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CH. 16
DISORDERLY, ESCAPE, RESISTING AND OBSTRUCTING OFFENSES

§16-1
Disorderly, Bribery, and Intimidation Offenses

§16-1(a)
Generally

United States Supreme Court

City of Chicago v. Morales, 527 U.S. 41, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) The City of Chicago "Gang Congregation Ordinance" violates due process because it gives police officers "absolute discretion" to determine what activities are unlawful.

Lewis v. New Orleans, 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974) City ordinance that prohibited wanton cursing, reviling, or use of obscene or opprobrious language toward city police officer in performance of official duties violates the constitution; ordinance is unconstitutional because it punishes protected speech.

Hess v. Indiana, 414 U.S. 105, 94 S.Ct. 326, 38 L.Ed.2d 303 (1973) Defendant's words, spoken while facing a crowd at an antiwar demonstration but while officers were attempting to clear the street, were constitutionally protected and could not be punished as obscene or "fighting words" or for having "a tendency to lead to violence."

Plummer v. Columbus, 414 U.S. 2, 94 S.Ct. 17, 38 L.Ed.2d 3 (1973) City Code providing that "no person shall abuse another by using menacing, insulting, slanderous, or profane language" is unconstitutional, because it punishes only spoken words and is not limited to only unprotected speech.

Gooding v. Wilson, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972) State statute making it a crime to use opprobrious or abusive language tending to cause breach of the peace is unconstitutional because statute was not limited to "fighting words" that tend to incite an immediate breach of the peace.

Gregory v. Chicago, 394 U.S. 111, 89 S.Ct. 946, 22 L.Ed.2d 134 (1969) A peaceful and orderly protest march is protected by the First Amendment even though onlookers become unruly.

Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966) Convictions for congregating in a public place with intent to provoke or under circumstances that may provoke a breach of peace were reversed. Defendants, members of a group protesting segregated library facilities, peacefully remained in public library after being asked to leave. The statute violated due process and the rights to freedom of speech and assembly and to petition the government for redress of grievances.

Illinois Supreme Court

People v. Warren, 173 Ill.2d 348, 671 N.E.2d 700 (1996) Unlawful visitation interference statute upheld. But the statute's prohibition against use of the civil contempt power to punish unlawful visitation interference was invalidated.

Illinois Appellate Court

People v. Maillet, 2019 IL App (2d) 161114 Defendant was convicted of two unauthorized-video-recording offenses for surreptitiously filming his stepdaughter in the shower. The first offense was for recording "another person in that other person's residence without that person's consent." 720 ILCS 5/26-4(a-5). Defendant argued that "other person's residence" could not apply to a situation where the parties lived together. The Appellate Court rejected the argument, finding the plain language of the statute did not exclude a recording in the complainant's home merely because defendant happened to live in the same home.

The second offense was based on defendant's recording of the complainant "in a restroom, tanning bed, tanning salon, locker room, changing room, or hotel bedroom." 720 ILCS 5/26-4(a). Defendant alleged that in context, "restroom" must refer to public restrooms, as all the locations in this provision are outside of the home. The court again found the plain language clear, noting the legislature could have included the word "public" before "restroom" but chose not to.

The Appellate Court also rejected defendant's constitutional attacks. As for his First Amendment argument, the court found the statutes are content-neutral and thus subject to intermediate scrutiny. While the statutes might incidentally infringe on some innocent or protected conduct, they would not apply to a "substantial amount" of such conduct. Nor do the statutes violate due process, as they have a knowing mental state and, because they prohibit recording only in places with heightened expectations of privacy, are narrowly suited to their purpose of protecting personal privacy.

People v. Gharrett, 2016 IL App (4th) 140315 Under 720 ILCS 5/12C-30(b)(i), a person who is 21 or older commits the offense of contributing to the criminal delinquency of a minor where, with intent to promote or facilitate the commission of an offense, he or she solicits, compels or directs a minor who is under the age of 17 in the commission of a felony. The court concluded that video evidence did not establish that the defendant told a two-year-old child to run into an office from which items were subsequently found to be missing where the video showed only that defendant leaned toward the child before she ran into the office.

The court noted that the child had previously wandered around the building, which was a Secretary of State facility, without any prompting from the defendant. In fact, the child "seemed to defy any commands to stay near" her parents. Under these circumstances, the evidence was insufficient to prove beyond a reasonable doubt that the child ran to the office area at defendant's direction.

People v. Holm, 2014 IL App (3rd) 130582 Under, 720 ILCS 125/2(a), one commits the offense of interfering with the lawful taking of wildlife or aquatic life where one obstructs or interferes with hunters or fishermen with the specific intent to prevent the lawful taking of animals. However, §125/2(a) exempts from the offense "landowners, tenants, or lease holders exercising their legal rights to the enjoyment of land, including, but not limited to, farming and restricting trespass."

As a matter of first impression, the court concluded that defendant was entitled to the above exemption where he remained at all times on the property where he resided, but drove an ATV along the fence while two men were attempting to hunt on adjoining property. At the same time, defendant's son walked along the fence line and shouted, whistled, clapped his

hands, and made other loud noises. When questioned by a conservation officer, defendant admitted that he knew the other two men were attempting to hunt.

The court concluded that the actions of defendant and his son constituted the legal use of their own land, and that the plain language of §125/2 therefore exempted them from the offense. The court also noted that §125/2 was intended to apply to protesters at game preserves and hunting clubs, and not to persons who legally use their own property.

The court rejected the argument that the defendant was not engaged in the legal use of his land because his conduct was performed with the specific intent of preventing hunters on adjacent lands from taking animals. Because the statute applies only where the defendant has the specific intent to prevent hunters from taking wild animals, "[t]he exemption [for acts committed on one's land] is meaningful only if it applies to exempt defendants who acted with the intent to prevent but did so through the legal use of their own property."

People v. Kucharski, 2013 IL App (2d) 120270 Under 720 ILCS 135/1-2(a)(1), the offense of harassment through electronic communications occurs when electronic communications are used to make an "obscene" comment "with an intent to offend." The statute does not violate the First Amendment because it is a content-based limitation which prohibits only obscene speech which is intended to offend, and not any other obscene speech.

The court rejected the argument that a communication is "obscene" under §1-2(a)(1) only if it satisfies the definition of "obscenity" established in **Miller v. California**, 413 U.S. 15 (1973) and embodied in the Illinois obscenity statute (720 ILCS 5/11-20(b)). The court concluded that **Miller** and §11-20(b) were intended to provide a definition of "obscene" for purposes of controlling the commercial dissemination of obscenity. Because the legislature did not intend to apply the definition of §11-20(b) to the electronic harassment statute, the court concluded that the ordinary dictionary definition of "obscene" should be employed. Thus, for purposes of the electronic harassment statute, the term "obscene" is defined as "disgusting to the senses" or "abhorrent to morality or virtue."

The court rejected the argument that 720 ILCS 135/1-2(a)(2) is unconstitutionally vague and overbroad on its face. Section 1-2(a)(2) creates the offense of harassment through electronic communications for interrupting, "with the intent to harass, . . . the electronic communication service of any person." This provision prohibits conduct rather than speech, and does not affect First Amendment rights. Therefore, the statute is not unconstitutional on its face. The court also rejected the argument that the statute is vague because the term "interrupt" is undefined, concluding that when the term is given its ordinary dictionary meaning the statute is sufficient to give adequate notice and prevent arbitrary enforcement.

The court also rejected the argument that the electronic harassment statute violates the First Amendment because it restricts speech that is merely "annoying." The court concluded that to come within the scope of the word "harass," the interruption must be made "with the intent to produce emotional distress or discomfort substantially greater than mere annoyance."

720 ILCS 5/16D-5.5(b)(1) provides that a person "shall not knowingly use or attempt to use encryption" to "commit, facilitate, further, or promote any criminal offense." The term "encryption" is defined as the use of "any protective or disruptive measure, including, without limitation, cryptography, enciphering, encoding, or a computer contaminant," to prevent, impede, delay or disrupt access to data, to make data unintelligible or unusable, or to prevent, impede, delay or disrupt the normal operation or use of a component or device.

The court concluded that §5/16D-5.5(b)(1) is intended to apply only where the defendant engages in "some type of data transformation, manipulation, or destruction." Merely changing the password on another's social media account does not fall within this

definition. Thus, defendant's conviction for unlawful use of encryption, which was based on changing his former girlfriend's password to her MySpace account, was reversed.

In re Tucker, 45 Ill.App.3d 728, 359 N.E.2d 1067 (3d Dist. 1977) A thirteen-year-old minor cannot be guilty of public indecency; the statute requires an age of seventeen years. Also, public indecency cannot be the basis for a disorderly conduct charge.

Chicago v. Blakemore, 15 Ill.App.3d 994, 305 N.E.2d 687 (1st Dist. 1973) Offensive language to police officer does not in itself create a disturbance of the peace. See also, **People v. Kellstedt**, 29 Ill.App.3d 83, 329 N.E.2d 830 (3d Dist. 1975).

§16-1(b)
Disorderly Conduct

United States Supreme Court

Norwell v. Cincinnati, 414 U.S. 14, 94 S.Ct. 187, 38 L.Ed.2d 170 (1973) Disorderly conduct conviction based on verbally protesting a police officer's treatment was reversed. The right to free speech is violated by punishing a citizen for nonprovocatively voicing an objection to what he feels is a highly questionable detention by an officer.

Illinois Supreme Court

People v. Swenson, 2020 IL 124688 The Supreme Court upheld defendant's disorderly conduct conviction, finding his call to a school administrator asking about safety and school shootings in graphic detail, was not protected speech.

The administrator testified that the caller stated he was interested in sending his son to the school, and asked a battery of questions about shootings: whether the school had bulletproof glass, whether she knew the "success rate" of school shooters, if she "was prepared to have the sacrificial blood of the lambs of our school" on her hands, and what protocols would be in place if he showed up to the school with a gun. He also invoked imagery of peaceful sleeping children being shot in the face. The administrator got the impression the man was on the school campus. During the call, the administrator texted the head of the school, notified him about the call, and asked him to call 911. But, she did not believe defendant made an immediate threat. He never said he had a gun, and never said he was coming to the school.

Defendant testified and agreed that he had asked several questions about the school's defenses against shootings, but denied threatening anyone and explained that he was trying to assess the security of the school before sending his son there. He was acquitted of telephone harassment but convicted of disorderly conduct. Although he did not make a threat, he knowingly made comments a reasonable person would find alarming and disturbing. See 720 ILCS 5/26-1(a)(1). He challenged the conviction on appeal, making an as-applied challenge to the statute based on a violation of free speech.

Defendant's conviction was predicated entirely on speech, so the question was whether that speech was protected. Because the statute places a content-based restriction on speech, the State had the burden of proving it was unprotected, *i.e.* a true threat. True threats do not need to be intentionally threatening, but the speaker must subjectively know the threatening nature of the speech. The effect on the listener is one factor in determining whether the speaker knew the speech was threatening.

The Supreme Court agreed defendant made a true threat. Although he did not explicitly or intentionally threaten the administrator directly, his "graphic hypothetical scenarios" communicated an intent to commit violence and intimidated her by suggesting the possibility of violence. The statements were objectively threatening, and therefore the administrator acted reasonably in becoming alarmed and disturbed.

Two dissenting justices would have found the speech protected based on the fact that the defendant primarily asked questions, and did not make declarative statements. They also found it dispositive that the administrator did not believe defendant was making a threat. The dissenters would not have found a serious expression of intent to commit violence, and no true threat.

People v. Davis, 82 Ill.2d 534, 413 N.E.2d 413 (1980) Conviction of disorderly conduct was upheld where defendant entered the home of an elderly woman, who had previously sworn out a complaint against defendant's brother, pointed a finger and waved papers at her, and effectively told her that the charge against his brother should not be prosecuted or some unidentified threat would be carried out.

Breach of the peace does not require an act performed in public view – "breach of the peace may as easily occur between two persons fighting in a deserted alleyway as it can on a crowded public street." See also, **People v. Dixon**, 91 Ill.2d 346, 438 N.E.2d 180 (1982) (although mob action requires a disturbance of the "public peace," such a disturbance may be caused by conduct that is not performed in public view).

People v. Klick, 66 Ill.2d 269, 362 N.E.2d 329 (1977) The portion of the disorderly conduct statute that makes it a crime to knowingly make a telephone call with the intent to annoy another is unconstitutionally overbroad because it prohibits conduct that is protected by the First Amendment. See also, **People v. Raby**, 40 Ill.2d 392, 240 N.E.2d 595 (1968) (disorderly conduct statute upheld over claim that it was vague and overbroad).

Chicago v. Morris, 47 Ill.2d 226, 264 N.E.2d 1 (1970) Defendant committed disorderly conduct where he engaged in loud argument and persisted in questioning and criticizing a police officer, causing a crowd to form and prompting more officers to the area.

Chicago v. Wender, 46 Ill.2d 20, 262 N.E.2d 470 (1970) Vehicle occupants did not commit disorderly conduct by making loud inquiries concerning officers' identities and authority to stop the vehicle.

Chicago v. Perez, 45 Ill.2d 258, 259 N.E.2d 4 (1970) Sit-in demonstrators were not guilty of disorderly conduct where they did not disrupt normal activities in the public building.

Illinois Appellate Court

People v. Purta, 2023 IL App (2d) 220169 Defendant was convicted of disorderly conduct for knowingly making a false complaint to a public safety agency under 720 ILCS 5/26-1(a)(6). The appellate court reversed.

Defendant was working at Mattress Firm during the George Floyd protests, and was advised by management to report any signs of danger at his store. Defendant called his boss and stated that he saw two men with assault rifles walk past the store. The boss called the police, who came to the store and interviewed defendant. Defendant repeated the story about the men with assault rifles. The police did not find any such men. Two witnesses testified

that they were at a nearby store within sight of the Mattress Firm at the time of the report, and did not see any men with guns. After speaking with police, defendant's store, along with all other area Mattress Firms, were closed, and defendant was allowed to go home. The trial court found defendant guilty.

The appellate court found the evidence insufficient. In a prosecution under section 26-1(a)(6), the State must prove, *inter alia*, that the defendant knowingly "transmits or causes to be transmitted in any manner" information to a public safety agency. Here, regardless of whether the State adequately established the claim to be false, defendant did not transmit the information to the police, and he did not sufficiently "know" that his boss would transmit the information by calling the police. Under the definition of "knowledge" in the Criminal Code, defendant must have been "practically certain" that his boss would call the police with the information he provided. Though defendant would understand it was probable or even likely his boss would call the police, it could not be said that he understood it to be "practically certain."

People v. Devine, 2022 IL App (2d) 210162 Defendant appealed from a conviction of nonconsensual dissemination of sexual images under 720 ILCS 5/11-23.5(b), arguing that the State failed to prove beyond a reasonable doubt that he "disseminated" the sexual images and that the person in the images was "identifiable." The Appellate Court agreed.

Defendant was working at a cell phone store when the complainant came into the store to transfer her cellular service. Defendant asked to see her phone to check some settings, and when defendant returned the phone to the complainant, she could see that a text message had been sent from her phone to a number she did not recognize. Attached to that text message were images that the complainant had taken of her vagina a few days earlier. She subsequently determined that defendant had sent the images to his own cell phone number, and she reported the incident to the police.

Section 11-23.5(b) provides a person commits nonconsensual dissemination of sexual images when he or she (1) intentionally disseminates an image of another person who is at least 18 years of age, is identifiable from the image itself or information displayed in connection with the image, and is engaged in a sexual act or whose intimate parts are exposed; (2) obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and (3) knows or should have known that the person in the image has not consented to the dissemination.

The Appellate Court first determined that to "disseminate" meant to "foster general knowledge of" the images or to make them "more widely known," consistent with the decision in **People v. Austin**, 2019 IL 123910. The court also looked to the Civil Remedies Act definition of "dissemination," which clarifies that it requires either publication of the images or distribution to another person. Defendant did not disseminate the images when he sent them to himself but did not expose the images to anyone else.

The Appellate Court also found that the complainant was not "identifiable" within the meaning of the statute. As the trial court noted, the images could have been any female with red fingernail polish, which was the only distinguishing characteristic noted. While the images were on the complainant's cell phone, and the complainant was wearing red fingernail polish when she handed the phone to defendant, "the images themselves were anonymous." The fact that the images were sent from the complainant's cell phone or that metadata associated with the images could connect them to her phone was insufficient for the same reason; the images themselves did not contain sufficient information to identify the person depicted.

After concluding that the evidence was insufficient to prove defendant guilty beyond a reasonable doubt of nonconsensual dissemination of sexual images, the Appellate Court went on to enter a conviction of disorderly conduct. The Court cited its authority under Illinois Supreme Court Rule 615(b)(3) to "reduce the degree of the offense of which the appellant was convicted." While disorderly conduct was not charged, the court concluded that the indictment gave defendant sufficient notice of that offense. Disorderly conduct is committed when a person knowingly does any act in such an unreasonable manner as to alarm or disturb another and to provoke a breach of the peace. The evidence here was sufficient to establish disorderly conduct beyond a reasonable doubt. Indeed, the parties conceded as much during oral argument.

People v. Swenson, 2019 IL App (2d) 160960 Disorderly conduct conviction upheld where defendant called a private school, made extensive inquiries about safety protocols as related to school shooters, indicated to a school employee that he was familiar with the campus, expressed a detailed knowledge of guns and school shootings, and asked what would happen if he showed up with a gun. Although defendant indicated he was inquiring about safety because he wanted to enroll his son in the school, the nature of his questions clearly exceeded the bounds of reasonableness.

Disorderly conduct is established by proof that an individual knowingly acted unreasonably and knew or should have know that his conduct would alarm or disturb another and cause a breach of the peace, and that standard was met here. The First Amendment provides no protection for words that are so unreasonable as to provoke a breach of the peace.

People v. Steger, 2018 IL App (2d) 151197 The State proved defendant guilty beyond a reasonable doubt of two counts of disorderly conduct. Defendant's 911 call to request assistance facilitating the custody exchange of his son was groundless where an officer was already present to assist, and they were just waiting for the child to change clothing. Any 911 call can result in an emergency response. Accordingly, defendant violated 720 ILCS 5/26-1(a)(6) by making a false 911 call knowing it could result in emergency response.

Likewise, defendant violated the misdemeanor disorderly conduct statute by standing across the street from his child's mother's house. While his conduct was facially innocuous, given this history of tension between the parties, his presence could be perceived as unreasonable and threatening.

People v. Khan, 2018 IL App (2d) 160724 Disorderly conduct statute which prohibits threats of violence against persons at a school (720 ILCS 5/26-1(a)(3.5)), is not unconstitutional. The statute contains a sufficient mental state because it requires that defendant act knowingly. The statute does not violate the First Amendment, because it prohibits only "true threats" – statements meant to communicate a serious intent to commit violence – which are unprotected speech.

Here, the evidence showed defendant committed disorderly conduct when he posted a message on the school's Facebook page indicating he carried a gun to school and planned on using it. The jury could reasonable conclude that defendant knew this was a serious expression of an intent to do harm. Even though the defendant used hypothetical language, stating that "someday" he would have to shoot somebody, a reasonable jury could conclude that the statement constituted a "true threat."

People v. Pence, 2018 IL App (2d) 151102 Defendant committed disorderly conduct by sending a Facebook message to a minor which said, "Hey. Long time no talk. How have you

been?" While the message was facially innocuous, it constituted disorderly conduct when considered in context. Four years prior to the Facebook message, defendant (who was 19 at the time) sent the then 12-year-old minor a series of sexually inappropriate texts, including requesting sexual pictures. Defendant and the minor met in person, resulting in his conviction of traveling to meet a minor and grooming. With regard to the Facebook message, the minor testified she was scared when she received it. Considering the history between defendant and the minor, the disorderly conduct conviction was affirmed.

People v. Diomedes, 2014 IL App (2d) 121080 At the time of defendant's conviction, 720 ILCS 5/26-1(a)(13) provided that disorderly conduct occurred when one knowingly transmitted or caused to be transmitted "a threat of destruction of a school building or school property, or a threat of violence, death, or bodily harm directed against persons at a school, school function, or school event, whether or not school is in session." The court found that the knowledge requirement applied to all elements of subsection (a)(13). Thus, the offense required that the actor not only "knowingly" transmit a message, but also that he know that what was being transmitted was one of the prohibited threats.

Under the circumstances of this case, to establish a violation of §26-1(a)(13) the State was required to prove beyond a reasonable doubt that defendant knowingly transmitted a threat directed against a dean at his high school, and not merely that defendant knew that he was transmitting a message.

The court concluded that a rational trier of fact viewing the evidence most favorably to the State could have found beyond a reasonable doubt that defendant knowingly transmitted an email which he knew contained a threat directed against the dean. Therefore, the State satisfied its burden of proof.

The court rejected defendant's argument that the email in question did not constitute a true threat and therefore could not support a conviction for disorderly conduct under the First Amendment. Acknowledging a conflict in the case law, the court noted that whether a communication constitutes a true threat may be determined under one of two objective tests - whether a reasonable speaker would have foreseen that the communication would be interpreted as a threat, or whether a reasonable recipient would view the communication as a threat. The court found that the "reasonable speaker" test essentially encompasses the "reasonable recipient" test because it requires consideration of how others might interpret the communication.

Even applying the defendant's preferred reasonable speaker approach, the email constituted a true threat. The court acknowledged that some factors weighed against finding that defendant made a true threat, including that the email was not as graphic as some communications found to constitute true threats in other cases, the message was not transmitted directly to the target of the alleged threat, and defendant had not made any specific prior threats against the target. The court concluded, however, that other factors supported a finding that the communication was a true threat, including that defendant had been expelled from high school for making threats on Facebook, the sole recipient of the email regarded it as a threat, defendant wanted to leave the alternative school environment in which he had been placed, defendant stated that he wanted to see the dean of his high school dead, and defendant had compiled a list of people whom he was going to kill. Under these circumstances, a reasonable speaker should have understood that the communication would be interpreted as a threat.

People v. Shultz, 2011 IL App (3d) 100340 Disorderly conduct is defined in relevant part as conduct in which an individual knowingly "[t]ransmits or causes to be transmitted a threat

of destruction of a school building or school property, or threat of violence, death, or bodily harm directed against *persons* at a school, school function, or school event, whether or not school is in session. 720 ILCS 5/26-1(a)(13).

The Statute on Statutes provides that "[i]n the construction of statutes, this Act shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute." 5 ILCS 70/1. It also provides in relevant part that "[w]ords importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular." 5 ILCS 70/1.03.

Applying the Statute on Statutes, the court held that the disorderly conduct statute is properly read to include both the singular and plural of the word "persons." Therefore, it reversed the circuit court's dismissal of an indictment for failure to state an offense where the indictment charged that defendant had directed threats against a single person.

Holdridge, J., dissented. Criminal or penal statutes must be strictly construed in defendant's favor. Even assuming that the Statute on Statutes applies to criminal statutes, §1.03 merely provides that words importing the plural number *may* include the singular. At most, application of the Statute on Statutes creates an ambiguity, which the rule of lenity requires be resolved in favor of the accused.

In re T.W., 381 Ill.App.3d 603, 888 N.E.2d 148 (4th Dist. 2008) Self-defense may be raised against a charge of disorderly conduct.

People v. Allen, 288 Ill.App.3d 502, 680 N.E.2d 795 (4th Dist. 1997) Whether an act provokes a breach of the peace depends upon the circumstances. "Breach of the peace" implies that defendant engaged in "conduct that create[d] consternation and alarm." Violence is not necessary for a "breach of the peace" to occur. Vulgar or offensive language does not necessarily breach the peace. See also, **People v. Bradshaw**, 116 Ill.App.3d 421, 452 N.E.2d 141 (4th Dist. 1983).

Under **People v. Davis**, 81 Ill.2d 534, 413 N.E.2d 413 (1980), the disorderly conduct statute is intended to guard against "an invasion of the right to others not to be molested or harassed, either mentally or physically, without justification." In light of **Davis**, defendant's threats to destroy minors' reputations violated their right not to be molested or harassed without justification and constituted "a form of mental and sexual harassment."

The evidence was sufficient to support three other counts of disorderly conduct based on "unwelcome and offensive sexual remarks" concerning defendant's willingness to engage in homosexual conduct with the minors. Statements of sexual harassment are not protected by the First Amendment, and defendant's lewd conduct in view of the youthfulness of the victims and their responses disturbed the public order.

People v. Bergeson, 255 Ill.App.3d 601, 627 N.E.2d 408 (2d Dist. 1994) Defendant's disorderly conviction (based on looking into complainant's window) was reversed where the only direct evidence that defendant looked at the basement window was the complainant's testimony, which was impeached by her admission that she could not see defendant's eyes. Further, even if defendant looked at the window, there was no evidence that he knew that the window led to a residence or that anyone was home. At most, defendant stood in a common area of an apartment complex (where he also lived) and looked at a covered window from ten feet away.

People v. Luttrell, 134 Ill.App.3d 328, 480 N.E.2d 194 (4th Dist. 1985) Information, which charged defendant with disorderly conduct for knowingly entering a high school and "behav[ing] in such an unreasonable manner as to alarm and disturb [complainant] and provoked a breach of the peace," was insufficient because it failed to specify the conduct allegedly performed in an unreasonable manner. See also, **People v. Swanson**, 308 Ill.App.3d 708, 721 N.E.2d 630 (2d Dist. 1999) (an information alleging that defendant filed a false police report, without specifically stating the nature of the alleged false complaint, was insufficient to state the offense of disorderly conduct).

People v. Trester, 96 Ill.App.3d 553, 421 N.E.2d 959 (4th Dist. 1981) Defendant's conviction of disorderly conduct reversed because there was no evidence of breach of the peace. Defendant swore at a police officer in the hallway and elevator of the court building, and offered to fight the officer if he removed his gun and badge. Defendant's language was not loud, and its profane nature does not give rise to a breach of the peace. Also, defendant's remarks about fighting were "couched in terms of what might happen if the officer removed his badge and guns," and were not an immediate threat.

People v. Justus, 57 Ill.App.3d 164, 372 N.E.2d 1115 (1st Dist. 1978) Defendant's conduct (arguing with a police officer and reaching for the officer's pen), although imprudent and intemperate, did not constitute disorderly conduct.

People v. Stevens, 40 Ill.App.3d 303, 352 N.E.2d 352 (1st Dist. 1976) Evidence showing that defendant knowingly made a false robbery report supported a disorderly conduct conviction.

People v. Yocum, 24 Ill.App.3d 883, 321 N.E.2d 731 (3d Dist. 1974) The creation and maintenance of the loud and raucous noises has traditionally been regarded as disorderly conduct. Also, refusing to obey the lawful order of police may be disorderly conduct.

People v. Suriwka, 2 Ill.App.3d 384, 276 N.E.2d 490 (1st Dist. 1971) Defendant was erroneously convicted of disorderly conduct for shouting in a foreign language to protest another's arrest.

§16-1(c)
Official Misconduct

Illinois Supreme Court

People v. Williams, 239 Ill.2d 119, 940 N.E.2d 50 (2010) Under 720 ILCS 5/33-3(b), the offense of official misconduct occurs when a public officer or employee, in her official capacity, knowingly performs an act she knows is forbidden by law. Here, defendant, a civilian employee of a police department, violated the confidentiality rules and regulations of the department. The State offered no evidence at trial on the drafting of the rules, the process used in enacting them, or the government body that adopted them. The Supreme Court found this evidence insufficient to prove that the rules were enacted as an ordinance.

The village ordinances governing the police department and minutes from a board of trustees meeting did not establish that the confidentiality rules were enacted as an ordinance. The minutes stated that the board approved a policies and procedure package, but there was no indication of its contents or that the confidentiality rules were part of that

package. The minutes also stated that the package was approved, but not that it was enacted as an ordinance. The ordinances submitted by the State included a section authorizing the police chief to make rules and regulations that could be approved by the village board and would govern all members of the department. This also furnished no proof that the confidentiality rules were enacted as an ordinance.

Absent evidence that any formal legislative process was used to enact the confidentiality rules, they could not be considered a law within the meaning of the official misconduct statute. The term "law" cannot be construed so broadly as to include rules promulgated solely by a person in authority of a governmental department or the administrative staff.

The Supreme Court affirmed the Appellate Court's judgment reversing defendant's conviction and entering a judgment of acquittal.

People v. Howard, 228 Ill.2d 428, 888 N.E.2d 85 (2008) A violation of the Illinois Constitution may serve as the act "in excess of . . . lawful authority" for purposes of the official misconduct statute. Thus, an official misconduct conviction could be predicated on a violation of Article 8, Section 1 of the Illinois Constitution, which provides that public funds shall be used only for public purposes.

People v. Grever, 222 Ill.2d 321, 856 N.E.2d 378 (2006) Indictment of township supervisor for official misconduct, which alleged only that township supervisor, by failing to apprise township board of amounts his wife owed to the township, breached an uncodified fiduciary duty to the public, did not sufficiently allege the "exceeding lawful authority" element of official misconduct. See also **People v. Bassett**, 169 Ill.App.3d 232, 523 N.E.2d 684 (5th Dist. 1988) (for official misconduct, charge must allege that a public officer, in his official capacity and with intent to obtain a personal advantage for himself or another, knowingly performed an act in excess of his lawful authority, and set out facts to demonstrate how defendant exceeded his lawful authority).

Illinois Appellate Court

People v. Klimek, 2023 IL App (2d) 220372 The trial court did not err in denying defendant's motion to dismiss a charge of official misconduct for failing to report a battery where the charge did not identify the victim of the battery. Where a challenge to the sufficiency of a charging instrument is raised prior to trial, the charge must strictly comply with the requirements of 725 ILCS 5/111-3(a).

Section 111-3(a) requires that a charge set forth the name of the offense, the statutory provision violated, the nature and elements of the offense, the date and county where the offense occurred, and the name of the accused. Defendant argued that the failure to include the underlying battery victim's name amounted to a failure to set forth the nature and elements of the offense of official misconduct. The appellate court concluded that the charge was sufficient where the official misconduct count in question was included among a group of charges all predicated on conduct occurring on the same date and, taken together, those charges "collectively notified" defendant of the identity of the victim of the underlying battery. Further, the court held that a charge of official misconduct need not allege with specificity the underlying act supporting the charge. Thus, the official misconduct charge here strictly complied with the requirements of section 111-3(a).

The court also rejected defendant's challenge to two of his official misconduct convictions which were predicated on violations of the Illinois Administrative Code. Under

720 ILCS 5/33-3(a)(1) and (2), official misconduct is committed when a public employee in his official capacity (1) intentionally or recklessly fails to perform any mandatory duty required by law or (2) knowingly performs an act which he knows is forbidden by law. Defendant was a juvenile justice specialist (JJS) at the Illinois Youth Center (IYC) at St. Charles. The charges in question alleged that defendant (1) allowed more than two offenders access to the shower at the same time and (2) failed to report a threat of safety to a youth under his supervision. These actions violated internal directives of the IYC. Defendant argued that, because the internal directives are not "laws," they could not form the basis for official misconduct convictions. The court held, however, that because the Administrative Code requires that JJSs comply with departmental rules and procedures such as the internal directives here, and because the charges alleged that defendant violated the Administrative Code, the convictions were proper. The provisions of the Administrative Code are "laws" such that they fall within the language of the offense of official misconduct.

People v. Dorrough, 407 Ill.App.3d 252, 944 N.E.2d 354 (1st Dist. 2011) The offense of official misconduct is committed where "in his official capacity," a public employee "intentionally or recklessly fails to perform any mandatory duty as required by law." 720 ILCS 5/33-3(a). Official misconduct is a Class 3 felony which requires the public employee to forfeit his or her public employment.

For purposes of the official misconduct statute, the term "law" has been construed to include a civil or penal statute, a Supreme Court Rule, an administrative rule or regulation, or a requirement of a professional code. In **People v. Williams**, 239 Ill.2d 119, 940 N.E.2d 50 (2010), the Illinois Supreme Court held that police regulations that have not been enacted, sanctioned, or approved by a governing body do not constitute "laws" for purposes of the official misconduct statute.

The court concluded that police regulations governing the handling of evidence in criminal cases did not constitute "laws" within the meaning of the official misconduct statute, because there was no evidence that the regulations had been "enacted, sanctioned, or approved by a governing body." The court rejected the State's argument that **Williams** was inapplicable because it involved subsection (b) of the official misconduct statute, which prohibits public employees from knowingly performing acts known to be "forbidden by law," while defendant was charged under subsection (a), which prohibits the failure to perform any mandatory duty "as required by law." Identical words appearing in different parts of the same statute should be given similar meaning unless there is some indication that the legislature intended otherwise.

The convictions for official misconduct, which involved a police officer removing a handgun from evidence, giving it to the father of a suspect, and lying when questioned about the missing weapon, were reversed.

People v. Hampton, 307 Ill.App.3d 464, 718 N.E.2d 591 (1st Dist. 1999) Defendant, an off-duty Chicago police officer, was improperly convicted of official misconduct for possessing cocaine that officers saw while questioning defendant as a potential witness in an unrelated crime. An act is performed in one's "official capacity" if it is accomplished by exploitation of one's public position. There was no evidence that defendant gained possession of the drugs by virtue of his official position and no connection between the drugs and defendant's only official act (frisking several men in an apartment building a few minutes before the cocaine was observed).

People v. Gray, 221 Ill.App.3d 677, 583 N.E.2d 109 (4th Dist. 1991) Defendant, a janitor at a veterans home, did not commit official misconduct by accepting investment money from a resident, in violation of an employment rule. Defendant had no "official capacity" in his job as janitor (a State employee has "official capacity" only if he has an "official position" that could be exploited "to the detriment of the public good") and violating an employment rule is not performing an act "forbidden by law."

§16-1(d)
Mob Action

Illinois Supreme Court

People v. Nance, 189 Ill.2d 142, 724 N.E.2d 889 (2000) The State acted improperly by bringing charges under 720 ILCS 5/25-1(a)(2), which provides that mob action is committed where two or more persons assemble "to do an unlawful act," because the statute was held unconstitutional (in 1968) under a federal injunction that was never challenged. See also, **People v. Nash et al.,** 173 Ill.2d 423, 672 N.E.2d 1166 (1996) (although the mob action statute has never been amended and the Chicago Police Department and Cook County State's Attorney have continued to prosecute alleged violations of the statute, the Court found it unnecessary to consider the effect of the Landry (**Landry v. Daley**, 280 F.Supp. 938 (N.D. Ill. 1996) injunction on this case); **People v. Williams et al.**, 361 Ill.App.3d 723, 838 N.E.2d 275 (2d Dist. 2005) (finding that the federal injunction in Landry prevents the Winnebago County State's Attorney from prosecuting defendants under §25-1(a)(2), but urging the Illinois Supreme Court to reconsider Nance and suggesting that the reasoning of Landry has been repudiated by subsequent developments in Illinois law).

Illinois Appellate Court

People v. Bush, 2022 IL App (3d) 190283 After a dispute about a belt, a large confrontation occurred between two groups of people in front of a residence. One group stood in a front yard while another group, including defendant, arrived in cars and approached the yard on foot. Witnesses from both sides described a chaotic scene, each side accusing the other of issuing threats and carrying weapons, while denying they engaged in any such behavior. Jones, who was standing in the yard, grabbed a broomstick carried by Mayfield, who had arrived with defendant. Defendant noticed the scuffle over the stick, and described the other side as threatening, taking their shirts off in preparation for a fight. Defendant felt he and his group were in danger, so he took out his gun and fired. He testified he was not trying to hit anyone, only scare off the other group, but Jones was shot and killed and another man was struck in the arm.

Defendant was charged with strong-probability first degree murder and felony murder predicated on mob action, along with several firearms offenses. He received a second degree murder instruction as a lesser-mitigated offense of strong-probability first degree murder.

The jury found defendant guilty of felony murder, second degree murder, aggravated battery with a firearm, reckless discharge of a firearm, two counts of mob action, and unlawful possession of a weapon by a felon. He was sentenced to consecutive prison terms of 65 years for felony murder and 15 years for aggravated battery with a firearm, and to a concurrent prison term of 7 years for unlawful possession of a weapon by a felon.

On appeal, defendant alleged that the evidence was insufficient to prove the underlying mob action charge because it failed to show that he and Mayfield were acting

together or with a common plan or purpose at the time of the offense. Defendant pointed out that he had testified that he did not know about the dispute, whose home to which he had arrived, or the reason that he and the others were going to that home.

The Appellate Court affirmed. To sustain the charge of mob action here, the State had to prove, among other things, that defendant acted together with one or more persons without authority of law. The court noted that a State witness heard Mayfield yell "shoot" just before defendant fired his gun. Mayfield and defendant arrived in the same car, and other witnesses confirmed that, despite defendant's denials, he would have heard a phone call during the drive in which Mayfield discussed the dispute. Thus, the evidence, viewed in a light most favorable to the State, established mob action beyond a reasonable doubt.

Defendant next challenged his felony murder conviction because the act that formed the basis of the mob action charge – shooting the gun – was inherent in the offense and not committed with an independent felonious purpose. The Appellate Court disagreed. The mob action charge was predicated on defendant's decision to join Mayfield and the others, drive to the house, and fight the group at the house. The act of shooting and killing Jones thus had an independent felonious purpose, and the felony murder conviction could stand.

People v. Barnes, 2017 IL App (1st) 142886 Mob action is defined as the use of force or violence by two or more people acting together. 720 ILCS 5/25-1(a)(1). Here defendant and an unidentified man shot at each other on the street. An innocent bystander was caught in the crossfire and killed. A jury acquitted defendant of felony murder but convicted him of armed violence predicated on mob action.

The Appellate Court held that the meaning and usage of the phrase "acting together" indicate that it only applies to joint or concerted action that is pursuant to an agreement or common criminal purpose. Given this definition, no reasonable jury could find that defendant and the unidentified man were acting together. When two people shoot at each other, they are acting at cross purposes, not with the common purpose or intent required for concerted action.

The court reversed defendant's conviction for armed violence based on mob action.

People v. Kent, 2016 IL App (2d) 140340 A defendant commits mob action when he and at least one other person act together to use force or violence that disturbs the public peace. 720 ILCS 5/25-1(a)(1). To sustain a conviction, the evidence must show that the defendant was part of a group engaged in physical aggression reasonably capable of inspiring fear of harm.

Defendant and his girlfriend, a woman named Wilson, drove to the home of an acquaintance, a man named Jackson. When they arrived, Wilson began arguing with Jackson in the front yard. Defendant also argued with Jackson. Wilson turned away to go inside. When Jackson also turned to go inside, defendant hit him from behind. Jackson and defendant began fighting. After a few minutes, a third man broke up the fight.

The court held that the State failed to prove that defendant and Wilson were acting together when he hit Jackson and began fighting with him. There was no evidence Wilson threatened or touched Jackson at any time. And there was no evidence of any communication between defendant and Wilson that would show that they were acting together. There was thus no evidence that defendant was part of a group engaged in physical aggression.

The court reversed defendant's conviction for mob action.

People v. Montgomery, 179 Ill.App.3d 330, 534 N.E.2d 651 (1st Dist. 1989) Defendant was properly convicted of mob action for shouting on the street, "Don't let them [police] take that

man away" where defendant intended or knew it likely that a crowd would interfere with the arrest, and a crowd did in fact form and join in the yelling.

In re Kirby, 50 Ill.App.3d 915, 365 N.E.2d 1376 (4th Dist. 1977) Finding of delinquency based on a mob action charge was reversed because there was no evidence that defendant either threatened or touched the victim.

§16-1(e)
Interference with Judicial Proceedings (Including Harassment of or Communication with a Witness or Juror); Harassing and Obscene Communications Act; Bribery

Illinois Supreme Court

People v. Cardamone, 232 Ill.2d 504, 905 N.E.2d 806 (2009) Under 720 ILCS 5/32-4a, witness harassment occurs where defendant, with the intent to harass or annoy a witness: (1) communicates directly or indirectly with the witness (or the family member of the witness) in such a manner as to produce "mental anguish" or "emotional distress," or (2) conveys a threat of damage or injury to the property or person of the witness. The terms "emotional distress" and "mental anguish" are defined as a "highly unpleasant mental reaction (such as anguish, grief, humiliation, or fury) that results from another person's conduct." The reactions which the witness reported upon being stopped for DUI - including "stomach dropping," "nerve-racking," "wondering what she had done wrong," and anger - are included within this definition. Thus, defendant committed witness harassment by making a false 911 report that the witness was driving while intoxicated.

The court rejected defendant's argument that making a false 911 call does not constitute indirectly "communicating" with a witness. One may "communicate" with a witness by making a false 911 call without intending that the witness know who made the 911 report, and police involvement is a reasonable and foreseeable consequence of making a 911 call. Further, whether police had a sufficient basis to conduct a stop based solely on the 911 call is irrelevant to whether a person who makes a false 911 call intends to "communicate" with the witness.

Illinois Appellate Court

People v. Baker, 2022 IL App (4th) 210713 Defendant was convicted of harassing a witness and, on appeal, challenged the sufficiency of the State's proof. At trial, the evidence showed that defendant's sister was on trial for the murder of her boyfriend's 8-year-old daughter. During the trial, defendant delivered a letter from her sister to her sister's boyfriend, in which defendant's sister threatened to kill herself, asked her boyfriend to take the blame for his daughter's death, and accused him of abusing his daughter and causing her death.

Harassment of a witness occurs when defendant, or one for whom she is legally accountable, communicates with a person who may be expected to serve as a witness in a pending legal proceeding with the intent to harass or annoy the person because of his or her potential testimony, and the communication is done in such a manner as to produce mental anguish or emotional distress. A person may be held legally accountable for the conduct of another when, either before or during the commission of an offense and with the intent to promote or facilitate that commission, he or she aids the other person in the planning or commission of the offense. Intent to promote or facilitate the crime may be shown by evidence

either that defendant shared the criminal intent of the principal or evidence there was a common criminal design.

On appeal, defendant argued that she was not accountable for her sister's conduct and thus was not proved guilty beyond a reasonable doubt. The appellate court disagreed. Prior to delivering the letter to her sister's boyfriend, defendant spoke to her sister in a series of recorded phone conversations where her sister instructed defendant, albeit cryptically, about receiving the letter and delivering it. And, defendant admitted she read at least a portion of the letter before giving it to her sister's boyfriend. Thus, the State's evidence, viewed in the light most favorable to the prosecution, demonstrated that defendant knew her sister intended to communicate with her boyfriend about her pending murder case where her boyfriend was a potential witness, and knew that her sister wanted to shift the blame for the murder on to her boyfriend. The jury could reasonably infer defendant's intent to facilitate that offense and to engage in a common criminal design, thus defendant's accountability for her sister's conduct was established. Further, defendant did not dispute that her sister intended to harass or annoy her boyfriend or that the letter caused her sister's boyfriend mental anguish or emotional distress. Accordingly, her conviction was affirmed.

People v. Henderson, 2019 IL App (4th) 170305 To prove defendant guilty of unlawful communication with a witness under 720 ILCS 5/32-4(b), the State need not prove that the "witness" was someone either party intended to call at defendant's pending trial. By soliciting a false affidavit from his ex-girlfriend, averring that she planted the drugs and firearms in his house, and paying her money in exchange, defendant made her a witness despite her lack of any prior connection to the case. The fact that other offenses such as subornation of perjury or bribery might more neatly fit the facts of this case is irrelevant given the prosecution's discretion to charge as it sees fit.

People v. Nelson, 2013 IL App (3d) 120191 720 ILCS 135/1-1(1) creates the offense of telephone harassment where a telephone is used for the purpose of making obscene, lewd, lascivious, filthy or indecent comments. 720 ILCS 135/1-1(2) creates the offense of telephone harassment for making a telephone call, whether or not conversation ensues, with intent to abuse, threaten, or harass any person at the number that was called.

Defendant was convicted of telephone harassment under subsections (1) and (2) of §135/1-1 for making four telephone calls to an elderly woman. Defendant suffered from Tourette's syndrome and obsessive compulsive tendencies, and presented uncontroverted expert testimony that he made the phone calls as part of a complex and uncontrollable "tic" caused by his illnesses. A defense expert testified that patients with Tourette's can perform complex actions as part of involuntary tics, that defendant could not control the tics without medication, and that selecting a phone number, dialing it, and saying lewd and offensive things may be part of a complex tic resulting from Tourette's.

For subsections (1) and (2), the required mental state is intent. A defendant acts intentionally when his conscious objective or purpose is to accomplish a result or engage in conduct that is proscribed by the statute. In addition to proving that defendant had the required intent, the State must also prove beyond a reasonable doubt that defendant's actions were voluntary. It is a fundamental principle that a person is not criminally responsible for an involuntary act. A body movement which is not the result of the defendant's volition or control is an involuntary act for which the defendant cannot be held criminally liable.

Here, there was no basis in the evidence on which a reasonable trier of fact could conclude that defendant acted voluntarily when he made the phone calls. The expert

testimony showed that the calls were made as part of an involuntary tic that could not be controlled without medication. The State did not present expert testimony or otherwise refute the defense expert, and the trial court properly found that under the circumstances it had to adopt the uncontroverted expert testimony.

The court rejected the State's argument that defendant's failure to take prescribed medication constituted a voluntary act that would support the convictions. There was no evidence that defendant voluntarily stopped taking the medication. Instead, the only evidence was the testimony of the defense expert, who believed that defendant had run out of the medication and had been unable to obtain a new prescription. The State had an opportunity to question defendant about his failure to take the medication but failed to do so. Based on this record, no rational trier of fact could have inferred that defendant voluntarily stopped taking the medication with the intent of making harassing or offensive phone calls.

Under the circumstances, defendant's failure to take his medication was an omission rather than an affirmative act. An omission constitutes a voluntary act only if it involves the performance of a duty which the law imposes on the offender and which he is physically capable of performing. (720 ILCS 5/4-1) Here, there was no evidence that defendant had a legal duty to take the medication.

Because the State failed to prove that defendant committed a voluntary act, the evidence was insufficient to sustain the conviction. Because the conviction must be reversed, the court declined to consider defendant's argument concerning lack of intent.

People v. Stuckey, 2011 IL App (1st) 092535 "A person who, with intent to deter any party or witness from testifying freely, fully and truthfully to any matter pending in any court . . . forcibly communicates, directly or indirectly, to such party or witness any knowingly false information or threat of injury, or damage to the property or person of any individual or offers or delivers or threatens to withhold money or another thing of value to any individual" commits the offense of communicating with a witness. 720 ILCS 5/32-4(b).

The *mens rea* element of this offense requires that the State prove that defendant had the "intent to deter any party or witness from testifying freely, fully and truthfully." There are also three possible *actus reus* elements, only one of which must be proven in addition to the *mens rea* element: the defendant either (1) forcibly detained the witness; (2) communicated to the witness "knowingly false information or threat of injury, or damage to the property or person"; or (3) "offer[ed] or deliver[ed] or threaten[ed] to withhold money or another thing of value."

The verb "deter" means "to turn aside, discourage or prevent." Therefore, the statute is violated not only when the defendant intends to coerce a witness into altering his testimony or testifying falsely, but also when his intent is to prevent the witness from testifying at all.

Here, defendant offered a witness $1000 in exchange for not testifying at trial, or threatened her with "something bad" if she did testify. A rational trier of fact could find from this evidence that the State proved that the defendant unlawfully communicated with a witness. The court affirmed defendant's conviction.

People v. Taylor, 349 Ill.App.3d 839, 812 N.E.2d 759 (2d Dist. 2004) 720 ILCS 135/1-1(2) prohibits making a phone call "with intent to abuse, threaten or harass any person at the called number." "Harassment" is defined as "knowing conduct which is not necessary to accomplish a reasonable purpose, would cause a reasonable person emotional distress, and does cause emotional distress." Intent to harass requires more than would be needed to show an intent to offend; "for a call to be made with intent to harass, the caller must have had the intent to produce emotional distress akin to that of a threat." Also, to avoid constitutional

issues, the level of emotional distress that the caller intends to produce must be substantially greater than mere annoyance, and the law "must not improperly impede speech delivering a rebuke or expressing a dispute." See **People v. Klick**, 66 Ill.2d 269, 362 N.E.2d 329 (1977).

The evidence was insufficient to convict defendant of making a phone call with intent to harass. The purpose of defendant's call was to express displeasure with the recipient's posting on an internet web site, which was proper. Although the evidence suggested that defendant intended to offend the recipient, an intent to offend does not violate §1-1(2). Also, the trial court erred by finding that defendant's use of vulgarity brought her actions within the statute; §1-1(2) "does not bar the use of vulgar or indecent language in a telephone call," but "bars only calls made with improper intent." A defendant's use of vulgar language is relevant, therefore, only to the extent that it shows that she acted with intent to harass.

People v. Terry, 342 Ill.App.3d 863, 795 N.E.2d 1028 (1st Dist. 2003) The offense of harassment of a witness or a family member of a witness occurs where defendant engages in specified behavior "with intent to harass or annoy one who has served or is serving or who is a family member of a person who has served or is serving . . . as a witness, or who may be expected to serve as a witness in a pending legal proceeding." The statute applies to potential witnesses only while the proceeding is pending. Thus, potential witnesses who were named in discovery responses, but who did not testify because the defendant pleaded guilty, did not come within the scope of the statute once the proceedings had terminated.

People v. Spencer, 314 Ill.App.3d 206, 731 N.E.2d 1250 (2d Dist. 2000) The evidence was insufficient to support defendant's convictions for making a telephone call "with the intent to abuse, threaten or harass a person," and of violating an order of protection by harassing his former girlfriend "by telephone." "Harassment" is "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner." Because the evidence showed that defendant made a single phone call, the former girlfriend hung up before defendant stated his reason for calling, and defendant did not swear at the complainant, there was no evidence that the call was for an unreasonable purpose. Though defendant's prior behavior toward his ex-girlfriend was relevant in determining the intent of the call, the prior conduct was too remote and attenuated to support the inference that defendant's call was part of a campaign of harassment.

People v. Nix, 131 Ill.App.3d 973, 476 N.E.2d 797 (3d Dist. 1985) Defendant was charged with aggravated battery, battery, and harassment of a witness for following and physically confronting a female drug agent who testified against defendant at a previous trial. A jury acquitted defendant of the first two charges, and the appellate court reversed the harassment conviction because there was no evidence of "intent to harass or annoy." By acquitting defendant of battery and aggravated battery, the jury indicated that it did not believe the agent's testimony of a physical assault. Also, defendant's innocuous statements, standing alone, did not show intent to harass or annoy.

People v. Scribner, 108 Ill.App.3d 1138, 440 N.E.2d 160 (5th Dist. 1982) "Communicating with a witness" requires that defendant offer or deliver money to a witness "with intent to deter" the witness from "testifying freely, fully and truthfully to any matters pending in any court. . . ." Defendant offered someone money in return for that person's agreement to ask the State's Attorney to drop the charges against his nephews, but there was no evidence that defendant asked the person to refuse to testify, so the conviction was reversed. See also,

People v. Robinson, 186 Ill.App.3d 1, 541 N.E.2d 1336 (1st Dist. 1989) (conviction of communication with a witness was reversed where there was no evidence that defendant, who offered to pay the complainant's mother if her daughter dropped the charges against him or refused to go to court, offered the money to deter the complainant from testifying freely, fully, and truthfully and, instead, offered it for the nonappearance of a witness).

People v. Brandstetter, 103 Ill.App.3d 259, 430 N.E.2d 731 (4th Dist. 1982) The bribery statute is not vague, overbroad, or in violation of First Amendment rights to freedom of speech and to petition the government for redress of grievances.

§16-1(f)
Threatening a Public Official; Intimidation

Illinois Supreme Court

People v. Holder, 96 Ill.2d 444, 451 N.E.2d 831 (1983) Intimidation statute is not overbroad. Any potential impermissible applications of the statute were not "substantial" when viewed in the context of the legitimate purposes of the intimidation statute.

Illinois Appellate Court

People v. Perkins, 2023 IL App (5th) 220108 The appellate court upheld two counts of threatening a public official, finding the evidence sufficient to convict. The State alleged that defendant violated 720 ILCS 5/12-9(a-5) twice, in that he: (1) threatened injury to a police officer; and (2) threatened to break the window of the officer's squad car.

During an arrest, defendant told the arresting officers he was going to "surprise your ass;" that he would "drop one of you motherfuckers;" that he would "sit around and wait for your ass;" and that he would come to the police station tomorrow with "50 motherfuckers to fry your ass." The complainant officer testified that based on his experience he understood these statements to mean the defendant wanted to harm him, possibly shoot him, and that defendant planned to "lie in wait" or ambush him with a mob of people. Once arrested and placed in the squad car, defendant started kicking the car and threatened to kick out the windows.

Defendant argued on appeal that his words did not "contain specific facts indicative of a unique threat" to the officer, as required by the statute. Rather, they were "generalized threats of harm," which are exempted under the statute. He also pointed out that when he said he'd kick out the windows, he said he'd do so on the count of three, but voluntarily stopped at two, and never positioned his body in such a way as to kick out the windows The appellate court disagreed that defendant's statements did not meet the standards for threatening a public official, finding the above threats were "very specific."

People v. Smith, 2019 IL App (4th) 160641 Defendant was not proved guilty beyond a reasonable doubt of threatening a public official where defendant left a voicemail on a judge's office phone that accused the judge of perjury and corruption, used profanity, said that the judge would "be hearing more from someone," and stated that he was giving the judge a chance to reconsider. Defendant's comments were ambiguous and did not constitute a true threat. There was no expression of an intent to do anything violent, and the message could not have placed the judge or his family in reasonable apprehension of immediate or future bodily harm.

People v. Goodwin, 2018 IL App (1st) 152045 A conviction for threatening a public official requires a "true threat." This means that the State must prove the speaker intended the communication to be a threat and that a reasonable listener would understand the communication to be threatening. Here, defendant was convicted after an ASA testified that defendant berated her, swore at her, followed her down a hallway, stuck his finger in her face, and waited outside her office. But the Appellate Court held that the State did not prove that defendant threatened the ASA with violence. The State argued that the totality of defendant's aggressive conduct rose to the level of a threat, but the court, resolving a factual dispute at trial, found that defendant's outburst was aimed at obtaining the ASA's name so as to lodge a complaint. (The ASA testified at trial that defendant never asked her name.) Because no rational trier of fact could find that defendant intended to convey a threat, the court reversed the conviction.

People v. Bona, 2018 IL App (2d) 160581 Defendant was convicted of threatening a public official based on a voice mail message he left for a state representative where he said, "we know where you live," and noted that there was "no longer an assault weapons ban." In that message, defendant also referenced a prior incident involving the posting of a map with Democratic candidates' images in the cross-hairs of a gun.

The threatening-a-public-official statute [720 ILCS 5/12-9] survived defendant's First Amendment challenge. While the First Amendment protects against the abridgement of free speech, "true threats" are a category of speech which is unprotected. Under **Elonis v. United States**, 575 U.S. _____, 135 S. Ct. 2001 (2015), a statute prohibits "true threats" and is constitutional where it requires either that defendant transmit the communication in question "for the purpose of issuing a threat, or with knowledge that the communication would be viewed as a threat."

Section 12-9 meets the **Elonis** standard that defendant knowingly transmit a true threat where the elements of the offense are that defendant knowingly communicate a threat to a public official, the threat would place the public official in reasonable apprehension of harm, and the threat be related to the public official's duties.

People v. Goodwin, 2017 IL App (5th) 140432 The statutory section that creates the offense of threatening a public official defines public official in several ways, including as relevant to this case, as "a sworn law enforcement or peace officer." 720 ILCS 5/12-9(b)(1). In deciding whether a particular person is a public official under this provision, the nature of the office is a question of law to be decided by the court and whether the person was such a public official is a question of fact for the jury.

The State charged defendant with threatening a public official by threatening a corrections officer with the Shelby County Sheriff's Department. The only evidence about the officer's status was that she was a correctional officer at the Shelby County Detention Center.

The court held that the State failed to prove that the victim was a public official. Simply establishing that she was a correctional officer at the Shelby County Detention Center did not prove that she was a sworn peace officer. In some counties, sheriff's department employees working as correctional officers may be sworn deputies assigned to work in the county jail. In other counties, these same employees may be unsworn civilian correctional officers. And in some counties, the status of a sheriff's department employee can change depending on whether she is serving in a sworn deputy capacity or in an unsworn correctional officer capacity.

Based on the varying status of correctional officers, the trial court could not as a matter of law determine that a person holding the position of correctional officer is a public

official. And since the record in this case only established that the victim was a correctional officer, the State failed to prove that she was a public official.

People v. Wood, 2017 IL App (1st) 143135 To prove the offense of threatening a public official, the State must show that: (1) defendant knowingly and willfully communicated a threat, either directly or indirectly, to a public official; (2) the threat would place the official in reasonable apprehension of immediate or future harm; and (3) the threat was related to the official's public status. 720 ILCS 5/12-9(a)(1)(I). A threat is a communicated intent to inflict violence on another.

Frustrated with his legal and financial problems, defendant called the public defendant's office and left a crude and offensive voice mail message about how much he hated everyone involved in his case. Among other comments, defendant stated that he dreamed about revenge every day and had "utter hate for the judge." He prayed every day "for the death and destruction upon the judge" and every other person involved in his case.

A public defender played the voice mail message for the judge and eventually the authorities determined that defendant had left the message. After he was arrested, defendant admitted making the call but claimed it was not a threat. He was overwhelmed by his legal troubles and wanted to tell the public defender how he felt, but he never intended the message for the judge or expected that the judge would hear it.

The Appellate Court held that none of defendant's statements about the judge, nor the communication in its entirety, contained a serious expression of intent to commit an act of violence. Defendant never said he was going to do anything. He just "prayed" that bad things would befall those who he felt had wronged him. Defendant's message was distasteful and crude, but it was merely expressing defendant's feelings, not making a true threat. Additionally, the State introduced no evidence that defendant knew his statements would be conveyed to the judge. The State thus failed to prove defendant guilty of threatening a public official.

People v. Casciaro, 2015 IL App (2d) 131291 Defendant was convicted of felony murder based on the alternative theories that he either killed Brian Carrick while committing the forcible felony of intimidation, or was accountable for the actions of Shane Lamb who killed Carrick while committing intimidation. A defendant commits intimidation when, with the intent to cause someone to perform an act, he communicates a threat to inflict physical harm to that person. 720 ILCS 5/12-6(a)(1). Intimidation is a specific-intent crime, and thus requires proof that a threat be communicated with the specific intent to coerce someone to do something against his will.

Carrick owed defendant money for the fronted marijuana. Defendant asked Lamb, who had been incarcerated as a juvenile for attempted murder and was larger than Carrick, to come talk to Carrick about the money he owed defendant. Lamb went to the grocery store where all three men worked and found defendant and Carrick arguing about the owed money. Lamb "muffed" Carrick by placing the heel of his hand against Carrick's face and shoving him into the produce cooler. Lamb and Carrick continued arguing while defendant stood behind Lamb "not doing or saying anything." When Carrick said that he didn't have the money, Lamb lost his temper and hit Carrick. Carrick fell straight back and Lamb believed he had knocked Carrick unconscious. Defendant told Lamb to leave the store. Carrick was never seen again. Defendant made statements to former friend that his cousins had taken Carrick's body to a river in Iowa.

The Appellate Court reversed defendant's conviction finding that the State failed to prove that either defendant (as a principal) or Lamb (under a theory of accountability)

committed intimidation. Defendant did not commit intimidation as a principal. Lamb specifically testified that defendant did not ask him to threaten or harm Carrick. Given Lamb's denial, the State theory was built entirely on an unsupported inference that defendant's request that Lamb speak to Carrick was a solicitation for Lamb to threaten harm to Carrick. Such a tenuous inference could not support a conviction and hence the State failed to prove that defendant committed intimidation as a principal.

The State also failed to prove that Lamb committed intimidation himself, and thus defendant could not have been guilty under a theory of accountability. Lamb denied that he intended to threaten or harm Carrick. And there was no evidence Lamb communicated any threat of physical harm to Carrick. Instead, Lamb punched Carrick after he suddenly lost his temper during the argument. Engaging in an argument or committing a battery are not necessarily acts of intimidation since intimidation is a specific intent crime requiring evidence of an intent to coerce someone to do something against his will.

People v. Dye, 2015 IL App (4th) 130799 Under 720 ILCS 5/12-9, threatening a public official is "knowingly" delivering or conveying to a public official a threat which would place that person or a member of his or her family in reasonable apprehension of immediate or future bodily harm or damage to property. Under **Watts v. U.S.** 394 U.S. 705 (1969) and its progeny, the State may prosecute a person for making a threat of violence only if defendant's conduct constitutes a "true threat." Otherwise, the prosecution would violate the First Amendment right to freedom of speech.

A "true threat" is a statement by which the speaker means to communicate to a particular individual or group of individuals a serious expression of an intent to commit an act of unlawful violence. The speaker need not actually intend to carry out the threat, as the prohibition on true threats is intended to protect individuals from fears of violence and disruption.

Defendant was convicted of threatening a public official after he became involved in an argument with his attorney, a public defender. Defendant threatened to complain to the judge and to request a different attorney, and then accused the attorney of "selling him out" and working for the State. The attorney said that defendant needed to leave her office. As defendant was leaving, he stated, "I'm gonna get you." He then repeated this remark two or three times.

The court concluded that the evidence was insufficient to prove the offense of threatening a public official. In determining the sufficiency of the evidence, the reviewing court must view the evidence in a light most favorable to the prosecution and determine whether it would be possible for any rational trier of fact to find beyond a reasonable doubt that defendant was guilty. Because defendant stated that he was going to "get" the attorney, but did not say that he was going to harm her physically, his statements were vague as to whether he intended to express a threat of bodily harm or merely that he intended some nonviolent retribution. The court stressed that the term "get" is "just as apt a word for nonviolent punishment as violent punishment," and that additional facts would be necessary to support an inference that defendant intended his statement to be a threat of violence. In this case, the threat to "get" the attorney was particularly ambiguous because defendant had just threatened to report the attorney's conduct to the judge.

The court stressed that although a reviewing court must draw reasonable inferences in favor of the prosecution, "random speculations in favor of the prosecution are not permitted." Because there was no basis in the evidence for the trier of fact to infer that defendant intended his statement to be a threat of violence, the conviction must be reversed.

People v. Hale, 2012 IL App (4th) 100949 A person commits the offense of threatening a public official when that person knowingly and willfully delivers or conveys, directly or indirectly, to a public official by any means a communication containing a threat that would place the public official or a member of his or her immediate family in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint. 720 ILCS 5/12-9(a)(1)(i). A "public official" includes a law enforcement officer. 720 ILCS 5/12-9(b)(1). When the threat is made to a law enforcement officer, it "must contain specific facts indicative of a unique threat to the person, family or property of the officer and not a generalized threat of harm." 720 ILCS 5/12-9(a-5).

Defendant was charged with threatening a public official, a correctional officer, or his family by stating that she knew where he lived and would kill him when she got out and that she would have his blood on her hands. The officer was an employee of the sheriff's department and thus was a law enforcement officer. At trial, the jury was not instructed in accord with the statute that because the threat was to a law enforcement officer, the jury had to additionally find that the threat contained specific facts of a unique threat and not a generalized threat of harm.

The omission of this element from the instruction was a clear and obvious error that undermined the fairness of defendant's trial and challenged the integrity of the judicial process. The court reversed and remanded for a new trial.

People v. Scates, 393 Ill.App.3d 566, 914 N.E.2d 243 (4th Dist. 2009) The offense of threatening a public official is committed where a person conveys "to a public official" a threat to injury to the official, his or her family, or his or her property. (720 ILCS 5/12-9(a)). The court concluded that an Assistant Attorney General is deemed a "public official" for purposes of this offense. (See also **COUNSEL**, §13-5(d)(3)(a)(1)).

People v. Carrie, 358 Ill.App.3d 805, 832 N.E.2d 863 (5th Dist. 2005) Defendant's convictions for threatening a public official were reversed because a Bridgeport police officer and a Lawrence County police dispatcher were not "public officials."

People v. Muniz, 354 Ill.App.3d 392, 820 N.E.2d 101 (1st Dist. 2004) For purposes of the offense of threatening a public official, "public official" is a person:

> who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nominations or election to such office.

The First Deputy Commissioner of the Chicago Public Library is not a "public official" because this position is not created or defined by statute.

People v. White, 29 Ill.App.3d 438, 330 N.E.2d 521 (5th Dist. 1975) Intimidation charge was defective because it failed to charge an essential element: "that the defendant intended to cause another to perform or to omit the performance of any act."

§16-2
Resisting, Obstructing, and Offenses Against Police Officers

Illinois Supreme Court

People v. Hutt, 2023 IL 128170 A defendant does not "conceal" physical evidence for purposes of obstructing justice by failing to affirmatively comply with an officer's request to submit to a blood draw and provide a urine sample, even where the officer was in possession of a search warrant authorizing those procedures. Concealment of physical evidence requires that the evidence be placed out of sight or moved from a state of visibility to a state of being hidden. Here, defendant did not take any action to hide otherwise visible blood or urine. He simply took no action to affirmatively comply with the warrant. Thus, his actions did not amount to concealment within the meaning of the obstructing justice statute, and his conviction of that offense was reversed outright.

People v. Casler, 2020 IL 125117 Defendant argued that his conviction of obstructing justice by furnishing false information (720 ILCS 5/31-4(a)(1)) should be overturned because the State had not proved that the false information he supplied materially impeded the investigation.

Police officers were on foot patrol of a local hotel when they saw defendant open a hotel room door, step out into the hallway, and then immediately retreat back into the hotel room upon seeing the officers. The officers smelled the odor of burnt cannabis emanating from the hotel room and knocked on the door. A woman answered, and the officers observed two men and two women in the room, but not defendant.

The officers noticed that the bathroom door was closed, knocked, and asked if anyone was inside. Defendant responded that he was using the bathroom and identified himself as Jakuta King Williams, but said he did not have identification on him. A check of that name did not reveal any records. When defendant exited the bathroom, one of the officers recognized him and remembered his name from a prior arrest. An outstanding warrant was discovered, and defendant was arrested.

The Supreme Court held that a material impediment to the administration of justice is required for obstructing justice by furnishing false information, just as it is required for obstructing a police officer (see **People v. Comage**, 241 Ill. 139 (2011)). Accordingly, defendant's conviction was reversed.

The Court also held that there was no double jeopardy bar to retrying defendant on the obstruction charge here. The Court concluded that at trial, the judge excluded any evidence relating to the question of material impediment when it sustained a State objection to defense counsel's questions tending to suggest that the officers were not impeded in their official functions by defendant's giving them a false name. Further, both the charge and jury instructions did not include "material impediment" as an element of the offense. So, the Court concluded that the jury never considered the question of whether defendant's furnishing a false name materially impeded the administration of justice. Under the instructions that were given, the evidence was sufficient to find each of the elements proved beyond a reasonable doubt.

Ultimately, the Court concluded that the error was "more akin to trial error than to sufficiency of the evidence." Because the State had no reason to offer evidence of material impediment where the Supreme Court had not yet held that to be an essential element of the offense, the Court found it appropriate to reverse and remand for a new trial rather than to reverse outright.

People v. Baskerville, 2012 IL 111056 720 ILCS 5/31-1(a) creates the offense of resisting or obstructing a peace officer where a person knowingly resists or obstructs the performance by a peace officer of any authorized act within the officer's official capacity. The court concluded that a physical act is not a required element of the offense of obstruction of an officer. Instead, §31-1(a) focuses on conduct which interposes an obstacle that impedes or hinders an officer in the performance of an authorized act. While a physical act may impede or hinder an officer in performing an authorized act, conduct which falls short of a physical act, such as furnishing false information or refusing to obey a lawful order to leave, may also constitute obstruction if it impedes an authorized act.

The court also noted that §31-1(a) prohibits both "obstructing" and "resisting" an officer. Because "resisting" implies some sort of physical exertion, the term "obstructing" would be superfluous if limited to the same meaning.

The court acknowledged that in **People v. Raby**, 40 Ill.2d 392, 240 N.E.2d 595 (1968), the Supreme Court found that obstructing an officer requires a physical act. The court limited **Raby**, however, noting that the conduct in question was going limp when officers attempted an arrest during a protest, and that First Amendment concerns were presented because the phrase "resists or obstructs" could be defined so broadly as to place citizens in jeopardy of arrest for disagreeing with an officer verbally or for expressing political speech.

Here, the alleged conduct was furnishing an officer with false information, an activity that is not protected by the First Amendment. Thus, this case does not present the First Amendment concerns which informed **Raby**.

The court concluded, however, that the evidence was insufficient to prove beyond a reasonable doubt that defendant obstructed an officer. To establish the offense of obstructing an officer, the State was required to show that: (1) defendant knowingly obstructed an officer, (2) the officer was performing an authorized act in his official capacity, and (3) defendant knew the officer was a peace officer. Here, the officer pursued defendant's wife for driving with a suspended license, and attempted to effect a traffic stop before defendant's wife walked in the house. When defendant came out of the house, he was asked to get his wife. He responded that his wife was not home. He then went back in the house, but returned a few minutes later and said he did not know what was going on but that the officer was free to search the house.

The officer was performing an authorized act in attempting to effect a traffic stop, and defendant knew that he was dealing with a police officer. However, the court found that defendant's statement concerning his wife's whereabouts did not impede the officer in light of the defendant's invitation to the officer to search the house:

Even if [the officer] had probable cause to arrest [defendant's wife], and [the wife] thwarted his ability to arrest her in a public place, defendant consented to a search and [the officer] chose not to enter the home. Therefore, there was no evidence that defendant's statement hampered or impeded the officer's progress in any way.

The court noted the trial judge's finding that the wife could have been hiding in the home, making a search futile. Defendant was charged only with providing false information, however, and not with concealing his wife. Furthermore, there was absolutely no evidence that defendant did anything to conceal his wife's whereabouts from the officer.

The conviction for obstructing a peace officer was reversed.

People v. Comage, 241 Ill.2d 139, 946 N.E.2d 313 (2011) The obstructing justice statute (720 ILCS 5/31-4(a)) provides that a person who "[d]estroys, alters, conceals or disguises

physical evidence, plants false evidence, [or] furnishes false information" commits the offense of obstructing justice where he or she acts "with intent to prevent the apprehension or obstruct the prosecution or defense of any person." Defendant was charged with obstructing justice for throwing a cocaine pipe and push rod over a privacy fence while he was being pursued by police. Officers saw the defendant throw "two rod-like objects," which they found within ten feet of the defendant's location within 20 seconds after going to look for them.

Because §31-4(a) does not define the word "conceal," the court considered two definitions in Webster's dictionary from 1961, the year the statute was adopted. The first definition stated that to "conceal" is to "prevent disclosure or recognition" or to "withhold knowledge" of an object. The second definition stated that to "conceal" is to "place an object out of sight" or to "shield [an object] from vision or notice."

The Supreme Court found that the second definition could not have been intended by the legislature, because carrying contraband in a pocket or briefcase during an arrest would transform a minor possession offense into a felony merely because the contraband was out of sight. The court concluded that the legislature intended that only actual interference with the administration of justice would result in the offense of obstructing justice. In other words, to be convicted of obstructing justice one must perform conduct which "obstructs [the] prosecution or defense of [a] person."

Thus, a defendant who places evidence out of sight during an arrest or pursuit has "concealed" the evidence for purposes of the obstructing justice statute if by doing so, an investigation is impeded. Because the officers saw defendant throw the crack pipe and push rod over the fence, and were able to walk around the fence and recover the objects almost immediately, defendant did not materially impede the investigation although the items were briefly out of the officers' sight. Because the items were not "concealed" within the meaning of §31-4(a), the conviction for obstructing justice was reversed.

In a dissenting opinion, Justices Thomas, Garman, and Karmeier found that persons who carry illegal items in a pocket, purse or briefcase would be guilty of obstructing justice only if they acted "with intent to prevent the apprehension or obstruct the prosecution or defense of any person." The dissent also found that an investigation is not materially impeded when a suspect merely throws evidence to the ground in view of a police officer, because the evidence is not destroyed or unlikely to be recovered. Here, defendant did not merely throw the items to the ground where they remained in plain view; he threw them over a privacy fence and out of the view of the pursuing officers.

People v. Ellis, 199 Ill.2d 28, 765 N.E.2d 991 (2002) Under the "exculpatory no" doctrine, a simple denial of guilt does not violate a federal statute prohibiting false or misleading statutes. See also, **Brogan v. U.S.**, 522 U.S. 398 (1998) (any false statement, including a simple denial of guilt, violates the federal statute). While false denials of guilt may be prosecuted, a citizen cannot be criminally charged for remaining silent when questioned about possible involvement in a crime.

People v. Miller, 171 Ill.2d 330, 664 N.E.2d 1021 (1996) The concealing a fugitive statute does not violate due process or the proportionate penalties clause.

People v. Weathington, 82 Ill.2d 183, 411 N.E.2d 862 (1980) Defendant's conviction of resisting or obstructing a police officer, based on his initial refusal to answer certain "booking questions" upon arrest, was reversed where defendant merely argued with the officer as to when he would answer the questions, defendant ultimately answered the questions, and no physical act of resistence or obstruction occurred. See also, **Williams v. Jaglowski & Kelly**,

269 F.3d 778 (7th Cir. 2001) (mere argument about the validity of an arrest or other police action does not constitute obstructing a peace officer).

People v. Powell, 72 Ill.2d 50, 377 N.E.2d 803 (1978) Defendant was properly convicted of bribery for tendering payments to a police officer to induce him to persuade a key witness not to appear or to withdraw the complaint.

Indictment for solicitation was not invalid for failing to allege the identity of the person whose apprehension defendant was seeking to prevent.

People v. Locken, 59 Ill.2d 459, 322 N.E.2d 51 (1974) A suspect commits the offense of resisting arrest when he resists any arrest by a known police officer, even where the arrest is unlawful. See also, **People v. Atherton**, 261 Ill.App.3d 1012, 633 N.E.2d 1288 (2d Dist. 1994).

Illinois Appellate Court

People v. Coates, 2025 IL App (4th) 231312 The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of obstructing a peace officer where defendant, who was the subject of a lawful traffic stop for speeding, repeatedly refused police instructions to provide his identification and to exit his vehicle. The offense of obstructing a peace officer under 720 ILCS 5/31-1(a), contemplates conduct which materially impedes, hinders, interrupts, prevents, or delays the performance of the officer's duties. Arguing with an officer, alone, does not constitute obstructing. In consider whether an individual's conduct constituted a material hindrance of an officer's duties, a court will primarily consider the length of the delay caused by the act, as well as whether the officer was familiar with defendant and whether the act tended to pose a risk to officer safety. The materiality inquiry is fact-specific, such that the same act may cause a material impediment in one circumstance but not in another. And, any refusal to act or small delay that poses a risk to officer safety constitutes a material impediment sufficient to sustain a conviction for obstructing.

Here, defendant's refusal to provide his identification during a stop for a minor traffic violation, speeding, constituted a material hindrance. The officer did not know defendant, and accordingly he needed defendant's identification to execute his duties. Defendant spent several minutes arguing over whether he was required to provide his identification, despite the officer's repeated explanation that the police were authorized to request identification during a traffic stop. Defendant countered that he was a "sovereign citizen" and cited irrelevant and inaccurate law, supporting an inference that no explanation would have resulted in his compliance with the request for identification. Ultimately, the police only obtained defendant's identification after forcibly removing him from the vehicle. The stop occurred at night, and officers were delayed five or six minutes in obtaining defendant's identification. Looking at the totality of the circumstances, this was more than a mere argument and more than a *de minimis* delay, such that defendant's conviction was affirmed.

Similarly, defendant's refusal to exit his vehicle was sufficient to sustain a conviction for obstructing because it presented a risk to officer safety. The police may, as a matter of course, order a driver to exit his vehicle during a routine traffic stop in order to promote officer safety. Defendant was ordered to exit his vehicle at least three times and was told he would be arrested and taken to jail if he did not. In the face of those statements, defendant continued to debate the matter with the police, repeatedly refusing to comply with their instructions. While there was only a minimal delay occasioned by defendant's refusal to exit his vehicle, it was sufficient to constitute a material impediment given that it posed a risk to

officer safety. Accordingly, defendant's conviction of obstructing for refusing to exit his vehicle was affirmed.

Finally, the court held that there was no error in the jury instructions where the jury was not specifically instructed that the State was required to prove that defendant's conduct constituted a "material" impediment. Materiality is not a unique element of obstructing. Rather, the requirement of materiality is definitional; it is based on Illinois courts' statutory interpretation of the meaning of "obstruct." And, the jury was properly instructed on the State's burden to prove that defendant "knowingly...obstructed" the officer's performance of an authorized act.

People v. McAndrew, 2024 IL App (1st) 230881 The appellate court affirmed defendant's conviction for obstruction of a peace officer under 720 ILCS 5/31-1(a). Defendant was visibly intoxicated, sitting in the driver's seat of a running vehicle at the scene of a single-car accident. Officers approached and asked her numerous times to exit the car. Defendant refused for 15 minutes, at which time she was removed by force. She was ultimately convicted of DUI and obstruction. While defendant argued the encounter was a **Terry** stop – a voluntary encounter during which defendant has the right to refuse officer requests – the appellate court held that the discovery of a potential DUI during a **Terry** stop requires further investigation. Here, the officers were in the middle of conducting a DUI investigation and defendant's behavior acted as a significant impediment to that investigation.

Defendant also argued that IPI Criminal 4th No. 22.14 does not accurately state the law because it fails to inform the jury that the obstructive act must materially impede the officer in the performance of his authorized duties. Citing **People v. Osman**, 2024 IL App (2d) 230149-U, the appellate court rejected this argument. In **Osman**, the defendant argued that IPI No. 22.14 should be modified to specify what conduct obstructed the officer. The appellate court rejected defendant's argument, finding the instruction accurately conveys the applicable law and that, where the evidence and arguments at trial detail defendant's obstructive conduct, making the jury aware of what conduct was alleged to support the obstruction charge, no modifications are necessary. Similarly here, the instruction accurately stated the law and the evidence and arguments adequately informed the jury of the elements of the offense.

People v. Bates, 2024 IL App (4th) 230011 The State's evidence was sufficient to prove defendant guilty beyond a reasonable doubt of aggravated fleeing and eluding. One element of the offense is that the officer attempted to initiate a traffic stop by displaying "illuminated oscillating, rotating, or flashing red or blue lights." See 625 ILCS 5/11-204(a). While the State did not present direct evidence regarding the specifics of the lights on the officer's squad car here, there was circumstantial evidence from which the jury could infer that the lights met the statutory requirement. The officer testified that he turned on his lights, which in turn activated his dash camera. The vehicle's indicator for "lights" was illuminated. During the pursuit, other vehicles moved to the side of the road to allow the officer to pass, a clear indication that they were responding to the officer's signal lights. And, a photo of the officer's vehicle was admitted into evidence, showing it to be a marked SUV equipped with a light bar on the roof.

Defendant also argued that the State failed to prove that he willfully failed or refused to obey the officer's signal to stop because he testified that he did not see or hear the police because he was driving too fast, was focused on the road ahead of him, and was not able to use the mirror on his motorcycle. But, the jury heard those explanations and was free to reject

them in favor of other evidence that defendant exceeded 100 miles per hour during the pursuit, continued to pull away from the officer as he got closer, and only stopped when he experienced tire trouble. Taking the evidence in the light most favorable to the prosecution, defendant was proved guilty beyond a reasonable doubt.

People v. Olvera, 2023 IL App (1st) 210875 Defendant was charged with obstructing justice based on his removing and discarding an open alcohol container from his vehicle during the police investigation into a motor vehicle accident which resulted in the death of another individual. On appeal, defendant argued that he was not proved guilty beyond a reasonable doubt because his conduct did not materially impeded the investigation or prosecution of his aggravated DUI offense. The appellate court disagreed.

Evidence at defendant's trial was that following the accident, a police officer's dash camera video captured defendant removing a bottle from his vehicle and throwing it into some nearby bushes. Nobody saw this at the time, but the police discovered what defendant had done when they reviewed the dash camera footage the next day. The police then returned to the scene and recovered a vodka bottle from the bushes. Defendant's fingerprints were found on that bottle.

The appellate court concluded that this satisfied the material impediment requirement for obstructing justice. Obstructive conduct need not achieve its ultimate aim of putting evidence out of law enforcement's reach. Here, because of defendant's conduct in surreptitiously discarding the vodka bottle, the police did not discover it until the next day, and only then after they returned to the scene and searched for it. And, defendant's conduct caused the police to have to undertake otherwise unnecessary fingerprint testing in order to link defendant to the discarded bottle. Thus, the material impediment element was established, and defendant was proved guilty beyond a reasonable doubt of obstructing justice.

People v. Sadder-Bey, 2023 IL App (1st) 190027 The appellate court reversed defendant's conviction for resisting a peace officer, finding the evidence insufficient. Under 720 ILCS 5/31-1(a), the State must prove that the defendant "resisted or obstructed someone he knew was a peace officer, and that this obstruction or resistance actually impeded or hindered the officer from conducting an act that he or she was authorized to perform."

Here, defendant repeatedly refused to get out of his car when ordered to do so after failing to provide a driver's license during a traffic stop. But his refusal was temporary. Once an officer grabbed his arm and gave him a choice to get out or be pulled out, defendant submitted and exited the car. The question on appeal was whether defendant's initial refusal to exit the car actually impeded or hindered the officer. Relying on obstruction of justice cases such as **Comage** and **Baskerville,** the appellate court held that to "actually impede[ ] or hinder[ ]" the officer, defendant must "materially interfere" with the authorized act. Defendant's "resistance" lasted two minutes, and was primarily argumentative rather than physical, and passive rather than active. Thus, it did not materially impede the officer.

People v. Gotschall, 2022 IL App (4th) 210256 Although the supreme court has not explicitly held that to prove defendant guilty of obstructing a peace officer under 720 ILCS 5/31-1(a) the State must prove defendant materially impeded the officer, the appellate court concluded that, based on cases interpreting similar obstruction offenses, section 31-1(a) does include a material-impediment element.

Here, the State alleged that defendant ignored repeated demands to put his foot inside the squad car during his arrest. The evidence showed defendant refused to comply for about

30 seconds until the officer threatened him with pepper spray, at which time he submitted. The appellate court found the evidence insufficient because defendant's brief refusal to place his foot inside the squad car did not materially impede the officer from performing the authorized act of transporting defendant to the county jail.

People v. Ammons, 2021 IL App (3d) 150743 During deliberations on a charge of aggravated battery of a police officer, the jury sent out a note inquiring whether a defendant placed under arrest has the right to defend himself against unlawful force. With the parties' agreement, the judge responded that the jury should continue deliberating based on the law already provided (which included a self-defense instruction). Defendant was convicted, and on appeal argued that the court's response was error. The Appellate Court declined to review the issue as plain error since the parties had agreed to the provided response in the trial court. Regardless, there was no error because there was no evidence that the officers used excessive force prior to defendant's alleged acts of resistance. Instead, the evidence showed that defendant resisted the officers from the outset of his interaction with them, before either officer used any physical force at all to place defendant under arrest. Accordingly, defendant was not even entitled to the self-defense instruction that he received.

The trial court did not err by instructing the jury on resisting arrest, either. There was evidence that defendant resisted arrest, and even though he was charged only with aggravated battery, the resisting instruction was relevant to a determination of whether defendant acted without legal justification for purposes of aggravated battery. The court was not required to provide the corresponding issues instruction and verdict form for resisting arrest, however, where defendant did not request a lesser-included offense instruction and, regardless, no rational jury would have acquitted defendant of aggravated battery on the evidence presented at trial.

People v. Hall, 2021 IL App (1st) 190959 Police officers responding to a kidnaping dispatch pulled over a car driven by defendant. A woman rode in the passenger seat. Defendant pulled into a gas station, exited the car, and entered the gas station. Detective Gibson followed defendant inside, where he told defendant he was investigating a kidnaping and asked defendant for identification. Defendant told him he had the wrong person, then, seeing Officer Zurowski talking to the female in the passenger seat, ran back towards the car. He yelled at Zurowski to leave the woman alone before he was pushed back and detained.

The State charged defendant with obstruction of justice pursuant to 720 ILCS 5/31-1, alleging he obstructed Detective Gibson by disobeying a request for identification or to identify himself, during the course of a criminal investigation.

The trial court found defendant guilty. In denying a motion for new trial, the court explained that it believed the "gravaman" of the obstruction occurred when defendant ran towards Zurowski and attempted to interfere with the conversation with the passenger.

On appeal, defendant alleged: (1) insufficient evidence; and (2) a fatal variance between the complaint alleging obstruction of Gibson and the evidence showing obstruction of Zurowski. The State conceded the fatal variance. The Appellate Court, however, found no fatal variance. When, as here, the sufficiency of the charging instrument is attacked for the first time on appeal, defendant must show the variance to be material and of such character as to mislead the defense or expose defendant to double jeopardy. The Appellate Court found no distinction between the complaint and the evidence. The complaint alleged that defendant ignored the requests of Gibson, and the evidence supported those allegations. Although the trial court mentioned the "gravaman" of the obstruction occurred with regard to Zurowski, it would not interpret this comment to mean the court did not find obstruction of Gibson.

The Appellate Court did find the evidence insufficient. Finding the facts were not in dispute, it applied a *de novo* standard of review. While it noted that defendant ignored several orders by the officers, ultimately having to be pushed away and detained, the complaint strictly confined itself to defendant's act of ignoring the request to identify himself. The Appellate Court held that this act, in and of itself, did not constitute obstruction of justice. Precedent such as **People v. Fernandez**, 2011 IL App (2d) 100473 and **People v. Raby**, 40 Ill. 2d 392, 399 (1968), dictates that initial refusals to identify oneself, and arguing with officers, are not considered criminal acts. Nor did the refusal here materially hamper the investigation, where officers were able to immediately learn from the passenger that she was not in fact the victim of a kidnapping.

People v. Cavitt, 2021 IL App (2d) 170149-B An element the offense of fleeing and attempting to elude a police officer is ignoring a signal to stop given by an officer in uniform. Defendant alleged the undercover officers here were not wearing uniforms, but rather police vests over plain clothing. He argued that, under the plain language of the statute, the officers giving the signal to stop must be in uniform, not vests. The Appellate Court rejected the argument, holding that a vest with police markings can, under certain circumstances, constitute a police uniform under the statute. The totality of the evidence here, including the fact that defendant clearly saw one officer wearing a vest, badge, and holstered gun, was sufficient to establish this element of the offense.

People v. Gallagher, 2020 IL App (1st) 150354 To prove resisting/obstructing a peace officer under section 31-1(a), the State must establish that the officer was conducting an authorized act within his official capacity. If the defendant can show that the officer's actions violated the fourth amendment, they were not authorized and the evidence is insufficient to prove resisting/obstructing a peace officer.

Here, defendant and his girlfriend were sitting in a car parked in a gas station when an officer drove in behind them. It was 12:45 a.m., the station was closed, and there were "no trespassing" signs posted. The officer mentioned the gas station had been burglarized in the past. Upon approaching the car and asking for license and insurance, defendant became angry and asked to access the trunk for an insurance card. The officer denied defendant permission to access the trunk and physically closed the door on defendant as he attempted to exit the car. More officers arrived, defendant was ordered out of the car and again tried to access the trunk, and the officer arrested him for trespassing and obstruction.

The Appellate Court found the **Terry** stop was conducted without reasonable suspicion. The officer provided no details about the recency of the prior burglaries at the gas station. Nothing other than the car's presence suggested a burglary was imminent. The defense had established the gas station had a 24-hour air pump, and defendant testified he was having problems with the tires. The officer did not cite any other suspicious activity. Thus, the officer was not acting in an official capacity at the time of the obstruction, and the conviction was reversed.

People v. Mehta, 2020 IL App (3d) 180020 The obstruction of justice statute has a "materiality" requirement, such that *de minimis* acts of obstruction (such as tossing aside contraband which the officers can easily find) do not violate the statute. **People v. Comage**, 241 Ill. 2d 139, 150 (2011). Defendant here asked for such a requirement in the obstruction of a peace officer statute, arguing his refusal to turn around before being handcuffed only briefly impeded the officers' ability to arrest him.

The Appellate Court agreed that some material obstruction is needed, noting that a similar standard was implicitly applied in **People v. Baskerville,** 2012 IL 111056. However, the fact that defendant's act only briefly delayed the officer's ability to execute his duties is not the only factor in a materiality analysis. When the obstructive act implicates officer safety, even a brief impediment may constitute obstruction. In this case, defendant refused to turn around after the officers stopped defendant's vehicle at night in an area known for gang activity, on suspicion that the occupants were in possession of a firearm. "Defendant exacerbated the already elevated officer safety concerns by repeatedly ignoring orders given specifically for the protection of the officers." The court affirmed.

People v. Borders, 2020 IL App (2d) 180324 Under 720 ILCS 5/31-1(a), the offense of resisting requires proof that defendant knowingly resisted the performance of an authorized act by a person known to be a peace officer. Here, the State alleged that defendant's refusing to comply with commands, pulling away, and refusing to be handcuffed impeded the police officers' attempts to enter a residence from which a 911 "hang-up" call had been placed. The State argued that the "emergency aid" exception to the fourth amendment permitted them to enter the home without a warrant, and therefore defendant resisted an authorized act.

Even where there has been a 911 call, the emergency aid exception requires that the totality of the circumstances support a reasonable belief that an emergency exists and that immediate aid is necessary to protect life or property. Here, while the officers heard arguing inside the house, the 911 caller was outside and uninjured, and she asked police to leave. Further, defendant voluntarily agreed to speak with the police, and they did not suspect him of any crime. Accordingly, the Appellate Court concluded that there was no reasonable basis to believe an emergency required entry into the house.

Similarly, one officer testified that he was not attempting to arrest defendant, and therefore the resisting statute did not prohibit defendant from using reasonable force to prevent that officer from making an unconstitutional entry to his home. And, while a second officer testified that he was attempting to arrest defendant, a reasonable person in defendant's position would not have known the officer's intent until after the struggle was over and the officer told defendant he was under arrest. Defendant could not have knowingly resisted an arrest that he did not know was occurring. Defendant's convictions for resisting were reversed outright.

People v. Torrance, 2020 IL App (2d) 180246 Simple fleeing and or attempting to elude a peace officer requires proof that a motorist failed to stop after an officer gives certain signals, such as squad lights or sirens. Aggravated fleeing and eluding requires proof that a defendant ignored two or more traffic control devices during the attempt to flee or elude.

Here, an officer activated the necessary lights and sirens after seeing defendant, whom he knew to be driving on a suspended license. He watched defendant blow a stop sign, but because he was in a residential neighborhood, the officer deactivated his lights and gave up the chase. After he did so, he observed the defendant blow a red light and four stop signs.

After conviction, defendant argued on appeal that the aggravating factors were not proven because the officer deactivated his lights prior to the second disregard of a traffic control device. He argued that the statute requires a willful mental state, and that at the time of the second traffic infraction, he could not have been wilfully disobeying the officer's pursuit, as it had ended. The Appellate Court affirmed. It did not reach the issue of whether the State can prove the aggravating factors absent any evidence that a chase is ongoing at the time of the infractions. Rather, the court noted that the officer testified only that he turned off his lights, not his siren. If the siren were still sounding when the defendant drove

through the red light, as it appeared from reading the record in the light most favorable to the State, and if defendant continued to disobey four additional stop signs, then it was fair to infer that his disobedience was done with the intent to flee and elude.

People v. Gordon, 2019 IL App (5th) 160455 The offense of obstruction of justice by furnishing false information, 720 ILCS 5/31-4(a)(1), does not require proof that the false information materially impeded the investigation. The Appellate Court declined to follow **People v. Taylor**, 2012 IL App (2d) 110222, which improperly adopted the "materially impeded" language from **People v. Comage**, 241 Ill. 2d 139 (2011), a case involving obstruction by concealing physical evidence, not furnishing false information. Thus, even though the defendant's giving of a false name to the police impeded his arrest for only a few minutes, the State still proved obstruction of justice by furnishing false information beyond a reasonable doubt.

People v. Casler, 2019 IL App (5th) 160035 Defendant was in a hotel room when the police, smelling cannabis, knocked and announced their presence. Someone opened the door while defendant hid in the bathroom. An officer, seeing the bathroom door closed, asked defendant his name. He provided a fake name before eventually emerging, at which time the officer recognized him and ran a warrant check. Finding an active warrant, the officer arrested him. Defendant was charged with obstruction of justice.

The Appellate Court rejected defendant's argument that the State failed to prove his intent to interfere with his arrest when he provided the police with a fake name. Although the State did not offer direct evidence that he knew of his warrant, circumstantial evidence suggested he intended to evade capture, including the fact that he hid in the bathroom when the police arrived at his hotel room door.

The court also rejected defendant's claim that the State failed to show the deception materially impeded his apprehension. The court found this requirement is limited to the concealment of evidence, and therefore found **People v. Taylor**, 2012 IL App (2d) 110222, to be wrongly decided. Thus, even though the fake name in this case did not materially impeded the defendant's arrest, the State proved the elements of obstruction of justice.

People v. Hansen, 2019 IL App (3d) 170302 Aggravated fleeing or attempting to elude a peace officer under section 11-204(a) of the Vehicle Code requires proof that the pursuing officer activated "red or blue lights" in an effort to stop defendant's vehicle. Here, even though the officer did not specify the colors of his lights, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt where the officer testified that he activated the "emergency lights" of his marked squad car and there was other clear evidence defendant knew he was being pursued by the police.

People v. Maxey, 2018 IL App (1st) 130698 Fleeing or attempting to elude a peace officer occurs when a driver willfully fails or refuses to obey a police officer's visual or audible signal to bring his vehicle to a stop, provided that the officer is in police uniform. 625 ILCS 5/11-204(a). Here the State failed to produce any evidence that the officer was in police uniform and thus failed to establish an essential element of the offense. Defendant's conviction for aggravated fleeing or attempting to elude a peace officer was reversed.

People v. Espino-Juarez, 2018 IL App (2d) 150966 "Obstructing identification" under section 31-4.5(a)(3) of the Criminal Code, occurs when one provides a false name to a police officer who has good cause to believe that the person is a witness to a crime. Reviewing the

plain language of the statute as an issue of first impression, the Appellate Court held that "good cause" is the equivalent of "probable cause," and that the officer must have probable cause at the time the question is posed. Here, defendant gave a fake name to an officer called to the scene of a traffic accident. Defendant was a passenger in a car that had been rear-ended, but at the time defendant gave the false name, the officer did not think a crime had occurred; he admitted on the stand that he wanted to talk to the defendant as a witness because of possible further *civil* litigation. The Appellate Court found the State's evidence insufficient to prove the officer had probable cause to believe defendant witnessed a crime, and reversed defendant's conviction.

People v. Jackson, 2017 IL App (1st) 142879 A defendant commits battery when he knowingly makes physical contact of an insulting or provoking nature with another person. 720 ILCS 5/12-3(a)(2). A defendant resists a police officer when he knowingly resists the performance of a person known to be a peace officer. 720 ILCS 5/31-1(a). A defendant acts knowingly when he is consciously aware that a result is practically certain to be caused be his conduct. 720 ILCS 5/4-5(b). A defendant's knowing state of mind may be proved through circumstantial evidence and may be inferred from a defendant's actions and the conduct surrounding it.

Defendant called 911 from his apartment building asking for an ambulance. Two paramedics soon arrived and entered the building where they encountered defendant, who appeared nervous and upset. He told them he needed an ambulance but refused to believe they were really paramedics. Defendant again called 911 asking for an ambulance even though the dispatcher told him an ambulance was already there. Both paramedics could smell marijuana on defendant.

Since defendant was agitated and not acting rationally, the paramedics called the police for assistance. When the first officer arrived, defendant was inside the apartment building's vestibule screaming profanities and saying "I'm not going." The paramedics told the officer that defendant was mentally unstable and possibly under the influence of drugs. The officer tried to calm defendant, but when he reached for defendant's shoulder, defendant pulled away, fell to the floor, and began punching and kicking in defense. The officer tried but failed to handcuff defendant. He then used his taser on defendant about 10 times but it had "no affect whatsoever."

A second officer arrived and tried to help handcuff defendant. The second officer thought defendant was irrational and could smell cannabis in the vestibule. As the two officers were trying to handcuff defendant, he kicked the second officer several times in the leg. After struggling for several minutes, the officers finally handcuffed defendant. They put defendant in the ambulance, which took him to the hospital where he was still "unhinged and screaming."

Defendant's girlfriend testified that she had seen him have 10-20 seizures over the previous seven years. She saw defendant as he was being placed in the ambulance and believed he was having a seizure. The two paramedics testified that they did not believe defendant was having a seizure.

The jury convicted defendant of battery and resisting a police officer.

The Appellate Court, with one justice dissenting, held that the evidence was insufficient to prove that defendant acted knowingly when he kicked the officer. Both paramedics observed that defendant was nervous and agitated and believed that defendant had an altered mental state. The second officer thought that defendant's behavior was irrational. Since all the witnesses thought that defendant was not behaving normally, the court stated it could not infer from defendant's actions that he was consciously aware of what

he was doing. Instead, the evidence showed that defendant was not consciously aware of the results of his actions.

The court reversed defendant's conviction outright.

People v. Davis, 2017 IL App (1st) 142263 The Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant committed the felony of obstruction of justice, which was a predicate of residential burglary.

To prove obstruction of justice, the State must show that with intent to prevent the apprehension or obstruct the prosecution or defense of any person, the defendant knowingly destroyed, altered, concealed, or disguised physical evidence, planted false evidence, or furnished false information. 720 ILCS 5/31-4(a)(1). Here, the State alleged that with the intent to prevent the apprehension or obstruct the prosecution of Donta Hudson, defendant hid "physical evidence" (Hudson's handgun) in the freezer of a certain apartment. The Appellate Court concluded that although there was evidence defendant placed the gun in the freezer, there was insufficient evidence that he intended to prevent the apprehension or obstruct the prosecution of Hudson or knew that the gun was "physical evidence."

First, there was insufficient evidence that defendant intended to prevent the apprehension of Hudson where the evidence did not show that defendant knew Hudson was being chased by police, there was no evidence of any interaction between defendant and Hudson, there was no indication of when or how Hudson got rid of the weapon, and none of the witnesses saw defendant recover the gun. Second, unless defendant knew that there was an investigation or prosecution of Hudson, he could not have known that the gun was "physical evidence." Under these circumstances, the State failed to introduce evidence establishing the intent requirement of obstructing justice.

People v. Jenkins, 2016 IL App (1st) 133656 To convict a defendant of felony resisting or obstructing a police officer, the State must prove that defendant knowingly resisted or obstructed an officer in the performance of an authorized act, and his violation proximately caused an injury to the officer. 720 ILCS 5/31-1(a), (a-7). Proximate cause of injury is the element that elevates this offense from a Class A misdemeanor to a Class 4 felony.

Here defendant was charged with and convicted of the felony version of this offense, but the trial court committed error by failing to instruct the jury on the proximate cause of injury element.

Although defendant failed to object, the Appellate Court found that the incorrect instruction constituted plain error under the closely balanced evidence prong of the plain error doctrine. The arresting officer testified that as he tried to arrest defendant, defendant struggled with him and kicked him in the face causing and injury. Defendant, by contrast, testified that he did not resist arrest, but only started kicking and screaming in pain after the officer sprayed mace in his face.

The conflicting testimony showed that the jury had to make a judgment of credibility about whether defendant kicked the officer while he was resisting arrest. Where a judgment depends solely on the credibility of witnesses at trial, the evidence is closely balanced.

Defendant's conviction was reversed and remanded for a new trial.

People v. Jones, 2015 IL App (2d) 130387 The offense of obstructing a peace officer occurs where one knowingly obstructs the performance by one known to be a peace office "of any authorized act within his official capacity." 720 ILCS 5/31-1(a). An "authorized act" is an act of a type that the officer is authorized to perform.

Generally, an officer who is attempting to make an arrest is performing an authorized act. However, an attempted arrest which violates the Fourth Amendment is not an "authorized act" for purposes of §31-1. In the absence of a warrant or exigent circumstances, the Fourth Amendment prohibits police from entering a private residence. The State bears the burden of demonstrating exigent circumstances necessitating a warrantless search or arrest.

Here, defendant conceded that the officer was authorized to knock on the door of an enclosed porch at defendant's house in order to investigate a report of a loud argument including the sound of things breaking. In addition, the officer observed defendant and a woman arguing on the porch and saw that defendant was extremely intoxicated and belligerent. Under these circumstances, the officer was authorized to step onto the porch to see whether defendant's companion was injured or needed assistance.

However, once defendant stated that there was no problem and asked the officer to leave, and the officer saw that the companion was not visibly injured and did not require assistance, the officer was obligated to respect defendant's request that he leave the premises. At that point the officer's authority to remain in the enclosed porch ended.

Where the officer remained on the porch and attempted to arrest defendant, his actions violated the Fourth Amendment. Thus, the attempt to make an arrest was not an "authorized act" for purposes of the obstructing an officer statute.

Defendant's conviction for obstructing a peace officer was reversed. The conviction for aggravated battery to a peace officer was affirmed.

People v. Slaymaker, 2015 IL App (2d) 130528 An individual commits the offense of resisting a peace officer where he or she resists a known officer's performance of an authorized act. Because an officer lacks authority to perform a weapons frisk during a community caretaking encounter, defendant's conviction was reversed.

People v. Williams, 2015 IL App (1st) 133582 Under 625 ILCS 5/11-204(a), the offense of fleeing or attempting to elude a police officer occurs where a driver willfully fails to bring a vehicle to a stop in response to the signal of an officer who is "in police uniform." Where the officer who pursued defendant testified that he was wearing "civilian dress," the evidence was insufficient to sustain a conviction for fleeing or attempting to elude a peace officer although the officer was in a marked squad car and activated the emergency lights and siren during the pursuit.

The State argued that the purpose of the statute is fulfilled when an officer activates the emergency lights and siren, because the driver knows that the pursuer is a police officer. The court responded that the statute is unambiguous and by its plain language requires that the officer be in uniform. The court also noted that the State's argument was rejected in **People v. Murdock**, 321 Ill. App. 3d 175, 748 N.E.2d 683 (1st Dist. 2001), which the court declined to reconsider.

Defendant's conviction was reversed.

In re Q.P., 2015 IL 118569 Obstruction of justice is committed where, with intent "to prevent the apprehension or obstruct the prosecution or defense of any person," the defendant knowingly "destroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false information." The term "apprehension" includes the seizure, taking, or arrest of a person on a particular criminal charge. A person is not "apprehended" merely because he is seized; the "apprehension" must be related to a particular charge or offense.

Because an apprehension is tied to a particular offense, a person who is seized on one charge may be convicted of obstruction of justice if he provides false information to prevent police from discovering that he is also wanted on a different charge. Here, the evidence established that the minor was handcuffed and placed in the back seat of a squad car by an officer who responded to a report of a vehicle burglary. The minor gave false information concerning his name and birth date, and admitted that he hoped to prevent the officer from discovering that he was wanted on a juvenile warrant. Because the evidence showed that the minor committed obstruction of justice by providing a false name with the intent to prevent his apprehension on the juvenile warrant, the trial court's delinquency adjudication was affirmed.

People v. Wrencher, 2015 IL App (4th) 130522 The Appellate Court held that defendant, who was charged with two counts of aggravated battery of a police officer, was not entitled to a lesser-included jury instruction on the offense of resisting a peace officer. Utilizing the charging instrument approach, the Court found that resisting was a lesser-included offense of the first count of aggravated battery, but that the jury could not have rationally convicted defendant of resisting, but acquitted him of aggravated battery. As to the second count, the Court held that resisting was not a lesser-included offense.

The offense of resisting a peace officer has two elements: (1) the defendant knowingly resisted or obstructed a peace officer in the performance of any authorized act; and (2) the defendant knew the person he resisted or obstructed was a peace officer. 720 ILCS 5/31-1(a). To determine whether resisting was a lesser-included offense of aggravated battery, the Court employed the charging instrument approach. Under this test, the charging instrument need not expressly allege all the elements of the lesser offense. Instead, the elements need only be reasonably inferred from the language of the charging instrument.

The first count of aggravated battery alleged that defendant knowing caused bodily harm to the officer by digging his fingernails into the officer's hand, knowing he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-4(b)(18). The Court held that the elements of resisting arrest could be reasonably inferred from the language of this count. Although the count did not expressly allege that defendant resisted or obstructed the officer, causing bodily harm increased the difficulty of the officer's actions, and thereby caused resistence or obstruction.

But the Court found that a rational jury could not have found that defendant's act of causing bodily harm could have constituted resisting but not aggravated battery. By knowingly digging his fingernails into the officer's hand, the only charged act of resistence, defendant necessarily committed aggravated battery. Thus it would have been rationally impossible to convict defendant of resisting but acquit him of aggravated battery.

The second count of aggravated battery alleged that defendant knowingly made contact of an insulting or provoking nature by spitting blood on the officer's hand, knowing that he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-4(b)(18). The Court held that the elements of resisting arrest could not be reasonably inferred from the language of this count. Spitting is an act of contempt, not an act of resistence or obstruction. It thus did not show that defendant knew he would obstruct the officer by spitting blood. Instead, it only showed that he knew the officer would be disgusted and provoked.

People v. Shenault, 2014 IL App (2d) 130211 720 ILCS 5/31-1(a) provides that a person commits the offense of resisting or obstructing a police officer if he or she "knowingly resists or obstructs the performance by one known to the person to be a peace officer." Under Illinois

law, resisting or obstructing an officer is not committed where a citizen merely argues with an officer about the validity of an arrest. Instead, the citizen must in some way impose an obstacle which impedes, hinders, interrupts, or delays the performance of the officer's duties. In **People v. Baskerville**, 2012 IL 111056, the Supreme Court held that the focus of §31-1(a) is whether the defendant's conduct tends to impose such an obstacle, and not merely whether a physical act occurred.

Where a driver or passenger refuses to comply with an order to exit the vehicle during a traffic stop, issues of officer safety are presented. "It seems clear that any behavior that actually threatens an officer's safety or even places an officer in fear for his or her safety is a significant impediment to the officer's performance of his or her duties." **People v. Synnott**, 340 Ill. App. 3d 223, 811 N.E.2d 236 (2nd Dist. 2004).

Here, defendant refused to get out of her car when ordered to do so during a traffic stop. After several requests, the officer removed the defendant's seatbelt, pulled her out of the vehicle, and placed her under arrest.

The court concluded that defendant's repeated refusals to exit her car required the officer to place his safety at issue by forcibly removing her, and therefore impeded the officer in his authorized duties. The conviction was affirmed.

People v. Thomas, 2014 IL App (3d) 120676 To prove defendant guilty of felony resisting arrest, the State had to prove that defendant knowingly resisted an officer in the performance of an authorized act and proximately caused injury to the officer. 720 ILCS 5/3-1(a), (a-7). In a stipulated bench trial, defendant stipulated to the evidence presented at the preliminary hearing and the motion to suppress. The court held that there was no evidence presented at either hearing that the officer was injured. The court thus reduced defendant's conviction to a Class A misdemeanor and remanded for re-sentencing.

In re Q.P., 2014 IL App (3rd) 140436 Obstruction of justice occurs "when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, [a person] knowingly . . . furnishes false information." 720 ILCS 5/31-4(a)(1). The term "apprehension" is not defined in the statute and is to be given its plain and ordinary meaning. However, criminal statutes are strictly construed in favor of the accused, and nothing is to be taken by implication from the obvious or ordinary meaning of the statute.

Adopting the ruling of **People v. Miller,** 253 Ill. App. 3d 1032**,** 628 N.E.2d 893 (2nd Dist. 1993), the court concluded that a person is "apprehended" when he or she is "seized" for purposes of the Fourth Amendment. A "seizure" does not necessarily involve a full "arrest," and occurs when an officer by means of physical force or show of authority in some way restrains a citizen's liberty.

Here, the minor's liberty was undoubtedly restrained when he was handcuffed and placed in the back seat of a patrol car because he was a suspect in a burglary. Thus, the minor had been "apprehended" even if he had not been subjected to an "arrest."

Because the minor had already been apprehended, he could not have intended to prevent his "apprehension" by giving the officer a false name and birth date. Thus, the minor did not commit obstruction of justice even if he hoped to keep the officer from discovering that there was an outstanding warrant on other charges. The court stated, "[O]ne who is presently seized by the police cannot be seized again."

Because the minor could not have had the specific intent to prevent his own apprehension where he had already been handcuffed and placed in a squad car when he gave false identifying information, the delinquency adjudication based on obstruction of justice was reversed.

People v. Smith, 2013 IL App (3d) 110477 The offense of obstructing a peace officer has three elements: (1) defendant knowingly obstructed a peace officer; (2) the officer was performing an authorized act in an official capacity; and (3) defendant knew that the other individual was a peace officer. 720 ILCS 5/31-1(a). The term "obstruct" is not defined by §5/31-1(a), but is construed to include physical conduct that impedes or hinders progress. The court concluded that defendant committed the offense of obstructing a peace officer when he left his car while the officer was issuing a traffic citation and refused to return to the car at the officer's command. Although the officer had completed filling out the ticket and needed only to sign it, defendant's actions interfered with the authorized act of issuing the citation.

People v. Lipscomb, 2013 IL App (1st) 120530 Aggravated fleeing or attempting to elude a police officer is committed "by any driver or operator of a motor vehicle who flees or attempts to elude a police officer, after being given a visual or audible signal by a police officer *** and such flight or attempt to elude *** is at a rate of speed at least 21 miles per hour over the legal speed limit." 625 ILCS 5/11-204.1(a)(1).

The only testimony related to the speed of defendant's car was an officer's testimony that the speed limit in the area was 15 to 20 mph, and that at some point as he pursued defendant for about a half block on one street, and about a half block on another street, he looked at his speedometer and it read 55 mph. There was no evidence as to the period of time he drove at this speed, whether it was constant, or whether he accelerated to this speed to catch up to defendant. There was no evidence of the relationship of the vehicles during the pursuit, such as whether the defendant pulled away from the officer, or whether the officer gained on the defendant.

The Appellate Court concluded that the trier of fact could not reasonably infer from this evidence that defendant was traveling at least 21 mph over the speed limit during the pursuit. It reduced defendant's conviction to the lesser-included offense of misdemeanor fleeing or attempting to elude a police officer.

People v. Nasolo, 2012 IL App (2d) 101059 Although a person may commit obstruction of a peace officer by means of a physical act, a physical act is neither an essential element nor the exclusive means of committing an obstruction. Focusing solely on whether the conduct is active or passive is overly simplistic. Rather, the focus should be on whether the defendant actually obstructed the officers in performing their duties. **People v. Baskerville**, 2012 IL 111056.

Defendant actually obstructed the police, regardless of whether she can be said to have committed a physical act, when she impeded the police from completing the booking process by her refusal to be fingerprinted or photographed. As her refusal was complete and caused more than a brief delay, the court affirmed her conviction.

People v. Taylor, 2012 IL App (2d) 110222 A person obstructs justice when, with the intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts: (a) destroys, alters, conceals or disguises physical evidence, plants false evidence, or furnishes false information. 720 ILCS 5/31-4(a). False statements as well as physical acts may constitute obstruction, but the defendant's conduct must actually impose a material impediment to the administration of justice.

Defendant furnished a false name and denied that he had identification on him when he was stopped by the police. His false statements did not materially impede or interfere with his arrest on an outstanding warrant. The police recognized defendant from previous

encounters and arrested him almost immediately despite his false statements. The entire encounter took no more than a few minutes.

The Appellate Court reversed defendant's conviction for obstruction of justice.

People v. Jenkins, 2012 IL App (2d) 091168 Defendant was convicted of obstructing justice based on responding falsely to a police officer's questioning concerning whether he had a son who drove a particular car. On appeal, he argued that the trial court erred by excluding the testimony of the son and of defendant's wife concerning the questions asked by the officer and the answers given by the defendant. Defendant's wife was present during the conversation, and defendant's son overheard the conversation because he was talking to his father over a cell phone when the police approached. At trial, the judge found that the testimony of the defendant's wife and son concerning the conversation was inadmissible hearsay.

The court found that the trial court committed several errors at trial, and reversed the conviction without remand after finding that the evidence was insufficient to convict of obstructing justice. To obtain a conviction for obstructing justice, the State was required to prove that: (1) defendant knowingly furnished false information to the officer "as to whether he had a son," and (2) such false information was furnished with the intent to obstruct the prosecution of his son. Because there was no indication that defendant knew that a prosecution or criminal matter was involved, and the entire incident lasted but a few seconds before any confusion was clarified, the court concluded that there was insufficient evidence of an intent to obstruct a prosecution to sustain the reasonable doubt burden.

The conviction was reversed.

People v. Fernandez, 2011 IL App (2d) 100473 One cannot be convicted of obstructing a peace officer for merely refusing to identify oneself to an officer. Refusing to provide one's name or other identification to the police is akin to "mere argument" that is insufficient to support an obstruction conviction. The provision in the Code of Criminal Procedure (725 ILCS 5/107-14) that permits a police officer conducting a **Terry** stop to "demand the name and address of the person and an explanation of his actions," only governs the conduct of police officers. There is no corresponding duty in the Criminal Code for a suspect to identify himself.

Defendant's conviction for obstruction was reversed because he was charged and convicted of refusing to identify himself to police officers, who were responding to a report from a movie theater of a patron who refused to leave, and found defendant standing outside the theater visibly intoxicated and smelling of alcohol.

People v. Berardi, 407 Ill.App.3d 575, 948 N.E.2d 98 (3d Dist. 2011) 720 ILCS 5/31-1 creates the offense of resisting a peace officer where a person "knowingly resists or obstructs the performance by one known to the person to be a peace officer, . . . of any authorized act within his official capacity . . ." Defendant, an alderman for the city of Canton, was convicted of resisting a peace officer after he failed to leave an office in City Hall.

Defendant went to City Hall in an attempt to examine the city budget, in accordance with a notice published in the local newspaper. When he arrived at City Hall, defendant was told by the Budget Director that the mayor had directed him to withhold the budget until the following week. Defendant and two other persons stood in an open office area adjacent to the Budget Director's locked office after the director left, and were told by the police chief that they had to leave so the area could be secured. Defendant refused to leave and insisted that as an alderman, he was entitled to be in the area.

The police chief stated that defendant would be arrested if he did not leave, and defendant stated that he was not going to leave. When the police chief stated, "[L]et's go downstairs," defendant walked with the chief to the booking department of the police department. He was arrested and charged with resisting an officer.

The court concluded that defendant's actions did not constitute resisting a peace officer. Under Illinois precedent, the offense of resisting an officer requires some physical act which "impedes, prevents or delays" the performance of an authorized act by a peace officer. Section 31-3 does not prohibit one from arguing with a police officer about the validity of a police order. The court concluded that it was clear from the evidence, including a video recording of the encounter made by one of defendant's companions, that defendant merely argued with the police chief and stated his belief that he was entitled to remain in the area.

The court stressed that the entire incident took only a brief time, that defendant repeatedly stated his belief that he was authorized to remain in the office, and that when he was told to come to the police station defendant acquiesced. Under these circumstances, the record showed that defendant merely disputed the police chief's authority and did not attempt to hinder or delay the performance of an authorized act.

The court also noted, in passing, that the trial court erred by refusing to give an instruction which defendant tendered and which stated that mere verbal resistance or argument does not constitute resisting an officer. Because there was evidence to support defendant's argument that he merely challenged the validity of an order to leave a city office, the failure to give the tendered instruction removed a disputed issue from the jury's consideration. Thus, a new trial would have been required had the court not reversed the conviction for lack of evidence.

People v. McClanahan, 2011 IL App (3d) 090824 A person who is "in the lawful custody of a peace officer for the alleged commission of a felony offense" and intentionally escapes from custody commits escape. 720 ILCS 5/31-6(c). "Lawful custody" is not defined by the Code. When interpreting the term "custody" under the escape statute, courts have focused on the amount of control the officer had over the defendant at the time of the arrest. A defendant is not in custody merely because the police inform the defendant that he is under arrest, where the police make no physical contact with the defendant. The police must actually restrain the defendant before he breaks free in order for defendant to commit escape. It is not enough that defendant evades the imposition of custody altogether.

The State proved that defendant was in custody where the officer physically restrained defendant and forcefully moved him to the hood of a squad car. Defendant then escaped from that custody where he ran when the officer had to use one hand to reach for his handcuffs.

Resisting arrest and escape contain different elements. Resisting occurs when defendant struggles with an arresting officer, while escape requires that the defendant actually break free. Because defendant broke free, rather than merely struggled with the officer, the defendant committed escape, even though he could have been additionally charged and convicted of resisting arrest for struggling with the officer.

People v. Cervantes, 408 Ill.App.3d 906, 945 N.E.2d 1193 (2d Dist. 2011) Resisting or obstructing a peace officer is committed where the defendant knowingly resists or obstructs an officer's performance "of any authorized act within his official capacity." (720 ILCS 5/31-1(a)). Resisting or obstructing a peace officer is enhanced to a Class 4 felony if the violation "was the proximate cause of an injury to a peace officer." (720 ILCS 5/31-1(a-7)).

The term "proximate cause" includes two distinct requirements: cause in fact, and legal cause. "Legal cause" is "essentially a question of foreseeability." Thus, "legal cause" exists where a reasonable person would see the type of injury in question as a likely result of his or her conduct.

The court rejected the argument that the weather conditions at the time of the incident were so extraordinary that defendant's conduct - leading officers on a chase through ice and snow-covered yards and driveways - could not be deemed the proximate cause of injuries inflicted on an officer who fell during the chase. The court concluded that it should have been reasonably foreseeable that running from officers who were attempting to make a traffic stop might result in a chase, and that an officer might be injured by falling in the slippery conditions.

Furthermore, defendant's acts were clearly a proximate cause of an injury which the officer suffered when he climbed a fence. That injury was not related to the weather, and would have provided a sufficient basis to enhance the sentence without regard to other injuries.

The court rejected the argument that the defendant's conduct must be the "sole" proximate cause of an injury in order for the enhancement provision of 720 ILCS 5/31-1(a-7) to be applied. Thus, the State is required to show only that the defendant's actions were a contributing cause to the injury.

People v. Davis, 409 Ill.App.3d 457, 951 N.E.2d 230 (4th Dist. 2011) A person obstructs justice when, with intent to prevent the apprehension of any person, he knowingly destroys, alters, conceals, or disguises physical evidence, plants false evidence, or furnishes false information. 720 ILCS 5/31-4(a).

Defendant obstructed justice when she falsely informed the police that a person whom the police sought to arrest on a warrant was not in her house, even though she almost immediately recanted, acknowledged that the person was present, and consented to a search of her house, and the police apprehended the person in her house.

The court rejected defendant's reliance on **People v. Comage**, 241 Ill.2d 139, 946 N.E.2d 313 (2011), for the argument that there was no obstruction because defendant's brief denial did not materially impede the police investigation. According to the court, in **Comage**, the Supreme Court addressed concealment of evidence under the obstruction statute, whereas the case before it involved furnishing false information to the police. When the defendant places evidence momentarily out of sight, as in **Comage**, the defendant has not concealed evidence within the meaning of the obstruction statute because such an act does not make recovery of the evidence substantially more difficult or impossible. The risk that the evidence might be compromised is virtually nonexistent.

Where the defendant furnishes false information, the potential that the investigation will be compromised is exceedingly high, which is why such a crime may be completed at the moment false information is provided. Therefore, defendant was guilty of obstruction because when she lied to the police she impeded the officers by slowing down the progress of their investigation.

People v. Kotlinski, 2011 IL App (2d) 101251 A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity commits the offense of obstructing a peace officer. 720 ILCS 5/31-1(a). Innocent or inadvertent conduct is exempted from the statute's proscription. Passive acts that impede an officer's ability to perform his duties can be a violation of §31-1(a). But those acts must be committing "knowingly," which in the context of the obstruction statute requires

that defendant be "consciously aware" that his conduct is "practically certain" to interfere with the performance of an authorized act. 720 ILCS 5/4-5(b). By its very nature, knowledge is ordinarily proved by circumstantial evidence.

The State charged that defendant committed the offense of obstructing a peace officer when, as shown in a videotape, he exited the front passenger side of his vehicle, and stood at that side of the vehicle for 21-47 seconds as the police yelled at him to get back in his vehicle, halting the administration of a Breathalyzer test on his wife. Although the police testified that the defendant yelled at them as he stood outside of the car, the videotape showed this to be untrue.

Defendant's act of stepping out of the car was not an act of obstruction, because he had not been told to stay inside of the car while the police investigated his wife for a DUI violation. Defendant did delay 21-47 seconds before he complied with the officer's command to get back inside his car, but it was his act of stepping outside the car which interrupted the investigation, not his act of remaining outside the car. Moreover, the court questioned whether this short period of delay could constitute obstruction given that it was 3 a.m., close to zero degrees outside, both officers were screaming at defendant and threatening to tase him, defendant's wife was also screaming at him, and defendant appeared to be intoxicated.

Any inference that defendant knew that his act of getting out of the car was practically certain to interrupt the DUI investigation was dependent on proof that he knew that the officer was still administering field sobriety tests to his wife when he stepped outside. Defendant remained in the car while the officer administered the tests in defendant's view. It was only when the officer removed defendant's wife from his sight that defendant stepped out of the car. The only reasonable inference to be drawn from this evidence was that defendant stepped out of the car because he did not know what the officer was doing. His purpose in exiting was only to see what was happening to his wife. By standing next to his car, without advancing, speaking, or gesturing, defendant evinced no awareness that he was obstructing the investigation, any more that his watching from inside the vehicle had obstructed it.

Because no rational trier of fact could have found that the defendant violated §31-1(a), the court reversed defendant's conviction for obstructing a peace officer.

People v. Gordon, 408 Ill.App.3d 1009, 948 N.E.2d 282 (3d Dist. 2011) To convict a defendant of obstructing a peace officer, the State must prove that the defendant obstructed the performance by a peace officer of any authorized act within his official capacity. 720 ILCS 5/31-1(a). "Obstruct" means "to be or come in the way of." Consistent with this definition, the failure or omission to take action may constitute obstruction. Inaction, such as refusing a police officer's lawful order to move out of the way, can constitute interference with the officer in the discharge of his or her duties.

After a traffic stop that resulted in defendant being ticketed for failing to wear a seat belt and another passenger being arrested for marijuana possession, the police repeatedly ordered defendant to leave the area while they waited for a tow truck. Defendant refused, became irate, and yelled profanities at the officers. The court concluded that these actions by defendant impeded the officers in their duties to arrest the other passenger and to search and tow the vehicle.

The court affirmed the conviction for obstruction of a peace officer.

McDade, J. dissented on the ground that the charging instrument failed to state an offense. The charge alleged that defendant obstructed the performance by the police of "an authorized act within [the officer's] official capacity, being the investigation of [defendant], . . . in that he . . . failed to disperse from the scene after being ordered to do so." Because

defendant could not impede an investigation into his own criminal activity by remaining at the scene of the investigation, the facts alleged and found by the trial court to be true fail to constitute an offense. The defective charge is void and should be dismissed.

People v. Bohannon, 403 Ill.App.3d 1074, 936 N.E.2d 143 (5th Dist. 2010) Specific terms covering the given subject matter prevail over general language of the same or another statute that might otherwise prove controlling.

Defendant was charged with obstructing a peace officer based on his refusal to produce his driver's license and proof of insurance when stopped by the police at a random safety checkpoint. The act that the police officer was authorized to perform and that defendant resisted were the same exact acts that the defendant was required to perform at the request of a law enforcement officer by the Illinois Vehicle Code. Because the acts of resistence and obstruction were subsumed in the provisions of the Illinois Vehicle Code, defendant could not be prosecuted for obstruction of a peace officer.

The Appellate Court affirmed the circuit court's dismissal of the charge.

People v. Wilson, 404 Ill.App.3d 244, 935 N.E.2d 587 (3d Dist. 2010) Resisting a peace officer is punishable as a Class 4 felony if defendant's act was "the" proximate cause of an injury to the officer. 720 ILCS 5/31-1(a-7).

The resisting instructions submitted to defendant's jury required the jury to find that defendant's act was "a" proximate cause of the injury. Defendant argued that this instruction was plain error because use of the article "a" in the instruction allowed the jury to convict using a lower, more inclusive standard than provided by statute.

The court found no error in the instruction. The court noted that 19 statutes contain the word "proximate cause," ten with the article "a" and nine with the article "the." Two statutes that contain the article "the" included the language "more than 50% of the proximate cause." If use of "the" meant there could be only a single cause of injury, the legislature's addition of the "more than 50%" language was unnecessary. The court also looked at IPI Civil Instruction 15.01, which defines "proximate cause" as "a cause which . . . produced the injury. It need not be the only cause, nor the last nor nearest cause. It is sufficient if it combines with another cause resulting in injury." The court concluded that "a" and "the" are interchangeable and "the" does not indicate that defendant's act must be the sole proximate cause.

People v. Williams, 393 Ill.App.3d 77, 910 N.E.2d 1272 (1st Dist. 2009) A public officer or employee commits official misconduct where, while acting in an official capacity, he "[k]nowingly performs an act which he knows he is forbidden by law to perform." 720 ILCS 5/33-3(b). The defendant, a police dispatcher for the City of Glenwood, was convicted of official misconduct for knowingly performing an act "which she knew was forbidden by law to perform" – notifying Greg Stroud about police activity near his residence "in order to facilitate" his illegal drug-dealing. The State's evidence showed that Williams twice called Stroud from work on the day in question, that she conveyed confidential information during these phone calls, and that her conduct violated police department's rules and regulations regarding the dissemination of confidential information.

The Appellate Court reversed the conviction, finding that police department's rules and regulations are not "laws" as contemplated by §33-3(b). The court rejected the State's argument that directives from the Glenwood Police Department constitute administrative rules and regulations, finding that because neither the municipality of Glenwood nor its

police department is an "administrative agency," police department rules and regulations are "not an expression of legislative policy and . . . do not have the force of law."

In dissent, Justice Murphy noted that the Illinois Supreme Court has recently expanded the definition of an unlawful predicate act for purposes of the official misconduct statute, so that violations of the state constitution are now included. **People v. Howard**, 228 Ill.2d 428, 888 N.E.2d 85 (2008). The dissent argued that a municipal ordinance passed by a home rule community should be treated identically to an administrative rule or regulation.

Justice Murphy concluded, "[S]ometimes breaking an issue down to the basics is helpful – when a police dispatcher alerts a drug dealer of potential police activity aimed at him, it has to be official misconduct. Put quite simply, if this case is not an example of official misconduct, then I do not know what is."

People v. Comage, 395 Ill.App.3d 560, 918 N.E.2d 1211 (4th Dist. 2009) In **In re M.F.**, 315 Ill.App.3d 641, 734 N.E.2d 171 (2d Dist. 2000), the Appellate Court held that the defendant did not "conceal" evidence, for purposes of the offense of obstructing justice (720 ILCS 5/31-4(a)), when he threw baggies containing cocaine from his rooftop as police were coming up the stairs to execute a warrant. The baggies landed close to a police officer and were recovered within seconds.

The court distinguished **M.F.** because defendant did not merely abandon drug paraphernalia, but "took the more affirmative act of throwing the evidence over a privacy fence and out of the view of the police while . . . fleeing . . . at night." Although police quickly recovered the evidence, the court stressed that defendant could reasonably have anticipated that the officers might not see him throw the evidence over the fence.

Because defendant concealed evidence by throwing it over a fence as he was fleeing, the conviction for obstruction of justice was affirmed.

People v. McCoy, 378 Ill.App.3d 954, 881 N.E.2d 621 (3d Dist. 2008) Defendant committed offense of resisting a police officer where defendant struggled with arresting officer when he tried to handcuff her, defendant continued to struggle with the officer and spit in his face, and the officer had to take defendant to the ground to await the arrival of other officers.

People v. Sims, 374 Ill.App.3d 427, 871 N.E.2d 153 (3d Dist. 2007) The trial judge erred by refusing to give a self-defense instruction at a trial for resisting arrest and battery where defendant struggled with the arresting officers and kicked one officer; defendant testified that he did not use force until one of the officers placed his hands on defendant's girlfriend, who was holding a child, and another officer began to beat defendant when defendant objected to the mistreatment of his girlfriend.

People v. Murdock, 321 Ill.App.3d 175, 748 N.E.2d 683 (2d Dist. 2001) The offense of fleeing or attempting to elude a police officer requires a showing that the officer who signaled the driver to stop was in uniform. Because there was no evidence on which a rational trier of fact could have found that the officer was wearing his uniform, defendant's conviction was reversed.

In re M.F., 315 Ill.App.3d 641, 734 N.E.2d 171 (2d Dist. 2000) A person who is suspected of contraband and discards the contraband does not "conceal" the evidence for purposes of obstructing justice.

People v. Cope, 299 Ill.App.3d 184, 701 N.E.2d 165 (2d Dist. 1998) Defendant did not resist or obstruct police officers by refusing to open the door for them to enter his diner, where he brought a minor runaway after she complained that men were following her. A person who passively invokes his Fourth Amendment right to refuse a warrantless entry cannot be charged with resisting or obstructing the police. Defendant's "passive refusal" to turn the minor over to police was not a "physical act," as required by the statute. See also, **People v. Swiercz**, 104 Ill.App.3d 733, 432 N.E.2d 900 (1st Dist. 1982) (defendant was improperly convicted of obstructing a police officer for telling an officer, who was looking for a man named Carl Wyatt, that Wyatt was not at defendant's apartment and trying to prevent the officer's entry into the apartment, where there was no showing that the officer was obstructed in the performance of an "authorized act" because the officer's entry into the home was unlawful under the Fourth Amendment); **People v. Hilgenberg**, et al., 223 Ill.App.3d 286, 585 N.E.2d 180 (2d Dist. 1991). But see, **City of Champaign v. Torres**, 214 Ill.2d 234, 824 N.E.2d 624 (2005) (rejecting defendant's argument that he had not resisted an "authorized act" because the officer's action of preventing him from closing the apartment door violated the Fourth Amendment, as defendant was on the premises as a mere house guest and had no right to challenge the constitutionality of the officer's conduct).

People v. Meister, 289 Ill.App.3d 337, 682 N.E.2d 306 (4th Dist. 1997) In determining whether the offense of obstructing service of process has been committed, the issue is not whether actual delay occurred, but whether defendant "created an obstacle that may result in a delay." By deliberately contacting authorities in order to mislead them as to his wife's whereabouts, defendant clearly created such an obstacle.

People v. Floyd, 278 Ill.App.3d 568, 663 N.E.2d 74 (1st Dist. 1996) Defendant was properly convicted of four counts of resisting arrest for struggling with several officers as they attempted to arrest him. Where the defendant commits multiple acts against several police officers, multiple convictions for resisting arrest are appropriate.

People v. Gay, 239 Ill.App.3d 1023, 607 N.E.2d 299 (3d Dist. 1993) Defendant's conviction of disarming a police officer was affirmed, though the officer managed to keep at least one hand on the gun during a struggle with defendant. The statute was intended to prevent police officers from having their weapons seized, and the offense occurs whenever the officer effectively loses control of the weapon. That standard was satisfied here; defendant pointed the gun at the officer's face and threatened to kill him.

People v. Thomas, 198 Ill.App.3d 1035, 556 N.E.2d 721 (1st Dist. 1990) Defendant's initial failure to disclose his knowledge of the assailant's identity was not sufficient to sustain his conviction of concealing a fugitive. Defendant was not obligated to come forward with that information, and denying knowledge of the identity of a criminal is not an "affirmative act" in connection with the concealment, which the statute requires.

People v. Ivy, 166 Ill.App.3d 266, 519 N.E.2d 988 (1st Dist. 1987) A witness who left the police station against the wishes of the investigating officers was not guilty of obstructing justice. That a witness who is not under arrest violates the desires of the police does not establish the essence of obstruction of justice - the destruction or concealment of evidence relating to a criminal investigation or prosecution.

People v. Ramirez, 151 Ill.App.3d 731, 502 N.E.2d 1237 (5th Dist. 1986) Giving a false name to a police officer does not constitute a "physical act" within the meaning of the obstructing justice statute. See also, People v. Stoudt, 198 Ill.App.3d 124, 555 N.E.2d 825 (2d Dist. 1990) (the fact that each defendant "refused to remove himself" when ordered to do so does not constitute a physical act of resistance; failure to cooperate with an officer is not necessarily the same as resisting or obstructing him).

People v. Fox, 117 Ill.App.3d 1084, 454 N.E.2d 824 (4th Dist. 1983) Information, which charged defendants with knowingly obstructing a peace officer by attempting to conceal the whereabouts of a person for whom the police had a warrant, was insufficient because it failed to describe the physical acts that allegedly obstructed the officer. The charge was void, for the deficiency went to the nature and elements of the offense.

People v. Dewlow, 54 Ill.App.3d 5, 369 N.E.2d 270 (1st Dist. 1977) Defendant should not have been convicted of resisting or obstructing a peace officer where he went to the police station and misrepresented himself as the brother of a juvenile, in order to obtain her release from custody. There was no evidence that defendant knowingly resisted or obstructed an officer; no obstruction resulted from defendant's actions where the officer released the juvenile not to defendant, but to her court-appointed guardian instead.

People v. Brooks, 51 Ill.App.3d 800, 367 N.E.2d 236 (2d Dist. 1977) Defendants' false protestations of innocence during police interrogation did not constitute obstruction of justice where defendants had been charged with a crime and truthful answers would have amounted to confessions of guilt. But a defendant could be convicted of obstructing justice "if his answers to police questioning go beyond the limits of his own involvement in the crime charged either directly or by accountability and therefore beyond his denial of wrongdoing."

People v. Flannigan, 131 Ill.App.3d 1059, 267 N.E.2d 739 (5th Dist. 1971), which held that defendant's actions did not constitute resisting an officer, was wrongly decided because the evidence showed that defendant "jerked his arm away from the officer while being escorted to the police vehicle."

§16-3
Escape

Illinois Supreme Court

People v. Clark, 2019 IL 122891 There is no “custody” requirement in the “failure to report to a penal institution” subsection of the escape statute. While on bond, defendant failed to report to jail as required following her stay in a drug treatment facility. Alleging she “failed to report to a penal institution” in violation of 720 ILCS 5/31-6(a), the State charged her with escape, and she was found guilty. The Appellate Court reversed, relying on prior Illinois Supreme Court decisions which have held that one cannot commit escape unless in custody, and in this case defendant was on bond when she failed to report, not in custody.

Section 31-6(a) is divided into two independent clauses separated by a semicolon. The first clause contains an escape from custody provision, and the second clause contains the knowing failure to report provision at issue here. The word “custody” appears only in the first provision. Strictly construing the plain language of section 31-6(a), a 4-3 majority of the Supreme Court upheld the conviction, finding the “failure to report to a penal institution”

language says nothing about custody. Rather, the language makes clear that the statute is violated when two elements are proved: (1) "[a] person is convicted of a felony," and (2) the person "knowingly fails to report to a penal institution or to report for periodic imprisonment." 720 ILCS 5/31-6(a) (West 2014). Here, the State proved both elements regardless of whether defendant was in custody or out on bond at the time she failed to report.

The dissent would have read the plain language in the context of the other provisions of the escape statute, all of which require some sort of custody, and would have held, consistent with its prior decisions, that one cannot escape by failing to report to a penal institution unless in custody.

People v. Taylor, 221 Ill.2d 157, 850 N.E.2d 134 (2006) Defendant could not be charged with attempt escape based on a juvenile adjudication for robbery because a juvenile adjudication does not constitute a felony "conviction" for purposes of offenses that include a prior conviction as an element.

People v. Marble, 91 Ill.2d 242, 437 N.E.2d 641 (1982) A defendant's failure to return from work release constitutes escape under the Criminal Code. But, a defendant, who was in the custody of a county (and not the Illinois Department of Corrections) was not a "committed person" within the meaning of escape under the Unified Code of Corrections. See also, People v. Simmons, 88 Ill.2d 270, 430 N.E.2d 1032 (1981).

Illinois Appellate Court

People v. Williams, 2023 IL App (1st) 181285 Defendant was convicted of escape for knowingly leaving the geographic boundaries of an electronic monitoring or home detention program with the intent to evade prosecution. 730 ILCS 5/5-8A-4.1(a). The facts showed that defendant left his apartment and went up two flights to his sister's apartment, without leaving the building. While he was upstairs, Sheriff Investigators arrived at defendant's apartment in response to a report that the EM band had been tampered with or was malfunctioning. They did not see defendant in the apartment, though the band indicated that he was in the building. He was arrested about a month later outside of his apartment building, not wearing the band.

When entering the sheriff's electronic home monitoring program, defendant signed documents stating that he lived in apartment 1F and that he understood he knew he had to stay within his residence. The appellate court found that nothing in these documents suggested he had to remain in his apartment unit, and was not permitted to go other places within his apartment building. Any ambiguity in the agreement had to be interpreted in favor of defendant. Such an interpretation acknowledges the reality that people who live in apartment buildings must be able to leave their residences to perform essential tasks such as laundry and receiving mail. Because the State did not charge defendant for the act of leaving his apartment building without his band, defendant's conviction was reversed.

People v. Duffie, 2022 IL App (2d) 210281 Defendant was convicted of escape based on evidence that he violated the terms of his pretrial release by removing an electronic monitoring device from his ankle. Section 5-8A-4.1(a) of the electronic monitoring law [730 ILCS 5/5-8A-4.1] provides that a person charged with a felony who is conditionally released on electronic monitoring or home detention and subsequently violates a condition of the electronic monitoring or home detention program is guilty of escape. And, at the time of defendant's conduct, Section 5-8A-4(H) of the electronic monitoring law [730 ILCS 5/5-8A-

4(H)] provided that, when using electronic monitoring for home detention, the supervising authority's rules "shall" include notice to the participant that a violation may subject the participant to prosecution for escape.

The evidence at defendant's trial was that defendant removed his electronic monitoring device, thereby violating a condition of his pretrial release. And, it was undisputed that defendant had not been given the notice required by Section 5-*A-4(H). Defendant argued that he could not be convicted of escape given the absence of that notice. The appellate court disagreed.

The court held that the notice required by Section 5-8A-4(H) is not an element of the offense of escape as defined by Section 4-8A-4.1. The plain language of Section 5-8A-4.1 does not require receipt of notice for an escape violation to be found. The purpose of the notice requirement is to promote compliance with the conditions of release. Here, it was undisputed that defendant knew he was not permitted to remove his electronic monitoring device, even without being given the notice under 5-8A-4(H). So, defendant had notice that he was committing a wrongful act when he knowingly removed the device. Providing defendant notice of the consequences of that act is not a prerequisite to establishing his guilt of escape based on that act.

Further, while Section 5-8A-4(H) provides that defendant "shall" be given notice, this statute was merely directory under the mandatory-directory dichotomy in that the legislature provided no particular consequence for failure to give the required notice. The statute does not contain any language prohibiting a prosecution for escape in the absence of the required notice. And, to the extent the giving the notice encourages compliance with the law, the party the notice serves to protect is the public, not defendant. Immunizing defendant from prosecution due to the absence of notice would only serve to exacerbate any injury to public safety. Defendant's escape conviction was affirmed.

People v. Hileman, 2020 IL App (5th) 170481 The Appellate Court affirmed defendant's escape conviction, finding he was in lawful custody at the time he fled from the police. Defendant alleged he had not yet been taken into custody, because the officer admitted he was in the process of "trying to gain control" when defendant fled. This testimony, however, followed a description of the officers holding onto defendant's arms and walking him to the squad car. This met the standard of escape as defined in several Appellate Court cases involving some degree of control beyond telling defendant he was under arrest.

People v. Garza, 2019 IL App (4th) 170165 The escape statute provides, in part, that an individual who is in "lawful custody" of a peace officer for the alleged commission of a felony and who intentionally escapes commits a Class 2 felony. "Lawful custody" for purposes of the escape statute focuses on the degree of control an officer has over defendant. Here, officers placed defendant under arrest at his home, but allowed him to get dressed and say goodbye to his family prior to handcuffing him. Defendant's act of running from the officers when they attempted to handcuff him once outside was an escape from "lawful custody." The officers had escorted defendant through his home and had a hold of his arms outside prior to his flight.

People v. Clark, 2017 IL App (3d) 140987 Defendant pleaded guilty to burglary and was sentenced to a 30-month probation sentence. After she violated probation and was resentenced, she was released to the custody of her father on a temporary recognizance bond with the condition that she attend substance abuse treatment at an inpatient facility. After

defendant successfully completed the treatment, the trial court modified the conditions of the bond to require defendant to enter an extended residential care halfway house. The modified bond condition provided that defendant could leave the halfway house for employment, medical needs, and 12-step meetings, and upon release from or discharge from the halfway house was to "immediately return to the custody" of the county jail.

Several months later, defendant left the halfway house and failed to report to the jail. She was convicted of escape.

The Appellate Court reversed defendant's conviction. An element of the offense of escape is that the defendant is in custody. Custody includes physical and constructive custody, and may include lessor forms of restraint than confinement. However, a defendant released on bail or recognizance bond is not in custody.

Because the conditions of defendant's bond included that she attend treatment and a halfway house, she was not in custody when she failed to return to the jail after leaving the halfway house. Therefore, she could not be convicted of escape.

People v. Esparza, 2014 IL App (2d) 130149 Escape is a continuing offense which encompasses the entire period between the time the escape occurs and the time the defendant is returned to custody. Thus, a defendant who was 16 when he removed an electronic home monitoring bracelet from his ankle but 17 when he was arrested could be prosecuted either as a juvenile or an adult.

People v. Rogers, 2012 IL App (1st) 102031 Defendant was charged with escape under the Electronic Home Detention Law, 730 ILCS 5/5-8A-4.1, in that he knowingly violated a condition of the electronic-home-monitoring-detention program by failing to report to day reporting as required. To sustain its burden, the State had to establish that day reporting was a condition of the electronic-monitoring program.

The State failed to present any evidence that day reporting was a condition of electronic monitoring. An investigator testified that electronic monitoring and day reporting "work side by side," which would denote that they operate independently of each other. There was also evidence that electronic monitoring was a condition of day reporting, in which case defendant's failure to attend day reporting would not necessarily violate the terms of the electronic-monitoring program. The investigator testified that a court document existed in defendant's file stating that day reporting was a condition of electronic monitoring, but no such document was produced. The electronic-monitoring contract that defendant signed contained no provision requiring defendant to participate in day reporting. The contract made reference to additional rules and regulations, but the State adduced no evidence of those rules and regulations.

Because the State failed to prove that day reporting was in fact a condition of electronic monitoring, the Appellate Court reversed defendant's conviction for escape.

People v. McClanahan, 2011 IL App (3d) 090824 A person who is "in the lawful custody of a peace officer for the alleged commission of a felony offense" and intentionally escapes from custody commits escape. 720 ILCS 5/31-6(c). "Lawful custody" is not defined by the Code. When interpreting the term "custody" under the escape statute, courts have focused on the amount of control the officer had over the defendant at the time of the arrest. A defendant is not in custody merely because the police inform the defendant that he is under arrest, where the police make no physical contact with the defendant. The police must actually restrain the defendant before he breaks free in order for defendant to commit escape. It is not enough that defendant evades the imposition of custody altogether.

The State proved that defendant was in custody where the officer physically restrained defendant and forcefully moved him to the hood of a squad car. Defendant then escaped from that custody where he ran when the officer had to use one hand to reach for his handcuffs.

Resisting arrest and escape contain different elements. Resisting occurs when defendant struggles with an arresting officer, while escape requires that the defendant actually break free. Because defendant broke free, rather than merely struggled with the officer, the defendant committed escape, even though he could have been additionally charged and convicted of resisting arrest for struggling with the officer.

People v. Skillom, 361 Ill.App.3d 901, 838 N.E.2d 117 (1st Dist. 2005) For purposes of 720 ILCS 5/31-7(a), which defines the offense of aiding an escape as assisting an alleged felon in escaping from the "lawful custody of a peace officer," the term "lawful custody" is defined as the "physical custody of a peace officer . . . acting in a manner permitted or authorized by law."

People v. Runge, 346 Ill.App.3d 500, 805 N.E.2d 632 (3d Dist. 2004) 720 ILCS 5/31-6(b)(1), which creates the offense of escape where a person committed as a sexually violent person intentionally escapes from the custody of a DHS employee, does not violate equal protection.

People v. Bowden, 313 Ill.App.3d 666, 730 N.E.2d 138 (4th Dist. 2000) Under the amended version of 720 ILCS 5/31-6(a), a pretrial detainee's failure to return from work release is not "escape." Under a previous version of §31-6(a), an unauthorized absence from a work release program did constitute escape.

People v. Frazier, 274 Ill.App.3d 990, 654 N.E.2d 575 (1st Dist. 1995) Because a violation of probation is neither a felony nor a misdemeanor, the escape of a person under arrest for a probation violation is not covered by the escape statute. Earlier escape statutes provided that the intentional escape from "lawful custody" constituted the offense of escape; but, in enacting 720 ILCS 5/31-6(c), the legislature elected to limit the offense to persons in custody for felonies and misdemeanors.

People v. Newbolds, 194 Ill.App.3d 539, 551 N.E.2d 813 (5th Dist. 1990) Statute making it a felony to escape from custody following conviction of a felony applies when a person escapes after the guilty verdict but before sentence is imposed.

People v. Kosyla, 143 Ill.App.3d 937, 494 N.E.2d 945 (2d Dist. 1986) The evidence did not prove escape where defendant fled before he was "in the lawful custody of a peace officer." At most, the evidence proved resisting arrest instead of escape.

§16-4
"Hate Crimes"

United States Supreme Court

Wisconsin v. Mitchell, 508 U.S. 476, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993) The federal constitution is not violated by a state statute that increases the sentence for any crime where the victim was selected based on "race, religion, color, disability, sexual orientation, national origin or ancestry." The statute did not violate the First Amendment and was not overbroad.

R.A.V. v. St. Paul, Minnesota, 505 U.S. 377, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) On First Amendment grounds, the Court invalidated a city ordinance that prohibited use of symbols (such as swastikas or burning crosses) that "one knows or has reasonable grounds to know arouse anger, alarm or resentment" based on "race, color, creed, religion or gender." Although lower courts had limited application of the ordinance to "fighting words," the Court found that even "fighting words" cannot be restricted solely because they express a message that the government disfavors. Thus, while a city could outlaw all "fighting words," it could not prohibit only those that express a message of racial, religious, or gender-based hatred.

Illinois Supreme Court

In re B.C., et al., 176 Ill.2d 536, 680 N.E.2d 1355 (1997) The victim of a hate crime need not be a member of, nor perceived to be a member of, the group against whom the predicate offense is directed. Thus, offenses aimed at non-members of the protected group but due to bias (e.g. a battery against a Caucasian for associating with African-Americans) constitute hate crimes.

Illinois Appellate Court

People v. Rokicki, 307 Ill.App.3d 645, 718 N.E.2d 333 (2d Dist. 1999) The Illinois Hate Crime Statute is not overbroad and does not impermissibly chill free speech where the predicate offense is disorderly conduct. The hate crime statute does not infringe on an individual's right to hold unpopular beliefs, but merely punishes an offender who allows such beliefs to motivate criminal conduct. See also, **People v. Nitz**, 285 Ill.App.3d 364, 674 N.E.2d 802 (3d Dist. 1996) (the hate crime statute is not an unconstitutional infringement of free speech or vague and overbroad).

People v. Davis, 285 Ill.App.3d 875, 674 N.E.2d 895 (1st Dist. 1996) To constitute a "hate crime," the offense must be motivated "by reason of" the victim's "actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin." The fact that an offense is accompanied by racial comments does not necessarily make it a hate crime.

People v. Johnston, 267 Ill.App.3d 526, 641 N.E.2d 898 (1st Dist. 1994) The Illinois ethnic intimidation statute does not violate the federal or state constitutions. (Note: Effective January 1, 1991, the offense of ethnic intimidation was replaced with the offense of "hate crime." 725 ILCS 5/12-7.1. Under certain circumstances, hate crime may be a non-probationable offense. See 730 ILCS 5/5-5-3(c((2)(L). Also, the fact that the offense was based on the victim's "actual or perceived" membership in a protected group may be considered as a factor in aggravation under 730 ILCS 5/5-5-3.2(a)(10).)

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