



Illinois Prosecutor Services, LLC

Don Hays

PO Box 722

Carlinville, Illinois 62626

Office Phone: (217) 854-8041 Fax: (217) 854-5343

Webpage: www.ipsllc.com

Email: don.ipsllc@gmail.com



PUBLISHER NOTE: If you are interested in obtaining access to these and other materials on our website at www.ipsllc.com please see the subscription information at the end of this publication or contact us at don.ipsllc@gmail.com and subscription information will be provided.

CRIMINAL CASE LAW QUARTERLY

SUMMER ISSUE– 2018
(April-June 2018 Cases)

IN THIS ISSUE

1. **People v. Andrew Davis and Donate Graham, 2018 IL APP (1st) 152413, (1st Dist., June 29, 2018)** First-Degree Murder and Attempted First-Degree Murder - - Affirmed. **ISSUE: REASONABLE DOUBT (First-Degree Murder)**: Did the People present sufficient evidence to support the convictions of these defendants? (Yes).
2. **People v. Abdourhman Gueye, 2018 IL App (1st) 152826, (1st Dist., June 29, 2018)** Violating the Counterfeit Trademark Act - - Affirmed. **ISSUES: 1) REASONABLE DOUBT (Counterfeit Trademark Violation)**: Did the People fail to present sufficient evidence to support this defendant's conviction? (No); **2) CONSTITUTIONALITY OF STATUTE (Counterfeit Trademark Act)**: Did the offense of violating the Counterfeit Trademark Act violate this defendant's due process rights? (No).
3. **People v. Delfonte Miller, 2018 IL APP (1st) 152967, (1st Dist., June 29, 2018)** Possession of a Controlled Substance - - Conviction Affirmed; Mittimus Corrected. **ISSUE: REASONABLE DOUBT (Possession of a Controlled Substance)**: Did the People fail to prove this defendant guilty where the arresting Officer never "exactly" what was in the defendant's hand? (No).
4. **People v. John G. Monteleone, 2018 IL APP (2nd) 170150, (2nd Dist., June 28, 2018)** Delivery of a Controlled Substance - - Affirmed. **ISSUE: REASONABLE DOUBT (Unlawful Possession of K-2)**: Did the People present sufficient evidence to support this defendant's conviction for delivering K-2? (Yes).
5. **People v. Williams J. Ross, 2018 IL APP (2nd) 161079, (2nd Dist., June 28, 2018)** First-Degree Murder - - Affirmed. **ISSUE: REASONABLE DOUBT (First-Degree Murder)**: Did the People fail to present sufficient evidence to support this defendant's conviction? (No).
6. **People v. Donald R. Gauger, Jr., 2018 IL APP (2nd) 150488, (2nd Dist., June 27, 2018)** Violation of an Order of Protection; Stalking; Aggravated Stalking - - Affirmed. **ISSUE: STATUTORY CONSTRUCTION (Aggravated Stalking)**: Was the statute upon which this defendant was convicted unconstitutional? (No).
7. **In re O.S., 2017 IL App (1st) 171765, (1st Dist., June 26, 2018)** Denial of Motion to Suppress - - Affirmed. **ISSUE: REASONABLE DOUBT (Unlawful Possession of a Weapon)**: Did the People present sufficient evidence to prove that this defendant was a juvenile and that he did not possess a FOID card? (Yes).
8. **People v. Jamari McArthur, 2017 IL App (1st) 150626, (1st Dist., June 25, 2018)** Aggravated Criminal Sexual Abuse - - Affirmed. **ISSUES: 1) REASONABLE DOUBT (Aggravated Criminal Sexual Abuse)**: Did the People fail

to present sufficient evidence to support this defendant's conviction? (No); 2) **CONSTITUTIONALITY OF STATUTE (SORA)**: Was the SOA provision that precludes minors charged under the criminal laws as adults from petitioning to terminate their sex offender registration requirements? (No).

9. **People v. Erick Martin, 2017 IL App (1st) 152249, (1st Dist., June 22, 2018)** Armed Habitual Criminal - - Affirmed. **ISSUE: CONSTITUTIONALITY OF STATUTE (Armed Habitual Criminal)**: Was the offense of being an Armed Habitual Criminal constitutionally applied to this defendant where his offenses were all non-violent and more than 20-years' old? (No).

10. **People v. Jerry Brown, 2018 IL APP (1st) 151311-B, (1st Dist., June 14, 2018)** Robbery; Aggravated Battery of a Senior Citizen - - Affirmed in Part; Vacated in Part. **ISSUE: OFFENSES (One Act – One Crime)**: Was this defendant improperly convicted of both Robbery and Aggravated Battery of a Senior Citizen? (No).

11. **People v. Stevie Smith, 2018 IL APP (1st) 151312-B, (1st Dist., June 14, 2018)** Robbery; Aggravated Battery of a Senior Citizen - - Affirmed in Part; Vacated in Part. **ISSUE: OFFENSES (One Act – One Crime)**: Was this defendant improperly convicted of both Robbery and Aggravated Battery of a Senior Citizen? (No).

12. **People v. Nicole E. Fiumetto and Joclyn E. Hall, 2018 IL App (2nd) 170230, (2nd Dist., June 12, 2018)** Dismissal of Charges - - Affirmed in Part; Reversed and Remanded in Part. **ISSUE: STATUTORY CONSTRUCTION (Affirmative Defense)**: Were the People required to prove that the defendants did not legally possess the hypodermic needles and is an ordinary table spoon "drug paraphernalia?" (No to both questions).

13. **People v. Runaldo D. Ramsey, 2018 IL APP (2nd) 151071, (2nd Dist., June 12, 2018)** Home Invasion and Aggravated Battery - - Affirmed; Sentence Modified. **ISSUE: REASONABLE DOUBT (Home Invasion)**: Did the People introduce sufficient evidence to prove the defendant's unauthorized entry into the victim's dwelling? (Yes).

14. **People v. Keith Middleton, 2018 IL APP (1st) 152040, (1st Dist., June 6, 2018)** First-Degree Murder - - Reversed and Remanded. **ISSUE: REASONABLE DOUBT (First-Degree Murder)**: Was the testimony of a single occurrence witness sufficient to support this defendant's Murder conviction? (Yes).

15. **People v. Jamison L. Moore, 2018 IL APP (2nd) 160277, (2nd Dist., June 6, 2018)** Burglary - - Affirmed. **ISSUES: 1) REASONABLE DOUBT (Burglary)**: Did the People introduce sufficient evidence to support this defendant's Burglary conviction? (Yes); 2) **REASONABLE DOUBT (Accountability)**: Did the People to prove that the defendant was accountable for the conduct of his co-defendant? (No).

16. **People v. Michael L. Wilkinson, 2018 IL APP (3rd) 160173, (3rd Dist., June 5, 2018)** Aggravated Battery - - Affirmed. **ISSUE: REASONABLE DOUBT (Aggravated Battery)**: Did the People introduce sufficient evidence to support this defendant's conviction for being an Aggravated Battery? (Yes).

17. **People v. Sebastian Rodriguez, 2017 IL App (1st) 141379-B, (1st Dist., June 4, 2018)** First-Degree Murder - - Conviction Affirmed; Sentence Vacated; Case Remanded for Resentencing. **ISSUES: 1) STATUTORY CONSTRUCTION (Juvenile Law Amendments)**: Should the changes to the Juvenile Court Act be applied retroactively to this defendant? (No); 2) **CONSTITUTIONALITY OF STATUTE (Sentencing)**: Was Sebastian's 50-year sentence, pursuant to which he will not be released until the age of 65, a *de facto* life sentence subject to our supreme court's holding in *People v. Reyes*, 2016 IL 119271, and whether this sentence violated both the eighth amendment and the proportionate penalties clause? (No).

18. **People v. Tyquan Anderson, 2018 IL APP (4th) 160037, (4th Dist., May 30, 2018)** Armed Violence, Unlawful Possession of a Weapon by a Felon, and Unlawful Possession of a Controlled Substance with Intent to Deliver - - Affirmed in Part; Vacated in Part; Remanded with Directions. **ISSUES: 1) REASONABLE DOUBT (Armed Violence and Possession of a Weapon)**: Did the People fail to present sufficient evidence to support these convictions? (No); 2) **REASONABLE DOUBT (Intent)**: Did the People prove that the defendant possessed drugs with the intent to deliver? (Yes); 4) **OFFENSES (One Act – One Crime)**: Could this defendant be found guilty of both UUV and Possession of a Controlled Substance? (Yes).

19. **People v. Terry Johnson**, 2018 IL APP (1st) 153634, (1st Dist., May 29, 2018) Armed Robbery - - Affirmed. **ISSUE: STATUTORY CONSTRUCTION (Dangerous Weapon):** Did the trial court err in finding that pepper spray was a “dangerous weapon” for purposes of the offense of Armed Robbery? (No).
20. **People v. John Plank**, 2018 IL 122202, (Ill. Sup. Ct., May 24, 2018) Dismissal of Charges - - Reversed and Remanded. **ISSUE: CONSTITUTIONALITY OF STATUTE (Low-Speed Gas Bicycle):** Was the definition of the term “low speed gas bicycle” unconstitutionally vague? (No).
21. **People v. Derek K. Webb**, 2018 IL APP (3rd) 160403, (3rd Dist., May 23, 2018) Armed Habitual Criminal - - Affirmed. **ISSUE: REASONABLE DOUBT (Armed Habitual Criminal):** Did the People introduce sufficient evidence to support this defendant’s conviction for being an Armed Habitual Criminal? (Yes).
22. **People v. Deontae Curry**, 2018 IL APP (1st) 153635, (1st Dist., May 22, 2018) Armed Robbery - - Remanded with directions. **ISSUE: STATUTORY CONSTRUCTION (Dangerous Weapon):** Did the trial court err in finding that pepper spray was a “dangerous weapon” for purposes of the offense of Armed Robbery? (No).
23. **People v. Curtis T. Lovelace**, 2018 IL APP (4th) 170401, (4th Dist., May 22, 2018) Bond Order - - Affirmed. **ISSUE: CONSTITUTIONALITY OF STATUTE (Bond):** Was the Illinois Bond statute that allows the People to keep 10% of a defendant’s bond, even if they are acquitted of all criminal charges unconstitutional? (No).
24. **People v. Jeremi R. Stevens**, 2018 IL APP (4th) 150871, (4th Dist., May 16, 2018) UUV - - Affirmed in Part; Vacated in Part. **ISSUE: CONSTITUTIONALITY OF STATUTE (Concealed Carry):** Was the Concealed Carry statute unconstitutional? (No).
25. **People v. Michael G. Tatera**, 2018 IL APP (2nd) 160207, (2nd Dist., May 15, 2018) Aggravated DUI - - Affirmed. **ISSUE: REASONABLE DOUBT (Aggravated DUI):** Did the People introduce sufficient evidence to support this defendant’s Aggravated DUI conviction? (Yes).
26. **People v. Terrance T. Norwood**, 2018 IL APP (4th) 150883, (4th Dist., May 9, 2018) Domestic Battery - - Affirmed in Part; Vacated in Part. **ISSUE: REASONABLE DOUBT (Armed Violence):** Did the People present sufficient evidence to support this defendant’s Armed Violence conviction? (Yes).
27. **People v. Christopher M. Holmes**, 2018 IL APP (3rd) 160060, (3rd Dist., May 8, 2018) Aggravated Criminal Sexual Abuse - - Affirmed. **ISSUE: REASONABLE DOUBT (Aggravate Criminal Sexual Abuse):** Did the People introduce sufficient evidence to support this defendant’s conviction for Aggravated Criminal Sexual Abuse? (Yes).
28. **People v. Antwan Space**, 2018 IL APP (1st) 150922, (1st Dist., May 4, 2018) Felony Murder - - Reversed. **ISSUE: REASONABLE DOUBT: (Felony Murder):** Did the People present sufficient evidence to support this defendant’s felony murder conviction? (No).
29. **People v. Patrick Steger**, 2018 IL APP (2nd) 151197, (2nd Dist., May 4, 2018) Disorderly Conduct - - Affirmed. **ISSUE: REASONABLE DOUBT: (Disorderly Conduct):** Did the People present sufficient evidence to support this defendant’s disorderly conduct conviction after he made a false 911 call? (Yes).
30. **People v. Darionte Jones**, 2018 IL APP (1st) 151307, (1st Dist., May 3, 2018) Predatory Criminal Sexual Assault of a Child - - Affirmed. **ISSUE: CONSTITUTIONALITY OF STATUTE (Sex Offender Registration and Notification):** Were the Sex Offender Registration and Notification statutes constitutional? (Yes).
31. **People v. Mark E. Sato**, 2018 IL APP (2nd) 170089, (2nd Dist., April 25, 2018) Speeding - - Affirmed. **ISSUE: REASONABLE DOUBT (Speeding):** Did the People present sufficient evidence to support this defendant’s conviction for speeding where this defendant argued that no proof of a valid engineering survey had supported the speed limit? (Yes).

32. **People v. Gabriel Enrique Berrios, 2018 IL APP (2nd) 150824, (2nd Dist., April 20, 2018)** Unlawful Contact with a Street-gang - - Affirmed. **ISSUES:** 1) **CONSTITUTIONALITY OF STATUTE (Unlawful Contact with a Street Gang)**: Was the offense of the unlawful contact with a street gang member unconstitutional? (No); 2) **REASONABLE DOUBT (Unlawful Contact with a Street Gang)**: Did the People introduce sufficient evidence to support this defendant's Unlawful Contact with a Street Gang conviction? (Yes).

33. **People v. Noble Lewis Jr., 2018 IL APP (4th) 150637, (4th Dist., April 13, 2018)** Domestic Battery - - Affirmed in Part; Vacated in Part. **ISSUE:** **REASONABLE DOUBT (Domestic Battery)**: Did the People present sufficient evidence to support this defendant's domestic battery conviction? (Yes).

34. **People v. Jesus Sanchez, 2018 IL APP (1st) 143899, (1st Dist., April 10, 2018)** First-Degree Murder - - Reversed. **ISSUE:** **REASONABLE DOUBT (Murder)**: Did the People present sufficient evidence to support this defendant's murder conviction? (No).

35. **People v. Eric M. Pence, 2018 IL APP (2nd) 151102, (2nd Dist., April 6, 2018)** Disorderly Conduct - - Affirmed. **ISSUE:** **REASONABLE DOUBT (Disorderly Conduct)**: Did the People present sufficient evidence to support this defendant's Disorderly Conduct conviction after the defendant sent a message to the victim to say "hi?" (Yes).

36. **People v. Samuel B. Burchell, 2018 IL APP (5th) 170079, (5th Dist., April 6, 2018)** Dismissal of Charges - - Affirmed. **ISSUES:** 1) **STATUTORY CONSTRUCTION (SORA)**: Does the "temporary" absence provision of SORA require that the defendant be absent from his home for three consecutive days? (No); 2) **REASONABLE DOUBT (SORA)**: Did the People present sufficient evidence to prove this defendant violated SORA? (No).

37. **People v. Eduardo Gomez, 2018 IL APP (1st) 150605, (1st Dist., April 3, 2018)** Armed Habitual Criminal; Aggravated Unlawful Use of a Firearm; Unlawful Use of a Firearm by a Felon - - Convictions Affirmed in Part; Vacated in Part; Case Remanded with Instructions. **ISSUE:** **OFFENSES (One Act – One Crime)**: Was this defendant improperly convicted of both AHC and his weapons charge? (Yes).

38. **People v. Steve W. Gill, 2018 IL APP (3rd) 150594, (3rd Dist., April 3, 2018)** Aggravated Arson - - Reversed and Remanded. **ISSUE:** **REASONABLE DOUBT (Aggravated Arson)**: Did the People present sufficient evidence to support this defendant's Aggravated Arson conviction? (Yes).

39. **People v. Matthew Haberkorn, 2018 IL APP (3rd) 160599, (3rd Dist., April 3, 2018)** Unlawful Presence - - Reversed. **ISSUE:** **REASONABLE DOUBT (Unlawful Presence)**: Did the People fail to prove that this defendant, a child sex offender, was unlawfully present at a facility that provided services exclusively for children? (Yes).

40. **People v. Robin Johnson, 2018 IL APP (1st) 140725, (1st Dist., March 30, 2018)** First-Degree Murder; Disarming Peace Officer and Aggravated Discharge of a Firearm - - Affirmed. **ISSUE:** **CONSTITUTIONALITY OF STATUTE (Life Sentence)**: Was the defendant's life sentence constitutional? (Yes).

41. **People v. Antuan Joiner, 2018 IL APP (1st) 150343, (1st Dist., March 30, 2018)** First-Degree Murder and Attempted First-Degree Murder - - Convictions Affirmed; Sentences Vacated. **ISSUES:** 1) **REASONABLE DOUBT (DUI)**: Did the People present sufficient evidence to support this defendant's convictions? (Yes); 2) **CONSTITUTIONALITY OF STATUTE (Juvenile Sentence)**: Did the sentencing scheme that allowed this defendant to receive a sentence of 71 years in prison unconstitutional? (Yes).

42. **People v. James Walker, 2018 IL APP (3rd) 140723-B, (3rd Dist., March 26, 2018)** Dismissal of a Post-Conviction Petition - - Affirmed. **ISSUE:** **CONSTITUTIONALITY OF STATUTE (Life Sentence)**: Was this Juvenile's Life Sentence unconstitutional? (No).

43. **People v. Eric F. Ziemba, 2018 IL APP (2nd) 170048, (2nd Dist., March 23, 2018)** Involuntary Sexual Servitude of a Minor; Traveling to Meet a Minor; Grooming - - Affirmed. **ISSUE:** **REASONABLE DOUBT (Involuntary Sexual Servitude of a Minor)**: Did the People present sufficient evidence to support this defendant's conviction for the

offense of Involuntary Sexual Servitude of a Minor where this was a sting operation and the minor never actually existed? (Yes).

44. **People v. Aaron Zetterlund, 2018 IL APP (3rd) 150435, (3rd Dist., March 23, 2018)** Criminal Sexual Assault - Affirmed. **ISSUE: STATUTORY CONSTRUCTION (Second Degree Murder):** Does the jurors' inability to unanimously agree upon whether a mitigating factor exists, for purposes of second degree murder, result in a finding of first degree murder, as charged, and as necessarily found by the jury in the required statutory progression? (Yes).

45. **People v. Arthur Manning, 2018 IL 122081, (Ill. Sup. Ct., March 22, 2018)** First-Degree Murder - - Affirmed. **ISSUE: STATUTORY CONSTRUCTION (Second Degree Murder):** Does the jurors' inability to unanimously agree upon whether a mitigating factor exists, for purposes of second degree murder, result in a finding of first degree murder, as charged, and as necessarily found by the jury in the required statutory progression? (Yes).

46. **People v. Darionte Jones, 2018 IL APP (1st) 151307, (1st Dist., March 22, 2018)** Predatory Criminal Sexual Assault of a Child - - Affirmed. **ISSUE: CONSTITUTIONALITY OF STATUTE (Predatory Criminal Sexual Assault of a Child):** Were the sentencing provisions of this offense unconstitutionally harsh? (No).

47. **People v. Darionte Jones, 2018 IL APP (1st) 151307, (1st Dist., March 22, 2018)** Predatory Criminal Sexual Assault of a Child - - Affirmed. **ISSUE: CONSTITUTIONALITY OF STATUTE (Predatory Criminal Sexual Assault of a Child):** Were the sentencing provisions of this offense unconstitutionally harsh? (No).

48. **People v. Joseph M. Jophlin, 2018 IL App (4th) 150802, (4th Dist., March 20, 2018)** Aggravated DUI; DWLR - Affirmed in Part; Vacated in Part. **ISSUE: REASONABLE DOUBT (DUI):** Did the People present sufficient evidence to support this defendant's DUI and DWLR convictions? (Yes).

49. **People v. Donzell Ephraim, 2018 IL App (1st) 161009, (1st Dist., March 19, 2018)** Armed Habitual Criminal - - Reversed. **ISSUE: STATUTORY CONSTRUCTION (Forcible Felony):** Is Aggravated Battery of a Peace Officer a Forcible Felony for purposes of the offense of being an Armed Habitual Criminal? (No).

CASE ANALYSIS

1. **People v. Andrew Davis and Donate Graham, 2018 IL APP (1st) 152413, (1st Dist., June 29, 2018)** First-Degree Murder and Attempted First-Degree Murder - - Affirmed.

FACTS: The People charged Davis and Graham with first degree murder and attempt (murder). Following separate but simultaneous jury trials, the court convicted Davis and Graham of murder and attempt (murder). The court sentenced Davis to a total of 55 years' imprisonment for murder and 25 years' imprisonment for attempt murder with the sentences to run consecutively for an aggregate sentence of 80 years. The court sentenced Graham to a total of 50 years' imprisonment for murder and 25 years' imprisonment for attempt (murder) to run consecutively. They appealed, and the appellate court consolidated their appeals.

ISSUE: REASONABLE DOUBT (First-Degree Murder): Did the People present sufficient evidence to support the convictions of these defendants? (Yes).

ARGUMENTS: Defendants each argue the evidence adduced at trial is insufficient to prove their guilt beyond a reasonable doubt. Specifically, Davis argues the State failed to meet its burden because the identifications of him as a shooter were "inconsistent and unreliable" where the witnesses recanted their identifications at trial, the testimony at trial "was markedly different from prior statements," Stribling's identification was not subject to cross-examination, and where no scientific or physical evidence linked him to the crime and he did not confess. Graham separately argues the only evidence implicating him is "prior statements, given without the scrutiny of cross-examination," and he challenges the reliability of the identifications in the witnesses' out-of-court statements based on the "Biggers factors" as well as the fact the witnesses were under pressure to make an identification.

FINDING: In the particular circumstances of this case, this court cannot say that no rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

2. **People v. Abdourhman Gueye, 2018 IL App (1st) 152826, (1st Dist., June 29, 2018)** Violating the Counterfeit Trademark Act - - Affirmed.

FACTS: Gueye was convicted of counterfeit trademark violation following a bench trial and was sentenced to one year of probation. On appeal, he contended that the People failed to prove him guilty beyond a reasonable doubt of violating the Counterfeit Trademark Act (Act) (765 ILCS 1040/2), where he lacked the intent to deceive. He also argued, in the alternative, that the Act, which criminalizes knowingly selling a product with a counterfeit mark, violates state and federal constitutional guarantees of due process.

ISSUES: 1) **REASONABLE DOUBT (Counterfeit Trademark Violation):** Did the People fail to present sufficient evidence to support this defendant’s conviction? (No); 2) **CONSTITUTIONALITY OF STATUTE (Counterfeit Trademark Act):** Did the offense of violating the Counterfeit Trademark Act violate this defendant’s due process rights? (No).

ARGUMENTS: On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of violating the Counterfeit Trademark Act (Act) (765 ILCS 1040/2), where he lacked the intent to deceive. Defendant argues in the alternative that the Act, which criminalizes knowingly selling a product with a counterfeit mark, violates state and federal constitutional guarantees of due process.

FINDING #1: Accordingly, the purpose of the Act is not only to penalize those individuals selling counterfeit items under the guise that the items are authentic, but also to penalize those who disclaim to the consumer, as was done in this case, that the item is “fake.” In both scenarios, the offender is infringing on trademarks by trafficking counterfeit items bearing registered trademarks and misappropriating the investment of the trademark holder. **FINDING #2:** Accordingly, viewing this evidence in a light most favorable to the State, we find that the trial court did not abuse its discretion in finding that the State proved beyond a reasonable doubt that the handbags in question bore counterfeit marks and that defendant violated section 2 of the Act. **FINDING #3:** The appellate court found the statute to be constitutional.

3. **People v. Delfonte Miller, 2018 IL APP (1st) 152967, (1st Dist., June 29, 2018)** Possession of a Controlled Substance - - Conviction Affirmed; Mittimus Corrected.

FACTS: Following a bench trial, Miller was found guilty of possession of a controlled substance and sentenced to one year in prison. On appeal, he contended that he was not proven guilty, beyond a reasonable doubt, of possession of a controlled substance when the arresting officer did not see “exactly” what was in his hand and the contraband was recovered from a trash pile. He also contended that his mittimus must be corrected to accurately reflect the offense of which he was convicted and challenges the assessment of certain fines and fees.

ISSUE: **REASONABLE DOUBT (Possession of a Controlled Substance):** Did the People fail to prove this defendant guilty where the arresting Officer never “exactly” what was in the defendant’s hand? (No).

ARGUMENTS: On appeal, he contends that he was not proven guilty, beyond a reasonable doubt, of possession of a controlled substance when the arresting officer did not see “exactly” what was in his hand and the contraband was recovered from a trash pile.

FINDINGS: Here, taking the evidence in the light most favorable to the State as we must, there was evidence from which a rational trier of fact could have found that Miller possessed the baggies of heroin based on Husic's testimony that (i) Miller had something in his hand as he reached behind the stairs, (ii) Miller did not have anything in his hand as he ran away, and (iii) nine baggies of suspect heroin were recovered from behind the stairs.

4. **People v. John G. Monteleone, 2018 IL APP (2nd) 170150, (2nd Dist., June 28, 2018)** Delivery of a Controlled Substance - - Affirmed.

FACTS: On three separate occasions, an undercover police officer purchased commercially packaged products, known as “Mary Joy” and “Mary Joy Dead and Berried,” from the King Puff–N–Stuff smoke shop owned by defendant, Monteleone. The ingredient list on the packages did not include any illegal substances, but lab results revealed that the products contained lab-manufactured chemical compounds frequently referred to as synthetic cannabinoids, which are illegal controlled substances. The People charged Monteleone by indictment with several counts and, following a bench trial, defendant was found guilty of six counts. Monteleone appealed his convictions of delivery of a controlled substance and unlawful possession with intent to deliver a controlled substance. Monteleone admitted that he possessed and sold the products, but he contended that the People failed to prove beyond a reasonable doubt that he knew that the products contained an illegal substance.

ISSUE: REASONABLE DOUBT (Unlawful Possession of K-2): Did the People present sufficient evidence to support this defendant’s conviction for delivering K-2? (Yes).

ARGUMENTS: Defendant contests solely whether the State proved beyond a reasonable doubt that he knew that the Mary Joy and the Dead and Berried he delivered or possessed and intended to deliver contained a controlled substance. Because the trial court made a factual determination that defendant knew what he was selling, defendant must establish that the evidence was not sufficient to support this finding.

FINDINGS: We agree with the trial court that the rational inference to be drawn from all of the evidence was that defendant knew that he possessed and sold products containing illegal substances. Accordingly, a rational fact finder could determine that the State met its burden of proof concerning knowledge.

5. People v. Williams J. Ross, 2018 IL APP (2nd) 161079, (2nd Dist., June 28, 2018) First-Degree Murder - - Affirmed.

FACTS: Ross was found guilty of first-degree murder and of having discharged a firearm that caused the death of Jacqueline Schaefer. 720 ILCS 5/9-1(a)(2); 730 ILCS 5/5-8-1(d)(iii). The trial court sentenced defendant to 24 years' imprisonment for first-degree murder and a consecutive 25 years' imprisonment for the use of a firearm, for a total of 49 years' imprisonment (plus 3 years' mandatory supervised release (MSR)). Ross appealed, arguing that (1) the trial court erred in denying his motion to suppress certain statements to police, where he did not knowingly and intelligently waive his *Miranda* rights; (2) the court erred in admitting evidence of his prior alleged abuse of Schaefer; (3) the court erred in admitting evidence of Ross's ownership of firearms; and (4) the evidence was insufficient to sustain his convictions.

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

APPEAL: The Appellate Court held that the evidence was sufficient to sustain defendant's first-degree murder conviction.

FINDINGS: Evidence was sufficient to sustain defendant's conviction of first-degree murder of victim, who had been shot to death and then left for several months in a bedroom of the house she had shared with defendant; defendant had previously pleaded guilty to battery of victim, screwed shut the windows and doors of his residence after victim had not been seen for months, repeatedly told the caretaker of the property to not enter his residence while away on a trip, insisted on this even after his residence suffered water damage, and left DNA on a piece of latex glove on the duct tape used to seal victim's bedroom, which contained her remains and belongings. 720 ILCS 5/9-1(a)(2).

6. People v. Donald R. Gauger, Jr., 2018 IL APP (2nd) 150488, (2nd Dist., June 27, 2018) Violation of an Order of Protection; Stalking; Aggravated Stalking - - Affirmed.

FACTS: Following a bench trial, Gauger was convicted of violating an order of protection (720 ILCS 5/12–3.4(a)), stalking (*id.* § 12–7.3(a)(2)), and aggravated stalking (*id.* § 12–7.4(a)(3)). The trial court merged the lesser convictions and sentenced him to five years' imprisonment for aggravated stalking. Gauger appealed, contending that he was convicted under an unconstitutional provision of the aggravated-stalking statute.

ISSUE: STATUTORY CONSTRUCTION (Aggravated Stalking): Was the statute upon which this defendant was convicted unconstitutional? (No).

ARGUMENTS: Defendant contends that his Facebook messages to Carswell constituted “communicat[ing] to or about” her and that Releford struck this portion of the definition from the statute.

FINDINGS: We agree with the State however that, unlike in Releford, defendant's conviction can be sustained under another, constitutional, portion of the statute. The trial court here specifically found that defendant monitored Carswell. The stalking statute does not define “monitoring,” but the dictionary defines “monitor” as “to watch, keep track of, or check usu. for a special purpose.” Merriam–Webster's Collegiate Dictionary 750 (10th ed. 2001). Even without the Facebook messages, the evidence showed that defendant created at least one fictitious Facebook account in the name of Carswell's friend, downloaded pictures of her and her family, and apparently even obtained mail addressed to her. This course of conduct satisfies that definition, and the court reasonably found that defendant “knew or should have known that this course of conduct would cause a reasonable person to suffer other emotional distress.”

7. **In re O.S., 2017 IL App (1st) 171765, (1st Dist., June 26, 2018)** Denial of Motion to Suppress - - Affirmed.

FACTS: Following a bench trial conducted in accordance with the Juvenile Court Act of 1987 (705 ILCS 405/1–1 et seq.), O.S. was adjudicated delinquent of the offenses of aggravated unlawful use of a weapon and unlawful possession of a weapon and committed to the Department of Juvenile Justice for an indeterminate period of time. On appeal, he contested his delinquency adjudication, arguing (1) the trial court erred in denying his pretrial motion to suppress and (2) the People failed to prove him delinquent of the offenses beyond a reasonable doubt.

ISSUE: REASONABLE DOUBT (Unlawful Possession of a Weapon): Did the People present sufficient evidence to prove that this defendant was a juvenile and that he did not possess a FOID card? (Yes).

ARGUMENTS: Respondent next challenges the sufficiency of the evidence. He argues that the State failed to present sufficient evidence concerning his age and his lack of a FOID card, which were necessary elements to prove him delinquent of aggravated unlawful use of a weapon and unlawful possession of a firearm. The State disputes respondent's challenge to the sufficiency of the evidence and contends that Officer Cloherty's testimony conclusively established respondent's juvenile status as well as the fact that he had not been issued a FOID card at the time he was found in possession of a firearm.

FINDINGS: Viewing the Officer's testimony in the light most favorable to the State, we find that there was sufficient evidence that respondent had not been issued a FOID card.

8. **People v. Jamari McArthur, 2017 IL App (1st) 150626, (1st Dist., June 25, 2018)** Aggravated Criminal Sexual Abuse - - Affirmed.

FACTS: Seventeen-year-old McArthur was arrested for allegedly engaging in sexual conduct with M.W., an 11-year-old boy. He confessed to the police in writing after having spent 50 hours in custody without a probable cause determination. McArthur filed a motion to suppress his confession arguing that the duration of his detention without a probable cause determination rendered his confession involuntary. The trial court ruled that his confession was voluntary despite the delay. A jury found him guilty of the aggravated criminal sexual abuse of M.W. and the trial court sentenced him to four-years' imprisonment. As a result of his conviction, McArthur was ordered to register as a sex offender under the Sex Offender Registration Act (SORA) (730 ILCS 150/1 et seq.) for the remainder of his natural life. On appeal, McArthur challenged the trial court's ruling that his confession was voluntary, and the sufficiency of the evidence presented at trial. He further challenged the constitutionality of SORA and the SORA provision that precludes minors charged under the criminal laws as adults from petitioning to terminate their sex offender registration (730 ILCS 150/3–5(i) (West 2014) (Subsection (i) of Juvenile SORA)).

ISSUES: 1) REASONABLE DOUBT (Aggravated Criminal Sexual Abuse): Did the People fail to present sufficient evidence to support this defendant's conviction? (No); **2) CONSTITUTIONALITY OF STATUTE (SORA):** Was the

SOA provision that precludes minors charged under the criminal laws as adults from petitioning to terminate their sex offender registration requirements? **(No)**.

ARGUMENTS: Defendant challenges the sufficiency of the evidence presented at trial, arguing that forensic evidence contradicted the State's case such that no rational trier of fact could have found him guilty of criminal sexual abuse beyond a reasonable doubt. Defendant's challenge requires us to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.

FINDING: We hold that the jury could have found defendant guilty of aggravated sexual abuse beyond a reasonable doubt based on the evidence presented at trial. The testimony of M.W. was sufficient to convict defendant of his sex offense and we will not retry the defendant or substitute the jury's credibility determinations with that of our own.

ARGUMENTS: Defendant challenges the facial and as-applied constitutionality of Subsection (i) of Juvenile SORA, which precludes minors prosecuted under the criminal laws as adults from petitioning a court to terminate their SORA registration. 730 ILCS 150/3–5(i). Defendant argues that Subsection (i) of Juvenile SORA deprives him of equal protection by creating a “distinction that allows minors who are found guilty of committing the same offense, at the same age, to be subject to different SORA registration requirements.”

FINDINGS: We hold that defendant's facial and as-applied equal protection challenges to the constitutionality of Subsection (i) of Juvenile SORA fail outright because he was simply not subject to the jurisdiction of the JCA when he engaged in the sexual conduct that supported his conviction. Defendant falls into the category of 17–year–old offenders who were alleged to have committed a criminal offense before the amendment to the exclusive jurisdiction provision of the JCA went into effect. (Public Act 98–61, section 5 (eff. Jan. 1, 2014) (extending jurisdiction of the JCA to minors under 18 years of age at time of their alleged offense); 705 ILCS 405/5–120 (. Prior to the statute's amendment only individuals under the age of 17 could be tried in juvenile court. *Id.* Therefore, defendant was simply unable to take advantage of that which an adjudication of delinquency would have provided: the opportunity to petition a court for termination from the SORA registry after five years. But the cause of defendant's complaint is timing, not illegality.

ARGUMENTS: Defendant's final contention is that Subsection (i) of Juvenile SORA, and his mandated lifetime SORA registration, impose a (1) cruel and unusual punishment in violation of the Eighth Amendment and (2) disproportionate penalty in violation of the proportionate penalties clause of the Illinois Constitution.

FINDINGS: We hold that Subsection (i) of Juvenile SORA is a non-punitive jurisdictional statute that does not apply to defendant and therefore, his as-applied constitutional challenge must fail. Subsection (i) of Juvenile SORA merely precludes individuals not subject to, or excluded from, the jurisdiction of the JCA from petitioning a court to terminate their SORA registration.

9. People v. Erick Martin, 2017 IL App (1st) 152249, (1st Dist., June 22, 2018) Armed Habitual Criminal - - Affirmed.

FACTS: Following a bench trial, Martin was convicted of (1) being an armed habitual criminal, (2) unlawful use of a weapon by a felon, and (3) six counts of aggravated unlawful use of a weapon. These convictions were merged into the single offense of armed habitual criminal, and the trial court imposed the minimum six-year term of imprisonment. Martin's sole contention on appeal was that the armed habitual criminal statute was unconstitutional as applied to him, where his underlying felony offenses were nonviolent and more than 20 years old.

ISSUE: CONSTITUTIONALITY OF STATUTE (Armed Habitual Criminal): Was the offense of being an Armed Habitual Criminal constitutionally applied to this defendant where his offenses were all non-violent and more than 20-years' old? **(No).**

ARGUMENTS: Defendant's sole contention on appeal is that the Illinois armed habitual criminal statute is unconstitutional as applied to him because the statute's application to him was triggered by nonviolent offenses that were more than 20 years old. Defendant asserts that the statute violates his second amendment right to possess a firearm. In

response, the People maintain that defendant's as-applied challenge fails both procedurally and substantively. The People assert that the challenge fails procedurally because he did not raise the issue in the trial court and therefore there was no evidentiary hearing and no findings of fact regarding his as-applied challenge. Substantively, the People maintain that defendant's as-applied challenge fails because he has not established that his conduct was entitled to second amendment protection where he chose to possess a firearm knowing that his prior felony convictions had not been vacated or otherwise set aside. The People maintain defendant was not a "law abiding, responsible citizen" protected by the second amendment.

FINDINGS: In sum, the armed habitual criminal statute "is a valid exercise of Illinois's right to protect the health, safety, and general welfare of its citizens from the potential danger posed by convicted felons in possession of firearms" and survives intermediate scrutiny. The application of the armed habitual criminal statute is not unconstitutional as applied to defendant, who committed two prior felonies, despite his assertions that these were older, nonviolent felonies and that he has since been rehabilitated. Accordingly, we hold that the judgment of the circuit court is affirmed.

10. People v. Jerry Brown, 2018 IL APP (1st) 151311-B, (1st Dist., June 14, 2018) Robbery; Aggravated Battery of a Senior Citizen - - Affirmed in Part; Vacated in Part.

FACTS: This case comes before us again (*People v. Brown*, 2017 IL App (1st) 151311-U, 2017 WL 4764914), after the Illinois Supreme Court denied Brown's petition for leave to appeal and entered a supervisory order directing us to vacate the order and consider the effect of *People v. Coats*, 2018 IL 121926, — Ill. Dec. —, — N.E.3d —, on the issue of whether Brown's convictions for robbery and aggravated battery of a senior citizen violate the one-act, one-crime rule.

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

Same as Smith, below.

Same as Smith, below.

11. People v. Stevie Smith, 2018 IL APP (1st) 151312-B, (1st Dist., June 14, 2018) Robbery; Aggravated Battery of a Senior Citizen - - Affirmed in Part; Vacated in Part.

FACTS: The Illinois Supreme Court entered a supervisory order denying defendant Stevie Smith's petition for leave to appeal and directing this court to vacate its initial judgment (*People v. Smith*, 2017 IL App (1st) 151312, 418 Ill. Dec. 177, 89 N.E.3d 1011). The supervisory order instructed us to consider the effect of *People v. Coats*, 2018 IL 121926, —Ill. Dec. —, — N.E.3d —, on the issue of whether defendant's convictions for robbery and aggravated battery of a senior citizen violate the one-act, one-crime rule.

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

ARGUMENTS: Smith contends that his conviction for aggravated battery of a senior citizen should be vacated because it violates the one-act, one-crime rule, as it is based on the same single physical act as his robbery conviction. Smith argues that the only evidence of a physical act committed against Burtner was the single punch that resulted in fractured ribs. Smith also argues that the single punch cannot serve as the basis for both the aggravated battery and the force element for the robbery.

FINDINGS: Based on this record, we find that Smith's convictions for robbery and aggravated battery of a senior citizen were both based on Smith's single physical act of punching Burtner. The two convictions violate the one-act, one-crime rule and cannot stand. The aggravated battery of a senior citizen offense is a Class 2 felony and, thus, less serious than the robbery of a senior citizen, which was elevated to Class 1. Accordingly, we vacate Smith's conviction for aggravated battery of a senior citizen.

12. People v. Nicole E. Fiumetto and Joclyn E. Hall, 2018 IL App (2nd) 170230, (2nd Dist., June 12, 2018) Dismissal of Charges - - Affirmed in Part; Reversed and Remanded in Part.

FACTS: In these consolidated cases, the State appeals from the dismissal of the charges of knowingly possessing a hypodermic syringe (720 ILCS 635/1) against defendants Fiumetto and Hall, and dismissal of the charge of possessing drug paraphernalia (720 ILCS 600/3.5(a) against Hall.

ISSUE: STATUTORY CONSTRUCTION (Affirmative Defense): Were the People required to prove that the defendants did not legally possess the hypodermic needles and is an ordinary table spoon “drug paraphernalia?” **(No to both questions).**

ARGUMENTS: On appeal, the State contends that (1) because section 1(b) of the Syringes Act constitutes an exception to, rather than a description of, the offense of possessing a hypodermic syringe, its inapplicability need not be alleged in the charging instrument and, (2) although it was an ordinary spoon, because Hall intended to use the spoon to ingest a controlled substance, it qualified as drug paraphernalia. Defendants respond that, because section 1(b) describes the offense of possessing a hypodermic syringe, its inapplicability must be included in the charge. Hall further responds that, because a common spoon, without modification, is not intended to be used to ingest, inhale, or otherwise introduce a controlled substance into a human body, the State failed to properly allege a violation of the Paraphernalia Act.

FINDINGS: Because the language here designates persons withdrawn from the application of the Syringes Act, as opposed to a description of the offense, it need not be negated in the charging instrument. Moreover, when all reasonable and common-sense inferences are drawn in favor of legitimate use, an ordinary spoon is not intended to be used for the consumption of a controlled substance. It is not clearly and beyond a reasonable doubt intended for the illegal use of a controlled substance. Thus, the State failed to properly charge Hall with possession of drug paraphernalia.

13. People v. Rinaldo D. Ramsey, 2018 IL APP (2nd) 151071, (2nd Dist., June 12, 2018) Home Invasion and Aggravated Battery - - Affirmed; Sentence Modified.

FACTS: Ramsey appealed his convictions and sentences for Class X home invasion (720 ILCS 5/12–11(a)(2), (c)) and two counts of Class 3 aggravated battery (*id.* § 12–3.05(a)(1), (f)(1), (h)). He contended that the evidence was insufficient to prove him guilty of home invasion beyond a reasonable doubt, that he was denied his right to counsel of his choice, and that he was wrongly sentenced to an extended term for aggravated battery.

ISSUE: REASONABLE DOUBT (Home Invasion): Did the People introduce sufficient evidence to prove the defendant’s unauthorized entry into the victim’s dwelling? **(Yes).**

ARGUMENTS: Defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of home invasion because it failed to prove an unauthorized entry into Stanley’s dwelling. He argues that the laundry room was part of the dwelling and that the State failed to prove beyond a reasonable doubt that he completely left the building to get the weeders and then reentered without authorization. The State argues that the laundry room was not part of Stanley’s dwelling and that, in any event, there was sufficient evidence that defendant entirely left the building.

FINDINGS: Here, our focus is on whether the victim used or intended to use the location as a human habitation, home, or residence. We conclude that, in this case, there was sufficient evidence that the laundry room was not used by Stanley in such a manner. This case involves a common area of a multiunit dwelling, which defendant used only to pass through. We also note that the crime of burglary uses a definition of “dwelling” that includes “a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside.” Here, our focus is on whether the victim used or intended to use the location as a human habitation, home, or residence. We conclude that, in this case, there was sufficient evidence that the laundry room was not used by Stanley in such a manner. We find that there was sufficient evidence for the trial court to infer that Stanley did not use the location as part of his habitation, home, or residence. Instead, it was a

common area that he merely passed to reach his apartment, which was his actual dwelling. As a result, when defendant left Stanley's apartment, he exited the dwelling and then returned unauthorized, making him guilty of home invasion.

14. People v. Keith Middleton, 2018 IL APP (1st) 152040, (1st Dist., June 6, 2018) First-Degree Murder - - Reversed and Remanded.

FACTS: Following a jury trial, Middleton was found guilty of first degree murder while personally discharging a firearm and sentenced to 53 years in prison. He appealed, arguing that he was not proved guilty beyond a reasonable doubt because he was identified by a single occurrence witness, whose description of defendant was severely impeached. Namely, there was conflicting evidence as to whether he wore a full or half-ski mask and whether the single occurrence witness could see his face. Middleton also argued the prosecutor improperly introduced a demonstrative exhibit during closing arguments depicting him with a half-ski mask superimposed over his arrest photograph, but the prosecutor neglected to introduce this exhibit at trial. In addition, he contended the People elicited improper hearsay statements at trial, the court erred in overruling certain objections, the court erred in admitting video evidence, his trial counsel was ineffective, the People offered improper closing argument, and the court erred in sustaining objections to defense counsel's arguments.

ISSUE: REASONABLE DOUBT (First-Degree Murder): Was the testimony of a single occurrence witness sufficient to support this defendant's Murder conviction? **(Yes).**

ARGUMENTS: Defendant first challenges the sufficiency of the evidence to sustain his conviction, arguing Conner's identification was so vague or doubtful that there exists a reasonable doubt of defendant's guilt. Defendant argues the judgment must be set aside because the only proof that he committed the crime was Conner's testimony. He asserts that Conner could not have made a positive identification where he could only see the upper part of defendant's face, Conner only briefly viewed defendant, and Conner's degree of attention was insufficient as belied by the lack of detail regarding defendant's physical description. Defendant also claims Conner was severely impeached by the defense witnesses who testified that Conner did not see the shooter's face and that the shooter wore a full, rather than half, ski mask.

FINDING: While the evidence in this case was certainly not overwhelming, examining it in a light most favorable to the prosecution, as we must, we conclude that a rational fact finder could have found beyond a reasonable doubt that it was defendant who shot Brown dead.

15. People v. Jamison L. Moore, 2018 IL APP (2nd) 160277, (2nd Dist., June 6, 2018) Burglary - - Affirmed.

FACTS: Following a jury trial, Moore was convicted of Burglary (720 ILCS 5/19-1(a)) and retail theft (id. § 16-25(a)(1)). The trial court sentenced him to concurrent prison terms of 10 years for burglary and a 6-year extended term for retail theft. He appealed, contending that (1) he was not proved guilty beyond a reasonable doubt of burglary where he entered a Walmart store during regular business hours and remained in publicly accessible areas of the store; (2) the People failed to prove that he intended to commit a theft when he entered the store or that he was accountable for the conduct of his cousin who stole merchandise from the store; and (3) if the Court affirms both convictions, it must vacate his extended-term sentence for retail theft.

ISSUES: **1) REASONABLE DOUBT (Burglary):** Did the People introduce sufficient evidence to support this defendant's Burglary conviction? **(Yes); 2) REASONABLE DOUBT (Accountability):** Did the People to prove that the defendant was accountable for the conduct of his co-defendant? **(No).**

ARGUMENTS: Defendant argues first that the State failed to prove beyond a reasonable doubt that he entered the Walmart store "without authority." 720 ILCS 5/19-1(a). He maintains that he never exceeded the scope of his authority to be in the store, given that he entered during regular business hours, never entered an area of the store that was off-limits to the public, and left while the store was still open. For the following reasons, we follow longstanding authority and reject defendant's argument.

FINDING: Consequently, evidence that the defendant entered the building intending to steal from the vending machine was sufficient to convict him of burglary by unauthorized entry.

ARGUMENT: Defendant next contends that the evidence was insufficient to prove that he entered the store intending to commit a theft or that he was accountable for Adrian's conduct after they entered the store.

FINDING: The evidence was sufficient to prove that defendant and Adrian entered the store intending to commit a theft and, moreover, that defendant was accountable for Adrian's conduct after they entered the premises. We affirm defendant's convictions.

16. People v. Michael L. Wilkinson, 2018 IL APP (3rd) 160173, (3rd Dist., June 5, 2018) Aggravated Battery - - Affirmed.

FACTS: Wilkinson appealed following his conviction for aggravated battery and argued that the People presented insufficient evidence to prove beyond a reasonable doubt that his use of force in defending himself was not reasonable.

ISSUE: REASONABLE DOUBT (Aggravated Battery): Did the People introduce sufficient evidence to support this defendant's conviction for being an Aggravated Battery? **(Yes).**

APPEAL: The Appellate Court held that evidence support finding that defendant's belief that striking victim in head with hammer was necessary to prevent great bodily harm to himself was not reasonable.

FINDINGS: Evidence was sufficient to support finding that defendant's belief that striking victim in head with hammer was necessary to prevent great bodily harm to himself was not reasonable, for purposes of self-defense to charge for aggravated battery, even though victim, who was Caucasian, had made it clear to defendant, who was African American, that he was not welcome in neighborhood and had been aggressor and initiated physical confrontation by punching defendant in face; victim testified that, after being struck initially with hammer, he was simply trying to stand up and flee, and that once he was on ground, he "kept getting hit" and was hit in head at least "a few" times until he could no longer see, which testimony tended to show that defendant continued to strike victim with hammer after any threat had subsided.

17. People v. Sebastian Rodriguez, 2017 IL App (1st) 141379-B, (1st Dist., June 4, 2018) First-Degree Murder - - Conviction Affirmed; Sentence Vacated; Case Remanded for Resentencing.

FACTS: Fifteen-year-old Sebastian Rodriguez was charged with first degree murder in connection with the shooting of thirteen-year-old Sameere Conn on October 1, 2008. At the time of the offense, 15-year-olds charged with first degree murder were automatically excluded from juvenile court jurisdiction. Sebastian was accordingly tried, convicted, and sentenced as an adult. Following his jury trial, the circuit court sentenced Sebastian to 50 years in prison: 25 years for the murder and 25 additional years pursuant to a mandatory firearm enhancement. In this direct appeal, Sebastian argues that (1) the circuit court erroneously denied his motion to suppress evidence found during a search of his home, (2) expert testimony identifying a revolver found in his home as the murder weapon was improperly admitted without a hearing to determine if it was based on generally accepted scientific methodologies, and (3) the imposition of a 50-year sentence on an offender who was 15 years old at the time of his offense is unconstitutional. Shortly after Sebastian filed his notice of appeal, the Illinois legislature raised the age of automatic transfer from juvenile court to criminal court for an individual charged with first degree murder from 15 to 16 years of age and adopted additional sentencing guidelines for defendants who were under the age of 18 at the time of their offenses, including making firearm enhancements discretionary, rather than mandatory, for such individuals. In supplemental briefing, Sebastian argues that these amendments should apply to his case.

ISSUES: 1) **STATUTORY CONSTRUCTION (Juvenile Law Amendments):** Should the changes to the Juvenile Court Act be applied retroactively to this defendant? **(No);** 2) **CONSTITUTIONALITY OF STATUTE (Sentencing):** Was Sebastian's 50-year sentence, pursuant to which he will not be released until the age of 65, a *de facto* life sentence

subject to our supreme court's holding in *People v. Reyes*, 2016 IL 119271, and whether this sentence violated both the eighth amendment and the proportionate penalties clause? (No).

ARGUMENTS: Rodriguez argued that his 50-year sentence, pursuant to which he will not be released until the age of 65, was a *de facto* life sentence and that sentence violated both the Eighth Amendment and the proportionate penalties clause.

FINDING: The Court concluded that Rodriguez's 50-year sentence was not a *de facto* life sentence and did not violate the Eighth Amendment or the Proportionate Penalties Clause.

18. People v. Tyuan Anderson, 2018 IL APP (4th) 160037, (4th Dist., May 30, 2018) Armed Violence, Unlawful Possession of a Weapon by a Felon, and Unlawful Possession of a Controlled Substance with Intent to Deliver - - Affirmed in Part; Vacated in Part; Remanded with Directions.

FACTS: Anderson appealed from his convictions of armed violence, unlawful possession of a weapon by a felon, and unlawful possession of a controlled substance with intent to deliver. In his direct appeal, defendant challenges the sufficiency of the State's evidence, the comments of the prosecutor during closing argument, the constitutionality of his sentence, whether there was a violation of the one-act, one-crime doctrine, and the imposition of fines and associated credits. We affirm defendant's convictions and sentence but vacate the improperly imposed fine and remand for the trial court to amend the sentencing judgment and impose the fine authorized by statute with the application of the appropriate *per diem* credit.

ISSUES: 1) **REASONABLE DOUBT (Armed Violence and Possession of a Weapon):** Did the People fail to present sufficient evidence to support these convictions? (No); 2) **REASONABLE DOUBT (Intent):** Did the People prove that the defendant possessed drugs with the intent to deliver? (Yes); 4) **OFFENSES (One Act – One Crime):** Could this defendant be found guilty of both UUW and Possession of a Controlled Substance? (Yes).

APPEAL: The Appellate Court held that: (a) the evidence was sufficient to demonstrate defendant's constructive possession of handgun, so as to support conviction for unlawful possession of weapon by felon; (b) the evidence demonstrated that defendant was “otherwise armed” during arrest, within meaning of armed violence statute; (c) the evidence was sufficient to establish that defendant intended to deliver packages of cocaine and cannabis, so as to support controlled substances convictions; (d) the defendant’s convictions for possession of weapon as felon and possession with controlled substance with intent to deliver were not required to be vacated under one-act, one-crime doctrine;

FINDINGS: Evidence was sufficient to demonstrate that loaded handgun was immediately accessible to defendant before and during his arrest for unlawful possession of controlled substance, such that he was “otherwise armed” within meaning of armed violence statute prohibiting a person from carrying or being “otherwise armed” with weapon during commission of predicate crime, though defendant was not in possession of handgun at time of arrest; handgun was found lying approximately two to three feet in front of defendant when he was taken into custody after falling over brush pile in residential back yard while fleeing from police, detective testified that defendant's hands were tucked inside towards front of waistband as he fled, and there was no other person in back yard. 720 Ill. Comp. Stat. Ann. 5/33A-1(c)(1), 5/33A-2(a). Evidence was sufficient to demonstrate that defendant had constructive possession over handgun found lying approximately two to three feet in front of him when he was taken into custody after falling over brush pile in residential back yard while fleeing from police, so as to support conviction for unlawful possession of a weapon by a felon, though officers testified that they did not see defendant with gun; detective testified defendant's hands were “tucked inside towards the front of waistband” as he fled from police, gun was found short distance from defendant, and no others were present in yard. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a). Evidence was sufficient to establish that defendant intended to deliver packages of cocaine and cannabis that he was carrying at time of his arrest, so as to support convictions for unlawful possession of controlled substance with intent to deliver; evidence was presented that both drugs were in individually wrapped packages, that defendant was carrying more doses than typically used for personal use, that he was carrying no paraphernalia or means to consume drugs himself, and that he possessed handgun. 720 Ill. Comp. Stat. Ann. 550/5(b), 570/401(c)(2). Defendant was not entitled to vacation of convictions for unlawful possession of weapon by felon and possession of controlled substance with intent to deliver under one-act, one-crime doctrine on ground that they

constituted underlying felonies of his armed-violence conviction and were carved from the same physical act; defendant's possession of handgun and possession of drugs were separate acts, and each weapons offenses required additional act not required by other, as armed violence required possession of gun at time defendant unlawfully possessed cocaine, and unlawful possession by felon required possession of gun and having been convicted of prior felony. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a), 5/33A-2(a), 570/401(c)(2).

19. People v. Terry Johnson, 2018 IL APP (1st) 153634, (1st Dist., May 29, 2018) Armed Robbery - - Affirmed.

FACTS: Johnson and others planned to rob a video game store. After one of his companions used pepper spray to incapacitate the store clerk, Johnson tackled the clerk to the floor and struggled with him. They took the clerk's keys and several video game systems. Johnson was convicted of armed robbery at a bench trial, with the trial court noting that the evidence showed the robbery was “preplanned” and “very methodical.” At sentencing, defense counsel asked the trial court to give Johnson the 13-year sentence originally offered during the Rule 402 conference. The trial court rejected this, stating that it had offered that sentence before trial. At trial, “I hear[d] much more detail with regard to what happened and the sequence of the events, the planned nature of this, all the different steps that were involved here and I heard specifically about your role in this and I believe being one of the major actors in this particular situation.” The trial court sentenced Johnson to 16 years. Johnson, like his codefendant Curry, argued that he should have been found guilty of robbery, rather than armed robbery, because the pepper spray was not a “dangerous weapon” within the meaning of the armed robbery statute. See 720 ILCS 5/18-2(a)(1) (person commits armed robbery if he or she commits a robbery and carries, or is otherwise armed with, “a dangerous weapon other than a firearm”).

ISSUE: STATUTORY CONSTRUCTION (Dangerous Weapon): Did the trial court err in finding that pepper spray was a “dangerous weapon” for purposes of the offense of Armed Robbery? **(No).**

APPEAL: The Appellate Court held that pepper spray qualified as a “dangerous weapon” under armed robbery statute.

FINDINGS: Pepper spray qualified as a “dangerous weapon” under armed robbery statute, even if store clerk did not suffer a long-term injury from the pepper spray; pepper spray was used to immobilize store clerk from the beginning of the robbery and the effects of pepper spray are disabling and temporarily incapacitates its victims. Pepper spray falls into the category of objects that can be used in a dangerous manner, so it is for the trier of fact to determine whether the pepper spray actually was used that way in the particular case. 720 Ill. Comp. Stat. Ann. 5/18-2(a)(1).

20. People v. John Plank, 2018 IL 122202, (Ill. Sup. Ct., May 24, 2018) Dismissal of Charges - - Reversed and Remanded.

FACTS: The Illinois Vehicle Code prohibits anyone with a revoked driver's license from driving a “motor vehicle.” 625 ILCS 5/6-303(a). However, someone with a revoked license may still drive a “low-speed gas bicycle” without violating this statute. The Vehicle Code defines “low-speed gas bicycle” as a “2 or 3-wheeled device with fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour.” When the People charged Plank with driving a motor vehicle with a revoked license, he claimed that the statute did not clearly tell him which vehicles he could and could not drive. Specifically, he argued that the Vehicle Code's definition of “low-speed gas bicycle” was unconstitutionally vague in violation of the due process clauses of the United States and Illinois Constitutions. The trial court agreed with Plank, dismissed the charge against him, and declared section 1-140.15 unconstitutional on its face. The People appealed directly to the Supreme Court.

ISSUE: CONSTITUTIONALITY OF STATUTE (Low-Speed Gas Bicycle): Was the definition of the term “low speed gas bicycle” unconstitutionally vague? **(No).**

APPEAL: The Supreme Court held that: (a) the statute defining “low-speed gas bicycle” was not rendered unconstitutionally vague by fact that it referenced operator of particular weight, and (b) the statutory definition of “low-speed gas bicycle” was sufficiently specific to satisfy due process.

FINDINGS: Statute defining “low-speed gas bicycle” for purposes of conviction of driving a “motor vehicle” without a license was not rendered unconstitutionally vague, in violation of due process, by fact that it referenced an operator “who weighs 170 pounds”; when read in context, such phrase meant that a defining characteristic of a low-speed gas bicycle was an engine that was incapable of transporting 170 pounds at 20 miles per hour without help from gravity or pedaling and did not directly refer to the weight of any particular operator.; 625 Ill. Comp. Stat. Ann. 5/1-140.15, 5/6-303(a). Statutory definition of “low-speed gas bicycle,” which defined a bicycle as a “motor vehicle,” for purposes of a conviction of driving a motor vehicle with a revoked license, by referencing two or three-wheeled device whose maximum speed on paved level surface, when powered by motor while ridden by operator weighing 170 pounds, was less than 20 miles per hour was sufficiently specific to satisfy due process; while an officer conducting a stop would not necessarily be able to conclusively determine whether someone had violated the statute, a particular vehicle either was a low-speed gas bicycle for everyone, or was not for everyone. 625 Ill. Comp. Stat. Ann. 5/1-140.15, 5/6-303(a).

21. People v. Derek K. Webb, 2018 IL APP (3rd) 160403, (3rd Dist., May 23, 2018) Armed Habitual Criminal - - Affirmed.

FACTS: Webb appealed from his armed habitual criminal conviction and argued the People failed to prove his guilt beyond a reasonable doubt because they failed to present evidence to the jury that he had been convicted of two prior forcible felonies.

ISSUE: REASONABLE DOUBT (Armed Habitual Criminal): Did the People introduce sufficient evidence to support this defendant’s conviction for being an Armed Habitual Criminal? **(Yes).**

FINDINGS: Evidence was sufficient to prove that defendant had two prior forcible felony convictions, as required to support his conviction for being an armed habitual criminal; trial court determined that defendant's two prior aggravated batteries constituted forcible felonies, jury was instructed that the evidence had to show that defendant had two prior aggravated battery convictions to find him guilty of being an armed habitual criminal, and State presented the parties' stipulation to the aggravated battery convictions at trial. 720 Ill. Comp. Stat. Ann. 5/24-1.7(a)(1).

22. People v. Deontae Curry, 2018 IL APP (1st) 153635, (1st Dist., May 22, 2018) Armed Robbery - - Remanded with directions.

FACTS: Curry acted as the getaway driver, while some of his associates robbed a video game store and used pepper spray to incapacitate the store clerk. Curry was convicted of armed robbery (on an accountability theory) and sentenced to 12 years of imprisonment. At a posttrial hearing, Curry's counsel told the trial court that Curry alleged that counsel was ineffective for failing to move to suppress Curry's statement to police based on *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966). The trial court did not ask any further questions of Curry or his counsel to discern the claim's factual basis of his complaint. On appeal, Curry argued that the trial court erred in failing to investigate his ineffective assistance claim. Also, Curry requested a new sentencing hearing on the grounds that he was guilty of robbery, but not armed robbery, because the pepper spray used on the store clerk was not a “dangerous weapon.”

ISSUE: STATUTORY CONSTRUCTION (Dangerous Weapon): Did the trial court err in finding that pepper spray was a “dangerous weapon” for purposes of the offense of Armed Robbery? **(No).**

APPEAL: The Appellate Court held that pepper spray qualified as a “dangerous weapon” under armed robbery statute.

FINDINGS: Pepper spray qualified as a “dangerous weapon” under armed robbery statute, even if store clerk did not suffer a long-term injury from the pepper spray; pepper spray was used to immobilize store clerk from the beginning of the robbery and the effects of pepper spray are disabling and temporarily incapacitates its victims. Pepper spray falls into the category of objects that can be used in a dangerous manner, so it is for the trier of fact to determine whether the pepper spray actually was used that way in the particular case. 720 Ill. Comp. Stat. Ann. 5/18-2(a)(1).

23. People v. Curtis T. Lovelace, 2018 IL APP (4th) 170401, (4th Dist., May 22, 2018) Bond Order - - Affirmed.

FACTS: Lovell filed a motion for return of bond in which he requested that the entire bond should be returned less the actual costs of electronic monitoring. The trial court conducted a hearing on the amount of the bond that should be refunded. Ultimately, the court ordered the circuit clerk to retain \$35,000, which was 10% of the posted cash bond and which the court noted was provided by statute (725 ILCS 5/110-7(f)), and \$5433.75 in electronic monitoring costs. Lovell appealed, raising non-constitutional and constitutional challenges. For his non-constitutional claims, he argued the trial court (1) failed to exercise its discretion under the statute or (2) abused its discretion by considering inappropriate factors when it ordered the retention of 10% of the posted bond. As to his constitutional claims, he argued that the 10% bail bond statute (1) is facially unconstitutional; (2) violates due process because it did not provide for a hearing on defendant's ability to pay; (3) is unconstitutional as applied to him, based upon the Supreme Court's holding in *Nelson v. Colorado*, 581 U.S. —, 137 S.Ct. 1249, 197 L.Ed.2d 611 (2017), because he was acquitted; (4) violates the equal protection clause of the federal constitution and the uniformity clause of the Illinois Constitution; and (5) is an excessive fine in violation of the eighth amendment of the United States Constitution and the Illinois Constitution's proportionate penalty provision.

ISSUE: CONSTITUTIONALITY OF STATUTE (Bond): Was the Illinois Bond statute that allows the People to keep 10% of a defendant's bond, even if they are acquitted of all criminal charges unconstitutional? **(No).**

ARGUMENT: The defendant argued that the 10% bail bond statute (*id.*) (1) is facially unconstitutional; (2) violates due process because it did not provide for a hearing on defendant's ability to pay; (3) is unconstitutional as applied to him, based upon the Supreme Court's holding in *Nelson v. Colorado*, 581 U.S. —, 137 S. Ct. 1249, 197 L.Ed.2d 611 (2017), because he was acquitted; (4) violates the equal protection clause of the federal constitution and the uniformity clause of the Illinois Constitution; and (5) is an excessive fine in violation of the eighth amendment of the United States Constitution and the Illinois Constitution's proportionate penalty provision.

FINDINGS: The bail bond statute does not violate equal protection or procedural due process under *Cook*, and the trial court was not required to consider defendant's ability to pay when deciding how much of defendant's cash bail bond to refund. Even assuming due process did require such a hearing, defendant was afforded that opportunity. Even assuming due process did require such a hearing, defendant was afforded that opportunity. Accordingly, defendant had the opportunity to and did raise the issue of his ability to pay. Accordingly, he was not denied due process. Accordingly, we hold the bail bond fee in section 110-7(f) is (1) an administrative fee and (2) not a penalty; accordingly, the eighth amendment and proportionate penalties clause do not apply. We conclude that the bail bond fee serves both as compensation to the county for the administration of the particular defendant's bail in each case and as revenue for the funding of the bail bond system as a whole. Interesting though this question is, ultimately, it makes no difference whether the bail bond fee is a "fee" or a "tax." Because the bail bond fee is not imposed as a punishment or as a result of a conviction, it is not a "fine," and the eighth amendment and proportionate penalties clause do not apply.

24. People v. Jeremi R. Stevens, 2018 IL APP (4th) 150871, (4th Dist., May 16, 2018) UUV - - Affirmed in Part; Vacated in Part.

FACTS: Stevens was arrested and charged with aggravated unlawful use of a weapon. A jury found him guilty and the trial court sentenced him to 24 months of probation. On appeal, he argued (1) his conviction is void due to the Firearm Concealed Carry Act (Act) (430 ILCS 66/1 to 999) being facially unconstitutional, (2) he was denied effective assistance of counsel due to counsel's failure to object to the videotape of defendant's arrest in a motion *in limine* hearing, (3) he was denied effective assistance of counsel due to counsel's failure to object to testimonial hearsay, and (4) his fines imposed by the circuit clerk should be vacated.

ISSUE: CONSTITUTIONALITY OF STATUTE (Concealed Carry): Was the Concealed Carry statute unconstitutional? **(No).**

FINDINGS: Defendant failed to meet his burden to overcome the presumption of constitutional validity for the statute that charged nonresidents a fee for a concealed carry license; defendant presented no evidence that the licensing scheme charged more than was necessary for the administration of the licensing statute and for the maintenance of public order in the matter licensed, and the three funds that the fee went to either covered the administrative costs for the licensing scheme, the enforcement of the licensing scheme, or were related to the overarching public interest in the management of lawful firearm ownership. 430 Ill. Comp. Stat. Ann. 66/60(c).

25. People v. Michael G. Tatera, 2018 IL APP (2nd) 160207, (2nd Dist., May 15, 2018) Aggravated DUI - - Affirmed.

FACTS: Following a brief jury trial, Tatera was convicted of the offense of aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(A)), and he was sentenced to an eight-year term of imprisonment. He appealed, arguing that (1) the evidence was insufficient to convict him of the offense beyond a reasonable doubt, (2) the trial court erred in allowing the jury to view a part of the video of defendant's arrest that depicted an improperly conducted field sobriety test, (3) the prosecutor shifted the burden of proof in his rebuttal closing argument, and (4) the trial court improperly used a double enhancement in fashioning his sentence.

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

FINDINGS: Sufficient evidence existed to support the finding that defendant was under the influence of alcohol, as an element of driving under the influence of alcohol (DUI), although there was evidence that defendant could perform a number of tasks without any problem or indication of impairment, where officer testified that defendant disregarded numerous signs and barricades to drive on a closed road, that when officer approached the car he smelled a moderate odor of alcohol, that defendant seemed confused, that defendant's eyes were glassy, that defendant was unable to follow directions and kept putting his hands in his pockets despite being instructed not to do so, that defendant became agitated and raised his voice refusing any further field sobriety tests and stating "just arrest me," and that the defendant refused to submit to chemical testing. 625 Ill. Comp. Stat. Ann. 5/11-501(a)(2).

26. People v. Terrance T. Norwood, 2018 IL APP (4th) 150883, (4th Dist., May 9, 2018) Domestic Battery - - Affirmed in Part; Vacated in Part.

FACTS: After a bench trial, the trial court found Norwood guilty of two counts of armed violence and sentenced him to concurrent 16-year prison sentences. He appealed, arguing the court erred in finding him guilty of armed violence because the State did not establish beyond a reasonable doubt the rifle found in his bedroom was immediately accessible to him when the police entered his bedroom. He also argues the circuit clerk erred in imposing fines on him.

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

FINDINGS: Evidence was sufficient to support a reasonable inference that an assault rifle found in defendant's bedroom was immediately accessible to defendant during the period between the police officers entering the home and opening the bedroom door, as required to support defendant's convictions on two counts of armed violence; defendant's fiancée told police defendant slept on the same side of the bed as where the rifle was found, defendant was still in bed when defendant's fiancée got up to let the dog out, when police officer opened the bedroom door and ordered defendant to get on the ground, he instead laid down on the bed, decreasing the distance between himself and the rifle, and did not tell the officer anything about the rifle being in the room. 720 Ill. Comp. Stat. Ann. 5/33A-2(a).

27. People v. Christopher M. Holmes, 2018 IL APP (3rd) 160060, (3rd Dist., May 8, 2018) Aggravated Criminal Sexual Abuse - - Affirmed.

FACTS: Holmes appealed from his conviction for aggravated criminal sexual abuse. He argued (1) the trial court improperly overruled the defense counsel's objection to lay opinion testimony regarding the defendant's intent and (2) the People failed to prove aggravated criminal sexual abuse beyond a reasonable doubt.

ISSUE: REASONABLE DOUBT (Aggravate Criminal Sexual Abuse): Did the People introduce sufficient evidence to support this defendant's conviction for Aggravated Criminal Sexual Abuse? **(Yes).**

FINDINGS: Evidence of defendant's intent to touch victim's breasts for the purpose of sexual gratification or arousal was not close and therefore any error by trial court of allowing officer's testimony in aggravated sexual assault case regarding defendant's intent was harmless, as required for the first-prong of plain error analysis, victim and victim's brother testified regarding a prior incident of inappropriate contact by defendant in the same area on victim, victim testified that defendant's behavior towards her changed after the prior incident with him treating her "overly nice," there was evidence that defendant made the unusual request for victim's help with the laundry and then repeatedly asked if victim could "keep a secret," and that he attempted to reach up victim's shirt and after being deflected once, placed his hands under victim's shirt and bra cupping her breasts. 720 Ill. Comp. Stat. Ann. 5/11-0.1.

28. People v. Antwan Space, 2018 IL APP (1st) 150922, (1st Dist., May 4, 2018) Felony Murder - - Reversed.

FACTS: Following a 2007 jury trial, Space was convicted of first degree murder while attempting or committing a forcible felony other than second degree murder in violation of section 9-1(a)(3) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(3) (felony murder) and sentenced to 45 years' imprisonment. On appeal, he contended that (1) his conviction should be reversed because the People did not establish a requisite predicate forcible felony.

ISSUE: REASONABLE DOUBT: (Felony Murder): Did the People present sufficient evidence to support this defendant's felony murder conviction? **(No).**

FINDINGS: Aggravated battery by firing gunshot and hitting victim helping another gunshot victim into car did not have independent felonious purpose apart from murder of other victim, and therefore could not provide basis for felony murder conviction; battery victim was shot while helping murder victim after latter had been shot by defendant, shot that injured battery victim might have been intended for murder victim, and state's arguments at trial stating that defendant approached and shot at both victims with "motive" to "murder" and "get rid of" murder victim suggested both murder and aggravated assault were committed with the same felonious purpose. 720 Ill. Comp. Stat. Ann. 5/2-8, 5/9-1(a)(3), 5/12-4.2(a)(1).

29. People v. Patrick Steger, 2018 IL APP (2nd) 151197, (2nd Dist., May 4, 2018) Disorderly Conduct - - Affirmed.

FACTS: Steger was charged by information with one count of felony disorderly conduct (720 ILCS 5/26-1(a)(6) and by complaint with one count of misdemeanor disorderly conduct (*id.* § 26-1(a)(1)). Following a jury trial, he was convicted of both counts and sentenced to 24 months' conditional discharge. He contended that the evidence was insufficient to convict him on either count.

ISSUE: REASONABLE DOUBT: (Disorderly Conduct): Did the People present sufficient evidence to support this defendant's disorderly conduct conviction after he made a false 911 call? **(Yes).**

FINDING #1: Evidence was sufficient to support conviction for felony disorderly conduct; although defendant alleged that evidence did not show that he did not know that the complaint he made when he called 911 was false and that he knew that the call would result in an emergency response, defendant called 911 to request an officer to facilitate custody exchange when county sheriff's deputy was already at the scene to conduct exchange, and deputy informed defendant prior to his 911 call that it would be unlawful for defendant to use the emergency number to complain about deputy's handling of the custody exchange. 720 Ill. Comp. Stat. Ann. 5/26-1(a)(6).

FINDING #2: Evidence was sufficient to support conviction for misdemeanor disorderly conduct; although defendant did not knock on the door of the victim's home, he did not make any gestures, or say or yell anything, defendant had a history of tension with the victim, who was the mother of his child, during custody exchanges and had a history of conflict with the victim's husband, victim testified that defendant's act of standing outside her home "freaked her out," as he was not allowed to be at her home and custody exchanges were supposed to occur at a neutral location, and defendant's conduct of standing with his legs crossed with his hands across behind his head, standing directly across the street from the victim's home could be reasonably perceived as meant to provoke or upset the victim and her husband and invaded their right to not be mentally harassed. 720 Ill. Comp. Stat. Ann. 5/26-1(a)(1).

30. People v. Darionte Jones, 2018 IL APP (1st) 151307, (1st Dist., May 3, 2018) Predatory Criminal Sexual Assault of a Child - - Affirmed.

FACTS: After a bench trial, Jones was found guilty of one count of predatory criminal sexual assault and sentenced to 10 years in the Illinois Department of Corrections (IDOC). The conviction stems from the sexual assault of a 12-year-old victim on August 30, 2011, when defendant was 17 years old. On appeal, defendant does not challenge the sufficiency of the evidence against him. Jones claimed (1) that his trial counsel was ineffective for failing to move to dismiss the charges against him after the State allegedly failed to bring him to trial within the period required by section 103-5(a) of the Code of Criminal Procedure of 1963 (Speedy Trial Act) (725 ILCS 5/103-5(a)); (2) that, as applied to defendant, the statute governing predatory criminal sexual assault is harsh and violates the cruel and unusual punishment clause of the eighth amendment, as well as the proportionate penalties clause; and (3) that the trial court abused its discretion by sentencing defendant to 10 years, in light of the fact that he was 17 years old at the time of the offense, had only one prior juvenile adjudication for a nonviolent offense, and expressed remorse at sentencing.

ISSUE: CONSTITUTIONALITY OF STATUTE (Sex Offender Registration and Notification): Were the Sex Offender Registration and Notification statutes constitutional? (Yes).

FINDING #1: Sex Offender Registration Act, which required defendant to register as a sex offender with local law enforcement officials, was not punitive in nature, and thus defendant could not sustain as-applied Eighth Amendment constitutional challenge to Act following conviction for predatory criminal sexual assault; Act was a regulatory statute intended to foster public safety. 730 Ill. Comp. Stat. Ann. 150/1 et. seq.

FINDING #2: Statutory scheme that resulted in a ten-year sentence for defendant following conviction for predatory criminal sexual assault did not violate the federal constitution's prohibition against cruel and unusual punishment, or state constitution's proportionate penalties clause as applied to defendant, where defendant was 17-years old when he committed the offense against the 12-year old victim, there was no evidence that defendant suffered from a mental health disability, and trial court exercised its discretion and selected a sentence at the low end of the sentencing range. 720 Ill. Comp. Stat. Ann. 5/11-1.40(a).

31. People v. Mark E. Sato, 2018 IL APP (2nd) 170089, (2nd Dist., April 25, 2018) Speeding - - Affirmed.

FACTS: The Village of Algonquin charged Sato with driving over the posted speed limit (Algonquin Municipal Code § 41.01 (amended Dec. 21, 2010) (incorporating by reference 625 ILCS 5/11-601(b)). Sato proceeded *pro se*. After a bench trial, the court found him guilty and imposed \$311 in fines and fees. Sato, still proceeding *pro se*, appealed. He contended that (1) the judgment was erroneous because there was no proof that a valid engineering survey supported the speed limit and (2) the Village did not provide a proper foundation for the evidence of his speed as measured by police radar and the officer's squad-car speedometer.

ISSUE: REASONABLE DOUBT (Speeding): Did the People present sufficient evidence to support this defendant's conviction for speeding where this defendant argued that no proof of a valid engineering survey had supported the speed limit? (Yes).

FINDING #1: Defendant's failure to introduce competent evidence that village had failed to comply with State Vehicle Code's requirement of an engineering survey before posting speed limit precluded defendant from raising his defense to village's charge of driving over posted speed limit that absence of such survey rendered the posted speed limit invalid. 625 Ill. Comp. Stat. Ann. 5/11-301(a). **FINDING #2:** Defendant forfeited any argument that police officer's testimony about radar and speedometer readings was inadmissible in village's charge for driving over the posted speed limit, where defendant did not object to the admission of that testimony but waited until cross-examination to question officer about whether the devices had been tested and certified for accuracy. **FINDING #3:** Use of two tuning forks to test accuracy of radar unit provided sufficient assurance that tuning forks themselves were accurate and, thus, radar evidence was sufficient in itself to prove that defendant was speeding, in charge for driving over the posted speed limit, because each tuning fork corroborated accuracy of the other and it was highly unlikely that radar unit and both tuning forks would have been inaccurate to same degree.

32. People v. Gabriel Enrique Berrios, 2018 IL APP (2nd) 150824, (2nd Dist., April 20, 2018) Unlawful Contact with a Street-gang - - Affirmed.

FACTS: Section 25-5(a)(3) of the Criminal Code of 2012 (720 ILCS 5/25-5(a)(3)) makes it a misdemeanor offense for a person to have contact with street gang members after having been, *inter alia*, "ordered by a judge in any non-criminal proceeding to refrain from direct or indirect contact with a street-gang member or members." After a bench trial, Berrios was convicted of violating this statute and sentenced to 30 days in the county jail. On appeal, he contended that the statute is unconstitutional, that he was not proven guilty of the offense beyond a reasonable doubt, and that the trial court erred in admitting hearsay evidence.

ISSUES: **1) CONSTITUTIONALITY OF STATUTE (Unlawful Contact with a Street Gang):** Was the offense of the unlawful contact with a street gang member unconstitutional? (No); **2) REASONABLE DOUBT (Unlawful Contact with a Street Gang):** Did the People introduce sufficient evidence to support this defendant's Unlawful Contact with a Street Gang conviction? (Yes).

FINDING #1: Evidence was sufficient to find that gang that defendant had contact with was a street gang, having engaged in a course or pattern of criminal activity within the meaning of Illinois Streetgang Terrorism Omnibus Prevention Act, in prosecution for unlawful contact with street gangs after being order not to have such contact, where expert testified that he had been a member of the gang unit for three years and that the gang unit tracked the gang and other street gangs; in so stating, expert expressed the opinion that gang was, in fact, a street gang. 740 Ill. Comp. Stat. Ann. 147/1. **FINDING #2:** Defendant could not show that injunction following entry of default judgment prohibiting him from having contact with street gang members violated his Constitutional right to free association and speech, where defendant did not file a timely motion to vacate default judgment or seek an injunction on the injunction. 735 Ill. Comp. Stat. Ann. 5/2-1301.

33. People v. Noble Lewis Jr., 2018 IL APP (4th) 150637, (4th Dist., April 13, 2018) Domestic Battery - - Affirmed in Part; Vacated in Part.

FACTS: The People charged Lewis with home invasion (720 ILCS 5/19-6) and domestic battery (subsequent offense) (12-3.2(a)(2)). A jury found Lewis guilty of domestic battery but not guilty of home invasion. The trial court later sentenced him to five years in prison. Lewis appealed, arguing that (1) the People failed to prove him guilty beyond a reasonable doubt, (2) the trial court erred because, when the deliberating jury requested to hear again the compact disc recording of the victim's 911 call, the court had the jury brought into the courtroom where the compact disc was replayed in the presence of the court, both counsel, and the defendant, (3) his trial counsel rendered ineffective assistance of counsel, and (4) this court should vacate the purported fines imposed by the circuit clerk but not imposed by the judge.

ISSUE: REASONABLE DOUBT (Domestic Battery): Did the People present sufficient evidence to support this defendant's domestic battery conviction? (Yes).

FINDINGS: Evidence was sufficient to support defendant's conviction of domestic battery, despite defendant's contention that victim was impeached by inconsistencies between her 911 call and her trial testimony, and that victim's testimony was not supported by physical evidence; evidence demonstrated that discrepancy of whether defendant was present in victim's apartment during victim's first call to 911 could have been attributed to fact that defendant was present at the door of the apartment when phone call began and then defendant fled, victim's testimony was not so unbelievable that she could be considered an unreliable witness, and even though there were no weapons found at the scene of the crime, state presented photographs of victim's battered face and defendant could have hid staple gun and could have held a knife to victim's neck without cutting her with it. 720 Ill. Comp. Stat. Ann. 5/12-3.2(a)(2).

34. People v. Jesus Sanchez, 2018 IL APP (1st) 143899, (1st Dist., April 10, 2018) First-Degree Murder - - Reversed.

FACTS: A jury found Sanchez guilty of a murder committed in 2013, when Sanchez was 18 years old. The trial court sentenced him to 45 years in the penitentiary. On appeal, Sanchez contended that the evidence did not prove that he committed the offense and that the trial court should have suppressed the statements he made.

ISSUE: REASONABLE DOUBT: (Murder): Did the People present sufficient evidence to support this defendant's murder conviction? (No).

FINDINGS: Sufficient evidence did not support murder conviction; no witnesses saw defendant on street from which gun shots came, defendant's hands and clothes bore no trace of antimony, barium, or lead, and although defendant confessed to the murder after police interrogated him for many hours and refused to let him speak with his mother until he agreed with them that he shot victim, defendant's initial account that he was not at scene of crime was corroborated by other witnesses.

35. People v. Eric M. Pence, 2018 IL APP (2nd) 151102, (2nd Dist., April 6, 2018) Disorderly Conduct - - Affirmed.

FACTS: Pence appealed from his conviction of disorderly conduct (720 ILCS 5/26-1(a)(1)), arguing that the evidence was insufficient to prove him guilty beyond a reasonable doubt.

ISSUE: REASONABLE DOUBT (Disorderly Conduct): Did the People present sufficient evidence to support this defendant's Disorderly Conduct conviction after the defendant sent a message to the victim to say "hi?" (Yes).

FINDINGS: Defendant's greeting to 16-year-old female victim posted on social media website was sufficient to constitute a breach of the peace, supporting conviction for disorderly conduct; defendant had previously sent inappropriate sexual text messages to the victim when he was 19-years-old and the victim was 12-years-old, defendant and the victim eventually met in person and he was ultimately convicted of traveling to meet a minor and grooming, the victim testified that when she received defendant's message on social media she was scared and immediately contacted her mother, and the victim and her mother reported the contact to police and requested extra police presence around their home. 720 Ill. Comp. Stat. Ann. 5/26-1(a)(1).

36. People v. Samuel B. Burchell, 2018 IL APP (5th) 170079, (5th Dist., April 6, 2018) Dismissal of Charges - - Affirmed.

FACTS: The People appealed the order of the trial court that granted the motion to dismiss of the defendant, Samuel B. Burchell.

ISSUES: 1) STATUTORY CONSTRUCTION (SORA): Does the "temporary" absence provision of SORA require that the defendant be absent from his home for three consecutive days? (No); **2) REASONABLE DOUBT (SORA):** Did the People present sufficient evidence to prove this defendant violated SORA? (No).

FINDING #1: Statute requiring a sex offender or sexual predator who is temporarily absent from his or her current address of registration for three or more days to notify the law enforcement agency that had jurisdiction of his or her registration, referred to consecutive days rather than aggregate days in a calendar year. 730 Ill. Comp. Stat. Ann. 150/3(a). **FINDING #2:** Even if statute requiring a sex offender or sexual predator who is temporarily absent from his or her current address of registration for three or more days to notify the law enforcement agency that had jurisdiction of his or her registration was ambiguous, the rule of lenity required construction of consecutive days, rather than aggregate days in a calendar year, since a three-aggregate-day construction would impose a greater burden on registrants. **FINDING #3:** Charging instrument alleging unlawful failure of sex offender to report absence from address of registration did not strictly comply with the requirements of the Code of Criminal Procedure, where the amended information did not allege that defendant was temporarily absent from his registered address for three or more consecutive days, which was an element of the offense, and did not adequately apprise the defendant of the nature of the offense with which he was charged so that he could prepare a defense. 725 Ill. Comp. Stat. Ann. 5/111-3.

37. **People v. Eduardo Gomez, 2018 IL APP (1st) 150605, (1st Dist., April 3, 2018)** Armed Habitual Criminal; Aggravated Unlawful Use of a Firearm; Unlawful Use of a Firearm by a Felon - - Convictions Affirmed in Part; Vacated in Part; Case Remanded with Instructions.

FACTS: Following a bench trial, Gomez was convicted of being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7 (a)), of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6), and of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1). He was sentenced to three concurrent terms of seven years' imprisonment and assessed various fines, fees, and costs. On appeal, he argued that (1) the trial court erred in denying his pretrial motion to suppress, (2) his aggravated unlawful use of a weapon conviction should be vacated, and (3) the fines, fees, and costs imposed by the trial court should be reduced.

ISSUE: OFFENSES (One Act – One Crime): Was this defendant improperly convicted of both AHC and his weapons charge? (Yes).

FINDING #1: Defendant's convictions for being an armed habitual criminal and aggravated unlawful use of a weapon violated the one-act, one-crime rule since both convictions were premised on defendant's possession of a single loaded firearm, and because defendant's conviction for aggravated unlawful use of a weapon was the less serious offense, that conviction would be vacated. 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(A), 5/24-1.6(d)(3), 5/24-1.7(a)(1), 5/24-1.7(b). **FINDING #2:** Defendant's convictions for being armed habitual criminal and unlawful use of a weapon by a felon did not run afoul of the one-act, one-crime rule since defendant's conviction for unlawful use of weapon was based on his possession of firearm ammunition and his habitual criminal conviction was based on possession of a single loaded firearm. 720 Ill. Comp. Stat. Ann. 5/24-1.7(a).

38. **People v. Steve W. Gill, 2018 IL APP (3rd) 150594, (3rd Dist., April 3, 2018)** Aggravated Arson - - Reversed and Remanded.

FACTS: Gill appealed following his conviction for aggravated arson. He argued on appeal that the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt. He also argued that the trial court erred in failing to suppress certain pieces of evidence at trial. Further, he urged that he was denied a fair trial.

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

FINDINGS: Evidence was sufficient to establish defendant's identity as the individual who committed aggravated arson; evidence indicated that resident of house stole either money or drugs from defendant, that defendant argued with resident in front of house shortly before the house fire occurred, and that defendant moved out of state shortly after the fire, several witnesses testified that the odor of gasoline was present in and around the burned house, nurse testified that defendant smelled of gasoline when he arrived at hospital in the hours after the fire started, evidence indicated that a trained canine alerted to the presence of an accelerant on defendant's hands and clothing, and surveillance footage from a tavern near

house showed a truck parking, a figure walking toward house, a figure returning from the direction of house, and the truck leaving. 720 Ill. Comp. Stat. Ann. 5/20-1(a)(1), 5/20-1.1(a)(1).

39. People v. Matthew Haberkorn, 2018 IL APP (3rd) 160599, (3rd Dist., April 3, 2018) Unlawful Presence - - Reversed.

FACTS: Haberkorn appealed from his conviction and sentence for unlawful presence at a facility providing services exclusively directed toward children by a child sex offender (720 ILCS 5/11–9.3(c)). Specifically, he argued that (1) the People's evidence failed to prove him guilty and (2) the trial court erred in denying his posttrial motion based on a defective indictment.

ISSUE: REASONABLE DOUBT (Unlawful Presence): Did the People fail to prove that this defendant, a child sex offender, was unlawfully present at a facility that provided services exclusively for children? (Yes).

FINDINGS: Defendant, who was a registered sex offender, did not commit the offense of unlawful presence at a facility providing services exclusively directed toward children by a child sex offender when defendant accompanied his cousin and her three children on to a bus chartered by a charitable organization for a field trip, where evidence showed that neither the charitable organization, nor a parent-enrichment program run by organization, nor the bus transporting the group to the field trip, were facilities providing programs or services exclusively directed toward children. 720 Ill. Comp. Stat. Ann. 5/11-9.3(c).

40. People v. Robin Johnson, 2018 IL APP (1st) 140725, (1st Dist., March 30, 2018) First-Degree Murder; Disarming Peace Officer and Aggravated Discharge of a Firearm - - Affirmed.

FACTS: Johnson was convicted in a jury trial of the first-degree murder of a Police Officer, disarming an Officer, and aggravated discharge of a firearm toward another police officer, for which she received sentences of, respectively, mandatory natural life, four years' imprisonment, and 15 years' imprisonment. In this appeal, she raised several challenges to the judgment. She alleged that the trial court violated her constitutional right to present a defense when it barred proposed expert and lay testimony that she contends establishes that she was in a postictal, or post-seizure, state at the time of the offense. She also argued that the trial court erred in refusing to instruct the jury on involuntary manslaughter and in not allowing defense counsel to impeach a defense witness about the People having provided the witness with housing prior to her testifying at trial. Finally, she contended that her mandatory natural life sentence was unconstitutional.

ISSUE: CONSTITUTIONALITY OF STATUTE (Life Sentence): Was the defendant's life sentence constitutional? (Yes).

FINDINGS: Defendant's mandatory sentence of natural life for murdering a peace officer did not shock the moral sense of the community and, thus, did not violate the proportionate penalties clause of the state constitution or the Eighth Amendment as applied to defendant, although defendant asserted her medical condition, lack of prior convictions, and advanced age warranted a lesser penalty; legislature determined the seriousness of murdering an officer mandated a sentence of natural life imprisonment, such that no set of mitigating circumstances would have properly allowed for a lesser penalty, and record suggested the trial court, even if it had discretion, would have imposed same sentence. 730 Ill. Comp. Stat. Ann. 5/5-8-1(a)(1)(c)(iii).

41. People v. Antuan Joiner, 2018 IL APP (1st) 150343, (1st Dist., March 30, 2018) First-Degree Murder and Attempted First-Degree Murder - - Convictions Affirmed; Sentences Vacated.

FACTS: After a bench trial, 16-year-old Joiner was convicted of first degree murder (720 ILCS 5/9–1(a)(1)) and two counts of attempted murder (720 ILCS 5/8–4(a)) and sentenced to 71 years' imprisonment in the IDOC. On appeal, he contended his trial counsel provided ineffective assistance by failing to move to suppress suggestive photo array and

lineup identifications. He also contended that the People failed to prove beyond a reasonable doubt that he was the perpetrator of the offense and that his due process rights were violated when the trial court improperly shifted the burden of proof. He further maintained that his sentence was unconstitutional under *Miller v. Alabama*, 567 U.S. 460, 132 (2012), and that the new juvenile sentencing provisions making firearm enhancements discretionary apply retroactively, requiring this matter to be remanded for resentencing.

ISSUES: 1) **REASONABLE DOUBT (DUD):** Did the People present sufficient evidence to support this defendant's convictions? (Yes); 2) **CONSTITUTIONALITY OF STATUTE (Juvenile Sentence):** Did the sentencing scheme that allowed this defendant to receive a sentence of 71 years in prison unconstitutional? (Yes).

FINDING #1: Evidence supported the victims' identification of defendant as shooter in prosecution for murder and attempted murder; both surviving victims testified that they were able to view defendant's face while he shot handgun at them, even though defendant was wearing a hood that covered his hair, both victims testified that they knew defendant from the neighborhood and were able to identify him from photo array and physical lineup, both victim's identified defendant definitively, and although victims' did not initially identify defendant as the shooter to responding medics or come forward to identify shooter to police, they both informed detectives immediately upon being interviewed separately shortly after the shooting occurred. **FINDING #2:** Evidence was sufficient to support defendant's convictions of murder and attempted murder in connection with an alleged gang related shooting; victims' testified that they were able to see defendant's face during shooting and positively identified defendant during respective photo array and physical lineup, and even though DNA discovered on the baseball cap, hooded sweatshirt, and handgun found near the scene of the shooting did not identify defendant as a source, stipulated testimony established that it was possible for someone, such as defendant, to wear or handle such items and not leave any DNA behind. 720 Ill. Comp. Stat. Ann. 5/8-4(a), 5/9-1(a)(1). **FINDING #3:** Mandatory minimum sentence 45 years for first-degree murder committed when defendant was 16 years old, with mandatory 25 year firearm enhancement, together with 26 years for each of the two convictions for attempted murder, with mandatory 20 year firearm enhancements, which defendant's sentences for first-degree murder and attempted murder were to run consecutively and two convictions for attempted murder were to run concurrently, violated Eighth Amendment prohibition against cruel and unusual punishment, under *Miller v. Alabama*; as a result, defendant was sentenced to a mandated sentence of 71 years, and he was required to serve minimum 66 years before he would become eligible for release, thus amounting to de facto mandatory life sentence without possibility of parole, and trial court failed to make finding regarding defendant's youth, immaturity, or potential for rehabilitation.

42. *People v. James Walker*, 2018 IL APP (3rd) 140723-B, (3rd Dist., March 26, 2018) Dismissal of a Post-Conviction Petition - - Affirmed.

FACTS: A jury convicted 17-year-old Walker of felony murder. The court sentenced him to natural life imprisonment without the possibility of parole. Walker filed a post-conviction petition and argued that at his sentencing hearing, the trial court did not consider his status as a juvenile and the attendant characteristics of his youth at the time of the offense. Citing *Miller v. Alabama* in support, defendant alleges his constitutional rights were violated. He also claimed his sentence violated the proportionate penalties clause of the Illinois Constitution. Upon the People's motion, the trial court dismissed Walker's petition. He appealed arguing his sentence (1) violated the United States Constitution, (2) violated the proportionate penalties clause of the Illinois Constitution, and (3) as it applied to juveniles, Illinois's natural life sentencing scheme was unconstitutional. In addition to countering Walker's claims, the People maintained that Walker's post-conviction petition is untimely.

ISSUE: **CONSTITUTIONALITY OF STATUTE (Life Sentence):** Was this Juvenile's Life Sentence unconstitutional? (No).

FINDING #1: Postconviction petitioner waived appellate review of his argument that sentence violated the proportionate penalties clause of the State Constitution, where he declined to amend his petition in the trial court to include the argument. 725 Ill. Comp. Stat. Ann. 5/122-3. **FINDING #2:** Postconviction petitioner's claim challenging his sentence of life without parole for felony murder committed when he was a juvenile, based on the argument that juveniles were less culpable for their actions than adults, was untimely, where the argument was available to him for over ten years. 725 Ill. Comp. Stat. Ann. 5/122-1 et seq. **FINDING #3:** Sentence of life without parole for felony murder committed when

defendant was 17 years old did not violate the Eighth Amendment, where the defendant was not given a mandatory sentence, the trial court was aware of defendant's age and life circumstances at the time of the offense, discussed defendant's criminal record, which contained recent juvenile records of adjudication, and had the presentencing report that indicated that the defendant had received counseling for a variety of family, social, sexual, and educational problems, and the defendant failed to present any mitigating evidence to dispute the court's finding that he showed no potential for rehabilitation. Ill. Rev. Stat. 1983, ch. 38, 9-1. **FINDING #4:** Sentence of life without parole for felony murder committed when defendant was 17 years old did not violate the proportionate penalties clause of the State Constitution, where defendant planned his act before deliberately putting it into action, and he was the one who physically shot and killed the victim. 725 Ill. Comp. Stat. Ann. 5/122-1(c).

43. People v. Eric F. Ziemba, 2018 IL APP (2nd) 170048, (2nd Dist., March 23, 2018) Involuntary Sexual Servitude of a Minor; Traveling to Meet a Minor; Grooming - - Affirmed.

FACTS: Following a bench trial, Ziemba was found guilty of involuntary sexual servitude of a minor (720 ILCS 5/10-9(c)(2)), traveling to meet a minor (§ 11-26(a)), and grooming (§ 11-25(a)). On appeal, he contended that (1) the evidence was insufficient to prove him guilty beyond a reasonable doubt of involuntary sexual servitude of a minor and (2) the trial court erroneously admitted certain text messages into evidence.

ISSUE: REASONABLE DOUBT (Involuntary Sexual Servitude of a Minor): Did the People present sufficient evidence to support this defendant's conviction for the offense of Involuntary Sexual Servitude of a Minor where this was a sting operation and the minor never actually existed? **(Yes).**

FINDING #1: Evidence was sufficient to establish that defendant intended to solicit sexual acts from a minor, in prosecution for involuntary sexual servitude of a minor; even though defendant alleged that he only intended to engage in sexual activity with mother of two minor daughters, after it became clear that undercover police officer, posing as mother in text messages, was offering her minor daughters to engage in sexual activity with defendant, defendant continued conversation, asked about rate and what they were able to do, and agreed to engage in sexual activity with minors. 720 Ill. Comp. Stat. Ann. 5/10-9(c)(2). **FINDING #2:** Text messages between defendant and undercover officer discussing sexual activity with minors were sufficiently authenticated to be admissible in prosecution for involuntary sexual servitude of a minor; undercover officer who personally sent and received the text messages testified that transcript of text messages was the entire conversation and affirmed that it had been recorded accurately, second police officer testified that defendant's phone, taken after arrest, matched the number undercover officer had been texting, police officer testified that he confirmed that the text messages on phone matched the text messages on computer, defendant followed directions from text messages and confirmed terms of agreement in text messages when he entered room before arrest, and defendant confirmed that text message transcript was accurate.

44. People v. Aaron Zetterlund, 2018 IL APP (3rd) 150435, (3rd Dist., March 23, 2018) Criminal Sexual Assault - - Affirmed.

FACTS: The People charged defendant with criminal sexual assault (720 ILCS 5/11-1.20(a)(2)). The evidence at trial established that Zetterlund was present at a party with the victim and several other individuals. During the course of the night, the victim became severely intoxicated and lost consciousness. While the victim was unconscious, Zetterlund removed the victim's clothing and performed vaginal intercourse on the victim. Zetterlund's friend was present and recorded the assault on his phone. The victim did not recall any of these events. The next day, other individuals that were present at the party told the victim what happened, and the victim went to the hospital for a sexual assault examination. The victim stated that she never consented to having sexual intercourse with Zetterlund. Ultimately, the jury found him guilty of criminal sexual assault. The court sentenced Zetterlund to six years' imprisonment and an indeterminate term of three years to life of mandatory supervised release (MSR). Because of Zetterlund's conviction, he is subject to the restrictions and obligations set forth in the SORA statutory scheme for the remainder of his life. On appeal, he challenged the constitutionality of the SORA statutory scheme, which he is now subject to because of his present conviction.

ISSUE: CONSTITUTIONALITY OF STATUTE (Sex Offender Registration): Was the Sex Offender Registration Act unconstitutional? (No).

FINDING #1: Restrictions and obligations in Sex Offender Registration Act (SORA), which included prohibition on knowingly being present in any public park building or on real property comprising any public park, satisfied substantive and procedural due process requirements under state and federal constitutions; means adopted in section governing public parks were reasonable method of accomplishing legislature's desired objective in protecting public from sex offenders, there was rational relationship between registration, notification, and restrictions of sex offenders and protection of the public from such offenders, and restrictions and obligations were not sufficiently burdensome to mandate additional procedural protection of mechanism to determine risk of recidivism. 720 Ill. Comp. Stat. Ann. 5/11-9.3, 5/11-9.4-1; 730 Ill. Comp. Stat. Ann. 5/5-5-3(o), 150/3(a), 150/3(b), 150/3(c)(6), 150/3(d), 150/7; 735 Ill. Comp. Stat. Ann. 5/21-101.

FINDING #2: Defendant forfeited for appellate review any argument that Sex Offender Registration Act (SORA) scheme was facially unconstitutional under Eighth Amendment and state constitution's proportionate penalties clause, although conclusion in defendant's brief that Appellate Court should strike down SORA and related statutes suggested that defendant was making facial challenge, where defendant did not cite any specific law or make specific argument that SORA scheme was unconstitutional on its face. **FINDING #3:** Defendant's claim that Sex Offender Registration Act (SORA) scheme violated Eighth Amendment and state constitution's proportionate penalties clause as applied to him was premature and thus would not be considered on direct appeal from conviction for criminal sexual assault; record was insufficient to determine whether imposing lifetime registration requirements was grossly disproportionate to defendant's crime given the record's lack of any evidence as to defendant's risk of recidivism, and record did not show that defendant had been discharged from mandatory supervised release (MSR).

45. People v. Arthur Manning, 2018 IL 122081, (Ill. Sup. Ct., March 22, 2018) First-Degree Murder - - Affirmed.

FACTS: Manning was charged with First-Degree Murder after stabbing his victim to death. A jury asked the following question: "For approving mitigating factors to reduce charge to second degree murder, if vote on mitigating factor is not unanimous, does it revert to first degree murder?" The trial court said yes; the appellate court said no." Now the Supreme Court gets to decide.

ISSUE: STATUTORY CONSTRUCTION (Second Degree Murder): Does the jurors' inability to unanimously agree upon whether a mitigating factor exists, for purposes of second degree murder, result in a finding of first degree murder, as charged, and as necessarily found by the jury in the required statutory progression? (Yes).

FINDING: A defendant's failure to sustain the burden of convincing all twelve jurors that a mitigating factor exists for purposes of second-degree murder does not nullify the jurors' unanimous finding that the State has proven defendant guilty of first-degree murder beyond a reasonable doubt. 720 Ill. Comp. Stat. Ann. 5/9-2 (2008).

46. People v. Darionte Jones, 2018 IL APP (1st) 151307, (1st Dist., March 22, 2018) Predatory Criminal Sexual Assault of a Child - - Affirmed.

FACTS: After a bench trial, Jones was found guilty of one count of predatory criminal sexual assault and sentenced to 10 years in the IDOC. The conviction stems from the sexual assault of a 12-year-old victim, when Jones was 17 years old. On appeal, Jones did not challenge the sufficiency of the evidence against him. Rather, he claimed (1) that his trial counsel was ineffective for failing to move to dismiss the charges against him after the People allegedly failed to bring him to trial within the period required by section 103-5(a) of the Code of Criminal Procedure of 1963 (Speedy Trial Act) (725 ILCS 5/103-5(a)); (2) that, as applied to Jones, the statute governing predatory criminal sexual assault was harsh and violated the cruel and unusual punishment clause of the eighth amendment, as well as the Illinois proportionate penalties clause; and (3) that the trial court abused its discretion by sentencing Jones to 10 years, in light of the fact that he was 17 years old at the time of the offense, had only one prior juvenile adjudication for a nonviolent offense, and expressed remorse at sentencing.

ISSUE: CONSTITUTIONALITY OF STATUTE (Predatory Criminal Sexual Assault of a Child): Were the sentencing provisions of this offense unconstitutionally harsh? (No).

FINDING: Sex Offender Registration Act, which required defendant to register as a sex offender with local law enforcement officials, was not punitive in nature, and thus defendant could not sustain as-applied Eighth Amendment constitutional challenge to Act following conviction for predatory criminal sexual assault; Act was a regulatory statute intended to foster public safety. 730 Ill. Comp. Stat. Ann. 150/1 et. seq.

47. People v. Tyler R. Burlington, 2018 IL App (4th) 150642, (4th Dist., March 20, 2018) Burglary - - Affirmed in Part as Modified; Vacated in Part; and Remanded with Directions.

FACTS: The People charged Burlington with one count of burglary (720 ILCS 5/19–1(a)). A jury found Burlington guilty. He filed a post-trial motion. At a hearing, the court denied Burlington's post-trial motion and sentenced him to seven years' imprisonment. He filed a motion to reconsider his sentence, which the court granted. After a second sentencing hearing, the court sentenced defendant to six years' imprisonment. Burlington appealed, asserting (1) the People failed to prove beyond a reasonable doubt he entered a store without authority, (2) the court erred by allowing his prior burglary convictions to be used as impeachment evidence, (3) he was entitled to two additional days of sentencing credit, and (4) this court should vacate his fines imposed by the circuit clerk and the electronic citation fee.

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

FINDING: Defendant, in entering a retail store with intent to steal a digital camera recording system, entered store "without authority," as required to convict him of burglary, despite defendant's assertion that having an intent to steal did not remove his authority to be in the store; entry into a public building with the intent to commit a theft constituted an entry "without authority" under the burglary statute. 720 Ill. Comp. Stat. Ann. 5/19-1(a).

48. People v. Joseph M. Jophlin, 2018 IL App (4th) 150802, (4th Dist., March 20, 2018) Aggravated DUI; DWLR - - Affirmed in Part; Vacated in Part.

FACTS: A jury found Jophlin guilty of aggravated driving under the influence of alcohol (aggravated DUI), a Class 2 felony (625 ILCS 5/11–501(d)(1)(A), (d)(2)(B)) and driving while license revoked or suspended with three prior convictions for driving while license revoked or suspended (DWR), a Class 4 felony (§ 6–303(d–3)). The court sentenced him to four years and two years in prison to run concurrently and ordered defendant to pay specific fines, fees, and assessments. He appealed, arguing (1) the People presented insufficient evidence to support his conviction for aggravated DUI and DWR; (2) the People engaged in vindictive prosecution when it charged him with the more serious offense of aggravated DUI, a Class 2 felony, on the morning of trial, to punish him for exercising his right to a jury trial; (3) the People's repeated violation of the court's *in limine* order deprived him of his right to a fair trial; and (4) the circuit clerk improperly imposed numerous fines.

ISSUE: REASONABLE DOUBT (DUI): Did the People present sufficient evidence to support this defendant's DUI and DWLR convictions? (Yes).

FINDING #1: Evidence was sufficient to show that defendant arrested in a gas station parking lot drove on a state highway, as required to support conviction of driving while license revoked or suspended (DWR) with three prior convictions for DWR; defendant argued the state did not establish that defendant entered the gas station's private parking lot from a public road rather than from an adjacent private parking lot, but defendant admitted to being in a different town earlier the evening he was arrested, and witnesses testified to defendant being alone in his vehicle. 625 Ill. Comp. Stat. Ann. 5/6-303(d-3).

FINDING #2: Evidence was sufficient to show that defendant arrested in a gas station parking lot was intoxicated, as required for conviction of aggravated driving under the influence of alcohol (DUI); witnesses testified that defendant drove into the gas station, fell asleep while his vehicle overheated, had to be shaken awake by a gas station customer, had a dazed stare, smelled like alcohol, and admitted to consuming alcohol earlier in the evening. 625 Ill. Comp. Stat. Ann. 5/11-501(d)(1)(A), 5/11-501(d)(2)(B).

49. **People v. Donzell Ephraim, 2018 IL App (1st) 161009, (1st Dist., March 19, 2018)** Armed Habitual Criminal - - Reversed.

FACTS: Ephraim was found guilty of being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a)), aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(4)), and three counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(C); (a)(2), (a)(3)(C)). The court sentenced him to concurrent prison terms of 12 years for AHC, 6 years for the AUUW convictions, and 3 years for aggravated fleeing or attempting to elude a peace officer. On appeal, he contended that the People failed to prove him guilty of AHC because his conviction was predicated on his prior conviction for aggravated battery to a peace officer, which is not a qualifying offense for AHC.

ISSUE: STATUTORY CONSTRUCTION (Forcible Felony): Is Aggravated Battery of a Peace Officer a Forcible Felony for purposes of the offense of being an Armed Habitual Criminal? **(No).**

FINDING #1: Prior conviction for aggravated battery to peace officer did not qualify as enumerated offense in statutory definition of forcible felony and thus could not serve as predicate offense to support armed habitual criminal (AHC) conviction, absent any evidence that underlying battery resulted in great bodily harm or permanent disability or disfigurement to peace officer. 720 Ill. Comp. Stat. Ann. 5/2-8, 5/12-3.05(d)(4), 5/24-1.7(a). **FINDING #2:** Prior conviction for aggravated battery to peace officer did not qualify as offense in residual clause of statutory definition of forcible felony and thus could not serve as predicate offense to support armed habitual criminal (AHC) conviction; definition's use of "other" after listing 14 specific felonies, including aggravated battery resulting in great bodily harm or permanent disfigurement, indicated legislature's intent that other felony must refer to felonies other than aggravated battery, and there was no evidence that underlying battery resulted in great bodily harm or permanent disability or disfigurement to peace officer.

For a complete analysis of recent Criminal Justice Case Law see our **CRIMINAL CASE LAW DIGEST** on our website at: **www.ipsllconline.com**



Illinois Prosecutor Services, LLC

Training Division – Website Section

Don Hays

630 Talley Street, Standard City, Illinois 62640

or

PO Box 722, Carlinville, Illinois 62626

Office Phone: (217) 854-8041 Fax: (217) 854-5343

Webpage: www.ipsllonline.com



The Illinois Prosecutor Services, LLC now offers Criminal Justice publication on our website. You can find it at www.ipsllonline.com.

Included on this Website is the following Publications:

- Law Enforcement Officers Training Case of the Week (Weekly)
- Recently Published Criminal Justice Opinions (Monthly)
- Criminal Case Law Digest (Monthly)
- Confessions and Admissions (Quarterly)
- Criminal Case Law (Quarterly)
- Criminal Justice Publication Digest (Quarterly)
- Chapter 720 - Criminal Offenses - As Of 1-1-15 (Quarterly)
- Criminal Trial Procedure and Sentencing (Quarterly)
- Evidence Case Law (Quarterly)
- Juvenile Justice Case Law (Quarterly)
- Law Enforcement Liability (Quarterly)
- Post-Conviction Petition Case Law (Quarterly)
- Search and Seizure (Quarterly)
- Sex Offenses and Offender (Quarterly)
- Unlawful Substances Case Law (Quarterly)
- Vehicle Code Case Law (Quarterly)
- Legislative Update (Annually)

NOTE: The single subscription fee is \$100.00 per subscriber. (If your office has a number of subscribers (more than 5) who would like access to our Site, please contact our office for group rate quote). Each subscriber will have his or her own User ID/Name and Password.

NOTE: All subscribers to our Website will automatically begin receiving Weekly Criminal Justice Publication via E-Mail at no extra charge.

Accompanying this letter is a subscription form. If you would like to become a member to the Illinois Prosecutor Services website, just fill out the form and email, fax or mail it back to us and we will bill you. Illinois Prosecutor Services Website goal is Keeping the Criminal Justice System Up-To-Date. We believe it to be a valuable asset that can be used to assist you in your law enforcement duties. We look forward to working with you in the future.

Thank you for your support,

Don Hays



Illinois Prosecutor Services, LLC

Training Division – Website Section

Don Hays

630 Talley Street, Standard City, Illinois 62640

or

PO Box 722, Carlinville, Illinois 62626

Office Phone: (217) 854-8041 Fax: (217) 854-5343

Webpage: www.ipsllconline.com



ILLINOIS PROSECUTOR SERVICES

Website Yearly Subscription Form

(PLEASE PRINT OR TYPE)

Name: _____

Agency: _____

Business Address: _____

Position: _____

Phone: _____

E-Mail Address: _____

Product Cost:

Website Access: \$100.00 X _____ (# of Subscribers) \$ _____

(Call me if your agency has 6 or more subscribers sign up, you can qualify for a group rate)

X _____ I AGREE TO THE TERMS AND CONDITIONS. (They are found on our Website)
(Check)

(Fee Payment – Check One):

____ Check Enclosed (Please make check payable to: Illinois Prosecutor Services, LLC.)

____ Please bill me via Mail.

____ Please bill me via E-Mail.

____ Payment via Credit Card.

RETURN BY FAX, MAIL or E-Mail TO:

ILLINOIS PROSECUTOR SERVICES, LLC,

P. O. Box 722, Carlinville, IL 62626

Phone: (217) 854-8041 Fax: (217) 854-5343

E-Mail: don@ipsllconline.com