUE:** **SEARCH AND SEIZURE (Void Statute):** Does a finding that a statute is unconstitutional require the suppression of all evidence discovered because of that unconstitutional statute? (No).

7. **People v. Cara M. Ringland et al.**, 2017 IL 119484, (Ill. Sup. Ct., June 29, 2017) Suppression of Evidence - - Affirmed. **ISSUE:** **SEARCH AND SEIZURE (Authority):** Did this investigator of the State's Attorney have the authority to make detentions while enforce the drug laws? (No).

8. **People v. Derrick Bonilla.**, 2017 IL App (3rd) 160457, (3rd Dist., June 14, 2017) Grant of a Motion to Suppress - - Affirmed. **ISSUES:** **1) SEARCH AND SEIZURE (Curtilage):** Is a common

hallway inside an apartment building within the curtilage of this defendant's apartment? (Yes); **2) SEARCH AND SEIZURE (Expectation of Privacy):** Did the defendant have an expectation of privacy in the common hallway of his apartment building? (Yes); **3) SEARCH AND SEIZURE (Jardines):** Was the fact the apartment building in this case was unlocked and the hallway was open to the public enough to support the People's argument that no search occurring in this case? (No); **4) SEARCH AND SEIZURE (Good Faith):** Did the Officer act in good faith when using the drug detection dog in this case? (No).

CASE ANALYSIS

1. **In re Tyreke H., 2017 IL App (1st) 170406, (1st Dist., September 28, 2017)** Denial Motion to Suppress - - Affirmed.

FACTS: Tyreke H. was riding his bicycle when two police officers, wishing to speak with him not as a suspect but as a potential witness to a homicide, stopped their squad car in his path of travel in the middle of the street. When stopped, the officers spotted a bulge in his pocket that resembled a firearm. Tyreke H. confirmed his identity to the officers and admitted that he was in possession of a firearm. He was adjudicated delinquent of two counts of aggravated unlawful use of a weapon and one count of unlawful possession of firearms. He claimed he was unreasonably seized and unreasonably searched in violation of the Fourth Amendment. The trial court initially agreed and suppressed the evidence of the gun, then reconsidered and reversed its ruling, leading to Tyreke H.'s adjudication of delinquency on the gun charge.

ISSUES: **1) SEARCH AND SEIZURE (Detention):** Did the Officers seize this defendant when they pulled their squad car in front of his bicycle? (Yes); **2) SEARCH AND SEIZURE (Reasonable Detention):** Was the detention of this defendant reasonable? (Yes); **3) SEARCH AND SEIZURE (Frisk):** Did the Officers improperly frisk this defendant.

APPEAL: The Appellate Court held that: (a) police officers' initial stop of juvenile was a seizure under Fourth Amendment; (b) the seizure was reasonable; (c) officer had reasonable suspicion that juvenile was armed, as required for *Terry* frisk; (d) officer was justified in performing pat-down during suspicionless but reasonable seizure; (e) trial court, on motion to reconsider, did not abuse its discretion in sua sponte ordering juvenile to produce his jeans and in examining gun; and (f) unlawful-possession adjudication and one unlawful-use adjudication would be merged into second unlawful-use adjudication.

FINDING #1: Police officers' initial stop of juvenile as he rode his bicycle amounted to a "seizure" within meaning of the Fourth Amendment, where officers' vehicle passed juvenile and then stopped ahead of him in the path of his bicycle, and officers then promptly emerged from the vehicle to address juvenile. **FINDING #2:** Police officers' seizure of juvenile as he rode his bicycle was reasonable under the Fourth Amendment; a homicide investigation was underway, officers were specifically seeking the assistance of the juvenile as a possible witness, and the initial detention did not constitute a severe interference with juvenile's liberty. **FINDING #3:** Police officer had reasonable suspicion that juvenile was armed, as required for valid *Terry* frisk, where officer observed not just a bulge in juvenile's jeans but the outline of a weapon. **FINDING #4:** Police officer was justified in performing a pat-down of juvenile during suspicionless but reasonable seizure of juvenile, where, in the course of detaining juvenile, the officer developed a reasonable suspicion that juvenile was armed based on the outline of a firearm in juvenile's jeans. **FINDING #5:** Trial court, in connection with the People's motion to reconsider a prior grant of juvenile's motion to suppress, did not abuse its discretion in sua sponte ordering juvenile to produce his jeans and in examining a gun found in juvenile's possession, in delinquency proceeding in which juvenile was charged with aggravated unlawful use of a weapon and unlawful possession of firearms; court had authority to allow the People to reopen their case, even without a motion from the People, the court did not assume role of advocate but merely sought to test the credibility of police officer who supported his decision to frisk juvenile based on outline of the gun in jeans pocket, and court did not rely on officers'

off-the-record comments about the jeans in ruling on motion to reconsider.

2. **People v. Kathleen Bianca, 2017 IL APP (2nd) 160608, (2nd Dist., September 28, 2017)** Suppression of Evidence - - Affirmed.

FACTS: Bianca was charged with two counts of DUI (625 ILCS 5/11-501(a)(1), (2)). She filed a motion to suppress evidence, claiming that she was unlawfully seized by the police officer. The trial court granted her motion, and the People appealed.

ISSUE: SEARCH AND SEIZURE (Traffic Stop): Did this unidentified tipster provide sufficient reasonable suspicion to justify this defendant's detention? **(No).**

APPEAL: The Appellate Court held that: (a) first encounter between officer and defendant, when officer asked defendant to stay in her parked car and wait for him to return after he "cleared" his other traffic stop, was consensual; (b) the defendant's acceding to the officer's direction and performing field sobriety tests was not consensual for Fourth Amendment purposes; and (c) at the point where defendant submitted to the direction to exit the car to perform field sobriety tests, there was a seizure, within meaning of Fourth Amendment, unsupported by a reasonable, articulable suspicion.

FINDING #1: First encounter between officer and defendant, when officer asked defendant to stay in her parked car and wait for him to return after he "cleared" his other traffic stop, was consensual, and thus, trial court's finding that the officer commanded defendant to stay was against the manifest weight of the evidence. **FINDING #2:** The People forfeited, for purposes of appeal, their claim that defendant's argument, that she was illegally seized, was beyond the scope of defendant's suppression motion since the People never objected that it was beyond the scope of the motion and never requested to reopen the proofs to present evidence that officer had a reasonable, articulable suspicion to have defendant exit her car and perform field sobriety tests. 725 Ill. Comp. Stat. Ann. 5/114-12(b). **FINDING #3:** At the point where defendant submitted to the direction to exit the car to perform field sobriety tests, there was a seizure, within meaning of Fourth Amendment, unsupported by a reasonable, articulable suspicion; People did not argue that officer had a reasonable, articulable suspicion to direct defendant to perform the field sobriety tests.

3. **People v. Cedrick Ramsey, 2017 IL App (1st) 160977, (1st Dist., August 22, 2017)** Aggravated Criminal Sexual Assault - - Affirmed.

FACTS: After a bench trial, the defendant was convicted of three counts of aggravated criminal sexual assault and sentenced to natural life in prison. He raised three issues on appeal: (i) whether the trial court erred in denying his motion to suppress evidence recovered during a warrantless search of his residence after police arrived in response to a 911 call, when the items were in plain view, were not taken by police during the initial search, and were later recovered by an evidence technician; (ii) whether the admission of other crimes evidence was an abuse of discretion; and (iii) whether his trial counsel was ineffective.

ISSUE: SEARCH AND SEIZURE (Warrantless Search): Did the trial court err in denying this defendant's motion to suppress evidence recovered during a warrantless search of his residence after the police had arrived in response to a 911 call? **(No).**

APPEAL: The Appellate Court held that emergency aid exception to warrant requirement justified warrantless entry into defendant's residence, search of residence, and seizure of evidence in plain view.

FINDING: Emergency aid exception to warrant requirement justified warrantless entry into defendant's residence, search of residence, and seizure of evidence in plain view; when police arrived they saw broken glass on ground under defendant's second floor window, defendant was nervous, sweaty, had

blood droplets on his T-shirt, and made spontaneous statement that he and his girlfriend had just had a fight, victim was inside house crying and with cut marks on her arms, such that it was reasonable for them to walk through residence to determine whether anyone else was present, officers did not exceed scope of permissible search, and evidence ultimately recovered by an evidence technician was in plain view and its relation to crime was readily apparent.

4. People v. George Brown, 2017 IL App (1st) 160025, (1st Dist., August 21, 2017) Resisting a Police Officer - - Reversed and Remanded.

FACTS: The defendant was charged with aggravated battery to a police officer. After a bench trial, he was acquitted of committing that offense, but found guilty of resisting a police officer as a lesser-included offense. Newly discovered evidence thereafter caused the trial court to vacate the conviction for resisting a police officer and order a new trial on the resisting charge only. This time, the defendant opted for a jury trial and was found guilty again for resisting a police officer. On appeal, the defendant raised a number of issues.

ISSUE: SEARCH AND SEIZURE (Denial of Motion to Quash Arrest): Did the trial court err in denying the defendant's motion to suppress based upon digital evidence of the traffic stop? **(No).**

APPEAL: The Appellate Court held that trial court did not err by denying defendant's motion to quash arrest;

FINDING: Trial court did not err by denying defendant's motion to quash arrest based on newly-discovered video evidence, even though significant inconsistencies in testimony, especially in how narrative of arrest evolved after discovery of video evidence, raised significant red flags, since video evidence did not affirmatively disprove testimony, and trial court heard testimony, observed witnesses, and found video evidence to be inconclusive.

5. People v. Javier Pulido, 2017 IL App (3rd) 150215, (3rd Dist., June 16, 2017) Denial of a Motion to Suppress - - Reversed and Remanded.

FACTS: The defendant appeals his conviction, arguing that the trial court erred in denying his motion to suppress evidence recovered from a search of his vehicle. The People charged the defendant with unlawful possession of methamphetamine with intent to deliver (720 ILCS 646/55(a)(1), (a)(2)(F)) after narcotics were found in his vehicle. The defendant filed a motion to suppress the evidence obtained from the traffic stop on the basis that he was illegally detained and the vehicle in which he was driving was illegally searched.

ISSUE: SEARCH AND SEIZURE (Detention): Was this defendant illegally detained after he and his car were taken to a local police station to be searched? **(Yes).**

APPEAL: The Appellate Court held that: (a) defendant violated statute governing speed limits, and thus law enforcement officer's traffic stop was lawful and justified; (b) free-air sniff performed by a drug enforcement dog on defendant's vehicle did not unreasonably or impermissibly prolong traffic stop and detention, and thus did not violate the Fourth Amendment; (c) officers had probable cause to search defendant's vehicle along-side of road based on dog's positive alert to presence of controlled substances inside vehicle; but (d) officers' probable cause to search vehicle on side of road dissipated after officers' search did not reveal any evidence of controlled substances, and thus officers lacked probable cause to move vehicle to nearby police station for second search.

FINDING #1: Motorist violated statute governing speed limits, and thus law enforcement officer's traffic stop of motorist was lawful and justified, although order to stop motorist had been given prior to officer's

observation that motorist had committed a traffic offense; officer's light detection and ranging device (LIDAR) was working properly at start of his shift, and LIDAR device showed that motorist was traveling seven miles per hour above the posted speed limit when officer initiated stop. 625 Ill. Comp. Stat. Ann. 5/11-601(b). **FINDING #2:** Free-air sniff performed by a drug enforcement dog on motorist's vehicle after law enforcement officer lawfully stopped motorist's vehicle for traveling in excess of the speed limit did not unreasonably or impermissibly prolong traffic stop and motorist's detention, and thus did not violate the Fourth Amendment; sniff occurred while officer was still performing the duties related to the initial purpose of the stop, and dog alerted regarding controlled substances before officer received confirmation that motorist did not have any outstanding warrants for his arrest. **FINDING #3:** Law enforcement officers had probable cause to search motorist's vehicle along-side of road, after an officer had stopped vehicle for traveling in excess of posted speed limit, based on drug enforcement dog's positive alert to presence of controlled substances inside motorist's vehicle, although dog's drug enforcement certification had expired a month prior to officer's stop and dog's positive alert, and although dog had been out of service for a three-month period due to a broken leg; dog's prior certification alone allowed court to presume that the dog was sufficiently reliable, dog and officer trained twice a month for ten hours each day at different locations in different environments, and dog had never alerted to a training blank. **FINDING #4:** Law enforcement officers' probable cause to search motorist's vehicle on side of road after motorist was stopped for traveling in excess of speed limit, which was based on drug enforcement dog's positive alert to presence of controlled substances, dissipated after officers' search did not reveal any evidence of controlled substances, and thus officers lacked probable cause to move motorist's vehicle to nearby police station for second search, even though officers testified that move of vehicle was due to weather conditions and safety, and although motorist allegedly gave officers consent to search vehicle; the People did not produce any evidence that would justify moving vehicle, move was ordered after officers completed initial search, and move exceeded scope of motorist's alleged consent.

6. People v. David Holmes, 2017 IL 120407, (Ill. Sup. Ct., July 20, 2017) Grant of Motion to Suppress - - Reversed and Remanded.

FACTS: The defendant was arrested when a Chicago police officer observed a revolver in the defendant's waistband. After the arrest, the police also discovered that the defendant lacked a Firearm Owner's Identification (FOID) card. He was charged with four counts of aggravated unlawful use of a weapon (AUUW). Counts I and III alleged that defendant carried a loaded, uncased, immediately accessible firearm (720 ILCS 5/24-1.6(a)(1), (a)(3)(A); (a)(2), (a)(3)(A) (West 2012)), and counts II and IV alleged that he did so without a FOID card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C); (a)(2), (a)(3)(C)). After the defendant's arrest, the Supreme Court issued its decision in *People v. Aguilar*, holding that section 24-1.6(a)(1), (a)(3)(A), (d)(1) was facially unconstitutional because it violated the right to keep and bear arms, as guaranteed by the second amendment to the United States Constitution. *People v. Aguilar*, 2013 IL 112116. The People entered a *nolle prosequi* on counts I and III. The defendant filed a motion to quash his arrest and suppress evidence with respect to counts II and IV because the arresting officer only had probable cause to believe defendant was violating sections 24-1.6(a)(1), (a)(3)(A) and 24-1.6(a)(2), (a)(3)(A), which had been declared unconstitutional. 720 ILCS 5/24-1.6(a)(1), (a)(3)(A); (a)(2), (a)(3)(A). As a result, the defendant argued that probable cause was retroactively invalidated and therefore his arrest violated his right to be free from unreasonable search and seizure under the state and federal constitutions. After a hearing, the trial court granted the defendant's motion. The appellate court affirmed and the Supreme Court allowed the People's petition for leave to appeal.

ISSUE: SEARCH AND SEIZURE (Void Statute): Does a finding that a statute is unconstitutional require the suppression of all evidence discovered because of that unconstitutional statute? **(No)**.

APPEAL: The Supreme Court held that void ab initio doctrine did not retroactively invalidate probable cause to arrest defendant.

FINDING #1: Void ab initio doctrine did not retroactively invalidate probable cause to arrest defendant

for violating statute that prohibited carrying loaded, uncased, immediately accessible firearm, which was later declared unconstitutional under Second Amendment, and thus there was no reason to suppress evidence collected incidental to arrest; police had probable cause to arrest at time of arrest, probable cause was component of both federal and state constitutions, and federal case law would not have required probable cause to be invalidated. 720 Ill. Comp. Stat. Ann. 5/24-1.6(a) (1, 2), (a)(3)(A). **FINDING #2:** The void ab initio doctrine does not retroactively invalidate probable cause to arrest based on a statute later held unconstitutional on federal constitutional grounds or on state constitutional grounds subject to the limited lockstep doctrine.

7. People v. Cara M. Ringland et al., 2017 IL 119484, (Ill. Sup. Ct., June 29, 2017) Suppression of Evidence - - Affirmed.

FACTS: The defendants were separately charged with felony drug offenses. In each case, a controlled substance was discovered during a traffic stop. These traffic stops were conducted by a special investigator appointed by the State's Attorney, pursuant to section 3-9005(b) of the Counties Code (55 ILCS 5/3-9005(b)). The trial court granted each defendant's motion to quash arrest and suppress evidence. The appellate court affirmed, holding that the conduct of the special investigator exceeded the scope of section 3-9005(b). The Supreme Court allowed the People's petition for leave to appeal.

ISSUE: SEARCH AND SEIZURE (Authority): Did this investigator of the State's Attorney have the authority to make detentions while enforce the drug laws? **(No).**

APPEAL: The Supreme Court held that common law duty to investigate suspected illegal activity did not provide basis for State's Attorney's appointment of special investigator to make traffic stops and arrest highway motorists who were smuggling narcotics or proceeds from narcotics.

FINDING #1: Common law duty to investigate suspected illegal activity did not apply to State's Attorney's investigation of drug trafficking and, thus, such common law duty did not provide basis, under statute allowing State's Attorney to appoint special investigator to serve subpoenas, make return of process, and conduct investigations which assisted the State's Attorney in the performance of his duties, for appointment of special investigator to make traffic stops and arrest highway motorists who were smuggling narcotics or proceeds from narcotics; there was nothing to indicate that law enforcement agencies inadequately dealt with such investigations or that any law enforcement agency had asked State's Attorney for assistance. 55 Ill. Comp. Stat. Ann. 5/3-9005(a), 5/3-9005(b). **FINDING #2:** By failing to raise such issue in both trial and appellate court, the People forfeited their contention, on appeal to Supreme Court from affirmance of grant of defendants' suppression motions, that even if special investigator's appointment by State's Attorney was invalid due to procedural errors, defendants could not, on that basis, exclude evidence of drugs discovered during traffic stops initiated by special investigator.

8. People v. Derrick Bonilla, 2017 IL App (3rd) 160457, (3rd Dist., June 14, 2017) Grant of a Motion to Suppress - - Affirmed.

FACTS: The defendant was charged with unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(c)). He filed a motion to quash warrant and suppress evidence (motion to suppress), which the trial court granted after a hearing. The People brought this appeal.

ISSUES: 1) SEARCH AND SEIZURE (Curtilage): Is a common hallway inside an apartment building within the curtilage of this defendant's apartment? **(Yes); 2) SEARCH AND SEIZURE (Expectation of Privacy):** Did the defendant have an expectation of privacy in the common hallway of his apartment building? **(Yes); 3) SEARCH AND SEIZURE (Jardines):** Was the fact the apartment building in this case was unlocked and the hallway was open to the public enough to support the People's argument that no search occurring in this case? **(No); 4) SEARCH AND SEIZURE (Good Faith):** Did

the Officer act in good faith when using the drug detection dog in this case? **(No)**.

APPEAL: The Appellate Court held that: (a) officer's actions, entering common-area hallway of unlocked apartment building and conducting canine sniff of front door of defendant's apartment, constituted search under Fourth Amendment, and (b) good faith exception to exclusionary rule did not apply.

FINDING #1: Police officer's actions, in entering common-area hallway of unlocked apartment building and conducting canine sniff of front door of defendant's apartment, constituted search under Fourth Amendment, although apartment building was unlocked and unsecured; common-area hallway just outside of defendant's apartment door constituted curtilage. **FINDING #2:** Reasonably well-trained officer would have known that warrantless search, canine sniff of front door of defendant's apartment, was illegal, and thus good faith exception to exclusionary rule did not apply; at the time of the search, both United States Supreme Court and Illinois Appellate Court had already ruled that canine sniff of front door of residence was Fourth Amendment search, police officer could not reasonably rely on older case law decisions or decisions involving canine sniffs in other contexts to authorize warrantless canine sniff of front door of defendant's residence, and officer could not reasonably rely on search warrant that was issued based upon warrantless police canine sniff of front door of defendant's apartment, a practice that had not been specifically authorized by any established precedent. 725 Ill. Comp. Stat. Ann. 5/114-12(b) (1, 2).

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