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## CONSTITUTIONAL CASELAW – 2020

### SEARCH AND SEIZURE QUARTERLY

**JANUARY – 2020**  
**(Oct-Dec 2019 Cases)**

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6. **People v. James Thomas**, 2019 IL APP (1<sup>st</sup>) 162791, (1<sup>st</sup> Dist., November 15, 2019) AUUW - - Reversed. **ISSUE: SEARCH AND SEIZURE (Probable Cause):** Did the police have probable cause to place this defendant under arrest simply because they discovered that he possessed a firearm? (No).
7. **People v. Quennel Augusta**, 2019 IL App (3<sup>rd</sup>) 170309, (3<sup>rd</sup> Dist., November 6, 2019) Denial of a Motion to Suppress - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Procedure):** Did the police violate the defendant's statutory rights by grabbing him by the throat while they were trying to seize drugs stashed inside of his mouth? (Yes).

8. **People v. DeAndre McMichaels**, 2019 IL APP (1<sup>st</sup>) 163053, (1<sup>st</sup> Dist., October 29, 2019) Armed Habitual Criminal - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Seizure and Arrest):** Was the defendant's detention and arrest justified? (Yes).

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10. **People v. Darnell E. Teague**, 2019 IL App (3<sup>rd</sup>) 170017, (3<sup>rd</sup> Dist., October 24, 2019) Unlawful Possession of a Controlled Substance with the Intent to Deliver - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Probable Cause):** Was the defendant's arrest on possession of drugs charges across town sufficient to support a warrant to search the defendant's house for drugs? (Yes).

11. **People v. Marcus E. Turman**, 2019 IL APP (4<sup>th</sup>) 170815, (4<sup>th</sup> Dist., October 23, 2019) Denial of Motion to Suppress - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion):** Did the arresting Officer lack sufficient reasonable suspicion to justify a detention of this defendant? (No).

12. **People v. David Carter**, 2019 IL App (1<sup>st</sup>) 170803, (1<sup>st</sup> Dist., October 22, 2019) Armed Habitual Criminal - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion):** Did the tip received by the police plus the arresting Officer's observations justify the detention of this defendant? (Yes).

### CASE ANALYSIS

1. **People v. Patrick Hood**, 2019 IL App (1<sup>st</sup>) 162194, (1<sup>st</sup> Dist., December 31, 2019) AUUW - - Affirmed in Part, Remanded with Directions.

**FACTS:** Following a bench trial, defendant Patrick Hood was convicted of aggravated unlawful use or possession of a weapon (AUUW) without a valid Firearm Owner's Identification (FOID) Card or concealed carry license (CCL) (720 ILCS 5/24-1.6(a)(1)) and sentenced to eight years' imprisonment. On appeal, defendant contended the trial court erred by denying his pretrial motion to quash arrest and suppress evidence because police lacked reasonable suspicion to justify a stop pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). He also challenged various monetary fines and fees assessed by the court.

**ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion):** Did the People present sufficient evidence to support the detention of the defendant? (Yes).

**FINDING #1a:** The defendant was not seized, within the meaning of the Fourth Amendment, when the officers stopped their car and approached the defendant's parked car to conduct a field interview after allegedly observing suspicious activity, even though four officers were present and one officer activated his flashlight. **WHY:** Only two officers in plain clothes approached the car and were outnumbered by the defendant and three other persons with him; it was dark at the time of the encounter; and the officers did not activate their flashing lights, display weapons, touch the defendant, or use language and tone of voice compelling the defendant to comply with their request. **FINDING #1b:** The Officers had a reasonable suspicion of criminal activity based on the totality of the circumstances sufficient to justify a *Terry* stop of the defendant. **WHY:** The stop occurred in a high narcotics area; an officer saw the defendant making furtive movements toward the floorboard of the car in which he was seated; and upon approaching the car the officer saw the defendant placing a gun in a plastic bag and throwing it into the backseat where another individual was seated. **FINDING #1c:** The Officers' brief search of the defendant's car and the recovery of a loaded gun from within was warranted and permissible as part of their *Terry* stop. **WHY:** An Officer saw the defendant toss a gun into the backseat of his car; he immediately notified other officer present, and the other officer immediately recovered the gun from the backseat. **FINDING #1d:** The defendant's actions of placing a gun into a plastic bag and tossing it into the backseat of his car contributed to the officers' reasonable suspicion of criminal activity justifying a *Terry* stop, even though mere possession of a firearm was not, in itself, a crime

and the officers were unaware of the defendant's status as a felon or whether he possessed a valid Firearm Owner's Identification (FOID) Card or concealed carry license (CCL). **WHY:** *The defendant's efforts to conceal the gun suggested he was not in lawful possession of the gun.* **FINDING #1e:** The statement made by the defendant to the police officers during this *Terry* stop admitting he did not have a concealed carry license (CCL) was admissible, even if the officers did not give him prior *Miranda* warnings. **WHY:** *The Firearm Concealed Carry Act permitted an officer to ask during an investigatory stop whether a person carrying a firearm had the requisite license.* **FINDING #1f:** The Officers had probable cause to arrest the defendant for a suspected weapons violation. **WHY:** *The Officers knew the defendant had been in possession of a gun; the defendant was attempting to conceal it; and he admitted he did not have a concealed carry license (CCL).*

**2. People v. Steven Spain, 2019 IL App (1<sup>st</sup>) 163184, (1<sup>st</sup> Dist., December 27, 2019) AUUW - - Affirmed.**

**FACTS:** Following a stipulated bench trial, Spain was found guilty of aggravated unlawful use of a weapon (AUUW) for possessing a concealed and loaded handgun with no valid Firearm Owner's Identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) or concealed carry license (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) Spain received the statutory minimum sentence of one year in prison. The trial court had earlier denied Spain's motion to quash his arrest and suppress evidence, agreeing with the People that the arresting officers had both a reasonable suspicion of illegal activity to detain Spain for questioning and probable cause to arrest him and seize the firearm. Spain challenged that ruling.

**ISSUE: SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient reasonable suspicion to justify stopping the defendant and sufficient probable cause to arrest him? (Yes).

**FINDING #2a:** The police officer's observations of the defendant, together with the officer safety alert and anticipated gang activity, formed a sufficient basis for the officer to stop the defendant for the purpose of an investigative stop. **WHY:** *The officers received a safety alert that multiple armed gang members planned to convene at a specific address; the officers observed a group of six men, including the defendant, standing in the yard of an abandoned building immediately next door to the address in the officer safety alert; an officer saw the defendant with what appeared to be partially concealed firearm; the officer saw the defendant try to stuff a large black object down his pants consisting of a gun handle; and the defendant's conduct as the officers approached was to move his gun from its partially concealed location to a completely concealed position down his pants.* U.S. Const. Amend. 4; Ill. Const. art. 1, § 6; 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(A-5), 5/24-1.6(a)(3)(C). **FINDING #2b:** The Officer had probable cause to believe that the defendant was carrying a gun and that the defendant was doing so illegally when he arrested the defendant without a warrant, although the arresting officers did not make any request of defendant for his concealed carry license. **WHY:** *The Officer told the defendant to put up his hands; the defendant complied for a second; he then, looking nervous, kept attempting to put his hand back in his pocket; the officer again told the defendant to put his hands in air; the officer had the defendant put his hands down on a nearby vehicle and performed apat-down; the officer felt what he believed to be the handle of a weapon he had seen the defendant attempt to conceal; the recovered weapon was a handgun matching what the officer had seen; and the officer immediately placed the defendant under arrest.*

**3. People v. Jamal Braswell, 2019 IL App (1<sup>st</sup>) 172810, (1<sup>st</sup> Dist., December 26, 2019) Armed Robbery with a Firearm and Unlawful Restraint - - Affirmed.**

**FACTS:** Following a bench trial, Braswell was found guilty of armed robbery with a firearm and unlawful restraint, then sentenced to a term of imprisonment of 21 years. On appeal, he contended that the court erred in denying his motion to suppress where the police did not have probable cause to arrest him. He further asserted that the court erred in finding that the People proved he was armed with a firearm at the time of the offense where the witness did not sufficiently describe the firearm and the court instead relied on her subjective belief that defendant had a firearm. Braswell maintained that his conviction should therefore be reduced to simple robbery.

**ISSUE: SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient probable cause to arrest the defendant? (Yes).

**FINDING #3a:** The law enforcement officers had probable cause to arrest the defendant for his participation in a counterfeit money passing scheme. **WHY:** *The facts known to the officers at the time of his arrest showed that there was a counterfeit money scheme being conducted at a chain of grocery stores; the defendant was not merely in a vehicle parked in a grocery store's parking lot that happened to be near where the offenders were passing counterfeit bills; he was in the same vehicle that three offenders used to travel to the grocery store and were presumably going to use to leave the store after committing the crime.* **FINDING #3b:** The existence of an investigative alert issued by a detective for the defendant relating to the defendant's involvement in an armed robbery did not render unconstitutional the arrest of the defendant by another police agency for the defendant's participation in a counterfeit money scheme and then the defendant's subsequent transfer to the detective who issued the investigative alert for his arrest for the armed robbery. **WHY:** *The law enforcement officers had probable cause to arrest the defendant for his participation in the counterfeit money scheme; and the investigative alert issued by the detective for the defendant's involvement in an armed robbery was supported by probable cause.*

**4. People v. Telly Flunder, 2019 IL App (1<sup>st</sup>) 171635, (1<sup>st</sup> Dist., December 26, 2019) UUWF -- Reversed and Remanded.**

**FACTS:** After Flunder was charged with the unlawful use of a weapon by a felon, the trial court granted his motion to suppress the gun and then reconsidered and denied the motion. On appeal following his conviction, Flunder argued that the trial court's first decision was correct, while the People asked the Court to affirm the court's second and final decision. The People argued that the encounter at issue was not an investigative or *Terry* stop, but rather a voluntary and consensual police-citizen encounter, and that, during this voluntary encounter, the officer developed a fear for his safety that justified a frisk. Instead of the familiar stop-and-frisk, the People argued that this was a voluntary-encounter-and-frisk. In response, Flunder argued that there is no such thing. He maintained that, if there was no legal basis for an investigative or *Terry* stop, then there was no legal basis for a frisk either.

**ISSUE: SEARCH AND SEIZURE (Frisk):** Did the police legally frisk the defendant during a consensual encounter? (No).

**FINDING #4a:** This Officer lacked reasonable suspicion to conduct a *Terry* stop of the defendant, although there had been shootings in the area in the prior two weeks. **WHY:** *There was nothing unusual about the defendant standing next to a motor vehicle at a gas pump in the middle of the afternoon; the officer had no particularized suspicion to connect the defendant to any crime; the defendant's act of reaching for his pocket was subject to many innocent explanations; and the defendant was standing and not fleeing during this confrontation.* **FINDING #4b:** The Officer did not have a reasonable fear for his safety sufficient to justify a protective pat-down search of the defendant who was standing next to a motor vehicle at a gas pump in the middle of the afternoon, and thus the gun seized from the defendant was not admissible in this prosecution for the unlawful use of gun by felon, although the Officer testified that the defendant reached for his pants pocket and appeared nervous. **WHY:** *The Officer was not in uniform nor in a marked police vehicle when he approached the defendant and he asked what the defendant's "business" was at the gas pump; the defendant reached for a pocket only when the Officer asked for his driver's license; the Officer walked around the vehicle to get closer to the defendant; and the defendant did not flee or continue to fidget, and the Officer's entire conversation with the defendant lasted only 15 seconds.*

**5. People v. Markell Horton, 2019 IL App (1<sup>st</sup>) 142019, (1<sup>st</sup> Dist., September 23, 2019) Denial of Motion to Suppress - Reversed and Remanded. **MODIFIED UPON DENIAL OF REHEARING – November 18, 2019.****

**FACTS:** The defendant was convicted of being an armed habitual criminal. He appealed and argued four issues: (i) the trial court improperly denied his motion to quash arrest and suppress evidence; (ii) the trial court improperly barred him from introducing registration and ownership evidence of the weapon, both before and after the People "opened the door" to the evidence; (iii) reasonable doubt; and (iv) ineffectiveness of trial counsel.

**ISSUES: 1) SEARCH AND SEIZURE (Probable Cause):** Did the fact that the police saw the defendant in possession of a handgun justify his arrest? (No); **2) SEARCH AND SEIZURE (Good Faith):** Did the police rely in good faith on a



weapons statute that was later declared to be unconstitutional? (No); 3) **SEARCH AND SEIZURE (Terry Stop):** Did the fact that this defendant might have been carrying a firearm justify his detention? (No); 4) **SEARCH AND SEIZURE (Hot Pursuit):** Were the police justified in chasing this defendant into his home after spotting what they believed to be a handgun in his waistband? (No); 5) **SEARCH AND SEIZURE (Flight):** Did the suspect's flight from the police justify their warrantless entry into his home? (No).

**FINDING #5a:** This Officer lacked probable cause to believe the defendant was violating the statute generally prohibiting the possession of ready-to-use firearms. **WHY:** *The Officer noticed the defendant had a "metallic object in his waistband" that the Officer had "a hunch" it might be a handgun; the defendant was standing in a residential yard and holding a conversation with people on the porch, supporting conclusion that he either lived on the property or was there with residents' permission; and the firearm possession statute did not apply to the possession of a gun while on one's own land or on the land of another as an invitee.* U.S. Const. Amend. 4; 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(A). **FINDING #5b:** The defendant's flight from the yard into the house immediately upon seeing the police officers did not establish probable cause to arrest the defendant. **WHY:** *The defendant did not interact with the police officers until the Officers entered the house to arrest him. The Officers were not investigating a crime, and did not see any indications of criminal behavior; and the pattern of negative interactions between the police and certain communities gave rise to a noncriminal reason for many members of those the communities to avoid police interactions.* **FINDING #5c:** The defendant's action of crouching down behind a bed, which was concealing his hands, did not provide the Officer with probable cause to arrest the defendant. **WHY:** *The Officer had a mere hunch that the defendant was possessing a gun; possession of a gun within a house did not, in and of itself, constitute a crime; the defendant immediately put his hands up on the police orders; and at least five minutes passed between the defendant fleeing into the house to avoid police interaction and the police entry into the house.* **FINDING #5d:** The gun found in the bedroom where the defendant was arrested was a direct product of the defendant's unlawful arrest, and, therefore, was suppressible under the exclusionary rule, even though the defendant did not reside in the bedroom and had no privacy interest there. **WHY:** *The Officers searched the bedroom after and because of the defendant's arrest, for which they lacked probable cause.*

6. **People v. James Thomas**, 2019 IL APP (1<sup>st</sup>) 162791, (1<sup>st</sup> Dist., November 15, 2019) AUUW - - Reversed.

**FACTS:** Following a bench trial, Thomas was convicted of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5); (a)(1), (a)(3)(C)) and sentenced to one year in prison. On appeal, he argued that (1) the trial court erred in denying his pretrial motion to quash his arrest and suppress evidence of a firearm police found in his vehicle and (2) the People failed to prove that he constructively possessed the firearm beyond a reasonable doubt.

**ISSUE: SEARCH AND SEIZURE (Probable Cause):** Did the police have probable cause to place this defendant under arrest simply because they discovered that he possessed a firearm? (No).

**FINDING #6:** The Officers' investigative stop did not give rise to probable cause to believe that the defendant had committed aggravated unlawful use of a weapon. **WHY:** *The defendant walked away from his car as the police approached because he had reached his home, he did not run away, he obliged when the police asked to talk to him, the gun found incident to the search was not on his person but was under a passenger seat of car where someone else was sitting, and the Officer never asked the defendant whether he had a Firearm Owner's Identification card.*

7. **People v. Quennel Augusta**, 2019 IL App (3<sup>rd</sup>) 170309, (3<sup>rd</sup> Dist., November 6, 2019) Denial of a Motion to Suppress - - Reversed and Remanded.

**FACTS:** Augusta appealed from his conviction for unlawful possession with intent to deliver a controlled substance. The defendant argued the trial court erred in denying his motion to suppress evidence because the arresting officers violated subsection 7-5.5(b) of the Criminal Code of 2012 (Code) (720 ILCS 5/7-5.5(b)) and the Fourth Amendment when they held him by the throat and forcibly removed suspected contraband from his mouth.

**ISSUE: SEARCH AND SEIZURE (Procedure):** Did the police violate the defendant's statutory rights by grabbing him by the throat while they were trying to seize drugs stashed inside of his mouth? (Yes).

**FINDING #7a:** The Officers' seizure of the defendant, in which they held him by the throat to prevent him from swallowing an object located in his mouth, was unreasonable, and thus, suppression of the evidence was warranted. **WHY:** *Although neither Officer employed a chokehold to restrain the defendant, their lesser contact with his throat was specifically prohibited by statute.* U.S. Const. Amend. 4; Ill. Const. art. 1, § 6; 720 Ill. Comp. Stat. Ann. 5/7-5. **FINDING #7b:** The plain view doctrine did not apply to justify the seizure of plastic bag inside of the defendant's mouth, and thus, the suppression of the evidence was warranted. **WHY:** *Although the appearance of plastic in mouth of a suspect was unusual, the incriminating character of object was not immediately apparent, and, to gain access to the object, the Officers had to use unpermitted force by making contact with the defendant's throat.* U.S. Const. Amend. 4; Ill. Const. art. 1, § 6; 720 Ill. Comp. Stat. Ann. 5/7-5.5(b).

**8. People v. DeAndre McMichaels, 2019 IL APP (1<sup>st</sup>) 163053, (1<sup>st</sup> Dist., October 29, 2019) Armed Habitual Criminal - Affirmed.**

**FACTS:** Following a bench trial, McMichaels was convicted of one count of being an armed habitual criminal and was sentenced to eight years' imprisonment. On appeal, he argued that the trial court erred in denying his motion to quash arrest and suppress evidence where the police officers conducted an unreasonable stop and search in violation of *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968), and they lacked probable cause to arrest him.

**ISSUE: SEARCH AND SEIZURE (Seizure and Arrest):** Was the defendant's detention and arrest justified? (Yes).

**FINDING #8a:** The defendant was seized for purposes of the Fourth Amendment when the Officer grabbed him, rather than when the police first arrived on the scene and told the defendant and his companions to "put their hands up." **WHY:** *The defendant twice refused the Officers' requests to display his hands and instead placed his hand in his pocket and turned away prior to an officer approaching him.* **FINDING #8b:** The Officers had reasonable suspicion to conduct an investigatory stop of the defendant, and therefore, the defendant was not entitled to suppression of the firearm that police obtained from him during the stop. **WHY:** *A tipster had informed the police that a person matching the defendant's description was in possession of a firearm; the defendant twice refused the Officers' requests to show his hands and instead put his hand in his pocket and turned away; and the defendant was not seized solely on the basis of the tip but rather as a result of his furtive conduct.* **FINDING #8c:** The Officer's recovery of a firearm from the defendant during an investigatory stop created probable cause for the police to arrest him for illegal firearm possession, even though the police did not inquire whether the defendant had a concealed carry license or felony convictions prior to effecting the arrest. **WHY:** *The Officers responded to a report that a person matching the defendant's description possessed a firearm; the defendant twice ignored the Officers' requests for him to show his hands and instead turned away with a hand in his pocket; and the defendant did not explain that he was properly licensed or otherwise in lawful possession of the firearm despite an opportunity to do so.*

**9. People v. Parrish Davis, 2019 IL APP (1<sup>st</sup>) 160408, (1<sup>st</sup> Dist., October 28, 2019) Possession of Cocaine - - Affirmed.**

**FACTS:** The People charged Davis with possessing more than 900 grams of cocaine found in a compartment secreted near where he sat in the backseat of a car. Before trial, Davis moved to suppress this evidence, arguing that the search leading to its discovery was unreasonable. The trial court denied the motion. In addition to the cocaine, officers found three guns and multiple rounds of ammunition. The People moved *in limine* to admit the gun evidence along with an admission to police that he possessed the drugs and guns. The trial court granted both *in limine* motions. A jury convicted Davis of one count of possession with intent to deliver more than 900 grams of cocaine. The trial court sentenced Davis to 25 years in prison. On appeal, Davis raised four arguments: (i) the trial court erred in denying his motion to suppress evidence, (ii) the trial court erred in admitting evidence of the guns, (iii) the prosecutor violated the trial court's *in limine* ruling by introducing evidence of the statement not covered by that ruling, and (iv) his sentence is excessive. At oral argument, Davis withdrew his third contention.

**ISSUE: SEARCH AND SEIZURE (Consent):** Did the police exceed the scope of the driver's consent to search his car? (No).

**FINDING #9a:** The People were permitted on appeal to rely on the automobile exception to the warrant requirement to conduct a search of the car in which the defendant was a passenger, in support of their contention that the trial court's denial of the defendant's motion to suppress evidence of drugs found in a compartment secreted near where the defendant sat in the backseat of the car should be affirmed, even though the People's argument below focused on consent. **WHY:** *The People's argument included repeated references to their belief that the Officers had sufficient cause to stop the car, and their position on appeal followed from their arguments before the trial court.* **FINDING #9b:** The Officer did not have an objectively reasonable belief that the driver of the car in which the defendant was passenger permitted the search to extend to hidden compartments around the defendant's seat in the back of the car. **WHY:** *The Officer did not single out any area of the car for inspection; the Officer received only a general consent to go ahead and search; without giving the driver more information, it was unreasonable to expect the driver's consent to go beyond a general frisk or pat-down of the interior compartment; and the driver's head movements and whisper that it was over there only directed the Officer to the backseat area of the car that the Officer had only just begun to search.* **FINDING #9c:** The Officer had probable cause to believe the backseat of the car stopped for a minor traffic violation contained an illegal secret compartment with contraband, and thus the search fell within the automobile exception and was permissible without a search warrant, although the officer's actions exceeded the scope of the car driver's consent to search. **WHY:** *The Officer was involved in a long-running investigation with a drug dealer as its target; the Officer was close enough to see that a white package came from the dealer and went to the car's occupants; the officer's initial search did not find anything; the driver indicated to the Officer to search the back seat; and the Officer was an experienced narcotics officer, familiar with the locations in which individuals could secrete or hide narcotics.* **FINDING #9d:** Even if the passenger of the car stopped for a minor traffic violation was outside the car at the time the Officer arrived and searched the car, that would not render unreasonable the Officer's belief that the white object that he observed come from the target of a narcotics investigation was still inside, for purposes of the automobile exception to the warrant requirement. **WHY:** *Nothing in anyone's testimony revealed that the passenger was seen acting in a way connoting she possessed or discarded the white object, and the officers detained and searched her and did not find anything.*

**10. People v. Darnell E. Teague, 2019 IL App (3<sup>rd</sup>) 170017, (3<sup>rd</sup> Dist., October 24, 2019) Unlawful Possession of a Controlled Substance with the Intent to Deliver - - Affirmed.**

**FACTS:** Teague was convicted of two counts of unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(B), (c)(1)) and was sentenced to concurrent 10-year prison terms. On appeal, Teague argued that the trial court erred when it denied his pretrial motion to suppress evidence.

**ISSUE: SEARCH AND SEIZURE (Probable Cause):** Was the defendant's arrest on possession of drugs charges across town sufficient to support a warrant to search the defendant's house for drugs? (Yes).

**FINDING:** A controlled purchase of cocaine from the defendant, who was convicted of the unlawful possession of a controlled substance with the intent to deliver, provided the police with probable cause to search the defendant's residence pursuant to a search warrant, and therefore, the defendant was not entitled to suppression of drug evidence obtained from his residence, even though the controlled purchase occurred across town from his residence. **WHY:** *The defendant was observed leaving his residence, getting into a vehicle, and driving directly to the controlled purchase location; and a police sergeant whose affidavit was offered in support of the search warrant stated that, in his experience, individuals who sold controlled substances often stored associated materials at their residences.*

**11. People v. Marcus E. Turman, 2019 IL APP (4<sup>th</sup>) 170815, (4<sup>th</sup> Dist., October 23, 2019) Denial of Motion to Suppress - - Affirmed.**

**FACTS:** Turman appealed from his conviction for violating section 3 of the Sex Offender Registration Act (Act) (730 ILCS 150/3). On appeal, he argued the Court should reverse his conviction because the trial court erred when it denied his motion to suppress evidence.

**ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion):** Did the arresting Officer lack sufficient reasonable suspicion to justify a detention of this defendant? (No).

**FINDING #11a:** The defendant's claim that the trial court erred in denying his motion to suppress, maintaining evidence demonstrated he was unlawfully seized without reasonable suspicion, was subject to review on appeal under constitutional-issue exception. **WHY:** The matter proceeded to a stipulated bench trial with the understanding the defendant was preserving the argument he made in his motion to suppress, and the matter could have been raised in a post-conviction petition. U.S. Const. Amend. 4; 725 Ill. Comp. Stat. Ann. 5/107-14(a). **FINDING #11b:** The Deputy had the requisite reasonable, articulable suspicion to justify a brief investigatory detention of the defendant while responding to a reported armed robbery, and thus, the defendant was not unlawfully seized. **WHY:** The defendant substantially matched the description of the armed robbery suspect; and he was found in close proximity to crime scene shortly after the Deputy responded to the dispatch call.

**12. People v. David Carter, 2019 IL App (1<sup>st</sup>) 170803, (1<sup>st</sup> Dist., October 22, 2019) Armed Habitual Criminal - - Affirmed.**

**FACTS:** Following a bench trial, Carter was convicted of the offense of armed habitual criminal and was sentenced to nine years' imprisonment. On appeal, he challenges his conviction, arguing that the trial court erred in denying his pretrial motion to suppress evidence and that the People failed to prove his guilt of the offense beyond a reasonable doubt.

**ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion):** Did the tip received by the police plus the arresting Officer's observations justify the detention of this defendant? (Yes).

**FINDING:** The police obtained reasonable suspicion to search the defendant based on the corroboration of an anonymous tip that a white male wearing a black hoodie was threatening individuals with a handgun, and therefore, the defendant was not entitled to the suppression of a loaded handgun the police seized from him during their investigatory stop. **WHY:** The Officer encountered the defendant at the location specified by the tipster; the defendant matched the physical description provided by the tipster; and, prior to stopping the defendant, the Officer saw the defendant holding the right side of his waistband as he walked, suggesting that he was attempting to conceal a firearm.

## **SEARCH AND SEIZURE QUARTERLY**

**SPRING – 2020**  
**(Oct-Dec 2019 Cases)**

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7. **People v. Charles D. Hill**, 2020 IL 124595, March 19, 2020. Denial of Motion to Suppress (Possession of a Controlled Substance) - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Probable Cause)**: Did the police have sufficient probable cause to justify a warrantless search of the defendant's car? (Yes).
8. **People v. David Carter**, 2019 IL App (1<sup>st</sup>) 170803, (1<sup>st</sup> Dist., ~~October 22, 2019~~) Armed Habitual Criminal - - Affirmed. **Modified upon denial of Rehearing - - March 10, 2020. ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion)**: Did the tip received by the police plus the arresting Officer's observations justify the detention of this defendant? (Yes).
9. **People v. Lorenc Bujari**, 2020 IL App (3<sup>rd</sup>) 190028, (3<sup>rd</sup> Dist., February 3, 2020) Denial of a Motion to Suppress - - Affirmed. **ISSUES: 1) SEARCH AND SEIZURE (Reasonable Suspicion)**: Did this state police officer have a reasonable, articulable suspicion of criminal activity? (Yes); **2) SEARCH AND SEIZURE (Procedure)**: Did the officer unreasonably prolong driver/credentials inspection of defendant's commercial vehicle? (No); **3) SEARCH AND SEIZURE (Timing)**: Was the defendant seized at the time the officer requested consent to perform dog sniff? (No).
10. **People v. Victor Short**, 2020 IL APP (1<sup>st</sup>) 162168, (1<sup>st</sup> Dist., January 24, 2020) Armed Robbery and Aggravated Kidnapping - - Affirmed in Part; Reversed in Part. **ISSUE: SUPPRESSION OF EVIDENCE (Identification)**: Did the trial court err in denying the defendant's motion to suppress the identification evidence in this case?

### CASE ANALYSIS

1. **People v. Sergio Bahena**, 2020 IL App (1<sup>st</sup>) 180197, (1<sup>st</sup> Dist., March 31, 2020) Attempted First-Degree Murder - - Affirmed.

**FACTS:** After a bench trial, Bahena, age 20, was convicted of the attempted first-degree murder. He was sentenced to 31 years with the IDOC. On appeal, Bahena claimed that the trial court erred by denying his pretrial motions (1) to suppress a photo array and a physical lineup as unduly suggestive and (2) to quash his arrest and suppress evidence because he was arrested based on an investigative alert and without a warrant.

**ISSUES: SEARCH AND SEIZURE (Probable Cause)**: Was the defendant's arrest unreasonable because it was based upon an unwarranted investigative alert? (No).

**FINDING #1:** Photo array used by victim to identify defendant was not unduly suggestive, and thus identification was not required to be suppressed at defendant's trial for attempted murder, even though defendant's photo was only photo in array with blue background and defendant's photo was cropped slightly more tightly than filler photos. **WHY:** *The people in the*

filler photos used resembled the defendant, all the photos in the array had slightly different neutral, institutional background colors; and, despite the defendant's photo being cropped slightly more tightly, all photos were cropped to show only the head and a portion of the shoulders and chest.

**FINDING #1:** The lineup used by the victim to identify the defendant was not unduly suggestive, and thus the identification was not required to be suppressed at the defendant's trial for attempted murder, even though he was only person in the lineup who was also in the photo array used for identification; and, in the lineup, the defendant was wearing a camouflage hooded sweatshirt and had shoes missing laces, which the defendant alleged distinguished him; **WHY:** Four of five men in the lineup were wearing hooded sweatshirts and laces were not visible on any shoes in the lineup.

**2. People v. Charles E. Thornton, 2020 IL App (1<sup>st</sup>) 170753, (1<sup>st</sup> Dist., March 31, 2020) Denial of Motion to Suppress (Home Invasion & Aggravated Criminal Sexual Assault) - - Affirmed.**

**FACTS:** Following a jury trial, Thornton was found guilty of home invasion and the aggravated criminal sexual assault of his victims. He was sentenced to a total term of 72 years' imprisonment for the offenses. On appeal, Thornton contended that the trial court erred in denying his motion to suppress evidence, including incriminating statements, collected while he was in police custody. As justification for his claim, he maintained the police arrested him based on an anonymous, uncorroborated tip absent reasonable suspicion or probable cause. He also maintained the police arrested him based on an unconstitutional investigative alert, rather than a warrant. He argued alternatively that the investigative alert was not supported by probable cause, which he claimed also justifies suppression of the evidence.

**ISSUE: SEARCH AND SEIZURE (Probable Cause):** Was the defendant's arrest unreasonable because it was based upon an anonymous tip and an unwarranted investigative alert? (No).

**FINDING #1:** The police officers had reasonable suspicion to briefly detain the defendant following a 911 call reporting a suspected perpetrator of a sexual assault. **WHY:** There was a temporal proximity between the time of the 911 tip and the defendant's location; the defendant matched the caller's description and general location; the fact that the caller reported a suspected perpetrator of a sexual assault implied that the caller was either the victim, an eyewitness, or knew the victim; the officers responded immediately to the call and did no more than necessary to investigate the suspect's identity; and, because there was not a report of a crime in progress for the officers to observe the suspect to gain more reasonable suspicion, the officers had a strong interest in solving the reported crimes and bringing the offender to justice, which outweighed this narrowly tailored intrusion. **FINDING #2:** The Officers did not affect an arrest requiring probable cause when they handcuffed the defendant, placing him in the back of a police vehicle. **WHY:** The officer handcuffed the defendant for safety reasons, given that the defendant was alleged to have committed two felony criminal sexual assaults possibly using force or threat of force. **FINDING #3:** Probable cause supported an investigative alert that revealed to police officers that the defendant was wanted for two criminal sexual assaults, and, therefore, the officers had probable cause to arrest the defendant without a warrant. **WHY:** The victim relayed to her son that the defendant had been shot in mouth before; the son's investigation of the neighborhood for such a person uncovered the defendant's name; the son then relayed this information to a detective who included the defendant's image in a photo array in which the victim tentatively identified the defendant as the rapist; the police then learned that the defendant lived near where the rapes occurred and that the defendant had been shot in the mouth, and these facts formed the basis of the investigative alert. **FINDING #4:** Probable cause supported an investigative alert that revealed to the police officers that the defendant was wanted for two prior criminal sexual assaults, and therefore the officers had probable cause to arrest the defendant without a warrant. **WHY:** The victim relayed to her son that the defendant had been shot in mouth before; the son's investigation of the neighborhood for such a person uncovered the defendant's name; the son then relayed this information to a detective who included the defendant's image in a photo array in which the victim tentatively identified the defendant as the rapist; The police then learned that the defendant had lived near where rapes occurred and that the defendant had been shot in mouth, and these facts formed the basis of the investigative alert. **FINDING #5:** Even assuming the defendant's initial Terry stop and arrest with handcuffing was illegal, the defendant's statement, the DNA swab, and the lineup identification were not fruit of his allegedly illegal arrest but instead were attenuated from illegal arrest. **WHY:** The information giving rise to probable cause, through the use of an investigative alert, was obtained independently of the defendant's alleged illegal arrest; about 14

hours passed before the police initiated collecting incriminating evidence, and the record did not betray the quality of purposefulness in that police stopped and then arrested the defendant while on a fishing expedition for incriminating evidence.

**3. People v. Dantrell White, 2020 IL App (1<sup>st</sup>) 171814, (1<sup>st</sup> Dist., March 31, 2020) Denial of a Motion to Suppress (Possession of a Controlled Substance) - - Reversed.**

**FACTS:** White was charged with possession of a controlled substance, and he moved to quash arrest and suppress evidence. The trial court denied the motion and subsequently convicted and sentenced him to two years' probation. White argued that the trial court erred in denying his motion. Specifically, he argued that the officers lacked a reasonable suspicion to conduct an investigatory stop or a lawful reason to frisk him, which led to the discovery of the controlled substance.

**ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion):** Did the police have sufficient reasonable suspicion to justify a Terry stop of White? (No).

**FINDING #1:** The police officer lacked reasonable suspicion of criminal activity to justify an investigatory stop of a mass-transit rider after the officer heard someone yell a profanity while the officer and other officers rode their bikes past a transit platform and saw a rider spit in the officer's direction when the officer turned in the direction of the yelling. **WHY:** The police officer did not know who yelled profanity or if it was directed at the police officer; even if the mass-transit rider yelled profanity it was not a crime, and the police officer did not view spitting as a crime. **FINDING #2:** The police officer, who felt a hard, cylindrical object through the suspect's pants, exceeded the scope of a frisk for weapons during this investigatory stop when the officer removed the plastic pill bottle from the suspect's pants pocket. **WHY:** A reasonable officer would have known after wrapping his/her hands around the bottle that it was not the metal barrel of a gun.

**4. People v. Tremayne Cherry, 2020 IL App (3<sup>rd</sup>) 170622, (3<sup>rd</sup> Dist., March 31, 2020) UUWF - - Affirmed**

**FACTS:** Cherry appealed following his conviction for unlawful use of a weapon by a felon. He argued that the trial court erred in denying his motion to suppress evidence. He also contended that the court committed structural error in denying his right to proceed as a self-represented litigant.

**ISSUE: SEARCH AND SEIZURE (Terry Stop):** Did the police properly seize the defendant after he fled as the Officers approached him? (Yes).

**FINDING #1:** The police officer did not have a reasonable, articulable suspicion that the defendant had committed or was about to commit a criminal offense, as was required for the officer to perform the alleged Terry stop, upon initially approaching the defendant and asking him to stop. **WHY:** The officer approached the defendant on the basis of an uncorroborated anonymous tip; the defendant's holding of his waistband was not indicative of criminal activity; and the fact that these events occurred in a high crime area could not elevate the officer's suspicion in a meaningful way. **FINDING #2:** The defendant did not submit to the officer's show of authority, during an incident in which he was approached by the officer, asked to stop, and was arrested while fleeing, and thus the initial encounter was not a Terry stop to which the Fourth Amendment requirements applied, rendering the officer's actions in initially approaching the defendant lawful. **WHY:** The defendant was already backing away when the officer was approaching him, took full flight as the officer came closer, did not indicate through his actions or words that he was submitting to the stop, and his utterance of "yes" when the officer asked him to stop was not indicative of submission to authority. **FINDING #3:** The defendant's unprovoked flight from the police officer, during an encounter in which he was approached by an officer, asked to stop, and arrested while fleeing, provided the officer with reasonable suspicion required to arrest the defendant, although the defendant's unprovoked flight, standing alone, may not have sufficiently provided reasonable suspicion for an arrest. **WHY:** The officer saw the defendant holding his waistband after briefly entering a vehicle and the Officer had received an anonymous tip that a group of men in the defendant's vehicle had been displaying a firearm, and the defendant's sudden flight was a strong indication of his guilty state of mind.

5. **People v. Bobby L. Burns, III, 2020 IL App (3<sup>rd</sup>) 170103, (3<sup>rd</sup> Dist., March 27, 2020)** Armed Violence; Possession of a Controlled Substance; and AUUW - - Affirmed in Part; Reversed in Part; and Remanded with Directions.

**FACTS:** The People charged Burns by indictment with armed violence, unlawful possession of a controlled substance, and aggravated unlawful use of a weapon. After the trial court denied his motion to suppress evidence, the trial court found the defendant guilty on all three charges following a stipulated bench trial. The court sentenced defendant to a 15-year term of imprisonment in the Illinois Department of Corrections. Burns appeals.

**ISSUE: SEARCH AND SEIZURE (Warrantless Search):** Did the police properly search the defendant's person after they detected the odor of burnt cannabis on his person? (Yes).

**FINDING #1:** Sufficient probable cause supported the police officers' decision to search the defendant's person before the observation of a weapon, in this prosecution for armed violence. **WHY:** The officers were trained in the detection of controlled substances; two officers separately detected the odor of cannabis emanating from the passenger side of the vehicle where the defendant sat; and the officer testified that the defendant made furtive movements before the officers reached the vehicle and appeared to be nervous and fidgeting after the traffic stop. U.S. Const. Amend. 4; Ill. Const. art. 1, § 6; 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **FINDING #2:** The police officers were not required to investigate whether the defendant possessed a handgun legally before securing him and seizing handgun; and, therefore, the officers' use of handcuffs to restrain the defendant after observing the handgun protruding from his back pants pocket was reasonable and necessary to ensure officer safety and did not transform this valid *Terry* stop into an unlawful arrest. **WHY:** The location of the handgun made it easily accessible to the defendant. U.S. Const. Amend. 4; Ill. Const. art. 1, § 6; 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **FINDING #3:** The contraband would have been discovered even if the police officers had not noticed the handgun first and quickly reacted by restraining the defendant in handcuffs and, therefore, the contraband was admissible under "inevitable discovery exception." **WHY:** The officers intended to perform a lawful search of the defendant's person at some point in time during the traffic stop based on the smell of cannabis; and officers were entitled to perform a search before viewing the handgun. U.S. Const. Amend. 4; Ill. Const. art. 1, § 6; 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **FINDING #4:** The Officers reasonably believed they were and were, in fact, entitled to remove a perceived threat to their safety by temporarily securing the defendant and swiftly seizing the handgun on his person, and, therefore, the contraband was admissible under the good faith exception to the warrant requirement. U.S. Const. Amend. 4; Ill. Const. art. 1, § 6; 720 Ill. Comp. Stat. Ann. 5/33A-2(a).

6. **People v. Alandis Craine, 2020 IL App (1<sup>st</sup>) 163403, (1<sup>st</sup> Dist., March 26, 2020)** Denial of Motion to Suppress (UUWF & Possession of Cannabis with the Intent to Deliver - - Reversed and Remanded.

**FACTS:** Following a bench trial, Craine was found guilty of unlawful use of a weapon by a felon and possession of cannabis with intent to deliver, then sentenced to a term of 26 months' imprisonment. On appeal, he contended that the court erred in denying his motion to suppress evidence where the police officers lacked probable cause and exigent circumstances to enter his home and effectuate the arrest. Defendant also contends that the consent to search his home was not given voluntarily and knowingly given the inherently coercive environment. Finally, defendant contends that the State failed to prove beyond a reasonable doubt that defendant had possession of the firearm and cannabis found in the bedroom of his home.

**ISSUE: SEARCH AND SEIZURE (Probable Cause):** Did the police lack justification for entering his home and making an arrest without a warrant? (Yes).

**FINDING #1:** The police officers did not have probable cause to enter the defendant's home and arrest him, although he ran into his home upon seeing an officer in his unmarked police vehicle, and the defendant was holding his right hip as if he was trying to conceal something. **WHY:** The officer at the time of the defendant's arrest knew that gunshots had been fired in the vicinity; the defendant was standing on a porch near where the officer believed gunshots emanated from; and

*the officer had no indication that the defendant was in any way involved with gunshots he heard. FINDING #2:* The Officer lacked reasonable suspicion to conduct a *Terry* stop of the defendant either before or after his flight into his home, and thus the Officers did not have probable cause to enter the defendant's home and arrest him, although the defendant was near an area where the Officer believed there were gunshots fired. **WHY:** *The defendant was not acting suspiciously in any way; he was not on the precise street where the Officer believed the shots originated; and the defendant's flight into his home did not give rise to reasonable a suspicion justifying a Terry stop.* U.S. Const. Amend. 4; 725 Ill. Comp. Stat. Ann. 5/107-14. **FINDING #3:** The defendant's flight into his home when the Officer approached did not give the officer probable cause to arrest. **WHY:** *The defendant was not acting suspiciously in any way, and he was not on the precise street where the Officer believed the shots originated.* **FINDING #4:** The smell of cannabis inside the defendant's home did not constitute an independent intervening event that broke the casual chain between illegal entry and detention and recovery of evidence, and thus the evidence was the fruit of officers' illegal detention of the defendant. **WHY:** *The only reason the police officers were in the house was to effectuate an illegal arrest and search of the defendant; only after the illegal entry into the house did the officers smell cannabis that prompted them to present the defendant's grandmother with a consent to search form; the officers never left the defendant's property and the search occurred only minutes after the defendant was illegally detained and searched.*

**7. People v. Charles D. Hill, 2020 IL 124595, March 19, 2020.** Denial of Motion to Suppress (Possession of a Controlled Substance) - - Affirmed.

**FACTS:** Hill was charged with unlawful possession of a controlled substance, after a police officer searched his vehicle and found a small rock of crack-based cocaine under the driver's seat. During pretrial, Hill filed a motion to suppress, arguing that the officer did not have reasonable suspicion for the initial stop and that the officer did not have probable cause to search defendant's vehicle. The trial court granted the motion based on the lack of reasonable suspicion for the initial stop but noted the subsequent search would have been valid if the initial stop was valid. The appellate court reversed and remanded. The Supreme Court allowed the defendant's petition for leave to appeal.

**ISSUE: SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient probable cause to justify a warrantless search of the defendant's car? (Yes).

**FINDING:** The Officer had probable cause to search the defendant's vehicle after stopping the vehicle to ascertain the identity of a passenger the officer believed to be a known fugitive. **WHY:** *The Officer believed the passenger to be an individual for whom there was an active traffic warrant; after the officer activated his lights to initiate the stop, the defendant delayed pulling over, which based on the officer's training and experience, often indicated a passenger may have been hiding contraband or retrieving a weapon, and the officer observed a "bud" of cannabis in the backseat of the defendant's car.*

**8. People v. David Carter, 2019 IL App (1<sup>st</sup>) 170803, (1<sup>st</sup> Dist., ~~October 22, 2019~~) Armed Habitual Criminal - - Affirmed. Modified upon denial of Rehearing - - March 10, 2020.**

**FACTS:** Following a bench trial, Carter was convicted of the offense of armed habitual criminal and was sentenced to nine years' imprisonment. On appeal, he challenges his conviction, arguing that the trial court erred in denying his pretrial motion to suppress evidence and that the People failed to prove his guilt of the offense beyond a reasonable doubt.

**ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion):** Did the tip received by the police plus the arresting Officer's observations justify the detention of this defendant? (Yes).

**FINDING:** The police established reasonable suspicion to search the defendant based on corroboration of an anonymous tip that a white male wearing a black hoodie was threatening individuals with a handgun, and, therefore, the defendant was not entitled to the suppression of a loaded handgun that the police seized from him during an investigatory stop. **WHY:** *The police officer encountered the defendant at the location specified by the tipster; the defendant matched the physical*

description provided by the tipster; and, prior to stopping the defendant, the officer observed the defendant holding the right side of his waistband as he walked, suggesting that he was attempting to conceal a firearm.

9. **People v. Lorenc Bujari**, 2020 IL App (3<sup>rd</sup>) 190028, (3<sup>rd</sup> Dist., February 3, 2020) Denial of a Motion to Suppress - - Affirmed.

**FACTS:** After a stipulated bench trial, Bujari was found guilty of possession with intent to deliver more than 5000 grams of a substance containing cannabis (720 ILCS 550/5(g) (West 2016)). On appeal, he argued the trial court erred in denying his motion to suppress because: (1) the stop of his vehicle was unconstitutionally prolonged; (2) the officer did not have reasonable articulable suspicion of criminal activity to justify prolonging the stop; and (3) he was unconstitutionally seized at the time of the dog sniff.

**ISSUES:** 1) **SEARCH AND SEIZURE (Reasonable Suspicion):** Did this state police officer have a reasonable, articulable suspicion of criminal activity? (Yes); 2) **SEARCH AND SEIZURE (Procedure):** Did the officer unreasonably prolong driver/credentials inspection of defendant's commercial vehicle? (No); 3) **SEARCH AND SEIZURE (Timing):** Was the defendant seized at the time the officer requested consent to perform dog sniff? (No).

**FINDING #1:** The State Police Officer had a reasonable, articulable suspicion of criminal activity sufficient to warrant further investigation and thus the questions posed to the defendant about his rate of pay did not unconstitutionally prolong this driver/credential inspection of the defendant's commercial vehicle. **WHY:** The Officer thought it was abnormal for the defendant to place an unnecessary private seal on his load, place a padlock on the wrong door so the load was not really secure; and have logbook discrepancies that suggested an attempt to hide down time. **FINDING #2:** The Officer did not unreasonably prolong this driver/credentials inspection of the defendant's commercial vehicle by turning on the video and audio recording equipment in his squad car. **WHY:** The State Police were required to record such activities if they reasonably believed recording may assist with a prosecution; and the Officer had a reasonable, articulable suspicion that the defendant was involved in criminal activity. U.S. Const. Amend. 4, Ill. Const. art. 1, § 6; 20 Ill. Comp. Stat. Ann. 2610/30(a), 2610/30(c). **FINDING #3:** The Officer did not prolong this driver/credentials inspection of the defendant's commercial vehicle by requesting consent to perform a dog sniff around the vehicle. **WHY:** The Officer had already terminated the inspection by confirming that the defendant had all his paperwork, and informing him he was free to leave; and thus the defendant was no longer seized at the time the officer asked for consent for a dog sniff. **FINDING #4:** The defendant was not seized at the time the Officer requested consent to perform a dog sniff of the defendant's commercial vehicle, and thus the Fourth Amendment did not apply in this case. **WHY:** The Officer had already terminated his driver/credentials inspection of the defendant's commercial vehicle by returning the defendant's paperwork so he was free to leave; the defendant had walked to his truck unescorted; and there was no evidence that the Officers exhibited a threatening presence, displayed their weapons, physically touched the defendant, or spoke to the defendant after he left the weigh station scale house. **FINDING #5:** The Officer and his drug-sniffing dog's act of momentarily passing in front of, or walking beside, the defendant's commercial vehicle, in and of itself, did not constitute a seizure under the Fourth Amendment. **WHY:** There was no evidence that the defendant was prepared to leave or was attempting to leave but was prevented from doing so in any way by the presence of the officer or his dog.

10. **People v. Victor Short**, 2020 IL APP (1<sup>st</sup>) 162168, (1<sup>st</sup> Dist., January 24, 2020) Armed Robbery and Aggravated Kidnapping - - Affirmed in Part; Reversed in Part.

**FACTS:** Following a jury trial, Short was convicted of armed robbery with a firearm and aggravated kidnapping and sentenced to concurrent prison terms of 21 and 8 years. He contended on appeal that the evidence was insufficient to convict him beyond a reasonable doubt, that the trial court erred in denying his pretrial motion to suppress identification, and that the People made improper remarks or arguments. He also contended that he was deprived of a fair trial when the prosecutor was allowed to elicit testimony implying that a non-testifying codefendant had implicated defendant, which constituted hearsay and violated defendant's right to confront witnesses against him. He contended that his trial counsel rendered ineffective assistance. Lastly, he contended that the People failed to prove him guilty of aggravated kidnapping beyond a



reasonable doubt when the asportation of the victim was incidental to the armed robbery.

**ISSUE: SUPPRESSION OF EVIDENCE (Identification):** Did the trial court err in denying the defendant's motion to suppress the identification evidence in this case?

**FINDING:** Denial of defendant's motion to suppress victim's pretrial identification of defendant in a lineup and photographic array was not plain error in prosecution for armed robbery with firearm and aggravated kidnapping, despite defendant's contention that lineup and array were unduly suggestive. **WHY:** The client of victim's tax preparation business, who witnessed robbery, independently identified defendant from a different photo array, and fact that client independently made same identifications as victim tended to indicate that victim's identifications were not result of undue suggestion or impropriety.

## **CONFESSIONS AND ADMISSIONS QUARTERLY**

**WINTER ISSUE – 2019**  
**(Oct – Dec 2018 Cases)**

### **IN THIS ISSUE**

1. **People v. Courtney Woods**, 2018 IL APP (3<sup>rd</sup>) 153323, (3<sup>rd</sup> Dist., December 24, 2018) Armed Robbery - - Affirmed in Part; Vacated in Part. **ISSUE: CONFESSIONS AND ADMISSIONS (Miranda):** Were the defendant's rights violated when he was ordered to cooperate with a pre-sentence investigation and then the information obtained during that investigation was used against him during his sentencing? (Yes).
2. **People v. Anthony Garza**, 2018 IL APP (3<sup>rd</sup>) 170525, (3<sup>rd</sup> Dist., December 6, 2018) Suppression of Evidence - - Affirmed. **ISSUE: CONFESSIONS AND ADMISSIONS (Miranda):** Did the trial court properly suppress the statements the defendant made in this case? (Yes).
3. **In re Jose A.**, 2018 IL APP (2<sup>nd</sup>) 180170, (2<sup>nd</sup> Dist., October 18, 2018) Suppression of Evidence - - Affirmed in Part; Reversed in Part. **ISSUE: CONFESSIONS AND ADMISSIONS (Miranda):** Should the statements made by this defendant at his school and at the police station have been suppressed? (Yes and No).
4. **People v. Lamarr Maxey**, 2018 IL APP (1<sup>st</sup>) 130698, (1<sup>st</sup> Dist., September 13, 2018) Residential Burglary and Aggravated Fleeing or Attempting to Elude a Police Officer - - Affirmed in Part; Reversed in Part; Fees and Fines Corrected. **ISSUE: DUE PROCESS (Suppression Hearing):** Did the trial court improperly allowed the People to violate his right not to incriminate himself? (No).

### **CASE ANALYSIS**

1. **People v. Courtney Woods**, 2018 IL APP (3<sup>rd</sup>) 153323, (3<sup>rd</sup> Dist., December 24, 2018) Armed Robbery - - Affirmed in Part; Vacated in Part.

**ISSUE: CONFESSIONS AND ADMISSIONS (Miranda):** Were the defendant's rights violated when he was ordered to cooperate with a pre-sentence investigation and then the information obtained during that investigation was used against him during his sentencing? (Yes).

**FACTS:** Woods was found guilty after a bench trial of two counts of armed robbery (720 ILCS 5/18-2(a)(2), (3)) and sentenced to concurrent terms of 34 years' imprisonment. On appeal, he argued his fifth amendment right against self-incrimination was violated at sentencing, when the trial court ordered him to participate in a presentence investigation (PSI) by speaking with the investigator, and information that he told the investigator was then used against him to increase his

sentence. He also argued that one conviction must be vacated in light of the one-act, one-crime doctrine and that some of his fines and fees should be vacated.

**FINDING:** The trial court violated the Fifth Amendment right against self-incrimination of this defendant convicted of armed robbery by requiring him to participate in a presentence investigation (PSI), and then using information provided by the defendant about a prior gang affiliation against him in sentencing. **WHY:** The defendant was specifically told by the judge that he had to talk to pretrial services and then the judge used that information to increase defendant's sentence, with no testimony at trial about the defendant's offense being gang-related.

2. **People v. Anthony Garza**, 2018 IL APP (3<sup>rd</sup>) 170525, (3<sup>rd</sup> Dist., December 6, 2018) Suppression of Evidence - - Affirmed.

**ISSUE: CONFESSIONS AND ADMISSIONS (Miranda):** Did the trial court properly suppress the statements the defendant made in this case? (Yes).

**FACTS:** Following the trial court's grant of Garza's motion to suppress evidence based upon a finding that Garza underwent a custodial interrogation without being informed of his Miranda rights, the People filed a certificate of substantial impairment and notice of appeal. They argued the court erred in granting Garza's motion to suppress.

**FINDING #1:** The law enforcement officer's questions about white-powder substance and the ownership of the backpack called for incriminating responses and, therefore, were interrogatory, for purposes of determining whether officer was conducting a custodial interrogation under *Miranda*. **WHY:** The Officer believed the white powder to be narcotics, and he knew that the backpack contained illicit substances and drug paraphernalia. **FINDING #2:** The “general on-the-scene questioning” exception to *Miranda* did not apply to this Officer's questioning. **WHY:** The defendant was subject to the compelling pressures of police custody; the officer had reason to suspect the defendant had committed a narcotics offense; and the officer's questions sought an incriminating statement from the defendant rather than generic facts surrounding a crime. **FINDING #3:** A reasonable person in the defendant's circumstances would not have felt at liberty to terminate interrogation and leave, and therefore the defendant was in custody, for *Miranda* purposes, even though no officer told the defendant he was not free to leave. **WHY:** The Officer directed the defendant and the other minivan occupants to exit the minivan and conducted a thorough search of each occupant, akin to a search incident to an arrest; the officer directed the occupants to move away from the minivan and stand near the police vehicle where two uniformed officers watched over them; the police presence grew to outnumber the occupants when additional officers arrived on scene, and the occupants' departure from the scene was rendered impractical by lack of access to the minivan.

3. **In re Jose A.**, 2018 IL APP (2<sup>nd</sup>) 180170, (2<sup>nd</sup> Dist., October 18, 2018) Suppression of Evidence - - Affirmed in Part; Reversed in Part.

**ISSUE: CONFESSIONS AND ADMISSIONS (Miranda):** Should the statements made by this defendant at his school and at the police station have been suppressed? (Yes and No).

**FACTS:** In a petition for adjudication of wardship, respondent, Jose A., was charged with delivery of a controlled substance (720 ILCS 570/407(b)(5)) and unlawful possession of a controlled substance (720 ILCS 570/402(c)). Jose filed a motion to suppress statements, alleging that at two separate interviews—one at his high school and one at a police station—he was subjected to custodial interrogations in violation of section 5-401.5 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-401.5). After a hearing, the court agreed with Jose and granted his motion to suppress statements. The People filed a certificate of impairment and appealed.

**FINDING #1:** The Deans at the high school attended by this juvenile did not fit into the category of “other public official or employee,” as used in the statute governing custodial interrogations of minors by “law enforcement officer, State's Attorney, juvenile officer, or other public official or employee,” and thus the Deans were not required to comply with the

procedural safeguards set forth in the statute, though they were school personnel responsible for administration and discipline within the high school. **WHY:** The deans' primary duties were not protection of public interest and enforcement of the law. 105 Ill. Comp. Stat. Ann. 5/24-24; 705 Ill. Comp. Stat. Ann. 405/5-401.5(a-5). **FINDING #2:** This juvenile was "in custody" when he made a statement at the police station, for purposes of statute governing the procedural protections available to juveniles during a custodial interrogation, and thus his statement was rendered presumptively inadmissible in this wardship proceeding arising from drug-related crimes in the absence of an electronic recording, though the interview was set in advance, the juvenile's mother was present, the questioning lasted less than an hour, the interview room was unlocked, and the officer was dressed in plain clothing. **WHY:** The officer instructed the mother to bring the juvenile to the station for an interview and fingerprinting; the officer read the juvenile the Miranda form prior to questioning; two officers were present during the questioning, one officer was armed and carrying handcuffs; and the juvenile was booked and fingerprinted on felony drug charges at the end of the interview. 705 Ill. Comp. Stat. Ann. 405/5-401.5(a, b); 720 Ill. Comp. Stat. Ann. 570/402(c), 570/407(b)(5).

**4. People v. Lamarr Maxey, 2018 IL APP (1<sup>st</sup>) 130698, (1<sup>st</sup> Dist., September 13, 2018)** Residential Burglary and Aggravated Fleeing or Attempting to Elude a Police Officer - - Affirmed in Part; Reversed in Part; Fees and Fines Corrected.

**ISSUE: DUE PROCESS (Suppression Hearing):** Did the trial court improperly allowed the People to violate his right not to incriminate himself? (No).

**FACTS:** Maxey was found guilty of residential burglary and aggravated fleeing or attempting to elude a peace officer. The trial court subsequently sentenced defendant to concurrent terms of 20 years for the residential burglary conviction and 3 years for the aggravated fleeing conviction. He appealed, arguing that: (1) defendant's waiver of counsel was invalid because the trial court failed to properly admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984); (2) during the suppression hearing, the trial court erred in allowing the People to question defendant on irrelevant matters and in excluding relevant evidence; (3) the trial court did not obtain a knowing and voluntary jury waiver; (4) the People failed to prove the charge of aggravated fleeing or attempting to elude a peace officer; and (5) the fines and fees order should be reduced by \$24 due to improperly imposed fines and full credit for time in custody awaiting trial.

**FINDING:** The trial court did not err in allowing the prosecutor to inquire during a hearing on the defendant's motion to suppress where this burglary defendant had been prior to driving on the street where the Officers first saw him. **WHY:** The defendant's prior location could have supported his testimony that he had not broken any traffic laws and did not commit the burglary, the cross-examination regarding his location factored into whether the officers had a reasonable suspicion to stop his vehicle, the defendant had placed his credibility at issue by testifying and the prosecutor was entitled to ask him questions about the events of the day, and the question was relevant to assess his credibility given that the question was asked several times because he evaded answering it and responded with vague and contradictory answers.

## **CONFESSIONS AND ADMISSIONS QUARTERLY**

**SPRING – 2020**  
**(January - March 2020 Cases)**

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assistance by failing to move to suppress parts of the statement the defendant gave to the police? (No).

3. **People v. Devin M. Kochevar**, 2020 IL App (3<sup>rd</sup>) 140660-B, (3<sup>rd</sup> Dist., February 4, 2020) Criminal Sexual Abuse - - Appeal Dismissed in Part; Affirmed in Part. **ISSUE: SUPPRESSION OF EVIDENCE (Statements):** Did the trial court err in refusing to suppress the statements to defendant made to the police based upon the defendant's argument that they were involuntarily made? (No).

4. **People v. Edwin L. Matute**, 2020 IL App (2<sup>nd</sup>) 170786, (2<sup>nd</sup> Dist., February 27, 2020) Predatory Criminal Sexual Abuse of a Child - - Conviction Affirmed; Sentence Vacated. **ISSUES: SUPPRESSION OF EVIDENCE (Statements):** Did the trial court err in refusing to suppress the statements to defendant made to the police based upon the defendant's inability to understand his *Miranda* rights? (No).

### CASE ANALYSIS

1. **People v. Bobby Wilson**, 2020 IL App (1<sup>st</sup>) 162430, (1<sup>st</sup> Dist., March 26, 2020) First-Degree Murder - - Reversed.

**ISSUE: SUPPRESSION OF EVIDENCE (Statements):** Did the trial court err in refusing to suppress the statements to defendant made to the police based upon the defendant's inability to understand his *Miranda* rights? (Yes).

**FACTS:** Following a jury trial, Wilson was found guilty of first-degree murder based on a theory of accountability for actions that occurred when he was 16 years old. The trial court subsequently sentenced him to 37 years' imprisonment. On appeal, Wilson contended that (1) the trial court erred by denying his motion to suppress statements made to the police where he lacked the ability to understand his *Miranda* rights, (2) the People failed to present sufficient evidence to prove his guilt based on a theory of accountability, (3) the trial court denied him a fair trial when it refused to provide the jury with an instruction on the concept of mere presence after the jury submitted a question during deliberations that allegedly demonstrated its confusion about the law of accountability, (4) he must receive a new sentencing hearing where the trial court failed to consider all of the statutory mitigating factors for juvenile offenders, and (5) his sentence was unconstitutional.

**FINDING #1:** The defendant lacked the mental capacity to knowingly and intelligently waive his constitutional rights, although there was evidence that he had been arrested multiple times. **WHY:** The defendant had never received *Miranda* warnings previously; he was only 16 years old when he waived his *Miranda* rights, and he had intellectual limitations, he scored 70 on intelligence quotient (IQ) test; based on the IQ tests the defendant undoubtedly was significantly below average on the intelligence spectrum. U.S. Const. Amends. 5, 14; 405 Ill. Comp. Stat. Ann. 5/1-100 et seq.; 725 Ill. Comp. Stat. Ann. 5/114-11(d). **FINDING #2:** The trial court's error in denying the defendant's motion to suppress his statements to the police when he lacked the ability to understand his *Miranda* rights was not harmless in this prosecution for first degree murder. **WHY:** The defendant's statements to the detectives placed him in the vehicle from which the victim was shot; the defendant's statements provided critical information that was not admitted into evidence through any other source; those details were crucial pieces of evidence for the jury to find the defendant guilty; and the defendant's statements likely diminished his credibility. U.S. Const. Amends. 5, 14; 405 Ill. Comp. Stat. Ann. 5/1-100 et seq.; 720 Ill. Comp. Stat. Ann. 5/9-1(a); 725 Ill. Comp. Stat. Ann. 5/114-11(d).

2. **People v. Ricardo Figueroa**, 2020 IL App (2<sup>nd</sup>) 160650, (2<sup>nd</sup> Dist., February 27, 2020) First Degree Murder; Attempted First-Degree Murder; Unlawful Possession of a Firearm by a Street Gang Member - - Affirmed in Part; Reversed in Part, Remanded for Resentencing.

**ISSUE: COUNSEL (Effectiveness):** Did the attorney for the defendant provide ineffective assistance by failing to move to suppress parts of the statement the defendant gave to the police? (No).

**FACTS:** A jury found Figueroa guilty of three counts of first-degree murder (720 ILCS 5/9-1(a)(1)-(3)), two counts of attempted first-degree murder, unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1)), and

mob action (720 ILCS 5/25-1(a)(1)). The jury further found that defendant committed the offenses of first-degree murder and attempted first-degree murder while armed with a firearm. The court sentenced defendant on five of the seven counts to an aggregate of 60 years in prison. Defendant appealed.

**FINDING:** Given the strength of the evidence against the defendant who was convicted of first-degree murder on the accountability theory, there was no reasonable probability that the outcome of the case would have been different had the defense counsel sought to redact a handful of comments from the defendant's videotaped statement to the police, as required to support the defendant's claim of ineffective assistance. **WHY:** The defendant admitted that he accompanied the gunman on evening of the murder with the intent to engage in a physical confrontation, and that he and the gunman were armed when they approached the vehicle containing rival gang members, confronted the occupants, and the gunman shot the driver.

**3. People v. Devin M. Kochevar, 2020 IL App (3<sup>rd</sup>) 140660-B, (3<sup>rd</sup> Dist., February 4, 2020) Criminal Sexual Abuse - - Appeal Dismissed in Part; Affirmed in Part.**

**ISSUE: SUPPRESSION OF EVIDENCE (Statements):** Did the trial court err in refusing to suppress the statements to defendant made to the police based upon the defendant's argument that they were involuntarily made? (No).

**FACTS:** Kochevar was charged by information with one count of criminal sexual abuse (720 ILCS 5/11-1.50(c)). He filed a motion to suppress the statement he made during a custodial interview with regard to the alleged abuse, which was denied. The case was tried before a jury, and Kochevar was found guilty. In the court's written order, he was sentenced to serve 90 days of jail time with all but 10 days suspended and 24 months of probation, and he was required to register as a sex offender, undergo sex offender treatment and aftercare, provide a DNA sample, and pay a variety of fines and fees. He appealed, challenging the denial of his motion to suppress his custodial statement as involuntarily procured and seeking reversal of his conviction and new proceedings. Kochevar later sought and was given leave to bring an as-applied constitutional challenge to the Sex Offender Registration Act (SORA) (730 ILCS 150/1 et seq.). The appellate court vacated the portion of Kochevar's sentence requiring him to register as a sex offender and remanded the case to the trial court. The People filed a petition for leave to appeal in the Supreme Court. That petition was denied, and the court issued a supervisory order requiring the Appellate Court to reconsider its opinion.

**FINDING:** The defendant's oral and written custodial confession was not coerced, even if incriminating portions of his written statement were given to earn leniency promised by the police officers he knew personally and trusted and not as a knowing, willing confession of criminal conduct in light of an understanding of its gravity. **WHY:** The defendant was an 18-year-old high school senior of average or better intelligence; he was given Miranda warnings orally and in writing and waived those rights, and he did not exhibit emotional distress during the interview; the interrogating officers were friendly; the defendant was brought to the police station voluntarily and without being handcuffed; the confession was unnecessary to the conviction (i.e., the evidence was overwhelming); the interview lasted less than an hour; and the defendant was returned to his school before the end of classes.

**4. People v. Edwin L. Matute, 2020 IL App (2<sup>nd</sup>) 170786, (2<sup>nd</sup> Dist., February 27, 2020) Predatory Criminal Sexual Abuse of a Child - - Conviction Affirmed; Sentence Vacated.**

**ISSUES: SUPPRESSION OF EVIDENCE (Statements):** Did the trial court err in refusing to suppress the statements to defendant made to the police based upon the defendant's inability to understand his Miranda rights? (No).

**FACTS:** Following a bench trial, Matute was found guilty of three counts of predatory criminal sexual assault of a child and sentenced to 27 years' imprisonment. On appeal, he contended that (1) the trial court improperly denied his amended motion to suppress statements, (2) the People failed to prove him guilty of predatory criminal sexual assault beyond a reasonable doubt, and (3) the trial court committed plain error by relying on defendant's lack of remorse in sentencing him to 27 years in prison.

**FINDING:** The suspect voluntarily, knowingly, and intelligently waived his *Miranda* rights during an investigation for the predatory criminal sexual assault of a child. **WHY:** Before the suspect was informed of his rights, a detective told the defendant to let him know if the suspect did not understand something; the detective read to the suspect the Miranda warnings, which were written in Spanish, the suspect's native language; the suspect responded to the detective in Spanish that he understood the warnings; the suspect did not request any further explanation; the suspect was 24 years old at the time of the questioning; and the suspect had attended college for two years. 720 Ill. Comp. Stat. Ann. 5/11-1.40(a)(1); 725 Ill. Comp. Stat. Ann. 5/114-11(d).





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27. **People v. Devin M. Kochevar**, 2020 IL App (3<sup>rd</sup>) 140660-B, (3<sup>rd</sup> Dist., February 4, 2020) Criminal Sexual Abuse - - Appeal Dismissed in Part; Affirmed in Part. **ISSUE: CONSTITUTIONALITY OF STATUTE (SORA):** Did the appellate court have the authority to consider the constitutionality of the SORA statute? (No).

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### CASE ANALYSIS

1. **People v. Aden D. Khan**, 2018 IL App (2<sup>nd</sup>) 160724, (2<sup>nd</sup> Dist., October 11, 2018) Disorder Conduct - - Affirmed.

**ISSUES:** 1) **CONSTITUTIONALITY OF STATUTE (Disorderly Conduct):** Was the offense of the Disorderly Conduct unconstitutional? (No); 2) **REASONABLE DOUBT (Disorderly Conduct):** Did the People present sufficient evidence to support this defendant's Disorderly Conduct conviction? (Yes).

**FACTS:** After a jury trial, Khan was convicted of committing disorderly conduct by making a threat of violence against persons at a school (720 ILCS 5/26-1(a)(3.5)) and sentenced to 30 months' probation. On appeal, he contends that (1) the disorderly conduct statute is unconstitutional and (2) he was not proved guilty beyond a reasonable doubt.

**FINDING #1:** The school-threat provision of the disorderly conduct statute may be applied to the knowing communication of a message if the defendant knows that a reasonable speaker would foresee the message as communicating, to a reasonable recipient, a serious intent to commit harm. **WHY:** *The provision includes a mental-state requirement that is consistent with the First Amendment, and while the intent to threaten is not essential, the knowledge that the communication is a true threat is sufficient. U.S. Const. Amend. 1; 720 Ill. Comp. Stat. Ann. 5/26-1(a) (3.5).* **FINDING #2:** For purposes of the crime of disorderly conduct by making a threat of violence against persons at a school, if the defendant does not know that he is transmitting a true threat, which is unprotected by the First Amendment, he is not guilty. **WHY:** *A defendant need not know that his message is unprotected by the First Amendment and need realize only that it is of a certain character, and knowledge of the First Amendment is not an element, and ignorance of the First Amendment is not a defense. U.S. Const. Amend. 1; 720 Ill. Comp. Stat. Ann. 5/26-1(a) (3.5).* **FINDING #3:** There was sufficient evidence that the defendant knew the message he posted on a social networking website, which stated that "I bring a gun to school every day. Someday someone is going to p\*\*\* me off and end up in a bag," was a serious expression of an intent to do harm, as required to support his conviction for disorderly conduct by making a threat of violence against persons at a school; **WHY:** *This anonymous message conveyed the reasonable impression that the sender was a student at the school. 720 Ill. Comp. Stat. Ann. 5/26-1(a) (3.5).*

2. **People v. Randell L. Owens**, 2018 IL App. (4<sup>th</sup>) 170506, (4<sup>th</sup> Dist., October 23, 2018) Failure to Register as a Sex Offender - - Affirmed.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Mandatory Presumption):** Did the Sex Offender Registration Statute create an unconstitutional mandatory presumption? (No).

**FACTS:** Owens was charged with failure to register as a sex offender under the Sex Offender Registration Act (Act). 730 ILCS 150/3(a). Owens filed a *pro se* motion to dismiss, arguing that the double jeopardy clause and the due process clause barred this prosecution. The trial court denied his motion. He appealed, arguing (1) the Act subjected him to double jeopardy, (2) collateral estoppel barred the People's prosecution for his failure to register as a sex offender, and (3) the Act creates an unconstitutional mandatory presumption.

**FINDING:** The statute governing the duty to register as a sex offender contained no provision that permitted or required the trier of fact to assume the existence of any ultimate fact, and, therefore, there was no presumption in the statute. 730 Ill. Comp. Stat. Ann. 150/3.

3. **People v. Edward R. Cetwinski**, 2018 IL App (3<sup>rd</sup>) 160174, (3<sup>rd</sup> Dist., October 26, 2018) Criminal Sexual Assault and Aggravated Criminal Sexual Abuse - - Affirmed.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Sentences):** Did the sentencing scheme created for sex offenses violate this defendant's constitutional rights? (No).

**FACTS:** Cetwinski, appealed following his conviction for criminal sexual assault and aggravated criminal sexual abuse. He argued that certain comments from the trial court made during jury instructions served to hasten the jury's verdict. He also argued that the Illinois statutory scheme of lifetime penalties to which convicted sex offenders are subjected is unconstitutional as applied to him.

**FINDING:** The defendant's sentence to a term of six years' imprisonment for criminal sexual assault and four years' probation for aggravated criminal sexual abuse was not grossly disproportionate to the crime, so as to violate the Eighth Amendment's prohibition against cruel and unusual punishment or the Proportionate Penalties Clause under the Illinois Constitution. **WHY:** This defendant, a coach at a high school, sexually assaulted a student who was on the team the defendant coached; the offense was among the most serious sex offenses that can be committed in Illinois; and many lesser offenses were subject to that same scheme under which the defendant was sentenced. U.S. Const. Amend. 8; Ill. Const. art. I, § 11; 720 Ill. Comp. Stat. Ann. 5/11-1.30; 720 ILCS 5/1213(a)(4), (b)(1); 730 Ill. Comp. Stat. Ann. 150/2(E)(7).

4. **People v. Victor Denis**, 2018 IL APP (1<sup>st</sup>) 151892, (1<sup>st</sup> Dist., November 19, 2018) Predatory Criminal Sexual Assault of a Crile, Aggravated Criminal Sexual Assault; Aggravated Criminal Sexual Abuse - - Affirmed.

**ISSUE: CONSTITUTIONALITY OF STATUTE (SORA):** Was the SORA unconstitutional on its face and as applied to this defendant? (No).

**FACTS:** Denis was convicted of criminal sexual assault and aggravated criminal sexual abuse and was sentenced to three and five-year terms of imprisonment, respectively, and required to register as a sex offender for the remainder of his natural life under the Sex Offender Registration Act (SORA). He appealed.

**FINDING:** The Sex Offender Registration Act (SORA) and separate statutes prohibiting a sex offender's right to change his or her name, his right to drive or possess a driver's license, or to be physically present or loiter near school property or public parks were rationally related to the legitimate state interest of protecting the public from sex offenders, and therefore did not violate substantive due process.

5. **People v. Travis D. Rhoades, 2018 IL App. (4<sup>th</sup>) 160457, (4<sup>th</sup> Dist., November 27, 2018)** Predatory Criminal Sexual Assault and Aggravated Criminal Sexual Abuse -- Affirmed.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Sentences):** Was the mandatory life sentence received by this defendant unconstitutional? (No).

**FACTS:** The trial court convicted Rhoades of predatory criminal sexual assault (720 ILCS 5/11-1.40(a)(1) and aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) after a bench trial and sentenced him to a mandatory term of natural life in prison for predatory criminal sexual assault pursuant to section 11-1.40(b)(2) and a consecutive term of 12 years in prison for aggravated criminal sexual abuse. He appealed, arguing section 11-1.40(b)(2) of the Criminal Code was facially unconstitutional because it mandates a life sentence—the harshest sentence allowed under Illinois law. Rhoades argued this violates “the principle of proportionality and the Eighth Amendment’s ban on cruel and unusual punishment.”

**FINDING:** The defendant's sentence to a mandatory term of natural life in prison for predatory criminal sexual assault did not violate the proportionate penalties clause of the Illinois constitution or the Eighth Amendment's ban on cruel and unusual punishment, though the criminal sexual assault sentencing statute mandated a natural life sentence and a natural life sentence was the harshest sentence allowed under Illinois law. **WHY:** The sentence did not lead to the inference of disproportionality based on the crime for which the defendant was convicted; the Eighth Amendment did not require an individualized determination of appropriateness before the imposition of a mandatory life sentence; and the legislature's decision to abolish the death penalty in murder cases yet leave in place the mandatory life sentence for sexual predators did not offend societal standards of decency. U.S. Const. Amend. 8; Ill. Const. art. 1, § 11; 720 Ill. Comp. Stat. Ann. 5/11-1.40(b)(2).

6. **People v. Rodney Lee, 2018 IL APP (1<sup>st</sup>) 152522, (1<sup>st</sup> Dist., November 30, 2018)** Failure to Register as a Sex Offender -- Affirmed.

**ISSUE: CONSTITUTIONALITY OF STATUTE (SORA):** Was the SORA unconstitutional on its face and as applied to this defendant? (No).

**FACTS:** Lee was convicted of violating the Sex Offender Registration Act (SORA) (730 ILCS 150/1 et seq.) for his failure to register as a sex offender and was sentenced to four years' imprisonment. On appeal, he contended that SORA's statutory scheme violates federal and Illinois constitutions' due process rights by infringing on registrants' fundamental liberty interests where it places upon them severe restrictions, intrusive monitoring and burdensome registration requirements without providing substantive or procedural due process.

**FINDING #1:** The reporting requirements and restrictions of the Sex Offender Registration Act (SORA) did not impact the fundamental rights of this defendant, who was a convicted sex offender, and thus the Appellate Court would apply the rational basis test, rather than strict scrutiny, in assessing the defendant's due process challenge to the constitutionality of SORA, although the burdens and restrictions of SORA would significantly impact a registered sex offender's life. **WHY:** The defendant did not have a fundamental right affected by the statute's prohibition on the defendant changing his name or the requirement for license renewal, and there was no fundamental right relating to the statute's prohibition on where the defendant could work, live, or be present. U.S. Const. Amends. 5, 14; Ill. Const. art. 1, § 2; 730 Ill. Comp. Stat. Ann. 150/1 et seq. **FINDING #2:** The statutory scheme of the Sex Offender Registration Act (SORA) did not violate the substantive due process rights of this defendant, who was a convicted sex offender, even though not every offender was necessarily inclined to commit another sex offense, and even though SORA may not have been perfect in its execution. **WHY:** Subjecting convicted sex offenders as a whole to certain restrictions served a legitimate state interest of protecting the public from sex offenders and the restrictions were rationally related to that interest. **FINDING #3:** The statutory scheme of the Sex Offender Registration Act (SORA) did not violate the procedural due process rights of the defendant and thus the additional procedures that would allow sex offenders to demonstrate that they were not likely to reoffend were not necessary to satisfy due process. **WHY:** The civil registration requirements of SORA were based entirely on the convicted offense, which provided the defendant with a procedurally safeguarded opportunity to contest, and the defendant's likelihood of recidivism was not relevant to determine whether he committed the charged offense.



7. People v. Stephen S. Bona, 2018 IL APP (2<sup>nd</sup>) 160581, (2<sup>nd</sup> Dist., December 10, 2018) Threatening a Public Official -- Affirmed.

**ISSUE: CONSTITUTIONALITY OF STATUTE** (Threatening a Public Official): Does this offense violate the free speech rights of the First Amendment? (No).

**FACTS:** Following a jury trial, Bona, was convicted of two counts of threatening a public official, in violation of section 12-9 of the Criminal Code of 2012 (Code) (720 ILCS 5/12-9(a)). He appealed his conviction, challenging (1) whether the statute is constitutional, (2) the sufficiency of the evidence presented against him, (3) the admissibility of certain evidence, and (4) allegedly improper comments during closing argument.

**FINDING #1:** The statute which criminalized threats made against public officials only proscribed “true threats[,]” and thus did not constitute a facial violation of the First Amendment to the United States Constitution. **WHY:** *The statute applied only to instances wherein a defendant knowingly communicated a threat to a public official and required that this threat place the official in reasonable apprehension of harm as well as relate to performance or nonperformance of official's duties.* 720 Ill. Comp. Stat. Ann. 5/4-3; 5/4-5; 5/12-9. **FINDING #2:** The statute did not constitute a violation of the First Amendment, as applied to the defendant who left voicemail threats against a state representative and her family. **WHY:** *The jury instructions included a definition of a “true threat” and required the jury to convict only if it found that defendant actually intended to communicate a threat, rather than that defendant simply knew the message would be viewed as a threat, thereby affording him greater protection than he was entitled to.* **FINDING #3:** The statute was not subject to a strict scrutiny review, despite the statute's content-based restriction on speech. **WHY:** *The statute only prohibited “true threats,” which, as a matter of law, were not protected by the First Amendment to the United States Constitution.*

8. People v. Timothy Herring, 2018 IL APP (1<sup>st</sup>) 152067, (1<sup>st</sup> Dist., December 11, 2018) First-Degree Murder -- Affirmed.

**ISSUE: CONSTITUTIONALITY OF STATUTE** (Sentencing): Was the defendant's sentence of natural life unconstitutional? (No).

**FACTS:** The victim discovered that someone had broken into his mother's garage and damaged his prized Ford Mustang. He called the police. An evidence technician arrived to collect fingerprints and other evidence. While the two men stood in the alley outside the garage, they were shot and killed. A few days later, friends and relatives of Herring informed the police that Herring had committed the murders. A jury convicted Herring of first-degree murder of both men. Herring argued on appeal that (i) the People did not prove the *corpus delicti* of the offense due to insufficient evidence; (ii) the trial court erred in making several evidentiary; (iii) the prosecutor committed prosecutorial misconduct in several ways; (iv) his trial counsel was ineffective for failing to object to fingerprint evidence and cell phone location data; and (v) his mandatory natural life sentence is unconstitutional.

**FINDING #1:** A natural life sentence for the murder of two victims imposed upon this 19-year-old defendant was not unconstitutional in violation of the Eighth Amendment. **WHY:** *The defendant fell on the adult side of the line protecting individuals under the age of 18 from capital punishment or mandatory life imprisonment without parole.* **FINDING #2:** The record was insufficient to allow the appellate review of the defendant's claim that the mandatory nature of his natural life sentence was unconstitutional under Illinois law as it prevented the trial court from taking his age into account as mitigating evidence. **WHY:** *An as-applied constitutional challenge was not raised in the trial court; no evidentiary record existed to base the defendant's constitutional claim; and the trial court made no findings of fact regarding his circumstances.*

9. People v. Jodie Christian, 2019 IL APP (1<sup>st</sup>) 153155, (1<sup>st</sup> Dist., January 22, 2018) Aggravated Criminal Sexual Assault -- Affirmed.

**FACTS:** Christian was found guilty of two counts of aggravated criminal sexual abuse and sentenced to concurrent terms of four years and six months in prison. The conviction arose from the sexual assault of a 14-year-old victim when Christian was 38 years old. Section 3 of the Sex Offender Registration Act (Registration Act) required Christian to register as a sex



offender. 730 ILCS 150/3. Christian did not challenge the sufficiency of the evidence against him or his sentence. Instead, he claimed the Registration Act violated his constitutional rights to due process and to be free from disproportionate penalties. He also contended he was entitled to seven additional days of sentencing credit. Finally, he argued his fines and fees order should be amended by vacating one fee and applying monetary credit against several other assessments.

**ISSUE: 1) CONSTITUTIONALITY OF STATUTE (SORA):** Was the SORA unconstitutional on its face and as applied to this defendant? (No).

**FINDING:** Defendant's constitutional challenges to the Sex Offender Registration Act were beyond the scope of the Appellate Court's power to grant relief in prosecution for aggravated criminal sexual abuse. **WHY:** The trial court's sentencing order did not require defendant to register as a sex offender under the act. 730 Ill. Comp. Stat. Ann. 150/1 et seq.

**10. People v. Danyel B. J. Smith, 2019 IL APP (3rd) 160631, (3<sup>rd</sup> Dist., March 18, 2019) Predatory Criminal Sexual Assault of a Child - - Affirmed.**

**FACTS:** Smith appealed his convictions for predatory criminal sexual assault of a child and aggravated kidnapping and argued the admission of a recording of the victim's interview at a child advocacy center (CAC) violated his right to confrontation. Specifically, he maintained that the victim was unavailable for cross-examination because she testified that she did not remember the events constituting the offense of predatory criminal sexual assault of a child. Smith also argued that his mandatory sentence of life imprisonment was unconstitutional as applied to him because he is intellectually disabled.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Sentences):** Was this defendant's mandatory life sentence unconstitutional because he was intellectually disabled? (No).

**FINDING:** Record was insufficient to address defendant's as-applied constitutional challenge arguing his mandatory sentence of natural life imprisonment for predatory criminal sexual assault of a child violated the Eighth Amendment due to him allegedly being intellectually disabled, but defendant was not foreclosed from bringing challenge in a postconviction petition. **WHY:** The defendant failed to raise his challenge in the trial court and the trial court did not make any findings of fact regarding the challenge, the record did not establish that defendant did, in fact, suffer from an intellectual disability, and the record contained no indication of defendant's intelligence quotient or a formal diagnosis of an intellectual disability.

**11. People v. Jamari McArthur, 2019 IL APP (1<sup>st</sup>) 150626-B, (1<sup>st</sup> Dist., March 18, 2019) 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. McArthur confessed to the police in writing after having spent 50 hours in custody without a probable cause determination. He 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 McArthur's 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. McArthur's conviction triggered mandatory lifetime sex offender registration under the Sex Offender Registration Act (SORA) (730 ILCS 150/1 et seq.). 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 (id. § 3-5(i) (hereinafter subsection (i) of Juvenile SORA)). The appellate court affirmed the trial court's judgment. In a supervisory order, the Illinois Supreme Court directed the Court to vacate its judgment and consider the effect of People v. Bingham, 2018 IL 122008, on the issue of whether defendant may raise the constitutionality of SORA on direct appeal.

**ISSUE: CONSTITUTIONALITY OF STATUTE (SORA):** Was the Sex Offender Registration Statute unconstitutional? (Appeal Dismissed).

**FINDING:** The obligation to register as a sex offender is not embodied in the trial court's judgment because the Sex Offender Registration Act (SORA), not the trial court, imposes the obligation. **WHY:** *A defendant who challenges his obligation to register as sex offender on direct appeal from a criminal conviction simply fails to invoke the powers of a reviewing court.* 730 Ill. Comp. Stat. Ann. 150/3-5(i).

**12. People v. Juan Rodriguez, 2019 IL App (1<sup>st</sup>) 151938-B, (1<sup>st</sup> Dist., March 26, 2019)** Registration under SORA - - Affirmed.

**FACTS:** Following a 2013 discharge hearing Rodriguez was found *not not* guilty of aggravated criminal sexual assault on the basis of unfitness. The trial court held that Rodriguez was not required to register pursuant to the Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.*) because he was incapable of understanding the registration requirements, but on appeal, the appellate court reversed. *People v. Rodriguez*, 2014 IL App (1st) 141255-U, 2014 WL 7465768. On remand, the trial court ordered Rodriguez to register, and he appealed that ruling challenging the constitutionality of SORA both on its face and as applied to him. The appellate court affirmed (*People v. Rodriguez*, 2018 IL App (1st) 151938, 2018 WL 1096109), and Rodriguez petitioned for leave to appeal to the supreme court. The Illinois Supreme Court denied Rodriguez's petition for leave to appeal but issued a supervisory order directing the appellate court to vacate its judgment and reconsider its decision in light of *People v. Bingham*, 2018 IL 122008, 425 Ill. Dec. 611, 115 N.E.3d 166. In accordance with the supreme court's direction, the appellate court vacated its prior judgment and reconsider in light of *Bingham* to determine whether a different result was warranted.

**ISSUE: CONSTITUTIONALITY OF STATUTE (SORA):** Was the Sex Offender Registration statute with unconstitutional? (No).

**FINDING #1:** Burdens imposed by the Sex Offender Registration Act (SORA) do not impose punishment so as to override legislature's intent to create civil sanction. **WHY:** *The SORA's requirement of in-person registration does not amount to an affirmative restraint, act of appearing in person and registering is not traditionally regarded as punishment in same way as mandatory supervised release or parole, SORA scheme does not promote retribution or deterrence and is instead concerned with ensuring public safety, and legislature, by including termination provision for juveniles adjudicated guilty of sex offenses, has considered which sex offenders should be afforded ability to seek termination of registration requirements and has limited that relief to those who were juveniles when adjudicated.* 730 Ill. Comp. Stat. Ann. 150/1 *et seq.* **FINDING #2:** The Sex Offender Registration Act (SORA) statutory scheme is rationally related to legitimate state interest in protecting public from sex offenders. **WHY:** *The SORA enables law enforcement to monitor whereabouts of sex offenders, and, by keeping sex offenders who have committed offenses against children away from areas where children are present and out of professions where they could come in contact with children or vulnerable people, the legislature rationally limited the opportunities sex offenders have to reoffend.* **FINDING #3:** The Sex Offender Registration Act (SORA) statutory scheme was not unconstitutional as applied to defendant, who claimed that cognitive and physical defects made reoffending next to impossible and made him unable to comprehend and comply with SORA. **WHY:** *The defendant suffered from same cognitive defects at time he was charged with offense, and he did not claim or prove onset of any new defects that would prevent him from committing a similar offense in future.*

**13. People v. Daekwon Cunningham, 2019 IL App (1<sup>st</sup>) 160709, (1<sup>st</sup> Dist., March 29, 2019)** UUW and Aggravated Discharge of a Firearm - - Affirmed in Part and Reversed in Part; Mittimus Corrected.

**FACTS:** Cunningham was charged with unlawful use of a weapon (UUW) and reckless discharge of a firearm. Because he allegedly possessed the firearm while in public housing the People sought to have him sentenced as a Class 3 felon. Following a bench trial, the circuit court convicted Cunningham of both counts and sentenced him to three years' imprisonment for Class 3-felony UUW and a concurrent two-year term of imprisonment for reckless discharge of a firearm. He appealed his convictions arguing the UUW statute is unconstitutional on its face and, therefore, his conviction for UUW is void; and the People failed to prove every element of reckless discharge of a firearm beyond a reasonable doubt and his conviction must be reversed.

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

**FINDING:** The People's aim was to protect vulnerable populations in public housing facilities and it did so with a modest and easily avoidable burden on its citizens' Second Amendment rights, and, therefore, provision in unlawful use of weapons statute barring possession of firearms when visiting public housing was not facially unconstitutional. **WHY:** *The burden was not categorical ban on carrying firearms in public. Illinois residents could preserve undiminished right of self-defense by not entering public housing, there was a realistic concern for the safety of residents of public housing and their guests, and there was more than a rational fit between protecting the safety of residents, guests, and others present at housing facilities and limiting number of guns on public housing properties.* 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4), 5/24-1(c)(1.5).

**14. People v. Nathaniel McCurine, 2019 IL App (1<sup>st</sup>) 160817, (1<sup>st</sup> Dist., March 29, 2019) Armed Habitual Criminal - - Affirmed.**

**FACTS:** McCurine was convicted of one count of armed habitual criminal and sentenced to nine years with the Illinois Department of Corrections (IDOC). On appeal, he argued, first, that the People's evidence that he constructively possessed a gun was insufficient, where the gun was found in the smaller bedroom of his two-bedroom apartment and his girlfriend testified that he shared the apartment with another tenant who occupied the smaller bedroom. Second, he claimed that the Armed Habitual Criminal statute created an unfair prejudice against the accused in the eyes of the jury, thereby violating due process.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Armed Habitual Criminal):** Was the Armed Habitual Criminal statute unconstitutional? (No).

**FINDING:** Statute setting forth offense of armed habitual criminal, which required jury being presented with qualifying prior convictions, did not unduly prejudice defendant, and thus did not violate due process, although defendant argued that he was prejudiced by making his prior convictions an element of the offense submitted to the jury and by being labeled as an "habitual" criminal. **WHY:** *The determination that two felonies qualified a person as a habitual offender was a policy determination left to the legislature, and jury would have known that defendant committed prior felony because they would need explanation of why officers were at defendant's door, and stipulation did not inform the jury what the prior felonies were or if they were forcible felonies.* 720 Ill. Comp. Stat. Ann. 5/24-1.7(a).

**15. People v. Marc A. Pepitone, 2019 IL APP (2<sup>nd</sup>) 151161, (2<sup>nd</sup> Dist., May 15, 2019) Unlawful Presence in a Public Park - - Affirmed.**

**FACTS:** Following a bench trial, Pepitone was found guilty of being a child sex offender in a public park pursuant to section 11-9.4-1 of the Criminal Code of 2012 (Code) (720 ILCS 5/11-9.4-1) and was sentenced to 202 days in the jail. He appealed, contending that section 11-9.4-1 was unconstitutional as applied to him because it violated the *ex post facto* provisions of both the United States and Illinois Constitutions.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Unlawful Presence in a Public Park):** Did the Unlawful Presence in a Public Park offense constitute an *ex post facto* statute as applied to this defendant? (No).

**FINDING:** The statute prohibiting a child sex offender from being present in or loitering in or near public parks was not retroactive, and thus did not violate the *Ex Post Facto* Clauses of the United States and the Illinois Constitutions as applied to this defendant, even though the defendant had been convicted of predatory criminal sexual assault of a child 12 years before the statute took effect. **WHY:** *No additional legal consequences were attached to the defendant based solely on his status as a child sex offender, but, rather, the defendant's status was an element of an entirely separate crime, which required that the defendant commit additional act of being present in the park, and said additional act occurred after the statute's enactment.* 720 Ill. Comp. Stat. Ann. 5/11-9.4-1.

**16. People v. Wilson Morocho, 2019 IL APP (1<sup>st</sup>) 153232, (1<sup>st</sup> Dist., June 10, 2019) Aggravated Stalking - - Affirmed.**

**FACTS:** After a bench trial, Morocho was convicted of three counts of aggravated stalking. 720 ILCS 5/12-7.4(a)(1). The trial court merged the offenses and sentenced defendant to four years in prison. On appeal, he challenges the facial constitutionality of the offense upon which his conviction was predicated. Morocho's conviction was predicated upon a violation of section 12-7.3(a)(2) of the Criminal Code of 2012 (Stalking Statute) (720 ILCS 5/12-7.3(a)(2)), which defines the offense of stalking as follows: a person commits stalking when he or she knowingly "threatens" a specific person two or more times and knows or should know the threats would cause a reasonable person to suffer emotional distress. The offense is aggravated if the defendant causes bodily harm to the victim. 720 ILCS 5/12-7.4(a)(1). Morocho argued that subsection (a)(2) was overbroad in violation of the First Amendment and criminalizes wholly innocent conduct in contravention of the guarantees of substantive due process.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Aggravated Stalking):** Was a portion of the Aggravated Stalking statute unconstitutionally overbroad? (Yes).

**FINDING:** The subsection of the Stalking statute governing the conduct that would cause a reasonable person to suffer other emotional distress was overbroad on its face and unconstitutional under the First Amendment. **WHY:** The subsection's restrictions did not fall within the historic and traditional categories of unprotected speech; the subsection reached a vast number of circumstances limiting speech far beyond the generally understood meaning of stalking; core political speech was subject to criminal prosecution under this subsection if a person who threatened lawful action should know that the threats would cause a reasonable person to suffer emotional distress; and a separate subsection of the statute, which stated the subsection did not apply to the otherwise lawful exercise of right to free speech, was an affirmative defense that had to be raised at trial. 720 Ill. Comp. Stat. Ann. 5/12-7.3(a)(2), 5/12-7.3(d)(2).

17. **People v. Daniel A. Maillet**, 2019 IL APP (2<sup>nd</sup>) 161114, (2<sup>nd</sup> Dist., July 1, 2019) Unauthorized Videotaping - - Affirmed.

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

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

**FINDING #1:** Statute prohibiting unauthorized video recording of another person in that other person's residence without that person's consent applied even if other person's residence was also the defendant's residence. **WHY:** The plain language of the statute clearly and unambiguously referred only to the victim's residence, and the legislature could have but did not include language to except the situation in which the other person's residence was also the defendant's residence. 720 Ill. Comp. Stat. Ann. 5/26-4(a-5). **FINDING #2:** The statute prohibiting unauthorized video recording of another person without consent in a restroom included restrooms in a person's own residence. **WHY:** The plain language of the statute did not say "public restroom," and the legislature could have easily included the word "public." 720 Ill. Comp. Stat. Ann. 5/26-4(a). **FINDING #3:** The statutes prohibiting the unauthorized video recording of another person without consent in a restroom or in that other person's residence were not overbroad under the First Amendment. **WHY:** The statutes were content neutral, protection of a person's expectation of privacy in a restroom or in own home were important governmental interests, and prohibition of nonconsensual video recording in those areas was substantially related to those governmental interests. **FINDING #4:** The statutes prohibiting the unauthorized video recording of another person without consent in a restroom or in that other person's residence did not potentially punish a significant amount of wholly innocent conduct not related to their purpose, and, therefore, the statutes did not violate substantive due process. **WHY:** The statutes were narrowly suited to their purpose of protecting personal privacy, and the statutes required criminal knowledge that the

*offender's actions were likely to invade another person's substantial privacy interests.*

**18. People v. Daniel Carl Minor, 2019 IL APP (3rd) 180171, (3<sup>rd</sup> Dist., July 23, 2019) Aggravated DUI - - Affirmed.**

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

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

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

**19. People v. Brian Crawford, 2019 IL APP (1<sup>st</sup>) 160184, (1<sup>st</sup> Dist., July 25, 2019) Stalking - - Affirmed.**

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

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

**FINDING #1:** The cyberstalking statute did not criminalize innocent behavior in violation of the due process clause. **WHY:** The statute criminalized knowingly engaging in a course of conduct of two or more threats, that is, expressing an intent to inflict evil, injury, or damage, when he or she knew the conduct would cause a reasonable person to suffer significant mental suffering. 720 Ill. Comp. Stat. Ann. 5/12-7.5(a). **FINDING #2:** The cyberstalking statute was rationally related to the legislature's goal of protecting victims from violent attacks which occurred after the prohibited acts of sending electronic threats, as required by the due process clause. **WHY:** The statute allowed the police to act before the victim was actually injured and prevented the terror produced by the harassing actions. **FINDING #3:** The defendant's text messages to his ex-girlfriend telling her that she was "gone die," "I will f\*\*\* murder u," and "its not a matter of 'if' I catch u but 'when' and when i do, its gone be ugly and I'm already prepared to jail for doing it" constituted "true threats" to support his conviction for cyberstalking. **WHY:** The defendant meant to communicate a serious expression of intent to commit an act of unlawful violence at his ex-girlfriend. **FINDING #4:** The threat provision of the cyberstalking statute, criminalizing two or more nonconsensual communications to someone that a defendant knew or should have known would cause a reasonable person to fear for his or safety, fit into the threat exception to the constitutional guarantee of free speech, and thus did not violate the First Amendment. **WHY:** The offense did not require a defendant to have a mental state of intentionality that the recipient would understand the communication as a threat.

**20. People v. Bethany Austin, 2019 IL 123910, (Ill. Sup. Ct., October 18, 2019) Nonconsensual Dissemination of Private Sexual Images - - Affirmed.**

**FACTS:** Austin was charged with violating section 11-23.5(b) of the Criminal Code of 2012 (720 ILCS 5/11-23.5(b)), which criminalizes the nonconsensual dissemination of private sexual images. On defendant's motion, the trial court dismissed the charge, finding that the provision facially unconstitutional as an impermissible restriction on the right to free speech as guaranteed by the United States and Illinois Constitutions. The People filed a direct appeal challenging the judgment of the trial court.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Nonconsensual Dissemination of Private Sexual Images):** Did this offense unconstitutionally outlaw protected content-based speech? (No).

**FINDING #1:** The nonconsensual dissemination of private sexual images was not categorically excepted from the First Amendment, and thus a statute criminalizing such conduct was subject to First Amendment scrutiny, though nonconsensual dissemination of private sexual images appeared to be a strong candidate for categorical exclusion from full First Amendment protections. **WHY:** The United States Supreme Court had not addressed the question of a new categorical exclusion from the First Amendment for the nonconsensual dissemination of private sexual images, and the nonconsensual dissemination of private sexual images did not fall within any established First Amendment categorical exclusion. U.S. Const. Amend. 1; 720 Ill. Comp. Stat. Ann. 5/11-23.5(b). **FINDING #2:** The statute criminalizing the nonconsensual dissemination of private sexual images was content-neutral in time, place, and manner of restriction, and thus intermediate scrutiny, rather than strict scrutiny, applied to determination of statute's constitutionality under First Amendment. **WHY:** The statute distinguished dissemination of a sexual image not based on the content of the image itself, but rather based on whether the disseminator obtained the image under circumstances in which a reasonable person would know that the image was to remain private and knew or should have known that the person in the image had not consented to the dissemination, such that it was the manner of the image's acquisition and publication, and not its content, that was crucial to the illegality of its dissemination. **FINDING #3:** The substantial government interest of protecting Illinois residents from nonconsensual dissemination of private sexual images would be achieved less effectively absent statute criminalizing such dissemination, as would support finding that statute was narrowly tailored and, thus, did not violate First Amendment under intermediate scrutiny. **WHY:** The civil actions in tort based on privacy violations or copyright were inadequate, especially in light of the concerns regarding re-victimization and ineffectiveness of remedies, and the criminalization was a vital deterrent, given that neither the privacy torts nor copyright law successfully removed the images or deterred dissemination in first instance. **FINDING #4:** The statute criminalizing nonconsensual dissemination of the victim's private sexual images did not burden substantially more speech than necessary, and thus the statute was narrowly tailored to further the important governmental interest of protecting privacy of personal images of one's body that were intended to be private, such that it survived intermediate scrutiny under the First Amendment. **WHY:** The statute defined the nonconsensual dissemination of private sexual images narrowly; the scope of the statute was restricted to images of discreet and personal nature; the statute burdened only speech that targeted a specific person; the statute was inapplicable if disclosure was a natural and expected outcome or if there was consent to the disclosure; the statute required the dissemination to be intentional; the statute contained exemptions and reasonable avenues of communication remained. **FINDING #5:** The statute criminalizing the nonconsensual dissemination of a victim's private sexual images did not burden substantially more speech than necessary to advance the substantial governmental interest of protecting such persons, and thus the statute was not unconstitutionally overbroad under the First Amendment, though a malicious purpose or harm to the victim was not expressly mandated in the statute. **WHY:** The statute had a narrowly focused scope, as it prohibited a certain and limited category of knowing conduct that involved the unauthorized and intentional dissemination of an intensely personal image of another person; an illicit motive or malicious purpose was inherent in the act of disseminating the intensely personal image without consent of the person being portrayed; and the unauthorized dissemination of private sexual image was presumptively harmful. **FINDING #6:** The defendant's conduct in sending a letter to at least one other person that included the private sexual images of the victim without the victim's consent fostered general knowledge of the victim's image and made it more widely known, and thus fell within statutory proscription on nonconsensual dissemination of private sexual images, such that defendant could not claim that the statute was void for vagueness for lack of notice as to her circumstances, though the statute did not define "disseminate," and did not state to whom, when, where, or how the dissemination had to be accomplished. **FINDING #7:** The defendant was not entitled to challenge the statute on vagueness grounds based on the statutory exception for dissemination that served a "lawful public purpose" but did not address what such purpose might be. **WHY:** The dissemination of a private sexual image was a private matter; the defendant offered no argument that she acted in furtherance of a "lawful public purpose," and, indeed, the defendant explained that her dissemination of the photographs was for a personal reason, namely to defend herself against her fiancé's statements that she was crazy and to explain the reason underlying their breakup. **FINDING #8:** The statute was not rendered unreasonably vague in violation of due



process based on use of a “reasonable person” negligence standard, though the defendant asserted that it required her to “read the minds of others” as to whether the image was intended to remain private. **WHY:** The negligent mental state was a valid basis for imposing criminal liability and did not violate due process. **FINDING #9:** The statute did not violate due process on the ground that a private sexual image that had been shared with another person was not a truly private matter, though the defendant asserted that the unconditional disclosure of such an image imposed no duty to keep the image private and operated to relinquish all privacy rights of the person depicted therein; **WHY:** The sharing of private sexual image was truly a private matter; due process did not require the formality of requiring the person portrayed in the image to elicit the express promise that the image would be kept private, and the person who received the private sexual image did not acquire an ownership interest that entitled him or her to do with it as he or she saw fit, including dissemination to others without consent of the person portrayed.

**21. People v. Sherry J. Conroy, 2019 IL APP (2<sup>nd</sup>) 180693, (2<sup>nd</sup> Dist., November 12, 2019) Prostitution - - Affirmed.**

**FACTS:** Following a bench trial, Conroy was convicted of one count of prostitution. 720 ILCS 5/11-14(a). On direct appeal, she conceded that her conduct met the statutory definition of the offense, but she argued that section 11-14(a) of the Criminal Code of 2012 was unconstitutional because adults have a fundamental substantive due process right to engage in private, consensual sexual activity, without governmental intervention or fear of criminal liability, and section 11-14(a), as applied to her, impermissibly infringed on that right.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Prostitution):** Was the criminal offense of Prostitution unconstitutional because it infringed upon the basic constitutional right of privacy? (No).

**FINDING:** The statute prohibiting prostitution did not violate due process as applied to the facts and circumstances of the defendant's case, which involved police officers conducting an undercover sting operation in which the officer met the defendant in a hotel room after answering her “sexual in nature” internet advertisement, and, after the defendant told the officer that it would be \$250 for an hour of “exotic massage,” the defendant touched the officer's sex organ, at which time she was arrested. **WHY:** Although the encounter between the defendant and the officer occurred at a hotel room, the defendant's conduct did not occur entirely in private; the officers searched the internet and contacted the defendant through her online advertisement; there was no evidence that the advertisement was not publicly available; and, regardless of the degree to which the encounter occurred in public, cases under the statute prohibiting prostitution turn on exchange of sex for something of value. U.S. Const. Amend. 14; 720 Ill. Comp. Stat. Ann. 5/11-14(a).

**22. People v. Michael Taylor, 2019 IL APP (1<sup>st</sup>) 160173, (1<sup>st</sup> Dist., November 15, 2019) Aggravated Stalking - - Conviction Affirmed; Case Remanded.**

**FACTS:** Following a bench trial, Taylor was convicted of aggravated stalking and sentenced to four years' imprisonment with fines and fees. On appeal, he argued that his conviction for aggravated stalking (720 ILCS 5/12-7.4) must be vacated because the underlying stalking statute (*id.* § 12-7.3) was facially unconstitutional due to vagueness. He also contended for the first time on appeal that two of his fees were erroneous and that certain fees were actually fines for which he must receive presentence incarceration credit.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Stalking):** Was the offense of Stalking unconstitutionally vague? (No).

**FINDING:** The subsection of the Stalking statute governing conduct directed at a specific person and which the actor knew would cause a reasonable person to fear for his safety or suffer emotional distress was not unconstitutionally vague. **WHY:** It was not contradictory or illogical for the statute to proscribe the conduct directed at a particular person and performed by indirect means; the statute clearly applied to the defendant's conduct; and the defendant did not engage in innocent conduct that was improperly criminalized by a vague statute. 720 Ill. Comp. Stat. Ann. 5/12-7.3(a).

**23. People v. Christopher K. Kitch, 2019 IL APP (3<sup>rd</sup>) 170522, (3<sup>rd</sup> Dist., November 22, 2019) Predatory Criminal**

Sexual Assault of a Child - - Affirmed.

**FACTS:** Kitch appealed from his conviction for predatory criminal sexual assault of a child and aggravated criminal sexual abuse and argued (1) the court erred in allowing the People to present evidence of his prior offenses, (2) the People failed to prove his guilt of the charged offenses beyond a reasonable doubt, and (3) the predatory criminal sexual assault of a child statute is unconstitutionally vague as applied to him.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Predatory Criminal Sexual Assault of a Child):** Was this unconstitutionally vague as applied to this defendant? (No).

**FINDING:** The statute setting forth the offense of predatory criminal sexual assault of a child was not unconstitutionally vague as applied to a defendant convicted under the statute because it did not define the term “contact.” **WHY:** The broad definition of the term “contact,” which encompassed any touching, aligned with the language of the rest of the statute, which specified “an act of contact, however slight” was sufficient to be found guilty of predatory criminal sexual assault of a child.

**24. People v. Ralph Eubanks, 2019 IL 123525, (Ill. Sup. Ct., December 3, 2019)** First Degree, Failure to Report an Accident Involving Death or Injury, and Aggravated DUI. - - Affirmed in Part; Reversed in Part.

**FACTS:** Following a hit-and-run accident, the People charged Eubanks, with numerous offenses arising out of the incident. A jury ultimately convicted Eubanks of first-degree murder, failure to report an accident involving death or injury, and aggravated driving under the influence (DUI). Eubanks appealed, and the Appellate Court, First District, reversed Eubanks’ aggravated DUI conviction, holding that section 11-501.2(c)(2) of the Illinois Vehicle Code is facially unconstitutional because it permits compelled chemical testing without a warrant “in all cases where an officer has probable cause to believe that a driver under the influence has caused death or personal injury to another.” The court also reversed Eubanks’ conviction for first degree murder and remanded for a new trial, holding that the circuit court abused its discretion in denying Eubanks’ request for a reckless homicide instruction. Finally, the court reduced the felony class of Eubanks’ conviction of failure to report an accident. The People brought this appeal before the Illinois Supreme Court.

**ISSUE: 1) CONSTITUTIONALITY OF STATUTE (Aggravated DUI):** Was this offense unconstitutionally on its face because its blood draw provision violated the Fourth Amendment guarantee against unreasonable search and seizure? (No).

**FINDING #1:** The statute authorizing a compelled blood draw in cases where police officer had probable cause to believe that the defendant had been driving under influence of intoxicants and caused death or personal injury to another did not violate the Fourth Amendment guarantee against unreasonable search and seizure on its face. **WHY:** Although dissipation of defendant’s blood alcohol content (BAC) alone was not per se exigent circumstance, dissipation of BAC, together with some other factor creating a pressing health, safety, or law enforcement need that would take priority over warrant, could constitute an exigent circumstance, as an exception to the warrant requirement, under the totality of the circumstances, including when a traffic accident causes personal injury. U.S. Const. Amend. 4; 625 Ill. Comp. Stat. Ann. 5/11-501.2(c)(2).

**FINDING #2:** The statute authorizing a compelled blood draw in cases where a police officer had probable cause to believe that the defendant had been driving under influence of intoxicants and caused death or personal injury to another violated the Fourth Amendment guarantee against unreasonable search and seizure as applied to this defendant who was arrested shortly after 9:00 p.m. and initially taken to the police station, who was then transported to hospital for blood draw and urine sample at 2:57 a.m., and who submitted to a blood draw at 4:10 a.m. and urine sample at 5:20 a.m. **FINDING #1:** The police did not appear to be acting with any urgency to obtain blood or urine samples; they could have attempted to secure warrant during the same period of nearly eight and one-half hours, without interfering with other pressing needs or duties.

**FINDING #3:** The evidence in this case supported the defendant’s conviction for failure to report a motor vehicle accident resulting in death or personal injury to another, within 30 minutes of the accident, despite the defendant’s assertion that the People presented no evidence as to what he may have told officers following his arrest, which occurred within ten minutes of the accident. **WHY:** The evidence showed that after striking the pedestrians, the defendant failed to stop his car; that when a passenger said “I hope you didn’t do what I think you did,” the defendant replied “too late,” and then refused the passenger’s suggestion that the defendant return to scene of the accident, suggested that the defendant had no intent to report the accident, and following his arrest, investigating officer learned from other officers that the defendant had not

reported anything, and instead denied involvement in the accident. 625 Ill. Comp. Stat. Ann. 5/11-401(b).

**25. People v. Michelle A. Paranto, 2020 IL APP (3<sup>rd</sup>) 160719, (3<sup>rd</sup> Dist., January 14, 2020) Aggravated DUI (Cannabis)**  
- - Conviction Affirmed in Part; Vacated in Part; Case Remanded.

**FACTS:** Paranto appealed following her convictions on three counts of aggravated driving under the influence (DUI). She argued that the statutory section under which she was convicted was unconstitutional on its face. She also contended that the trial court erred in denying her request to be screened for drug court.

**ISSUES: CONSTITUTIONALITY OF STATUTE (Aggravated DUI):** Was the offense of Aggravated DUI (Cannabis) unconstitutional on its face? (No).

**FINDING:** Record from defendant's trial and sentencing hearings was insufficiently developed to consider on appeal defendant's constitutional challenge to statute criminalizing driving under the influence of any amount of drug, substance, or compound in her body resulting from the unlawful use or consumption of cannabis. **WHY:** The defendant's numerous assertions in her brief were unsupported by the record, many assertions were supported only by citation to secondary sources such as academic journals, if supported at all, and she cited those sources in an effort to introduce substantive evidence to establish the necessary scientific facts, and then she asked that Appellate Court rely upon them to conclude that the statute was unconstitutional. 625 Ill. Comp. Stat. Ann. 5/11-501(a)(6).

**26. People v. Samuel Collier, 2020 IL APP (1<sup>st</sup>) 162519, (1<sup>st</sup> Dist., February 3, 2020) Theft and Cruelty to Animals** - - Affirmed.

**FACTS:** Collier was charged with and convicted of theft and cruel treatment to animals. He appealed his convictions, arguing that the People failed to prove him guilty beyond a reasonable doubt, that his indictment was defective, and that the Animal Cruelty statute was unconstitutional.

**ISSUE: CONSTITUTIONALITY OF STATUTE (Cruelty to Animals):** Was the offense of Cruelty to Animals unconstitutionally vague? (No).

**FINDING:** Cruel treatment to animals statute of Humane Care for Animals Act defines the criminal offense with sufficient certainty that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement, and therefore statute is not unconstitutionally vague so as to violate due process. **WHY:** The statute does not capture innocent conduct, it only captures conduct that can be defined as cruel or abusive; ordinary people can understand from the language used in the statute what conduct is prohibited; and statute gives police officers, prosecutors, and most importantly judges and jurors, sufficient instruction so that the statute will not be enforced arbitrarily or in a discriminatory manner. U.S. Const. Amend. 14; 50 Ill. Comp. Stat. Ann. 70/3.01(a).

**27. People v. Devin M. Kochevar, 2020 IL App (3<sup>rd</sup>) 140660-B, (3<sup>rd</sup> Dist., February 4, 2020) Criminal Sexual Abuse** - - Appeal Dismissed in Part; Affirmed in Part. .

**FACTS:** Kochevar was charged by information with one count of criminal sexual abuse (720 ILCS 5/11-1.50(c)). He filed a motion to suppress the statement he made during a custodial interview with regard to the alleged abuse, which was denied. The case was tried before a jury, and Kochevar was found guilty. In the court's written order, he was sentenced to serve 90 days of jail time with all but 10 days suspended and 24 months of probation, and he was required to register as a sex offender, undergo sex offender treatment and aftercare, provide a DNA sample, and pay a variety of fines and fees. He appealed, challenging the denial of his motion to suppress his custodial statement as involuntarily procured and seeking reversal of his conviction and new proceedings. Kochevar later sought and was given leave to bring an as-applied constitutional challenge to the Sex Offender Registration Act (SORA) (730 ILCS 150/1 et seq.). The appellate court vacated the portion of Kochevar's sentence requiring him to register as a sex offender and remanded the case to the trial court. The People filed a petition for leave to appeal in the Supreme Court. That petition was denied, and the court issued a supervisory order

requiring the Appellate Court to reconsider its opinion.

**ISSUE: CONSTITUTIONALITY OF STATUTE (SORA):** Did the appellate court have the authority to consider the constitutionality of the SORA statute? (No).

**FINDING:** This appellate court lacked jurisdiction to consider defendant's as-applied challenge to constitutionality of Sex Offender Registration Act (SORA) on appeal from sexual abuse conviction. **WHY:** The registration obligation and other SORA requirements that the defendant challenged constituted collateral consequences of conviction, not part of conviction under review. 730 Ill. Comp. Stat. Ann. 150/1 et seq.

**28. People v. Dominik K. Bochenek, 2020 IL APP (2<sup>nd</sup>) 170545, (2<sup>nd</sup> Dist., February 19, 2020) Identity Theft - - Affirmed.**

**FACTS:** Following a six-person jury trial, Bochenek was convicted of a single count of identity theft not exceeding \$300 (720 ILCS 5/16-30(a)(1)) for the unauthorized use of the victim's credit card to buy cigarettes. Bochenek was sentenced to a 30-day term of periodic imprisonment and a 30-month term of probation. On appeal, he challenged as unconstitutional the venue provision pertaining to identity theft (id. § 1-6(t)), allowing proper venue in the county in which the victim resides. He also argued that the record did not show that he knowingly waived his right to a 12-person jury trial and that the trial court abused its discretion in allowing the People to present excessive and unduly prejudicial other-crimes evidence.

**ISSUES: CONSTITUTIONALITY OF STATUTE (Venue):** Were the venue provisions of the Identity Theft Statute unconstitutionally? (No).

**FINDING:** The venue provision for identity theft, which allowed prosecution for identity theft to take place where victim resided, did not violate state constitutional right to be tried in county in which offense was alleged to have been committed and, thus, provision was facially constitutional. **WHY:** The provision, which also allowed prosecution to take place where offense occurred and where information used to commit offense was illegally used, enacted a constitutional guarantee with a qualification that exceptions may be provided by law: a jury trial in the county in which the victim resided satisfied the constitutional command as the victim's possessory interest in personal identifying information or a personal identifying document was where the victim resided; and the offense of identity theft occurred both where physical acts occurred as well as where intangible identification information was located, i.e., the victim's residence. Ill. Const. art. 1, § 8; 720 Ill. Comp. Stat. Ann. 5/1-6(t), 5/16-30(a)(1).

**29. People v. Marshall Ashley, 2020 IL 123989, (Ill. Sup. Ct., January 24, 2019) Stalking - - Affirmed. MODIFIED UPON DENIAL OF REHEARING – March 23, 2020.**

**FACTS:** Following a bench trial Ashley was convicted of stalking (720 ILCS 5/12-7.3(a)(2), (c)(1)) and was sentenced to serve a prison term of one year and six months. He appealed, arguing that the provisions of the stalking statute under which he was convicted are facially unconstitutional in violation of the first amendment and substantive due process as guaranteed by the United States Constitution (U.S. Const., amends. I, XIV). The appellate court rejected Ashley's arguments and affirmed his conviction. 2018 IL App (4th) 150293-U, 2018 WL 3425326. The Supreme Court granted his petition for leave to appeal. Ill. S. Ct. R. 315 (eff. July 1, 2018).

**ISSUE: CONSTITUTIONALITY OF STATUTE (Stalking):** Was the offense of Stalking unconstitutional on its face? (No).

**FINDING #1:** The amended stalking statute that criminalized “course of conduct” involving two or more prohibited acts, including the transmission of “threats,” prohibited only true threats that fell outside the scope of constitutionally protected speech, and thus was not unconstitutionally overbroad, in violation of First Amendment. **WHY:** The “threats” punishable under the statute were limited to target threats of unlawful violence i.e., threats of bodily harm, sexual assault, confinement, or restraint; overruling People v. Morochó, 2019 IL App (1st) 153232. U.S. Const. Amend. 1; 720 Ill. Comp. Stat. Ann. 5/12-7.3(a-3), (a-5). **FINDING #2:** The provision of the amended stalking statute, which criminalized a course of conduct

directed at a specific person that the defendant “should know” would cause a reasonable person to fear for his/her safety or suffer emotional distress was unconstitutionally overbroad, in violation of the First Amendment. **WHY:** *The “true threat” exception to the protected speech required proof that the defendant knew that the threat would cause a person to fear for his or her safety or cause the person to suffer emotional distress.* U.S. Const. Amend. 1; 720 Ill. Comp. Stat. Ann. 5/12-7.3(a). **FINDING #3:** The stalking statute, which criminalizes the transmission of true threats of violence outside the scope of protected speech, does not target only a certain type of true threat or a true threat directed against a particular individual or group of individuals. **WHY:** *The basis for the restriction consists entirely of the very reason the entire class of speech at issue is proscribable, and no significant danger of idea or viewpoint discrimination exists.* U.S. Const. Amend. 1; 720 Ill. Comp. Stat. Ann. 5/12-7.3(a). **FINDING #4:** The amended stalking statute that criminalized the transmission of threats that caused the victim to suffer emotional distress was not unconstitutionally vague on its face, in violation of due process, despite the defendant's assertion that the statute reached speech that was merely distressing, including speech that was not be actionable under tort principles, and was not narrowly tailored to the legislature's goal of preventing conduct that may escalate to physical harm or death. **WHY:** *The statute criminalized only true threats of unlawful violence against a person, and threats that placed the victim in fear for his or her personal safety necessarily included “emotional distress,” which was defined as “significant mental suffering, anxiety, or alarm.”* U.S. Const. Amend. 14; 720 Ill. Comp. Stat. Ann. 5/12-7.3(a). **FINDING #5:** The defendant lacked standing to raise a substantive due process challenge to the stalking statute based on the transmission of threats of violence, despite his claim that the statute permits prosecution for other lawful conduct that does not fall within conduct involving true threats, such as monitoring, surveillance, or distressing speech that does not consist of a threat of unlawful violence. **WHY:** *The defendant was not found guilty of monitoring the victim, placing her under surveillance, or for expressing speech that was merely distressing, but was convicted for transmitting text messages to her threatening unlawful physical violence.* U.S. Const. Amend. 14; 720 Ill. Comp. Stat. Ann. 5/12-7.3(a-3). **FINDING #6:** The defendant's conviction for stalking, based on his transmission of threats of unlawful violence to the victim, did not rest on the invalid or overly broad portions of the stalking statute. **WHY:** *The defendant knowingly sent victim text messages stating that “I can make you suffer,” “that s\*\*\* will get you hurt or killed,” “where the f\*\*\* are u Cause rode past in seen lights on there,” “[y]ou got my blood boiling,” and “I swear b\*\*\* if a n\*\*\* there its g[ol]ing to be one;” he sent her a text message with a photograph of a gun; during a telephone call to the victim, which the victim put on speaker mode, he was heard by the victim's mother and several others present at the apartment threatening to go to the victim's apartment to kill the victim and everyone else “with a banger;” the victim and her mother immediately left the victim's apartment; and the victim testified that she was “scared” and “terrified.”* 720 Ill. Comp. Stat. Ann. 5/12-7.3(a).

