CH. 43
SEARCH & SEIZURE

§43-1
General Principles

§43-1(a)
Fourth Amendment Generally

United States Supreme Court

Illinois v. McArthur, 531 U.S. 326, 121 S.Ct. 946, 148 L.Ed.2d 838 (2001) The central requirement of the Fourth Amendment is that police act reasonably. In general, seizures of personal property are unreasonable unless there is a warrant. However, exceptions to the warrant requirement have been adopted where required by special law enforcement needs or diminished expectations of privacy, and where the intrusion is minimal.

Officers who were awaiting a search warrant did not violate the Fourth Amendment by refusing to allow defendant to reenter his home unaccompanied by an officer. Because the officers' actions were limited in time and scope, tailored to the need to prevent defendant from destroying evidence, and avoided any significant intrusion into defendant's home, they were not *per se* unreasonable.

In addition, the restriction was reasonable because the officers had probable cause to believe that the defendant's home contained evidence of a drug crime and reason to fear that defendant would destroy drugs while the warrant was being obtained, refrained from searching the trailer or arresting defendant before the warrant was obtained, left defendant's home and belongings intact, and imposed the restraint for only the period required to obtain the warrant.

The court was not required to decide whether the restriction would have been justified had only a "non-jailable" crime been involved.

Wyoming v. Houghton, 526 U.S. 295, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999) In determining whether the Fourth Amendment was violated, the court first determines whether the action "was regarded as an unlawful search or seizure under the common law" when the Fourth Amendment was adopted. If that inquiry is inconclusive, "we must evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests."

Soldal v. Cook County, 506 U.S. 621, 113 S.Ct. 538, 121 L.Ed. 450 (1992) The Fourth Amendment applies where State actors violate or damage a citizen's property interests, whether or not liberty and privacy interests are also violated.

Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985) The Fourth Amendment was violated by a state statute which authorized police to use deadly force to prevent the escape of an apparently unarmed suspected felon. Deadly force may be used to prevent an escape only when the officer has probable cause to believe the suspected felon poses a significant threat of death or serious physical injury to the officer or others.

Winston v. Lee, 470 U.S. 753, 105 S.Ct. 1611, 84 L.Ed.2d 662 (1985) A court order

compelling the defendant to submit to surgery to remove a bullet lodged in his chest was unreasonable under the Fourth Amendment. The operation would intrude substantially on the defendant's protected interests, and the State failed to demonstrate a compelling need.

U.S. v. VanLeeuwen, 397 U.S. 249, 90 S.Ct. 1029, 25 L.Ed.2d 282 (1970) Postal authorities may inspect mail only in the manner provided by the Fourth Amendment. See also, **People v. Shapiro & Smith**, 177 Ill.2d 519, 687 N.E.2d 65 (1997) (although postal authorities had sufficient cause to remove a suspicious package from the mail stream in Chicago, they lacked a basis to transport the package to St. Louis for further investigation; compliance with U.S. postal regulations did not excuse non-compliance with Fourth Amendment).

Katz v. U.S., 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) The Fourth Amendment protects people, not places; rejecting "physical intrusion" rule.

Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966) Compulsory administration of a blood test is subject to the constraints of the Fourth Amendment.

Illinois Supreme Court

People v. Gaytan, 2015 IL 116223 Defendant was convicted of unlawful possession of cannabis with intent to deliver when cannabis was found in his car after a traffic stop. The car was stopped because police believed that a trailer hitch obstructed the vehicle's license plate. At the time of the stop 625 ILCS 5/3-413(b) provided that a license plate must be securely fastened in a horizontal position, "in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers."

The court concluded that §3-413(b) is ambiguous concerning whether the prohibition applies to all materials which obstruct any part of the license plate, including the ball hitch at issue here, or only to materials which attach to and obstruct the plate. In the course of its holding, the court noted that accepting the State's interpretation of §3-413(b) would render a "substantial amount of otherwise lawful conduct illegal," including transporting electric scooters or wheelchairs on carriers on the back of a car, using bicycle racks, and towing rental trailers.

Applying the rule of lenity, the court concluded that §3-413(b) prohibits only objects which are physically connected or attached to the license plate and which obstruct the visibility and legibility of the plate. However, the court encouraged the General Assembly to clarify whether equipment and accessories attached to a vehicle near the license plate are restricted.

Although the statute did not apply to a trailer hitch, the court held that the stop was not improper. Under **Heien v. North Carolina**, 474 U.S. ___, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014), the Fourth Amendment is not violated where a police officer pulls over a vehicle based on an objectively reasonable but mistaken belief that traffic laws prohibit defendant's conduct. The court concluded that because §3-413(b) is ambiguous, a definitive interpretation was reached only by applying the rule of lenity, and there was no prior appellate authority concerning the scope of the statute, a reasonable police officer could have believed that §3-413(b) was violated when a trailer hitch was installed on the car.

The court rejected the argument that **Heien** should be rejected as a matter of state law. Illinois follows the "limited lockstep" doctrine when interpreting the search and seizure

provision of the Illinois Constitution. Under this doctrine, the court presumes that the drafters of the Illinois Constitution intended the State search and seizure provision to have the same meaning as the Fourth Amendment, unless there is a reason to adopt a different meaning. Although Illinois has a more broad exclusionary rule than does federal law, **Heien** involves not the exclusionary rule but whether there is a Fourth Amendment violation in the first place. Because **Heien** concluded that the Fourth Amendment is not violated where an officer executes a stop due to a reasonable, mistaken belief that a statute prohibits the conduct in question, no issue concerning the Illinois exclusionary rule is presented.

People v. Eagle Books, Inc., 151 Ill.2d 235, 602 N.E.2d 798 (1992) Police acted unconstitutionally when they conducted a "prior restraint" of materials arguably within First Amendment protection; although one copy of an allegedly obscene document may be seized for evidentiary purposes where there is probable cause to believe that obscenity laws are being violated, police may not completely remove a publication from circulation until there is an actual finding of obscenity after an adversarial hearing.

Illinois Appellate Court

People v. Bond, 2016 IL App (1st) 152007 A police district includes adjoining municipalities within the same county. 65 ILCS 5/7-4-7. The police have full authority and power within the entire police district. 65 ILCS 5/7-4-8. Officers thus may make extrajudicial arrests in an adjoining municipality.

A Blue Island police officer saw a car illegally parked on the Chicago side of a street. The officer investigated the illegally parked car and discovered defendant inside the car. Defendant appeared to be intoxicated and the officer arrested defendant for driving under the influence. The trial court suppressed the arrest because it did believe the officer had the authority to investigate a parking violation.

The Appellate Court reversed. It held that under sections 7-4-7 and 7-4-8, the officer could exercise his full authority and power in any part of his police district, which included the adjacent city of Chicago. The court rejected defendant's reliance on section 107-4(a-3) which provides that an officer may make arrests in any jurisdiction within the State if: (1) he is investigating criminal activity that occurred within his primary jurisdiction; (2) he is personally aware of the immediate commission of a felony or misdemeanor; or (3) another law enforcement agency request the officers assistance. 725 ILCS 5/107-4(a-3).

The court held that section 107-4(a-3) does not apply to adjoining municipalities that are within the same police district. It instead only applies to municipalities beyond those boundaries. The Blue Island officer thus had the authority to investigate the illegally parked car and arrest defendant within the adjacent municipality of Chicago.

People v. Marion, 2015 IL App (1st) 131011 The court rejected the trial judge's conclusion that police officers lack authority to make an enforceable promise of leniency to a suspect in exchange for the suspect's cooperation concerning other police work. "[T]he State has vested police officers with discretionary authority to decide whether or not to arrest persons apparently violating criminal laws, and to decide whether or not to report the apparent violations. . . . Police also have authority to promise not to arrest an individual and report an apparently criminal act in exchange for cooperation in the investigation or prevention of crime."

The court rejected the trial court's factual finding that police did not make any promises to defendant in return for his cooperation concerning firearms offenses. The trial

judge's credibility findings are entitled to great weight, but will be overturned where the State's evidence is improbable, unconvincing, or contrary to human experience.

The court concluded that accepting the trial judge's findings would require a belief that defendant engaged in behavior that was improbable, incomprehensible, and contrary to human nature in that defendant, without any promise of leniency, spontaneously helped officers recover handguns. The court also noted that defendant's testimony that an officer had offered him leniency on an unrelated controlled substances case "credibly explains" the decision to help officers recover handguns. Under these circumstances, the lower court's credibility determination should be overturned.

Because the trial court improperly denied defendant's motion to dismiss the charges on the ground that police officers failed to comply with a promise to offer him leniency if he helped them recover firearms, defendant's convictions were vacated.

People v. Tyus, 2011 IL App (4th) 100168 The Fourth Amendment protection against unreasonable searches and seizures concerns two types of intrusions. First, a "search" occurs when police infringe on an expectation of privacy which society is prepared to recognize as reasonable. Second, a "seizure" occurs where police interfere with an individual's possessory interest in property. The addressee of a package with a guaranteed delivery time has no Fourth Amendment possessory interest in the package until the guaranteed delivery time has passed. Prior to the guaranteed delivery time, therefore, detaining the package does not implicate any possessory interest.

In addition, law enforcement officers do not violate any privacy interest in a package where they merely observe its exterior without opening it. Matters which a person knowingly exposes to the public do not carry Fourth Amendment protection.

Where a package was sent by Federal Express with a "Next-Day-Air, Early-A.M." delivery option, the package was to be delivered by 8:30 a.m. Thus, although police took possession of the package several hours earlier, they did not interfere with the addressee's possessory interest until 8:30 a.m.

When a judge issued a search warrant at 9:25 a.m., the warrantless detention ended. Thus, the total detention for purposes of Fourth Amendment analysis was 55 minutes. Whether that detention was justified depends on whether officers had specific, articulable facts and reasonable inferences creating a reasonable suspicion that a crime was being committed.

The court concluded that the police had a reasonable suspicion that the package contained narcotics because it was shipped by overnight delivery from a known source state for narcotics, was sent to an address and addressee which could not be confirmed, and was heavily taped around the edges and seams. Because heavy taping around the seams is a known tactic used to defeat canine searches, the fact that a canine failed to alert on the package did not negate the factors justifying a belief that it contained narcotics.

Finally, the 55-minute detention was reasonable in length. The court concluded that a 55-minute detention while a search warrant was being sought was reasonable in light of precedent holding that in similar cases detentions of 29 hours, 12 to 14 hours, and four days were found to be reasonable.

People v. Wells, 403 Ill.App.3d 849, 934 N.E.2d 1015 (1st Dist. 2010) The police had reasonable suspicion to conduct a **Terry** stop of the defendant. The police received a call of a domestic disturbance at 2 a.m. The caller reported that her former boyfriend was ringing her bell and "threatening to kill her over the phone," but that she did not want him arrested. The police saw the defendant leaving her apartment on their arrival. Ten minutes later, they

received a second call that he had returned, was again ringing her bell and threatening to "call her over the phone." The police saw defendant walking down the street when they responded, and decided to stop defendant and conduct a field interview.

Before asking any questions, the police handcuffed the defendant, then patted him down and found a gun in his sock. The Appellate Court acknowledged that while handcuffs are generally indicative of an arrest, handcuffing does not invariably convert a **Terry** stop into an arrest if circumstances warrant it for the safety of the police or the public. The court concluded that the defendant was arrested without probable cause, because there were no circumstances that would justify handcuffing defendant in order to conduct a **Terry** stop. Defendant was immediately restrained and searched, the police conducted no investigation prior to handcuffing defendant, and defendant was cooperative and did not attempt to flee or struggle.

The police may conduct a pat-down search for weapons in connection with a **Terry** stop where they reasonably suspect that there is a danger of attack. 725 ILCS 5/108-1.01. The police had no reason to believe that they or others were in danger when they searched defendant. The calls that the police received were not sufficiently detailed to warrant a suspicion that there was a danger of attack, and the police did not investigate further before conducting the search. The fact that the calls related to a domestic disturbance did not by itself justify a search for weapons. The police had no reason to believe that the defendant was armed.

The police asked the defendant at the police station following his arrest if he had a car. They found defendant's car illegally parked and had it towed. The police searched the car before it was towed and found ammunition. The court concluded that the bullets were the fruit of the illegal arrest. There was no break in the chain of events sufficient to attenuate the recovery of the bullets from the illegal arrest. Each event followed and flowed from the initial illegality.

§43-1(b)
Illinois Constitution - Search and Seizure and Privacy Clauses; Illinois Exclusionary Rule

United States Supreme Court

Illinois v. Krull, 480 U.S. 340, 107 S.Ct. 160, 94 L.Ed.2d 364 (1987) Evidence need not be suppressed where it was seized in reasonable reliance on a statute which was later held unconstitutional. But see, **People v. Krueger**, 175 Ill.2d 60, 675 N.E.2d 604 (1996) (Illinois Constitution does not permit good faith exception for a statute later held unconstitutional; Illinois has its own exclusionary rule that is independent of the Federal Constitution); **People v. Carrera**, 321 Ill.App.3d 582, 748 N.E.2d 652 (1st Dist. 2001) (arrest could not be upheld where officers were acting in good faith reliance on a statute which gave police officers full police power in adjoining municipalities and which was subsequently declared unconstitutional as a violation of the single-subject rule).

Illinois Supreme Court

People v. Bass, 2021 IL 125434 After the complainant went to the Chicago Police Department, accused defendant of sexual assault, and identified him in a photo array, the police issued an investigative alert. The alert stated that officers had determined the existence of probable cause for defendant's arrest.

Three weeks later, police pulled over a car for running a red light. While one officer gave the driver a ticket, the other officer had the passengers, including defendant, exit the car. The officers ran the driver's, defendant's, and at least one other passenger's name through the computer in their squad car. They learned of the investigative alert, arrested defendant, and eventually elicited a custodial statement. The driver was given a warning. A motion to suppress, raising an improper seizure and warrantless arrest, was denied, and defendant was convicted of criminal sexual assault and sentenced to eight years in prison.

The Appellate Court held that the statement should have been suppressed for two reasons. First, two justices would have found the warrantless arrest illegal because the investigative alert system violates the Illinois Constitution. The warrant clause of Article 1 Section 6 uses the word "affidavit" rather than "oath and affirmation" as the requisite standard of evidence to obtain an arrest warrant, signaling the framers' intent to provide Illinois citizens with greater protection than the federal constitution. The investigative alert system, which depends on unsworn evidence presented to police officers, does not meet the affidavit requirement.

Second, all three justices agreed that regardless, the warrant check on defendant was improper because it went beyond the mission of the stop, and measurably extended the stop, in violation of **Rodriguez v. United States**, 135 S. Ct. 1609 (2015).

The Supreme Court affirmed on the **Rodriguez** issue, holding that defendant made a *prima facie* case of an illegal seizure by establishing that the police detained him without a warrant while they ran a warrant check on him. The warrant check was unrelated to the mission of the stop – investigation of a traffic offense – and therefore the State bore the burden of showing that it either was done for public safety reasons, or that it did not measurably extend the stop.

Here, the State conceded no public safety rationale justified the warrant check, but maintained that it did not measurably extend the stop. The Supreme Court disagreed, noting that the "sparse" testimony by the officers at the suppression hearing did not reveal the order or timing of the warrant checks in relation to checking the driver's license and writing a warning. Defendant's contention that the check must have added some time to the stop was therefore unrebutted. As such, the State did not meet its burden of proving the stop was not measurably extended.

The court then vacated the portion of the appellate court's holding invalidating the investigative alert. The court held that the question was moot once the court suppressed the defendant's statement pursuant to the **Rodriguez** issue. Reaching the investigative alert issue would violate the court's rule against advisory opinions and reaching unnecessary constitutional issues. Two justices disagreed with this portion of the opinion and would have reached the issue. They noted that both issues had been appealed by the State, and both presented constitutional questions, so there was no reason to bypass one issue in favor of the other.

People v. Boston, 2016 IL 118661 A grand jury investigation is designed to both exonerate individuals suspected of criminal activity and to establish probable cause necessary to arrest suspected felons. The grand jury has the power to investigate crimes and may issue subpoenas regardless of whether a specific charge is pending. Matters occurring before a grand jury may be disclosed to the prosecution and other government personnel for use in the enforcement of criminal law. 725 ILCS 5/112-6.

In **In re May 1991 Will County Grand Jury**, 152 Ill. 2d 381 (1992), the court held that under the federal constitution, no preliminary showing of reasonableness is necessary

for a grand jury to issues a subpoena for noninvasive physical evidence. Under the Illinois Constitution, which the court recognized as providing broader protections from unreasonable searches, there must be some showing of individualized suspicion before a subpoena for noninvasive physical evidence may be issued. This showing may be made by an affidavit from the prosecutor.

Here the police found a bloody palm print on a wall near the victim's body. The prosecutor investigating the case asked a grand jury to issue a subpoena for defendant's palm prints. The prosecutor informed the grand jury that defendant was the ex-boyfriend of the victim and "the police have received information that he may have been involved in her killing."

The grand jury issued a subpoena for a complete set of defendant's palm prints. Chicago police officers served the subpoena on defendant, obtained his palm prints, and delivered them to the Illinois State Police crime lab. The defendant's palm prints matched the palm print found at the scene and were used to convict defendant of first degree murder.

The court found that the State provided the grand jury with the requisite individualized suspicion to support the issuance of the subpoena. The prosecutor informed the grand jury that defendant was the ex-boyfriend of the victim and that the police had information that defendant may have been involved in the murder. Although the prosecutor did not provide this information in an affidavit, there was no allegation that any false statements were made to the grand jury.

People v. Gaytan, 2015 IL 116223 Defendant was convicted of unlawful possession of cannabis with intent to deliver when cannabis was found in his car after a traffic stop. The car was stopped because police believed that a trailer hitch obstructed the vehicle's license plate. At the time of the stop 625 ILCS 5/3-413(b) provided that a license plate must be securely fastened in a horizontal position, "in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers."

The court concluded that §3-413(b) is ambiguous. Applying the rule of lenity, the court concluded that §3-413(b) prohibits only objects which are physically connected or attached to the license plate and which obstruct the visibility and legibility of the plate. Although the statute did not apply to a trailer hitch, the court held that the stop was not improper. Under **Heien v. North Carolina**, 474 U.S. ___, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014), the Fourth Amendment is not violated where a police officer pulls over a vehicle based on an objectively reasonable but mistaken belief that traffic laws prohibit defendant's conduct. The court concluded that because §3-413(b) is ambiguous, a definitive interpretation was reached only by applying the rule of lenity, and there was no prior appellate authority concerning the scope of the statute, a reasonable police officer could have believed that §3-413(b) was violated when a trailer hitch was installed on the car.

The court rejected the argument that **Heien** should be rejected as a matter of state law. Illinois follows the "limited lockstep" doctrine when interpreting the search and seizure provision of the Illinois Constitution. Under this doctrine, the court presumes that the drafters of the Illinois Constitution intended the State search and seizure provision to have the same meaning as the Fourth Amendment, unless there is a reason to adopt a different meaning. Although Illinois has a more broad exclusionary rule than does federal law, **Heien** involves not the exclusionary rule but whether there is a Fourth Amendment violation in the first place. Because **Heien** concluded that the Fourth Amendment is not violated where an officer executes a stop due to a reasonable, mistaken belief that a statute prohibits the

conduct in question, no issue concerning the Illinois exclusionary rule is presented.

People v. LeFlore, 2015 IL 116799 Police officers who were investigating several burglaries received a Crime Stoppers tip concerning defendant. Acting without a warrant, an officer placed a GPS device under the rear bumper of the car which defendant drove but which belonged to his girlfriend. The officer placed the GPS device while the car was parked in a lot at the apartment complex where defendant and his girlfriend lived. The trial court denied a motion to suppress evidence obtained by tracking the car's movements by use of the GPS device.

While the case was pending on appeal, the United States Supreme Court decided **U.S. v. Jones**, 565 U.S. ___, 132 S. Ct. 945 (2012), which held that placement of a GPS tracking device constitutes an unlawful "trespass" and requires a warrant. **Jones** also held that the use of a GPS device to monitor a vehicle's movements on public streets constitutes a "search" under the Fourth Amendment. The Supreme Court also decided **Davis v. U.S.,** 564 U.S. ___, 131 S. Ct. 2419 (2011), which applied the good-faith exception to the exclusionary rule where a state police officer searched a car incident to the occupant's arrest. **Davis** concluded that the good-faith exception applied where the officer acted in "objectively reasonable reliance on binding judicial precedent" which set forth a bright-line rule allowing the search. The search in **Davis** occurred before **Arizona v. Gant**, 556 U.S. 332 (2009), adopted a new rule concerning searches of cars incident to arrest.

The Illinois Supreme Court held that even if installing the GPS violated the Fourth Amendment, the good-faith exception to the exclusionary rule applied.

At the time of the officer's actions, **United States v. Knotts**, 460 U.S. 276 (1983) and **United States v. Karo**, 468 U.S. 705 (1984) constituted "binding judicial precedent" on which the officer could reasonably rely. The court rejected defendant's argument that for purposes of the good-faith exception, "binding judicial precedent" exists only if the authority in question is from the same jurisdiction, is followed by police to the "letter," and is on all fours with the case to be decided. Although **Knotts** and **Karo** involved placing beepers in containers which the defendants then unknowingly took into their vehicles, the court held that the rationale of those cases would have led the officer in this case to reasonably believe that the Fourth Amendment would not be violated by installing an electronic device on defendant's car. In the course of its holding, the court noted that every Federal Court of Appeals decision to address the issue concluded that **Knotts** and **Karo** would have allowed the GPS tracker to be placed.

Alternatively, the court concluded that at the time of the search **United States v. Garcia**, 474 F.3d 994 (7th Cir. 2007), which specifically authorized the warrantless placement of a GPS device, was "binding judicial precedent" in the Seventh Circuit. The court noted that at the time the device was placed there was no Illinois authority on this question.

In addition, precedent defining the good-faith exception holds that the exception applies where the officer reasonably believed that his actions were proper in view of the existing "legal landscape." The good faith exception is based on the premise that no deterrent purpose is served where police act in an objectively good faith belief that their actions are proper. The court concluded that before **Jones** was decided, **Knotts** and **Karo** were widely understood as holding that the electronic surveillance of automobile movements did not implicate the Fourth Amendment. In addition, **Karo** discounted the "trespass" theory that the court in **Jones** accepted. Under these circumstances, an officer seeking to place a GPS device on defendant's car would reasonably believe that his actions were permissible.

The court rejected the argument that under **People v. Krueger**, 175 Ill. 2d 60, 675 N.E.2d 604 (1996), the state constitutional exclusionary rule is broader than the federal exclusionary rule and precludes application of the good faith exception here. The court concluded that **Krueger** held only that Illinois does not recognize the good faith exception where an officer relies on a statute that is later declared unconstitutional. **Krueger** does not apply where an officer relies on binding judicial precedent.

People v. Caballes, 221 Ill.2d 282, 851 N.E.2d 26 (2006) Although the Illinois Supreme Court has been described as following the "lockstep" doctrine, the court concluded that its approach is "more properly described as either an interstitial or perhaps a limited lockstep approach." The Illinois Supreme Court will interpret the Illinois constitution differently from the federal constitution if there is some indication in the language of the State constitution, or in the debates and committee reports of the constitutional convention, indicating an intent to construe the Illinois constitutional provision differently from its federal counterpart. See also, **People v. Moss**, 217 Ill.2d 511, 842 N.E.2d 699 (2005) (to diverge from the "lockstep" doctrine, there must be some indication - in either the language of the State constitution or the debates and committee reports of the Constitutional Convention - that the drafters intended that the State Constitution be construed differently than the U.S. Supreme Court's interpretation of the Federal Constitution).

The court rejected the argument that it should abandon the limited lockstep doctrine and deem the Illinois Constitution an independent or primary source of constitutional law. Not only would such a change raise implications of *stare decisis*, but the limited lockstep approach reflects the intent of both the drafters of the 1970 Illinois Constitution and the voters who adopted that constitution.

Although the "search and seizure" provision of the 1970 Illinois Constitution differs from the Fourth Amendment by prohibiting unreasonable "invasions of privacy or interceptions of communications by eavesdropping devices or other means," the privacy clause applies only where police seek either private records and information or to invade the actual physical body of a person. Thus, the privacy clause does not apply to canine sniffs during traffic stops. See also, **People v. Bartelt**, 384 Ill.App.3d 1028, 894 N.E.2d 482 (4th Dist. 2008) (l/a granted as No. 107276, 11/26/08) (officers who were making a traffic stop and who wanted to conduct a nonconsensual canine sniff of the exterior of the vehicle did not violate the Fourth Amendment by ordering defendant to roll up the windows and turn the blower "on high," in order to force air through the seams of the vehicle for purposes of the canine sniff).

Under **Illinois v. Caballes**, 543 U.S. 405 (2005), a dog sniff for narcotics during a traffic stop does not constitute a "search" under the Federal Constitution. The Illinois Supreme Court concluded that neither the language of Article I, §6 of the Illinois Constitution nor the record of the constitutional debates suggests that the use of narcotics dogs should be considered a "search" under the Illinois Constitution.

The "search and seizure" provision of the 1970 Illinois Constitution differs from the Fourth Amendment by prohibiting unreasonable "invasions of privacy or interceptions of communications by eavesdropping devices or other means." (Art. 1, §6). The privacy protection of the Illinois Constitution applies only to those police investigations which seek to obtain access to private records or to invasions of one's physical body.

In dissent, Justices Freeman, McMorrow and Kilbride found that the limited "lockstep" doctrine allows the court to diverge from the United States Supreme Court's interpretation of the Fourth Amendment for several reasons, including a finding that the

federal precedent is based on a "flawed federal analysis." The dissenters found that Justice Ginsberg's dissent in **Illinois v. Caballes** disclosed "several serious flaws in the Court's decision."

People v. Krueger, 175 Ill.2d 60, 675 N.E.2d 604 (1996) Illinois has its own exclusionary rule, independent of the Federal Constitution. See also, **People v. Brocamp**, 307 Ill. 448, 138 N.E. 728 (1923) (Illinois had State exclusionary rule before **Mapp v. Ohio** was decided); **People v. Carter**, 284 Ill.App.3d 745, 672 N.E.2d 1279 (5th Dist. 1996) (since at least 1923, Illinois has had a State exclusionary rule which precludes the admission of evidence obtained in searches that are "unreasonable" under the Illinois Constitution).

People v. Turnage, 162 Ill.2d 299, 642 N.E.2d 1235 (1994) Once a defendant has been arrested and posts bond, a second warrant on the same charge is void *ab initio*. A contrary holding would undermine the right to bail under the Illinois Constitution, allowing a second warrant to constitute a "pocket warrant" that police could execute any time or place although the target was already subject to the jurisdiction of the court.

The "good-faith" exception did not apply where defendant was arrested on a warrant that issued after he posted bond on the same charge. The State presented no evidence of the good faith of the officer who obtained the second warrant, and the good faith of the arresting officer was irrelevant.

King v. Ryan, 153 Ill.2d 449, 607 N.E.2d 154 (1992) Both the Fourth Amendment and the Illinois Constitution are violated by a State statute holding that a person driving a motor vehicle is deemed to have consented to a breath or blood test if there is probable cause to believe that he "was the driver at fault, in whole or part, for a motor vehicle accident which resulted in the death or personal injury of any person."

Basing implied consent on the fact that a driver is at fault in an accident, without requiring any suspicion that he has been drinking, violates the probable cause requirement of the Fourth Amendment. Although the State regulates the operation of motor vehicles within its borders, drivers do not have a lesser expectation of privacy similar to that of workers in a "pervasively" regulated industry. In addition, the search in question is much more intrusive than a roadblock or giving a urine sample, the purpose of the test is to obtain evidence for use in a criminal trial, and requiring probable cause to believe that a motorist has been drinking will not hamper the State's ability to detect drunk drivers.

The "zone of privacy" recognized by Article I, §6 of the Illinois Constitution is violated where a driver is required to take a breath or blood test in the absence of probable cause to believe he has been drinking. See also, **Fink v. Ryan**, 174 Ill.2d 302, 673 N.E.2d 281 (1996) (successor statute upheld).

People v. Tisler, 103 Ill.2d 226, 469 N.E.2d 147 (1984) The "totality-of-circumstances" approach adopted in **Gates** applies to probable cause questions under the Illinois Constitution that involve an informant's tip.

Under the totality of the circumstances test, probable cause existed. The informant could be deemed reliable based on accurate information he had previously provided, and the police corroborated many details of the informant's story.

Illinois Appellate Court

People v. Erwin, 2023 IL App (1st) 200936 Defendant was denied leave to file a successive post-conviction petition alleging an improper arrest pursuant to an investigative alert, based on the now-vacated reasoning of **People v. Bass**, 2019 IL App (1st) 160640, aff'd in part & vacated in part, 2021 IL 125434, and reiterated in **People v. Smith**, 2022 IL App (1st) 190691.

The appellate court affirmed. The majority declined to decide the investigative alert issue because, even if the appellate court now agreed that the practice is unconstitutional, the officers who made the arrest would have been acting under a reasonable belief that their conduct was constitutional. Thus, the good-faith exception to the exclusionary rule would apply, and defendant would not be entitled to the suppression of his confession. For this reason alone, defendant could not show prejudice, and therefore could not be granted leave to file his successive petition.

A special concurrence would have affirmed based on the failure to establish cause, where the claim rests on a provision of the Illinois Constitution that has existed since the 1800's. Finding a lack of prejudice based on the exclusionary rule, on the other hand, is premature given the lack of a record on the issue.

People v. Williams, 2020 IL App (3d) 180024 The trial court granted defendant's motion to suppress where the officer stopped defendant's vehicle based on the absence of a rear license plate, but the officer subsequently realized that defendant had an Iowa temporary registration sticker in his rear window. While the trial court found the officer credible that he did not see the registration sticker until after he had initiated the stop, the court concluded that the officer did not have the right to investigate further once he realized the vehicle had a valid registration sticker displayed. Therefore, his subsequent request for defendant's license, which led to the discovery that defendant's license was suspended and that defendant had a gun and cocaine in the vehicle, was improper. The trial court also rejected the alternative justification that defendant's rear license plate light was malfunctioning, which the officer observed after initiating the stop, concluding that a functioning light was not required where there was no rear license plate to be illuminated.

The Appellate Court reversed. First, the court concluded that the officer was justified in asking for defendant's driver's license; the continued investigation was not a fourth amendment violation pursuant to **People v. Cummings**, 2016 IL 115769. And, while defendant asserted that the Illinois constitution, article I, section 6, afforded him greater protection here, the majority found that defendant provided no reason to depart from interpreting Illinois' search and seizure clause in lockstep with the fourth amendment.

The dissenting justice would have found that defendant's rights were violated under the Illinois constitution because article I, section 6 provides expanded protections where it specifically affords protection against "invasions of privacy" – language which is not included in the federal constitution. The majority refused to consider the privacy language of article I, section 6, however, believing that defendant had not developed such a claim.

People v. Johnson, 2020 IL App (1st) 172987 Police do not need a search warrant, consent, exigent circumstances, or even suspicion of wrongdoing in order to conduct a reasonable search of a parolee's residence under either the Fourth Amendment or the search and seizure clause of the Illinois Constitution. Although said to be in "limited lockstep," the Illinois Constitution does not provide greater protections than the Fourth Amendment.

Here, the trial court erred when it cited "lack of standing" in denying defendant's motion to suppress the drugs and weapon found in a room he claimed was not his (standing is not a requirement of the fourth amendment), but it was correct to deny the motion to

suppress based on defendant's diminished expectation of privacy. Defendant signed an MSR agreement to allow searches of his residence, and while police broke a lock to enter the bedroom containing the contraband and several items belonging to defendant, this was a reasonable step after defendant's uncle told police the room belonged to defendant, while defendant claimed ownership of a different room containing only women's clothes.

People v. Thornton, 2020 IL App (1st) 170753 The police received a 911 call stating that a person wanted for two sexual assaults was sitting on the porch at a specific address; the caller also described defendant's clothing. Police patrolling in the area found defendant, walking down the street near the address provided by the caller, wearing clothing which matched that described. The officers approached and asked defendant his name. Upon checking his identity in their system, the officer discovered an investigative alert.

The initial **Terry** stop of defendant was valid based on the 911 call because defendant was quickly located in the general area and matched the description provided. While an anonymous tip requires corroboration of its assertion of illegality, not just identity, a 911 call is not viewed with the same skepticism as an anonymous tip. Further, the tip here was not of a crime in progress, but rather provided the location of a known suspect, merely allowing the officers to investigate further.

Handcuffing defendant during this initial encounter did not transform the **Terry** stop into an arrest where an officer testified that he cuffed defendant for safety reasons. The court found this reasonable in light of defendant's status as a sexual assault suspect.

The subsequent arrest of defendant based on the investigative alert was also proper. The investigative alert was supported by probable cause where one of the two victims identified defendant from a photo array, and defendant lived near the other victim's house where the assaults of both women occurred. Further, defendant had physical characteristics described by both women, including tattoos on his upper arms and a chipped front tooth from having been shot in the mouth previously.

The Appellate Court declined to follow **People v. Bass**, 2019 IL App (1st) 160640, which concluded that investigative alerts are unconstitutional. Instead, the court followed **People v. Braswell**, 2019 IL App (1st) 172810, and concluded that investigative alerts supported by probable cause are constitutional.

The concurring justice would have found that the **Terry** stop was converted into an arrest almost immediately when he was handcuffed and placed into a police car. She would have found that arrest proper on the basis of the same facts which supported the **Terry** stop, specifically the 911 call and the fact that defendant matched the description of a man wanted for two felonies.

People v. Bahena, 2020 IL App (1st) 180197 Eight months after being shot in a liquor store parking lot, the victim identified defendant as the shooter from a photo lineup. Based on that identification, an officer created an investigative alert. Relying on that investigative alert, two officers went to defendant's home and placed him under arrest. Defendant challenged his arrest, arguing that an investigative alert is an improper basis for a warrantless arrest, even if the alert is supported by probable cause. The Appellate Court disagreed, declining to follow **People v. Bass**, 2019 IL App (1st) 160640, and instead following its own prior decision in **People v. Braswell**, 2019 IL App (1st) 172810. An arrest based on an investigative alert supported by probable cause does not violate the Illinois Constitution.

People v. Braswell, 2019 IL App (1st) 172810 Police responding to a complaint that subjects inside a grocery store were passing counterfeit bills had probable cause to believe defendant

was accountable for their conduct, even though defendant was in a vehicle in the parking lot. While mere presence near a crime scene is insufficient to support an arrest, an individual's location prior to and after commission of a crime may be considered in determining probable cause. Here, defendant was not simply present in the parking lot, but rather had arrived at the location with the offenders and remained in the vehicle that presumably was meant to be used to leave the scene, as well.

After he was taken into custody, the suburban officers discovered an investigative alert for defendant and notified the Chicago detective who had entered the alert. Defendant then was turned over to Chicago police, who conducted a lineup at which defendant was identified as the offender in the armed robbery which was the subject of the investigative alert. The Appellate Court declined to follow **People v. Bass**, 2019 IL App (1st) 160640, which held that an arrest based on an investigative alert, rather than a warrant, was unconstitutional under the Illinois Constitution. Instead, the Appellate Court here concluded that an arrest requires only probable cause, not a warrant, and that an arrest is proper where the police have reasonable grounds to believe defendant has committed an offense regardless of whether an investigative alert has been issued.

People v. Ealy, 2015 IL App (2d) 131106 Compelled DNA extraction constitutes a "search" under both the Fourth Amendment and the Illinois Constitution, and therefore requires a warrant unless the defendant consents. At a jury trial for first-degree murder, the trial judge erred by admitting evidence that the defendant refused to submit to DNA testing.

The court stressed that the evidence allowed the jury to infer consciousness of guilt from the exercise of a constitutional right and that any probative value of the evidence was substantially outweighed by its prejudicial effect. In addition, the prejudice was exacerbated by the admission of evidence that 30 other persons had been interviewed by police and had consented to DNA testing.

The court found that it was irrelevant that defendant was not in custody at the time he refused the request for a DNA sample and thus was not reacting to **Miranda** warnings indicating that he was not required to cooperate with officers. The inadmissibility of a refusal to consent to DNA testing is based on the constitutional right to refuse to consent, and does not depend on whether the particular defendant was advised of that right.

The court concluded, however, that under the circumstances of this case the error was harmless beyond a reasonable doubt.

People v. Fitzpatrick, 2011 IL App (2d) 100463 A custodial arrest for a misdemeanor punishable by fine only does not violate the federal constitution's prohibition of unreasonable searches and seizures. **Atwater v. City of Lago Vista**, 532 U.S. 318 (2001). The Illinois Supreme Court has not yet clearly addressed whether the Illinois Constitution's counterpart to the Fourth Amendment (Ill. Const. 1970, Art. I, §6) permits the police to conduct a custodial arrest for a petty offense. Illinois Supreme Court decisions addressing the permissible scope or duration of a traffic stop where there was no initial arrest for the traffic violation have no bearing on this question.

Illinois follows a limited lockstep approach to interpreting state constitutional guarantees that correspond to rights secured by the United States Constitution. State constitutional provisions are interpreted in harmony with their federal counterparts unless a specific criterion, such as unique state history or state experience, justifies departure from federal precedent. An arguably flawed federal analysis is not a reason to depart from United States Supreme Court precedent.

Finding no reason to depart from federal precedent, the court concluded that a

custodial arrest for the petty offense of walking in the middle of a public road (625 ILCS 5/11-1007(a)) did not violate the state constitution. The trial court did not err in refusing to suppress the fruit of the search of defendant's person conducted at the police station following that arrest.

People v. Carter, 2011 IL App (3d) 090238 By statute, Illinois prohibits the use of strip searches in arrests for traffic, regulatory, or misdemeanor offenses, except for cases involving weapons or a controlled substance. 725 ILCS 5/103(c). Defendant was arrested for driving on a suspended license. The arresting officer squeezed defendant's crotch because it was a known spot for hiding illegal drugs, and then unzipped defendant's pants because the material did not "mesh" together. The officer removed a plastic bag containing drugs that he saw sticking out of a hole in defendant's clothing. Because defendant wore his pants low, his underwear was exposed prior to the search.

Even assuming that the strip-search statute had been violated, its violation would not automatically result in application of the exclusionary rule. The dispositive question is whether the search, as whole, was reasonable under the Fourth Amendment, considering: (1) the scope of the intrusion; (2) the manner in which the search was conducted; (3) the justification for initiating the search; and (4) the place where it was conducted.

Although the search was conducted on a public street in daylight, the officer had a reasonable suspicion that defendant possessed contraband. Unzipping the defendant's pants and extracting readily accessible contraband did not exceed the scope of a search incident to a lawful arrest. Because defendant chose to dress in a manner that exposed his underwear, he cannot complain that the officer violated his privacy rights by exposing a portion of his underwear. There was also no indication that anyone other than the officer could see the portion of defendant's underwear exposed by the search. Therefore, the officer did not conduct an unreasonable search.

Generally, a court will not construe the state exclusionary remedy to be broader than the federal rule, unless the proponent of the expansion can show either that: (1) the framers of the 1970 constitution intended the expansion; or (2) denying the expansion would be antithetical to state tradition and value as reflected by longstanding case precedent. No argument was made that either exception applies to the statutory limitation of strip searches.

People v. Glorioso, 398 Ill.App.3d 975, 924 N.E.2d 1153 (2d Dist. 2010) In **Hudson v. Michigan**, 547 U.S. 586 (2006), the United States Supreme Court held that under the federal constitution, the exclusionary rule does not apply to violations of the "knock-and-announce" rule. The Second District concluded that defendant failed to carry his burden to show that the Illinois Supreme Court would depart from the "lockstep" doctrine concerning **Hudson**. Thus, the Illinois Constitution's exclusionary rule does not apply to "knock and announce" violations.

The court noted that **People v. Krueger**, 175 Ill.2d 60, 675 N.E.2d 604 (1996), in which the Supreme Court parted from the "lockstep" doctrine, concerned an unconstitutional statute which had the potential to violate the constitutional rights of many persons, rather than a court decision which affected only an individual case.

People v. Nesbitt, 405 Ill.App.3d 823, 938 N.E.2d 600 (2d Dist. 2010) The Illinois Constitution, Article I, §6, contains both privacy and search-and-seizure clauses. While the search-and-seizure provision of the Illinois Constitution is interpreted in lockstep with the federal constitution, the privacy clause expands upon those rights and creates an additional right not covered by the search-and-seizure provision. This privacy clause protects an

individual's bank records in any form, electronic or otherwise. A citizen does not waive any legitimate expectation of privacy in her financial records by resorting to the banking system. Since it is virtually impossible to participate in the economic life of contemporary society without maintaining a bank account, opening a bank account is not entirely volitional.

The Banking Act, 205 ILCS 5/48.1, does not exempt the State from obtaining a subpoena or a warrant for defendant's constitutionally-protected bank records. The Banking Act merely defines the obligations a bank owes to its customers. It does not attempt to regulate governmental intrusion into a customer's confidential bank records. While the Banking Act authorizes a bank to release records to law enforcement when it reasonably believes that it has been the victim of a crime, the State offered no evidence that this exception applied at the hearing on defendant's motion to suppress. Rather, the State stipulated that law enforcement initiated a request for the records and the bank complied.

Defendant's status as an employee of the bank did not alter the State's obligations to obtain a warrant or a subpoena for the records. While there is a diminished reasonable expectation of privacy in work-related situations, the issue was not the bank's search of defendant's work space or computer. An employee does not lose her constitutional protections merely because she is employed by an entity capable of accessing protected information.

The State cannot rely on the inevitable-discovery doctrine to justify the seizure of defendant's records. That doctrine requires that an independent investigation already be in progress when the evidence was unconstitutionally obtained. There was no evidence of such presented at the hearing on the motion to suppress. There was also no evidence that the State's failure to obtain a warrant or subpoena was due to a mistaken reliance on the Banking Act. Suppression of the bank records will serve the purpose of informing law enforcement that it must obtain a subpoena or a warrant to obtain constitutionally-protected materials during a criminal investigation.

People v. Thiele, 114 Ill.App.3d 189, 448 N.E.2d 1025 (3d Dist. 1983) A search warrant was invalid for failing to satisfy the particularity requirement of the Fourth Amendment, the Illinois Constitution and Illinois statutes; the warrant commanded officers to search defendant's motor vehicle and seize "[i]tems taken from the Donovan Grade School and Martinton Grain Company, constituting evidence of" burglary and theft. The warrant was clearly inadequate because there was "nothing in the warrant which limited the scope of the property to be seized or to curtail the discretion of the officers in executing the warrant." See also, **People v. Holmes**, 20 Ill.App.3d 167, 312 N.E.2d 748 (1st Dist. 1974) (search warrant was defective because it did not describe the objects to be seized with sufficient particularity; "undetermined amount of U.S. currency" and "weapon" are meaningless and too broad).

People v. Moran, 58 Ill.App.3d 258, 373 N.E.2d 1380 (2d Dist. 1978) Affidavit for search warrant was "technically defective" because it was not properly notarized, but the warrant was upheld because the affiant was sworn before the issuing judge. Compare, **People v. Kleinik**, 233 Ill.App.3d 458, 599 N.E.2d 177 (5th Dist. 1992) (where the officer who requested the warrant was never placed under oath, the Fourth Amendment and Article I, §6 of the Illinois Constitution were violated; officer's signature on notarized document was not adequate replacement being placed under oath).

§43-1(c)
Government vs. Private Action

United States Supreme Court

U.S. v. Jacobson, 466 U.S. 109, 104 S. Ct. 1652, 80 L.Ed.2d 85 (1984) The Fourth Amendment is implicated only where an intrusion by police exceeds the scope of a preceding private search. Where the agents' inspection of the package did not enable them to learn anything beyond what was learned during the private search by the freight company employees, they did not infringe on a legitimate expectation of privacy and did not conduct a "search" within the meaning of the Fourth Amendment. Therefore, no warrant was required.

A field test of suspected contraband was not improper although it exceeded the scope of a prior private search. The field test merely disclosed whether a particular substance was cocaine, and did not compromise any legitimate interest in privacy.

Illinois Supreme Court

People v. Brooks, 2017 IL 121413 At a suppression hearing, the defendant bears the burden of making an initial *prima facie* showing that: (1) a search occurred, and (2) it violated the fourth amendment. The burden then shifts to the State to present evidence to counter defendant's *prima facie* case.

Here, defendant, who was charged with driving under the influence, filed a motion to suppress the results of a blood draw taken at a hospital following his motorcycle accident. The evidence at the suppression hearing, however, never established that a blood draw occurred. Defendant testified only that the police seized him and forced him to go to the hospital, and that he never consented to a blood draw. No witnesses testified to participating in a blood draw. While the court received an envelope from the hospital that the parties and court assumed contained the results of defendant's blood work, it was never opened and the parties did not stipulate to its contents.

Even assuming a blood draw did take place, defendant failed to establish that it was conducted by State actors. The officer who brought defendant to the hospital did not order, seek, or participate in a blood draw. Even though the officer seized him in order to bring him to the hospital, defendant challenged only the search, not the seizure. To determine whether the private hospital employees who would have conducted the search acted as agents of the State, courts consider all of the circumstances of the case. While defendant argued that any draw would have been at the behest of the police, defendant failed to call any witnesses from the hospital to testify, and thus offered no evidence that any private individual who may have drawn defendant's blood acted as a State agent under these circumstances.

People v. Clendenin, 238 Ill.2d 302, 939 N.E.2d 310 (2010) The Fourth Amendment applies only to government action, not to searches conducted by private persons. Where the government uses privately-discovered information to investigate a crime without obtaining a warrant, the Fourth Amendment question is whether the investigation exceeded the scope of the private search.

The police did not exceed the scope of the private search of defendant's computer disc. Defendant's friend testified that she viewed a video file on the disc containing apparent child pornography. She also searched the disc widely enough to discover other files with names suggestive of child pornography. This allowed the police to perform a general review of the disc for child pornography. There was no showing that the police searched any file whose name did not suggest it contained child pornography.

People v. Phillips, 215 Ill.2d 554, 831 N.E.2d 574 (2005) The Fourth Amendment applies only to government action, and is not violated where a private person conducts a search. Furthermore, no Fourth Amendment violation occurs where the government is informed of information discovered by a private search, because the private search frustrated any expectation that the information would remain private.

Thus, where the government uses privately discovered information to make a warrantless investigation of a crime, the Fourth Amendment is satisfied so long as the officer's investigation does not exceed the scope of the private search.

Where a computer repair technician told a police officer that he viewed a video which appeared to be child pornography, the officer did not exceed the scope of the search by viewing the video himself to determine precisely what it contained. The officer gained no new information by viewing the video, but merely confirmed the technician's report of the video's contents. In addition, once he viewed the video and confirmed that defendant owned the computer, the officer had probable cause to justify an arrest.

People v. Lahr, 147 Ill.2d 379, 589 N.E.2d 539 (1992) The common law rule — that a police officer has authority to make arrests outside the territorial limits of his or her political entity only when in "fresh pursuit" of a fleeing felon — has been modified by Illinois statutes which allow any person to make an arrest based upon reasonable grounds to believe a criminal offense is being committed. Thus, although a police officer may make a "citizen's arrest" outside his jurisdiction, his authority is no greater than that of a private citizen. An officer who is outside his jurisdiction may not use the "powers of his office to obtain evidence not available to private citizens."

Defendant was given a speeding ticket at a radar surveillance point that a municipal police officer set up outside his municipality's boundaries. The court concluded that using radar equipment was an act within the officer's official capacity — although radar equipment is available to private citizens, there is at best a remote likelihood of a private citizen using it to conduct surveillance of a road. Thus, the trial court properly granted a motion to quash the arrest.

People v. Fenton, 125 Ill.2d 343, 532 N.E.2d 228 (1988) No investigatory stop occurred where an Illinois officer pursued a speeding car two blocks into Iowa, but then told the driver go to the city hall in Hamilton, Illinois to pick up his citation. Although the officer had only the status of a private citizen, no arrest occurred. In addition, because the officer did not ask for the defendant's name or driver's license, no "seizure" occurred.

Furthermore, the exclusionary rule does not apply to an identification obtained by a police officer in his capacity as a private citizen. The court cautioned, however, that it was not holding that a police officer may, as a private citizen, conduct a noncustodial investigation of a driver for speeding.

People v. Hamilton, 74 Ill.2d 457, 386 N.E.2d 53 (1979) Where defendant was taken to a hospital following a traffic accident, and hospital personnel opened defendant's briefcase, closed it, and then told an officer to look inside, items in the briefcase were discovered as a result of a search by the officer. However, only a private search would have occurred had hospital personnel placed the evidence they discovered within the officer's plain view.

People v. Heflin, 71 Ill.2d 525, 376 N.E.2d 1367 (1978) The constitutional proscription against unreasonable searches and seizures does not apply to private individuals. Where

defendant's letters were given to the police by defendant's brother, after police asked for the letters but exerted no pressure, the brother was not as an agent of the police.

Illinois Appellate Court

People v. Mueller, 2021 IL App (2d) 190868 A blood draw taken by medical personnel following defendant's car accident did not violate the Fourth Amendment. The medical personnel were not State actors, and took the blood for medical reasons, not at the behest of the police. Section 11-501.4-1(a) of the Illinois Vehicle Code, which compels the release of the blood test results to law enforcement, does not create Fourth Amendment implications, because it does not require the draw or otherwise transform the medical personnel into State actors.

People v. Deroo, 2020 IL App (3d) 170163 The trial court did not abuse its discretion when it granted the State's motion for a directed finding at the hearing on the defense motion to suppress blood test results. Upon filing a motion to suppress evidence, the defense as moving party has the burden of making a prima facie case of an illegal search. Part of that burden is establishing that the blood was drawn by the State actor, including agents and instrumentalities of the State.

Here, the evidence made clear that hospital personnel, working as private citizens, drew and tested defendant's blood. Although police officers were present at the hospital at the time, there was no evidence that the blood was drawn at their behest. Thus, the defense did not show a state actor drew defendant's blood, and the defense could not make a *prima facie* case of an illegal search.

People v. Ringland, Saxen, et al, 2017 IL 119484 55 ILCS 5/3-9005(b) provides that the State's Attorney is authorized to appoint special investigators to serve subpoenas, make return of process, and conduct investigations which assist the State's Attorney in the performance of his or her duties. In addition, State's Attorneys have both the specified powers and duties listed by 55 ILCS 5/3-9005(a)(11) and common-law powers and duties vested by the Illinois constitution.

Generally, Illinois common law recognizes that a State's Attorney has an affirmative duty to investigate and determine whether an offense has been committed. That duty is subject to a significant limitation, however, because the State's Attorney ordinarily defers to law enforcement agencies to investigate criminal acts. Thus, the State's Attorney has a common law duty to affirmatively investigate suspected illegal activity only if the possible offense is not being adequately investigated by other agencies or a law enforcement agency asks the State's Attorney for assistance.

The court concluded that the LaSalle County State's Attorney erred by creating a State's Attorney Felony Enforcement (SAFE) unit for the purpose of patrolling interstates in LaSalle County, making traffic stops, and issuing tickets for suspected controlled substance offenses. Although the State's Attorney testified at the suppression hearing concerning the creation of the unit, he did not claim that any law enforcement agency was deficient in investigating suspected controlled substance offenses on LaSalle County interstates. Similarly, the State's Attorney did not state that he had received requests for assistance from any law enforcement agencies. The court also noted the trial court's finding that the SAFE unit was not following up on cases initiated by law enforcement agencies, but "actually going out and seeking complaints by making petty traffic stops and petty offenses."

The court rejected the State's argument that the SAFE unit was permitted because §5/3-9005(b) authorizes special investigators to conduct investigations which assist the

State's Attorney in the performance of his or her duties. Because a State's Attorney could claim a common law duty to investigate all crimes and authorize special investigators to conduct investigations into all illegal activity, the State's argument would allow the formation of 102 county police forces, each directed by a State's Attorney, and render superfluous the three statutory functions of State's Attorney's special investigators. The court concluded that the legislature did not intend to authorize county police forces operating at the behest of each State's Attorney.

The court concluded that it need not address several issues, including whether: (1) the common law would allow State's Attorney's investigators to patrol highways to seek out offenses if there had been a request for assistance or a finding that other law enforcement agencies were inadequately dealing with suspected criminal activity, and (2) the impropriety of an investigator's appointment would justify suppression of evidence that had been seized by that investigator.

Because the LaSalle County State's Attorney's SAFE unit was unauthorized by Illinois law where there was no showing that law enforcement agencies were inadequately investigating controlled substance offenses or that any law enforcement agency had asked the State's Attorney for assistance, the trial court's order granting defendant's motion to suppress was affirmed.

People v. Sykes, 2017 IL App (1st) 150023 The defendant's fourth amendment right against unreasonable searches was not violated when hospital staff forcibly catheterized her against her will, despite the involvement of police officers. The police brought defendant to the hospital after a single-car accident because she appeared disoriented. At the hospital, they placed her under formal arrest for DUI. The arresting officer sought her consent for chemical testing, which defendant refused. A doctor then examined defendant and, because she appeared to be in an altered mental state, ordered a urine test in an attempt to diagnose her. Defendant again refused, and, with the help of police, the hospital staff held her down and forcibly catheterized her. Test results showed the presence of cannabis and PCP.

The trial court did not err in denying defendant's motion to suppress the blood and urine test results before defendant's trial for DUI-drugs and DUI-cannabis. The Appellate Court agreed that forced catheterization by the police constitutes a search, but held that under these circumstances, the search was conducted by private actors. In **People v. Brooks**, 2017 IL 121413, the Illinois Supreme Court held that mere police participation is not state action. The question is whether the party actually taking the sample is acting as an agent of the State, and in this case, the hospital staff acted pursuant to the orders of a doctor, who hoped to obtain a medical diagnosis, not at the behest of police officers seeking evidence of a crime.

People v. Lee, 2016 IL App (2d) 150359 An arrest made outside the arresting officer's jurisdiction is valid if there is probable cause to believe that the suspect committed an offense in the officer's jurisdiction. The court concluded that an officer who parked his squad car just outside the municipal limits of the city for which he worked, and who used a radar unit to monitor the speed of vehicles inside city limits, had sufficient probable cause to arrest drivers who according to the radar were exceeding the speed limit inside the city. The validity of the arrests was not affected by the fact that the officer stopped the vehicles outside city limits.

The court distinguished the situation where an officer uses a radar gun to monitor the speed of vehicles which are driving outside the officer's jurisdiction. In such a case, the arrest cannot be based on the officer's official authority. Furthermore, such an arrest cannot be sustained as a citizen's arrest because an officer who uses a radar unit outside his or her

jurisdiction asserts official police authority that would not be available to a private citizen.

People v. Ringland, Pirro, Saxen, Harris and Flynn, 2015 IL App 130523 Section 3–9005(b) of the Counties Code provides that a State's Attorney may appoint one or more special investigators to "serve subpoenas, make return of process and conduct investigations which assist the States's Attorney in the performance of his duties." 55 ILCS 5/3-9005(b). Section 3-9005(b) also provides that such investigators "shall be peace officers" with powers authorized for investigators of the State's Attorneys Appellate Prosecutor. Investigators for the States Attorneys Appellate Prosecutor are peace officers and "have the powers possessed by policemen in cities and by sheriffs," but may "exercise such powers only after contact and cooperation with the appropriate law enforcement agencies." 725 ILCS 210/7.06(a).

The State's Attorney of LaSalle County appointed and equipped special investigators to staff the State's Attorney's Felony Enforcement unit. The purpose of the SAFE unit was to patrol highways which pass through the county, with the intent to enforce drug laws. The SAFE unit investigators were not sworn officers in LaSalle County, but were officers who had retired from various police departments.

A SAFE unit special investigator stopped defendant Ringland on Interstate 80 for driving with "inadequate mud flaps" and because the vehicle's rear license plate was obscured. A canine team was called, and cannabis was found when the car was searched after the canine alerted. The standard practice of the SAFE unit was to call for a canine unit whenever a traffic stop was made.

The other four defendants were stopped by the same investigator while traveling on I-80 on separate days. Each was charged with a drug offense after being stopped for a traffic violation.

The court concluded that the State's Attorney exceeded the scope of §3-9005(b) by creating the SAFE unit staffed by State's Attorney investigators. The court found that the plain language of §3-9005(b) limits the functions of special investigators to serving subpoenas, making return of process, and conducting investigations that assist the State's Attorney in the performance of his or her duties. The court concluded that if the LaSalle County's State's Attorney's actions were permissible, these statutory limitations on the powers of special investigators would be superfluous because there would be no distinction between sworn police officers and special investigators of the State's Attorney's office.

The court added that the intent of §3-9005(b) is not to allow the State's Attorney to create his or her own police force, but to provide State's Attorney's investigators with police powers to the extent necessary to assist the State's Attorney in cases originated by traditional police agencies or where the police are unable or unwilling to investigate. Here, there was no evidence that the prosecutions were originated by traditional police agencies or that police were unable or unwilling to investigate the defendants' activities. Because the actions of the SAFE investigator exceeded statutory authority, the trial acted properly by granting the defendants' motions to suppress.

People v. Lyons, 2013 IL App (2d) 120392 No Fourth Amendment "seizure" occurs where evidence is delivered to the police by a private individual who is not agent of the State. Here, defendant's wife was not acting as an agent of the State when she delivered two boxes of computer disks to the police. The incriminating nature of the disks was not immediately apparent, and became clear only after police employed technology to discern that the disks contained child pornography. Furthermore, defendant's wife stated that she did not know what was on the disks and that they were the defendant's property.

The court acknowledged that had defendant's wife searched the disks before she gave

them to police and told the officers that she suspected that the disks contained child pornography, the police search would not have exceeded the scope of the earlier private search. Where defendant's wife made it clear that she did not know what was on the disks, however, she implied that she had not searched them herself. Because there had been no private search, defendant's expectation of privacy in the contents of the disks had not been frustrated by the time of the police search. Thus, the police search implicated the Fourth Amendment.

However, defendant's wife gave consent to the police to search the disks when she brought the disks to the station and said that she did not want them in her house. Consent for a warrantless search may be based on permission obtained from a third party who possesses common authority over or a sufficient relationship to the property sought to be searched. A third party is not authorized to consent merely because he or she has an interest in the property. Instead, authority to consent to a search depends on mutual use of property by persons who have joint access or control, so that it is reasonable to expect that any of the persons has the right to permit the inspection and that all have assumed the risk that another might permit a search.

Under Illinois law, proof that spouses have common authority over space gives rise to a rebuttable presumption that each spouse also has authority over containers which are within the common area but which are the property of the nonconsenting spouse. This presumption is rebutted by evidence that the consenting spouse was denied access to the containers, but not by evidence that the consenting spouse merely refrained from accessing the containers. "We are concerned with the right of access, not regularity of use. . . ."

Authority to consent may be actual or apparent. Here, defendant's wife testified that she had access to the cabinet in which the disks were stored, and the trial court found that the wife had actual authority to consent. The Appellate Court therefore limited its holding to the issue of actual authority and did not reach the issue of apparent authority.

The court concluded that defendant's wife had actual authority to consent to a search of computer disks which belonged to the defendant where she had a key to a locked cabinet where they were stored, despite the fact that she did not go into the cabinet. In addition, in a telephone conversation which was overheard by police, defendant implied that his wife had access and control over the cabinet by agreeing that she could prepare the contents of the cabinet for him to pick up. Although defendant's wife indicated to police that the disks belonged to defendant, mere lack of ownership by the consenting spouse does not overcome the presumption arising from a married or cohabiting relationship.

The fact that the defendant placed passwords on the family's computers did not indicate that he was attempting to prevent his wife from gaining access to the contents of the computer disks, because the disks could easily have been taken to other computers to be viewed. A password on a computer is not a meaningful restriction on access to the contents of removable computer disks, and is more likely intended to protect information on the hardware itself.

Because defendant's wife had access to the cabinet containing the disks and defendant did not restrict her access to the content of the disks, defendant assumed the risk that the spouse would view the disks herself or allow others to do so. Therefore, the spouse had authority to consent to a search of the disks by the police.

The court distinguished this case from **People v. Elders**, 63 Ill.App.3d 554, 380 N.E.2d 10 (5th Dist. 1978), in which the court held that the mere fact of marriage did not give a spouse authority to consent to a search of the nonconsenting spouse's car in which the consenting spouse held no ownership interest. The court stressed that the car was neither part of the marital dwelling nor property that was within the marital dwelling.

The trial court's order denying defendant's motion to suppress the contents of the computer disks was affirmed.

People v. Olson, 361 Ill.App.3d 62, 836 N.E.2d 110 (1st Dist. 2005) Under 610 ILCS 80/2, a railroad may appoint a police force to "to aid and supplement the police forces of any municipality" in protecting the property of the railroad and its passengers. While "engaged in the conduct of their employment," railroad police officers "have and may exercise like police powers as those conferred upon the police of cities."

725 ILCS 5/107-4(a-3), which allows a "peace officer" employed by a "law enforcement agency" to conduct temporary questioning and make an arrest if "engaged in an investigation of an offense that occurred in the officer's primary jurisdiction and the temporary questioning is conducted or the arrest is made pursuant to that investigation," did not authorize railroad police officers to arrest defendant at his residence several hours after observing him committing crimes on railroad property. "By definition, the railroad police . . . did not fall within the parameter of §107-4(a-3)."

Furthermore, the arrest was not valid as a citizen's arrest. An extraterritorial, warrantless arrest is valid only if the officer who makes the arrest does not use powers of his office that are unavailable to private citizens. Where the railroad officers went to the door of defendant's residence, either obtained consent to enter or entered forcibly, gave **Miranda** warnings, and obtained defendant's consent to search the residence,"we cannot conclude that [they] effectuated a valid private citizen's arrest."

People v. Shick, 318 Ill.App.3d 899, 744 N.E.2d 858 (3d Dist. 2001) At common law, an officer had no authority to make an arrest outside his jurisdiction unless he was in fresh pursuit of a suspected felon who was fleeing the officer's jurisdiction. Under 725 ILCS 5/100-1, however, an officer may make an arrest outside his jurisdiction where he has reasonable grounds to believe that an offense other than an ordinance violation is being committed.

In addition, Illinois law permits an officer to make an extraterritorial, warrantless arrest if such an arrest could have been made by an ordinary citizen. In making such an arrest, the officer may not use powers of his office that are unavailable to the ordinary citizen.

Because Illinois law expressly authorizes citizen arrests, citizens also have implied authority to "undertake less intrusive actions," such as traffic stops, if there are reasonable grounds to believe that an offense other than an ordinance violation has been committed.

Where an officer received a radio bulletin that defendant had committed an armed robbery, he had a reasonable basis to believe that a felony had been committed. Thus, an arrest was proper although defendant attempted to flee and the arrest occurred outside the officer's jurisdiction.

The officer did not use the powers of his office to obtain evidence that would have been unavailable to a private citizen. Although a private citizen might not have been able to monitor a police radio band, the officer was in his jurisdiction when he received the bulletin concerning the offense. Furthermore, the officer's use of his radar gun did not require that the arrest be quashed, because the fact that defendant's vehicle was traveling under the posted speed limit and accelerated upon seeing the officer contributed little if anything to the description of the vehicle, which was the basis for the stop.

Finally, the arrest need not be quashed because the officer radioed his location to the dispatcher and utilized his overhead lights, spotlight and weapon. Even a police officer acting outside his jurisdiction may act "under color of his office to effect a valid citizen's arrest." Compare **People v. Carrera**, 321 Ill.App.3d 582, 748 N.E.2d 652 (1st Dist. 2001) (officers acted improperly by arresting defendant outside their jurisdiction - lead officer used the

powers of his office to develop grounds to believe that an offense was being committed where he approached defendant and identified himself as a police officer although he lacked official authority to question defendant outside his jurisdiction; arrest was not saved by good faith reliance on statute which authorized arrest but which was later held unconstitutional).

People v. Kirvelaitis, 315 Ill.App.3d 667, 734 N.E.2d 524 (2d Dist. 2000) An Illinois police officer may conduct an arrest under several theories, including where: (1) the arrest occurs in the officer's own "police district" (defined as the territory embraced within the municipalities which adjoin the officer's jurisdiction within a county); (2) the arrest occurs in a municipality within the same county as the officer's jurisdiction; (3) the officer is investigating an offense that occurred within his jurisdiction and the arrest is made outside that jurisdiction but pursuant to the initial investigation; (4) an on-duty officer becomes aware of the commission of a felony or misdemeanor; or (5) the officer acts as a private citizen.

725 ILCS 5/107-3 authorizes a citizen's arrest where there are reasonable grounds to believe that an offense other than an ordinance violation has been committed; however, a police officer acting as a private citizen has no greater authority than that given to a citizen who is not a police officer. While a police officer outside his jurisdiction may utilize the powers of his office to effect an arrest, the powers of office may not be used to develop grounds for an arrest.

In at least two respects, the record was insufficient to establish a proper arrest by a private citizen. First, it was unclear whether the officer observed defendant speeding before using his radar gun; if the arrest was based solely on the reading on radar gun, it would be the result of an impermissible use of the powers of office.

Second, to overtake defendant the officer drove approximately 90 mph in a 45 mph zone. Because a private citizen would not be authorized to exceed the speed limit to catch a speeder, an officer acting as a private citizen is foreclosed from doing the same.

People v. Carlile, 234 Ill.App.3d 1063, 600 N.E.2d 916 (4th Dist. 1992) Where officer was at residence at defendant's request to persuade defendant's girlfriend to leave peacefully, contraband which defendant's girlfriend handed to an officer was obtained through a "private" search. Furthermore, the officer did not conduct a "search" by looking behind a speaker in response to the girlfriend's direction.

People v. Burton, 131 Ill.App.3d 153, 475 N.E.2d 583 (1st Dist. 1985) Operation of a metal detector by private individuals did not constitute a "search" under the Fourth Amendment.

People v. Barber, 94 Ill.App.3d 813, 419 N.E.2d 71 (2d Dist. 1981) A landlord acted as an agent of the police where he entered defendant's apartment at the request of police and then allowed them in the apartment. "[W]e can think of no other reason for the police officers' presence . . . but their intent to avail themselves of an opportunity to search for stolen goods."

§43-1(d)
The Exclusionary Rule and Its Exceptions

§43-1(d)(1)
Generally

United States Supreme Court

Utah v. Strieff, 576 U. S. ___, 136 S.Ct. 2056, ___ L.Ed. ___ (2016) The Fourth Amendment exclusionary rule requires that courts exclude both primary evidence obtained as a direct result of an illegal search and any evidence subsequently discovered as a result of the illegal search. However, due to the significant cost of the exclusionary rule, the U.S. Supreme Court has limited its applicability to instances where the deterrent effect outweighs the substantial social cost.

Thus, several exceptions to the exclusionary rule are recognized, including the attenuation doctrine. This doctrine holds that evidence obtained as a result of a Fourth Amendment violation is admissible where the connection between the unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance such that the interests protected by the Fourth Amendment would not be served by suppressing the evidence.

The Utah Supreme Court erred by finding that the attenuation doctrine applies only where the intervening event between an unlawful arrest and the recovery of evidence consists of a voluntary act by the arrestee. Whether the discovery of evidence is sufficiently attenuated from the constitutional violation is determined by the three factors articulated in **Brown v. Illinois**, 422 U. S. 590 (1975): (1) the "temporal proximity" between the unconstitutional conduct and the discovery of evidence, (2) the presence of any intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. Of these factors, the third is the most important.

Here, the discovery of evidence on defendant's person was sufficiently attenuated from the unconstitutional stop to preclude application of the exclusionary rule.

During intermittent surveillance over one week, an officer who was investigating a tip concerning narcotics activity observed that several visitors left a particular residence within a few minutes after arriving. The officer observed defendant leave the house and go toward a nearby convenience store. Although he did not suspect any wrongdoing by defendant, the officer detained defendant, identified himself, and asked what defendant was doing at the residence.

As part of the stop, the officer requested defendant's identification. The officer relayed the information to a police dispatcher, who reported that defendant had an outstanding arrest warrant for a traffic violation. The officer arrested defendant pursuant to the warrant, and performed a search incident to arrest which disclosed a bag of methamphetamine and drug paraphernalia.

Throughout the proceedings, the prosecution conceded that the officer lacked reasonable suspicion for the stop. The prosecution argued, however, that the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband. The Supreme Court agreed.

The court concluded that the only the first **Brown** factor favored suppression, because substantial time did not elapse between the illegal detention and the discovery of the contraband. The court concluded that the second factor favored the State, however, because the arrest warrant was valid, predated the unconstitutional stop, was unconnected to the stop, and required the officer to make an arrest.

The court concluded that the third factor - the purpose and flagrancy of the officer's misconduct - also favored the State. The purpose of the exclusionary rule is to deter police misconduct. The court found that the officer here was "at most negligent," because he made "two good-faith mistakes" by stopping defendant "without a sufficient basis to suspect" that he was a short-term visitor who was consummating a drug transaction and by detaining defendant instead of merely asking to speak to him. "[T]hese errors in judgment hardly rise to a purposeful or flagrant violation of [defendant's] Fourth Amendment rights."

The court also stressed that there was no indication the stop was made as part of a systematic pattern of misconduct, the officer's conduct was lawful after the decision to make an improper stop, the warrant check was a precaution to assure officer safety, and the contraband was discovered as part of a lawful search incident to arrest. Under these circumstances, the outstanding warrant was a critical intervening circumstance which was independent of the illegal stop and which broke the causal connection between the illegal stop and the discovery of the evidence.

In the course of its holding, the court rejected the argument that conducting a suspicionless stop constitutes flagrant misconduct. The court found that police action can be "flagrant" only if it is "more severe" than merely making an unjustified stop.

The court also stated that in light of its conclusion that the attenuation doctrine applied, it need not decide whether the existence of an outstanding warrant made the initial stop constitutional "even if the [the officer] was unaware of [the warrant's] existence."

In dissent, Justices Sotomayor and Ginsberg noted that in many areas a substantial part of the population has outstanding arrest warrants. Thus, the possible existence of an arrest warrant is not the sort of "intervening surprise" that an officer cannot anticipate when making a stop.

Hudson v. Michigan, 547 U.S. 586, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006) Suppression of evidence is not an appropriate remedy for a violation of the "knock-and-announce" requirement, because the deterrent effect of the exclusionary rule in preventing violations of the "knock and announce" rule would not justify the exclusion of relevant evidence of wrongdoing.

The purposes of the "knock-and-announce" requirement are to protect the safety of officers and occupants of premises which are subject to a search warrant, prevent the destruction of property by giving occupants an opportunity to avoid forced entry, and protect "those elements of privacy and dignity that can be destroyed by a sudden entrance." The "knock and announce" requirement was never intended to protect "one's interest in preventing the government from seeing or taking evidence described in a warrant." Because the interests violated by a breach of the "knock and announce" rule "have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable."

The possibility of civil liability and internal discipline serve as effective deterrents to violations of the "knock and announce" rule, without incurring the social cost of excluding relevant evidence by applying the exclusionary rule.

Pennsylvania Board of Probation and Parole v. Scott, 524 U.S. 357, 118 S.Ct. 2014, 141 L.Ed.2d 344 (1998) The court declined to extend the exclusionary rule to evidence presented at State parole revocation hearings, finding that excluding such evidence would "hinder the functioning of State parole systems and alter the traditionally flexible, administrative nature of parole revocation proceedings" while providing only "minimal deterrence" because application of the rule to criminal trials "already provides significant deterrence" of unconstitutional searches.

The court rejected the lower court's ruling that the Federal Constitution requires application of the exclusionary rule where the officer who performed the search knew that defendant was a parolee, concluding that even under such circumstances the rule would provide only marginal deterrence.

New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990) Where police had probable cause but entered a home and made an arrest in violation of **Payton v. New York**,

the exclusionary rule did not require suppression of a statement made outside the home.

INS v. Lopez-Mendoza, 468 U.S. 1032, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984) Because the exclusionary rule is not applicable to civil deportation hearings, a statement made by the respondent following his unlawful arrest need not be excluded. However, the Court's conclusion about the value of the exclusionary rule at such proceedings might change if there was "good reason to believe that Fourth Amendment violations by INS officers [are] widespread." Furthermore, the constitutional violation here was not an egregious violation that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained.

U.S. v. Havens, 446 U.S. 620, 100 S.Ct. 1912, 64 L.Ed.2d 559 (1980) Evidence obtained as the result of an unlawful search and seizure may be used to impeach a defendant's testimony given in response to proper cross-examination. The Court refused to limit the use of such evidence to those instances in which it contradicts a specific statement made by a defendant on direct examination.

U.S. v. Caceres, 440 U.S. 741, 99 S.Ct. 1465, 59 L.Ed.2d 733 (1979) Evidence obtained by IRS agents in violation of IRS regulations may be used at a criminal trial.

U.S. v. Janis, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976) Evidence unlawfully seized by state law enforcement officers is admissible in a federal civil tax proceeding; exclusion from federal civil proceedings of evidence unlawfully seized by state officers "has not been shown to have a sufficient likelihood of deterring the conduct of the state police so that it outweighs the societal costs imposed by the exclusion."

Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976) The primary justification of the exclusionary rule is deterrence. This justification supports the application of the exclusionary rule at trial and on direct appeal of state court convictions, but not in federal *habeas corpus* actions.

Thus, "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal *habeas corpus* relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."

U.S. v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974) The exclusionary rule does not apply at grand jury proceedings.

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) The exclusionary rule is applicable to the states.

Illinois Supreme Court

People v. Johnson, 237 Ill.2d 81, 927 N.E.2d 1179 (2010) Defendant, a passenger in a car that had just been parked and away from which he and the driver were walking when they were approached by a police officer, lacked a legitimate expectation of privacy in the vehicle. There was no evidence that defendant had any ownership or possessory interest in the vehicle, had previously used the vehicle, could control another's use, or had a subjective expectation of privacy.

Even if officers did make an illegal arrest, statements which defendant later made at the police station were sufficiently attenuated from the illegal conduct be admissible. **People v. Galan**, 229 Ill.2d 484, 893 N.E.2d 597 (2008) The exclusionary rule applies only where the benefits of excluding evidence outweigh the social costs of exclusion. The court concluded that the exclusionary rule should not be applied where Illinois police officers arrested the defendant just inside the Indiana border, but failed to comply with an Indiana statute requiring an Indiana probable cause hearing.

People v. Wear, 229 Ill.2d 545, 893 N.E.2d 631 (2008) The court noted that it has never specifically decided whether the Fourth Amendment exclusionary rule applies to implied-consent proceedings. However, the State waived the issue by failing to argue that the exclusionary rule does not apply to summary suspension.

People v. Dowery, 62 Ill.2d 200, 340 N.E.2d 529 (1975) In the absence of police harassment, evidence obtained in violation of the Fourth Amendment is not subject to exclusion at a probation revocation proceeding. See also, **People v. Grubb**, 143 Ill.App.3d 822, 493 N.E.2d 699 (4th Dist. 1986) (supervision revocation proceedings); **People v. Brown**, 171 Ill.App.3d 500, 525 N.E.2d 1228 (4th Dist. 1988) (sentencing hearing following revocation).

Illinois Appellate Court

People v. Nash, 2024 IL App (4th) 221078 Defendant was charged with various offenses arising out of his possession of heroin, cocaine, and a loaded handgun, discovered following a traffic stop. On appeal, defendant argued that his trial attorney was ineffective for failing to seek suppression of the gun and drugs on the ground that the inventory search which led to their discovery was the product of an arrest based on an invalid warrant. Specifically, during the traffic stop, police learned of a warrant for defendant's arrest through a LEADS search, but it was later determined that the warrant had been withdrawn several months before the traffic stop. The warrant was the only basis for defendant's arrest and the subsequent inventory search. Defendant argued that because the warrant was inactive, his arrest violated the fourth amendment and thus the evidence found during the inventory search should have been suppressed.

The purpose of the exclusionary rule is to prevent and deter police misconduct. Here, the police acted properly in relying on the validity of the warrant in LEADS. Indeed, the arresting officer testified that he went a step further and requested that dispatch inquire about the validity of the warrant with the issuing county before initiating the arrest. The police had no way of knowing that there had been a clerical error which led to the warrant's mistakenly remaining active in LEADS after it had been withdrawn. Accordingly, because there was no misconduct by the police, the purpose of the exclusionary rule would not be served by ordering the suppression of evidence here. A motion to suppress on this basis would have failed, and thus defense counsel was not ineffective for not pursuing this ground in the trial court.

People v. Eubanks, 2024 IL App (1st) 221229 Relying on **People v. Redmond**, 2024 IL 129201, the appellate court reversed the denial of defendant's motion to suppress evidence. The search of defendant's vehicle was based solely on the odor of burnt cannabis. The police did not point to any other signs of cannabis consumption or evasive movements by defendant that might have otherwise justified the search. Under **Redmond**, the odor of burnt cannabis, alone, is insufficient to provide probable cause for a vehicle search.

The search could not be upheld as a search incident to arrest, either. At the time of the search, defendant was outside of the car and was not within reaching distance of the passenger compartment, so there was no threat to officer safety from anything inside the vehicle. And, there was no likelihood that evidence of the offenses under investigation – parking at a bus stop and failure to possess a driver's license – would be found in the vehicle.

The court reversed defendant's conviction of unlawful use of a weapon by a felon outright, where the only evidence of that offense was the firearm recovered during the unlawful search.

In re Jarrell C., 2017 IL App (1st) 170932 The police lack reasonable suspicion to conduct a **Terry** stop and frisk on a person who grabs his waistband or crotch area in a high-crime area. Although the police believed the respondent's actions suggested he possessed a gun, his acts were indistinct from innocent behavior such as holding up his pants or reaching into his pocket.

The existence of a valid arrest warrant - a fact not known by the officers at the time of the search and seizure - did not trigger the attenuation exception. Attenuation is governed by the three-factor analysis of **Brown v. Illinois**, 422 U.S. 590, 602 - (1) the temporal proximity between the unconstitutional conduct and the discovery of evidence, (2) the presence of intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. Here, the first two factors favored suppression - the search occurred within minutes of the seizure, and no intervening circumstances occurred. Rejecting the State's claim that a pre-existing valid arrest warrant constitutes an intervening circumstance, the Appellate Court distinguished **Utah v. Strieff**, 136 S. Ct. 2056 (2016). There the United States Supreme Court applied the attenuation exception because the officer discovered a pre-existing arrest warrant after the unlawful seizure but prior to the search. Here, the officers did not learn of the warrant until after the search, and therefore its discovery was not an "intervening" event. Finally, although the officers' conduct was not flagrant, two of the three factors favored suppression, and therefore the trial court erred in denying respondent's motion to suppress.

People v. Harrell, 2012 IL App (1st) 103724 Defendant was stopped by Chicago police officers in the city of Maywood, where he lived. The officers were in Maywood to investigate a tip from a confidential informant who had reported seeing several pounds of cannabis in defendant's residence.

Defendant was stopped after he left his apartment and entered a vehicle with two other men. The three men were taken to the front of defendant's home, where defendant's stepfather gave consent for police to search the home. After the search disclosed cannabis, heroin, drug paraphernalia, and a loaded handgun, defendant was placed in custody.

Defendant was subsequently charged with possession of cannabis with intent to deliver and unlawful use of a weapon by a felon. The trial court granted a motion to suppress statements in which defendant identified himself, gave his address, and admitted possessing the handgun and cannabis. The trial judge found that the Chicago officers lacked authority to investigate and make arrests in Maywood, and the State appealed.

The Appellate Court agreed that the Chicago officers lacked authority to act in Maywood. The Municipal Code defines a "police district" as "territory . . . embraced within the corporate limits of adjoining municipalities within any county of this State." (625 ILCS 5/7-4-7). Under 625 ILCS 5/7-4-8, an officer of any municipality within a police district has authority to act as a peace officer in any part of that district. The court rejected the State's

argument that §7-4-7 was intended to make all municipalities within a county part of a single police district, finding that the statutory language plainly provides that only municipalities which share a common geographical border are "adjoining" and thus part of the same police district.

Maywood and Chicago do not share a common border, and therefore are not part of a single police district. Thus, the Chicago officers lacked authority to make the arrest.

The court also rejected the State's argument that the exclusionary rule should not be applied because the benefits of deterrence were outweighed by the cost of suppressing voluntary statements. The court found that application of the exclusionary rule would have a deterrent effect because the officers acted on a confidential source's report that was not shown to be reliable and which was not supported by the observation of any illegal acts or the discovery of evidence of any crime.

In addition, Illinois precedent holds that the exclusionary rule is applicable where officers act without authority or make an extraterritorial arrest.

Finally, the court concluded that the trial judge properly suppressed statements which preceded the search of the residence and statements which were made after the search provided probable cause for an arrest. Although precedent holds that the discovery of probable cause may justify a second arrest of a suspect who has been improperly placed in custody, that precedent assumes that the officers had authority to take the actions which led to the discovery of the probable cause. Here, "[i]t would seem apparent that the Chicago police officers who were acting without authority in stopping and arresting defendant in the first instance also had no authority to seek consent or undertake a search under the guise of authority as police officers." Thus, even if the stepfather had authority to consent to a search, the officers lacked authority to request consent or to undertake a search. Under these circumstances, the trial court properly suppressed statements which defendant made after the search despite the discovery of probable cause during the search.

People v. Carter, 2011 IL App (3d) 090238 By statute, Illinois prohibits the use of strip searches in arrests for traffic, regulatory, or misdemeanor offenses, except for cases involving weapons or a controlled substance. 725 ILCS 5/103(c). Defendant was arrested for driving on a suspended license. The arresting officer squeezed defendant's crotch because it was a known spot for hiding illegal drugs, and then unzipped defendant's pants because the material did not "mesh" together. The officer removed a plastic bag containing drugs that he saw sticking out of a hole in defendant's clothing. Because defendant wore his pants low, his underwear was exposed prior to the search.

Even assuming that the strip-search statute had been violated, its violation would not automatically result in application of the exclusionary rule. The dispositive question is whether the search, as whole, was reasonable under the Fourth Amendment, considering: (1) the scope of the intrusion; (2) the manner in which the search was conducted; (3) the justification for initiating the search; and (4) the place where it was conducted.

Although the search was conducted on a public street in daylight, the officer had a reasonable suspicion that defendant possessed contraband. Unzipping the defendant's pants and extracting readily accessible contraband did not exceed the scope of a search incident to a lawful arrest. Because defendant chose to dress in a manner that exposed his underwear, he cannot complain that the officer violated his privacy rights by exposing a portion of his underwear. There was also no indication that anyone other than the officer could see the portion of defendant's underwear exposed by the search. Therefore, the officer did not conduct an unreasonable search.

Generally, a court will not construe the state exclusionary remedy to be broader than

the federal rule, unless the proponent of the expansion can show either that: (1) the framers of the 1970 constitution intended the expansion; or (2) denying the expansion would be antithetical to state tradition and value as reflected by longstanding case precedent. No argument was made that either exception applies to the statutory limitation of strip searches.

People v. Marshall, 399 Ill.App.3d 626, 926 N.E.2d 862 (1st Dist. 2010) Defendant was "seized" where, within seconds after he stopped his car in a "No Parking" zone, an officer pulled behind him and activated his overhead flashing lights. The officer testified that he intended to conduct a traffic stop when he pulled over, and upon reaching the car he immediately asked for a driver's license and proof of insurance. Because no reasonable person would have felt free to decline the request for documentation upon seeing flashing lights and being approached by a uniformed officer, a "seizure" occurred.

Because there were no specific, articulable facts providing a reasonable suspicion that criminal activity had or was about to occur, the officer lacked authority to conduct a **Terry** stop. The State argued that because no "police misconduct" was involved, the 4th Amendment exclusionary rule did not apply. The court distinguished this case from **People v. McDonough**, 395 Ill.App.3d 194, 917 N.E.2d 590 (4th Dist. 2009), which held that no misconduct occurred where an officer pulled behind a car that was stopped on a narrow shoulder to see if the driver needed assistance, and turned on his overhead lights for safety reasons. Here, defendant stopped not on the shoulder of a busy road, but in a "No Parking" zone on a residential street. Furthermore, the officer did not attempt to see whether the occupants needed assistance, but intended to conduct a traffic stop. The court concluded that because police misconduct occurs when an officer makes an illegal seizure, the exclusionary rule applied.

People v. Rose, 384 Ill.App.3d 937, 984 N.E.2d 156 (2d Dist. 2008) As a matter of first impression, the court concluded that the Fourth Amendment exclusionary rule does not apply at sentencing hearings. The court noted, however, that several federal courts which have made the same holding have found that the exclusionary rule would apply if there is evidence that the police intentionally violated the defendant's rights in order to obtain evidence to support a greater sentence.

§43-1(d)(2)
"Good Faith" Exception

United States Supreme Court

Davis v. United States, 564 U.S. 229 , 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011) For exclusion of evidence to be an appropriate remedy for a Fourth Amendment violation, not only must suppression provide deterrence, the deterrence benefits of suppression must outweigh its heavy costs – requiring courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. When police exhibit deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs. But when police act with an objectively reasonable good-faith belief that their conduct is lawful, the deterrence rationale loses much of its force, and the exclusion sanction is inappropriate.

This good-faith exception to the exclusionary rule applies where the police conduct a search in objectively reasonable reliance on binding judicial precedent. At the time of the search in question, the court had not yet decided **Arizona v. Gant**, 556 U.S. __, 129 S.Ct.

1710, ___ L.Ed.2d ___ (2009). Binding precedent of the circuit in which the search was conducted interpreted **New York v. Belton**, 453 U.S. 454 (1981), as creating a bright-line rule authorizing the search of a vehicle's passenger compartment incident to a recent occupant's arrest. Because the officers' conduct was not culpable in any way, as binding precedent authorized the police action, the exclusionary rule had no application.

Herring v. U.S., 555 U.S.135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009) The exclusionary rule is a judicially created remedy designed to safeguard Fourth Amendment rights, and is to be applied only where its deterrent effect substantially outweighs the cost to society of freeing guilty and possibly dangerous defendants.

The extent to which application of the exclusionary rule is justified varies with the culpability of the law enforcement conduct in question. The exclusionary rule best deters "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence."

Thus, where flagrant or outrageous misconduct is involved, the benefit of deterrence is more likely to substantially outweigh the cost to society of excluding relevant evidence of guilt. By contrast, where only negligent behavior is involved, the benefit of deterrence is less likely to substantially outweigh the cost of excluding the evidence.

Where defendant was arrested on a recalled warrant due to another police department's error in maintaining its database, and the arresting officer in good faith relied upon the database in determining that there was a outstanding warrant, the police misconduct was not so objectively culpable as to justify application of the exclusionary rule. The court acknowledged that systemic recordkeeping errors by the police, or official recklessness in relying on a system which is known to contain substantial errors, might be sufficiently culpable to justify application of the exclusionary rule. However, where the erroneous arrest is the result of mere negligence rather than systemic error or recklessness, any marginal deterrence gained by applying the exclusionary rule does not justify the substantial cost of excluding relevant evidence of a crime. See also, **Arizona v. Evans**, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995) (because court clerks are not part of law enforcement and have "no stake in the outcome of particular criminal prosecutions," and there is no evidence that court clerks are inclined to ignore the Fourth Amendment, there should be a "categorical exception to the exclusionary rule for clerical errors of court employees"). Compare, **People v. Boyer**, 305 Ill.App.3d 374, 713 N.E.2d 655 (3d Dist. 1999) (because a prosecutor is part of the law enforcement team and therefore has a stake in the outcome of criminal prosecutions, the exclusionary rule can be expected to have a deterrent effect where the prosecutor was responsible for failing to recall an arrest warrant).

U.S. v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) Adopting a "good faith" exception to the Fourth Amendment exclusionary rule - the prosecution may use in its case-in-chief evidence seized by police officers acting in reasonable reliance on a search warrant issued by a detached, neutral magistrate, even though the warrant is ultimately found to be unsupported by probable cause. See also, **Massachusetts v. Sheppard**, 104 S.Ct. 3424, 81 L.Ed.2d 737 (1984) (officers who sought warrant may rely on magistrate's representation that he or she granted warrant for the items sought in the application); **People v. Turnage**, 162 Ill.2d 299, 642 N.E.2d 1235 (1994) ("good-faith" exception did not apply where defendant was arrested on second warrant after having been previously arrested and posting bail on the same charge; State presented no evidence of the good faith of the officer who obtained the second warrant, and the good faith of the arresting officer was irrelevant; the Court also suggested that if the State's Attorney or officers who obtained the warrant knew that a

previous warrant had been issued, a good faith belief of validity would have been impossible to show); **People v. Bohan**, 158 Ill. App. 3d 811, 511 N.E.2d 1384 (2d Dist. 1987) (good faith exception is inapplicable when the officer lacked reasonable grounds to believe that the warrant was properly issued; exclusion is appropriate where: (1) the judge issuing the warrant was misled by information that the affiant knew was false or would have known was false except for his reckless disregard of the truth, (2) the issuing judge wholly abandoned his judicial role, (3) the affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, or (4) the warrant was so facially deficient that the executing officers could not have reasonably presumed it to be valid).

Illinois Supreme Court

People v. Bonilla, 2018 IL 122484 In **People v. Burns**, 2016 IL 118973, the Supreme Court held that a defendant had a reasonable expectation of privacy in the common-area hallway outside of his apartment door, located in a locked apartment building. In this case, the court extended this reasoning to unlocked apartment buildings. The threshold of an apartment door is comparable to the curtilage of his home, and does not depend on whether the exterior doors are locked. The Supreme Court affirmed the lower courts' decision to quash the search warrant based on a dog sniff made at the threshold of defendant's apartment door.

The Supreme Court refused to apply the good-faith exception to the exclusionary rule. The police could not reasonably rely on prior cases finding that a dog sniff does not constitute a "search" because those cases involved public places, and the officer should have known that the home has heightened expectations of privacy. Nor could the police rely on **People v. Smith**, 152 Ill. 2d 229 (1992), which found no fourth amendment violation when the police overheard a conversation in defendant's apartment while standing in a common-area hallway. The use of a drug-sniffing dog is not comparable to overhearing a conversation. On the other hand, **Burns** had already been decided in the appellate court and provided the police with persuasive authority that a warrantless dog sniff occurring outside an apartment door was an illegal search.

People v. Manzo, 2018 IL 122761 Before his trial for gun and drug possession, defendant moved to quash the search warrant and suppress the evidence found in his home as a result of that warrant. Defendant alleged the police lacked probable cause to search his residence, which he shared with his girlfriend Leticia. The warrant targeted Casillas, Leticia's cousin. But it sought to search defendant and Leticia's home, because: (1) on the day of the first undercover controlled buy from Casillas, officers saw Casillas driving Leticia's car, which was registered to defendant's home; and (2) 19 days later, before another controlled buy, Casillas left defendant's home and walked to the nearby supermarket where he sold the drugs. Casillas also made a third sale near defendant's home. The trial and appellate courts upheld the search.

The Illinois Supreme Court reversed in a 4-3 decision. The majority held that the facts known to the police and recited in the warrant failed to establish a sufficient nexus between Casillas' criminal activities and the defendant's home. The link between Casillas and Leticia did not create an inference they engaged in drug dealing together. The fact that Leticia allowed Casillas to drive her car to a drug deal does not establish Leticia knew of Casillas' illegal activities or that this was a regular occurrence. "To hold otherwise could expose virtually any innocent third party to a search of the home." As for the sale occurring after Casillas left the residence, more information is required for probable cause: whether he lived there, how often he visited, how long he stayed before leaving, where he went before, etc.

Notably, the warrant did not include information such as Casillas' criminal history, or the officer's experience with the manner in which drug dealers use nearby residences as a "stash house," as was the case in several authorities cited by the State.

Finally, the Court enforced the exclusionary rule because the good faith exception does not apply when the affidavit so lacks indicia of probable cause as to render official belief in its existence unreasonable. Here, the warrant affidavit could be characterized as "bare bones" because it failed to establish the required minimal nexus between defendant's home and the items sought in the warrant. Nothing directly connected Casillas' drug dealing to defendant's home itself, nor even raised an inference of such a connection.

The dissent disagreed with both conclusions, finding that while Casillas may have simply stopped at defendant's home while carrying the drugs on his person, "it is far more likely" that he used defendant's home to keep a "ready supply" because he was already at the home when contacted by the undercover purchaser. The dissent faulted the majority for isolating each fact rather than considering them in total. Finally, the dissent strongly disagreed that the affidavit could be considered "bare bones" in light of the two concrete connections between Casillas and defendant's residence.

People v. Burns, 2016 IL 118973 For Fourth Amendment purposes, "curtilage" consists of the area immediately surrounding and intimately associated with a home. In **Florida v. Jardines**, 569 U.S. ___, 133 S. Ct. 1409, 185 N.E.2d 495 (2013), the United States Supreme Court held that the porch of a private residence was part of the curtilage, and that a dog sniff conducted by a canine which was brought onto the porch therefore constituted a "search" under the Fourth Amendment. Here, the court rejected the argument that **Jardines** applies only to single-family residences and not to leased apartments or condominiums where a canine sniff is conducted from common areas of multi-unit buildings. Police received an anonymous tip that defendant was selling marijuana out of her apartment, and gained access to the common area of her three-story apartment building by knocking on the door and being allowed in by another resident. The common areas of the building were not accessible to the general public.

Officers then used a trained dog to conduct a sniff of the third floor landing outside defendant's apartment. One other apartment and a storage closet shared the landing. The dog alerted outside defendant's door. The court rejected the State's argument that the landing was not part of the "curtilage" of defendant's apartment.

The court rejected the State's argument that the good faith exception should apply. Under 725 ILCS 5/114-12(b)(1), (b)(2), the trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer pursuant to: (1) a search or an arrest warrant obtained from a neutral and detached judge where the warrant was free from obvious defects other than non-deliberate errors in preparation, contained no material misrepresentation by any agent of the State, and was reasonably believed by the officer to be valid, or (2) a warrantless search incident to an arrest for violation of a statute or local ordinance which is later declared unconstitutional. The U.S. Supreme Court has expanded the good-faith exception to include good-faith reliance upon binding appellate precedent that specifically authorized a particular practice but was subsequently overruled. **Davis v. United States**, 564 U.S. 229, ___, 131 S. Ct. 2419, 2429 (2011).

The court concluded that there was no binding Illinois precedent permitting the canine search which occurred here, and that there is precedent from the Appellate Court that the Fourth Amendment applies to the common areas of a locked apartment building. Under these circumstances, there was no binding precedent authorizing the search on which the

officers could rely.

People v. Gaytan, 2015 IL 116223 Defendant was convicted of unlawful possession of cannabis with intent to deliver when cannabis was found in his car after a traffic stop. The car was stopped because police believed that a trailer hitch obstructed the vehicle's license plate. At the time of the stop 625 ILCS 5/3-413(b) provided that a license plate must be securely fastened in a horizontal position, "in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers."

The court concluded that §3-413(b) is ambiguous concerning whether the prohibition applies to all materials which obstruct any part of the license plate, including the ball hitch at issue here, or only to materials which attach to and obstruct the plate. Although the statute did not apply to a trailer hitch, the court held that the stop was not improper. Under **Heien v. North Carolina**, 474 U.S. ___, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014), the Fourth Amendment is not violated where a police officer pulls over a vehicle based on an objectively reasonable but mistaken belief that traffic laws prohibit defendant's conduct. The court concluded that because §3-413(b) is ambiguous, a definitive interpretation was reached only by applying the rule of lenity, and there was no prior appellate authority concerning the scope of the statute, a reasonable police officer could have believed that §3-413(b) was violated when a trailer hitch was installed on the car.

Although Illinois has a more broad exclusionary rule than does federal law, **Heien** involves not the exclusionary rule but whether there is a Fourth Amendment violation in the first place. Because **Heien** concluded that the Fourth Amendment is not violated where an officer executes a stop due to a reasonable, mistaken belief that a statute prohibits the conduct in question, no issue concerning the Illinois exclusionary rule is presented.

People v. LeFlore, 2015 IL 116799 Police officers who were investigating several burglaries received a Crime Stoppers tip concerning defendant. Acting without a warrant, an officer placed a GPS device under the rear bumper of the car which defendant drove but which belonged to his girlfriend. The officer placed the GPS device while the car was parked in a lot at the apartment complex where defendant and his girlfriend lived. The trial court denied a motion to suppress evidence obtained by tracking the car's movements by use of the GPS device.

While the case was pending on appeal, the United States Supreme Court decided **U.S. v. Jones**, 565 U.S. ___, 132 S. Ct. 945 (2012), which held that placement of a GPS tracking device constitutes an unlawful "trespass" and requires a warrant. **Jones** also held that the use of a GPS device to monitor a vehicle's movements on public streets constitutes a "search" under the Fourth Amendment.

While this case was pending on appeal, the Supreme Court also decided **Davis v. U.S.,** 564 U.S. ___, 131 S. Ct. 2419 (2011), which applied the good-faith exception to the exclusionary rule where a state police officer searched a car incident to the occupant's arrest. **Davis** concluded that the good-faith exception applied where the officer acted in "objectively reasonable reliance on binding judicial precedent" which set forth a bright-line rule allowing the search. The search in **Davis** occurred before **Arizona v. Gant**, 556 U.S. 332 (2009), adopted a new rule concerning searches of cars incident to arrest.

The Illinois Supreme Court held that even if installing the GPS violated the Fourth Amendment, the good-faith exception to the exclusionary rule applied.

At the time of the officer's actions, **United States v. Knotts**, 460 U.S. 276 (1983) and **United States v. Karo**, 468 U.S. 705 (1984) constituted "binding judicial precedent" on which the officer could reasonably rely. The court rejected defendant's argument that for purposes of the good-faith exception, "binding judicial precedent" exists only if the authority in question is from the same jurisdiction, is followed by police to the "letter," and is on all fours with the case to be decided. Although **Knotts** and **Karo** involved placing beepers in containers which the defendants then unknowingly took into their vehicles, the court held that the rationale of those cases would have led the officer in this case to reasonably believe that the Fourth Amendment would not be violated by installing an electronic device on defendant's car. In the course of its holding, the court noted that every Federal Court of Appeals decision to address the issue concluded that **Knotts** and **Karo** would have allowed the GPS tracker to be placed.

Alternatively, the court concluded that at the time of the search **United States v. Garcia**, 474 F.3d 994 (7th Cir. 2007), which specifically authorized the warrantless placement of a GPS device, was "binding judicial precedent" in the Seventh Circuit. The court noted that at the time the device was placed there was no Illinois authority on this question.

In addition, precedent defining the good-faith exception holds that the exception applies where the officer reasonably believed that his actions were proper in view of the existing "legal landscape." The good faith exception is based on the premise that no deterrent purpose is served where police act in an objectively good faith belief that their actions are proper. The court concluded that before **Jones** was decided, **Knotts** and **Karo** were widely understood as holding that the electronic surveillance of automobile movements did not implicate the Fourth Amendment. In addition, **Karo** discounted the "trespass" theory that the court in **Jones** accepted. Under these circumstances, an officer seeking to place a GPS device on defendant's car would reasonably believe that his actions were permissible.

The court rejected the argument that under **People v. Krueger**, 175 Ill. 2d 60, 675 N.E.2d 604 (1996), the state constitutional exclusionary rule is broader than the federal exclusionary rule and precludes application of the good faith exception here. The court concluded that **Krueger** held only that Illinois does not recognize the good faith exception where an officer relies on a statute that is later declared unconstitutional. **Krueger** does not apply where an officer relies on binding judicial precedent.

People v. Carlson, 185 Ill.2d 546, 708 N.E.2d 372 (1999) The good faith exception applies to evidence seized under a warrant that was statutorily unauthorized. **People v. Krueger**, 175 Ill.2d 60, 675 N.E.2d 604 (1996), holds only that the good faith exception does not apply to evidence seized by virtue of a statute that is subsequently declared unconstitutional.

People v. Wright, 183 Ill.2d 16, 697 N.E.2d 693 (1998) The Illinois Constitution precludes admission of evidence obtained under the authority of a statute later held unconstitutional.

People v. Eagle Books, Inc., 151 Ill.2d 235, 602 N.E.2d 798 (1992) Police acted unconstitutionally when they conducted a "prior restraint" of materials arguably within First Amendment protection; the Court refused to extend the "good-faith" exception to permit seizure of materials potentially protected by the First Amendment.

Illinois Appellate Court

People v. Kendricks, 2023 IL App (4th) 230179 Defendant was convicted of cannabis-related offenses after 10 pounds of marijuana was found in the trunk of his car. On appeal,

he challenged the trial court's denial of his motion to suppress. The evidence introduced at the suppression hearing was that the investigating officer, Andrew Scott, was on patrol when he turned and followed defendant's vehicle to a gas station after he noticed it had Alabama license plates. Defendant parked at a gas pump and went inside the station. Scott parked at an adjacent pump, went inside, and asked defendant if he would consent to a dog sniff of the car. Defendant declined to consent. Scott exited the gas station and conducted a dog sniff of the vehicle anyhow. Scott testified that the dog went "into odor" within a couple seconds and ultimately gave a final alert on the driver's door. The dog was trained to detect methamphetamine, cocaine, and heroin. Ultimately, none of those substances were found, and the marijuana that was found was in the trunk, not the driver's door.

Defendant argued on appeal that the dog sniff constituted an unconstitutional seizure of his vehicle where no specific articulable facts existed to justify the seizure. Defendant also argued that the dog sniff constituted a trespass upon his vehicle where the dog put its paws on the car and its snout underneath it during the sniff, thereby transforming the sniff into a warrantless search unsupported by probable cause. The appellate court did not reach either constitutional issue, however, instead finding that the case could be resolved on the basis of good faith.

The court first pointed to binding appellate court decisions holding that a dog sniff of the exterior of a vehicle parked in a public place was neither a search (**People v. Ortiz**, 317 Ill. App. 3d 212 (2000)), nor a seizure (**People v. Thomas**, 2018 IL App (4th) 170440). Officer Scott thus had a good faith basis upon which to conclude that he did not detain defendant or his vehicle for purposes of conducting the dog sniff against defendant's challenge that it constituted an unconstitutional search and seizure. And, because the dog went "into odor" before putting its paws on the car or its nose underneath it, those subsequent intrusions were supported by probable cause. Going into odor is an indication that narcotics are present. Officer Scott could reasonably conclude that this general alert was enough to create probable cause for a full search of the vehicle, even before the dog gave its final indication as to the location where the smell of narcotics was strongest. Accordingly, the appellate court affirmed the denial of defendant's motion to suppress.

People v. Erwin, 2023 IL App (1st) 200936 Defendant was denied leave to file a successive post-conviction petition alleging an improper arrest pursuant to an investigative alert, based on the now-vacated reasoning of **People v. Bass**, 2019 IL App (1st) 160640, aff'd in part & vacated in part, 2021 IL 125434, and reiterated in **People v. Smith**, 2022 IL App (1st) 190691.

The appellate court affirmed. The majority declined to decide the investigative alert issue because, even if the appellate court now agreed that the practice is unconstitutional, the officers who made the arrest would have been acting under a reasonable belief that their conduct was constitutional. Thus, the good-faith exception to the exclusionary rule would apply, and defendant would not be entitled to the suppression of his confession. For this reason alone, defendant could not show prejudice, and therefore could not be granted leave to file his successive petition.

A special concurrence would have affirmed based on the failure to establish cause, where the claim rests on a provision of the Illinois Constitution that has existed since the 1800's. Finding a lack of prejudice based on the exclusionary rule, on the other hand, is premature given the lack of a record on the issue.

People v. Parlier, 2023 IL App (4th) 220091 During an investigation into allegations that defendant committed predatory criminal sexual assault and possession of child pornography,

a police officer spoke to defendant's mother-in-law, who provided an address at which defendant was staying. At that address, the officer found a car registered to defendant's brother. The officer sought a warrant for the residence and car, which was granted and led to the discovery of incriminating evidence.

On appeal, defendant argued that trial court erred in denying his motion to suppress because the warrant was granted without probable cause. Defendant argued the information in the officer's possession was stale because the complainants alleged acts that occurred at least two years in the past. Defendant also argued the officer's assertions in the warrant application failed to establish a nexus between these locations and the evidence, where they were based on a general belief that suspected child pornographers tend to keep the contraband on electronic devices that may be kept in a residence or car.

The appellate court held that it must attempt to decide a case on non-constitutional grounds if possible, meaning that it should first analyze the good faith exception to the exclusionary rule. A reviewing court decides *de novo* whether police officers' reliance on the search warrant was in good faith and, therefore, reviews *de novo* the ruling on the motion for suppression of evidence.

"Good faith" exists if an officer obtains evidence pursuant to a search warrant "free from obvious defects other than non-deliberate errors in preparation and contains no material misrepresentation by any agent of the State, and the officer reasonably believed the warrant to be valid" 720 ILCS 5/114-12(b)(2)(i).

Here, the warrant contained no obvious defects, and the officer could reasonably believe that the judge properly found probable cause. Regarding staleness, it was true that the complainants' came forward two to five years after the alleged conduct ended. But courts have noted that in child pornography cases, offenders are more likely to keep evidence longer given its difficulty to create or obtain. The court cited precedent where probable cause was found despite the passage of several years since the last evidence of a suspect's possession of child pornography, and a reasonable officer could rely on that precedent.

Similarly, regarding nexus, the officer could reasonably rely on precedent that states that offenders alleged to possess contraband could be expected to keep it in their residence. Finally, as to the brother's car, the court passed on the question because defendant failed to specify what, if any, evidence was found in the car that would be subject to suppression.

People v. Lockett, 2022 IL App (1st) 190716 As officers drove past defendant on a public street, he looked in the direction of their unmarked vehicle. He adjusted his waistband once, while the officers were in the vehicle, causing them to suspect he was concealing a firearm. He adjusted his waistband a second time when the officers approached him on foot; and he stated that he dropped a "bag of weed" after being ordered to remove his hands from his waistband. The officers frisked him and found an illegal firearm.

The appellate court held that the officers engaged in an unconstitutional frisk. To conduct a warrantless **Terry** frisk without probable cause, officers must have reasonable suspicion that defendant is armed and dangerous. Grabbing one's waistband alone is not evidence of criminality or of being armed, and neither officer provided any articulation as to why defendant's announcement that he dropped cannabis supported a belief that he was armed and dangerous.

The court also rejected the State's request to apply the good-faith exception to the exclusionary rule. None of the good faith exceptions outlined in caselaw or in 725 ILCS 5/114-12(b)(2) apply – there was no reasonable reliance on a warrant, no belief that defendant committed a crime later found unconstitutional, and no reliance on caselaw.

People v. Schantz, 2022 IL App (5th) 200045 Defendant was convicted of DUI/involving death and reckless homicide, and sentenced to six years in prison. She challenged the denial of her motion to suppress a blood draw, and the appellate court affirmed.

Defendant was arrested after striking and killing a motorcyclist. She smelled of alcohol, failed a series of field sobriety tests, and blew a 0.16 in her breathalyzer test. Once at the hospital, the arresting officer told the nurses to wait before drawing blood, while he retrieved his reports and his "Warning to Motorist" from his car. The warning informs the arrestee of their right to refuse blood-alcohol testing, but that doing so would result in a statutory summary suspension. The officer had not read the warning to defendant. By the time he got back, the nurses had already started drawing the blood. The results showed a BAL of 0.156. The officer obtained a warrant for a second draw, and that result showed a 0.078 six hours after the accident.

The appellate court first agreed with defendant that the nurses acted on behalf of the State and therefore the State had the burden to prove the search was reasonable. And the second draw was reasonable because it was issued pursuant to a search warrant, which was based on several signs of impairment.

The first draw, however, was done without a warrant, and therefore required proof of an exception to the warrant requirement. The State did not allege exigent circumstances, and any such argument would be rebutted by the fact that the officer quickly obtained a warrant for the second draw. Nor did defendant give express consent.

Two statutes, however – 625 ILCS 5/11-501.1(a), and 501.6(a) – require Illinois motorists to give implied consent whenever arrested for DUI or involved in an accident involving death or injury. Also, section 11-501.2(c)(2) mandates testing when officers have probable cause of intoxication following an accident involving death or injury, though that statute is unconstitutional in cases without exigent circumstances. **People v. Eubanks**, 2019 IL 123525. Although section 11-501.1(a) and 501.6(a) also face unresolved constitutional attacks, such as claims that implied consent laws are unconstitutional unless a defendant is warned about the ability to withdraw consent, the appellate court did not have to resolve those questions. Whatever the status of those laws, at the time of the blood draw here, the officer and nurses could have reasonably believed that defendant impliedly consented under these statutes, and therefore acted in good faith when drawing the blood. Under these circumstances, the exclusionary rule does not apply.

In any event, the error would have been harmless beyond a reasonable doubt given the other evidence of intoxication.

People v. Potts, 2021 IL App (1st) 161219 In 2007, more than 10 years prior to issuance of the decision in **Carpenter v. United States**, 138 S. Ct. 2206 (2018), the police obtained defendant's cell site location information (CSLI) without a warrant. On appeal, defendant argued that the CSLI should be suppressed based on **Carpenter**'s holding that individuals have a legitimate expectation of privacy in records of their physical movements as captured by CSLI, thus requiring a search warrant for its collection.

The Appellate Court rejected defendant's argument. Prior to **Carpenter**, courts had consistently held that warrantless collection of CSLI was permitted by the "third party doctrine" which provides that information an individual voluntarily turns over to a third party is not protected by the fourth amendment. But, none of those cases had been decided at the time defendant's CSLI was obtained by the police here.

Regardless, the Appellate Court held that the good-faith exception applied here. While the CSLI cases had not been decided and thus could not have been relied upon, the third-party doctrine was well established and officers could reasonably rely on that doctrine as the

basis for obtaining CSLI without a warrant. Thus, while **Carpenter** would require a warrant to obtain defendant's CSLI were it sought today, the good faith doctrine excused the officer's conduct in obtaining defendant's CSLI in 2007 and suppression was not required.

People v. Kaczkowski, 2020 IL App (3d) 170764 At a suppression hearing involving a traffic stop, a dashcam video showed defendant turning into the left lane, putting on his right turn signal, and drifting three lanes over to the far right lane. Asked why he pulled over defendant's car, the officer explained that defendant did not sufficiently pause in the middle two lanes. The circuit court accepted the answer and denied the motion to suppress.

The Appellate Court reversed. The rule that a defendant must signal for 100 feet applies to turns, not lane changes. The officer's mistaken belief was not reasonable because the statutes in question were unambiguous. The court suppressed the controlled substances found as a result of the stop and remanded the case for further proceedings.

People v. Jones, 2020 IL App (3d) 170674 The police obtained a warrant to search defendant's residence by alleging that on two occasions, defendant left the residence, sold a small amount of drugs to a nearby confidential informant, and returned to the residence. Under **People v. Manzo**, 2018 IL 122761, a search warrant should not issue based on these facts, because they do not give rise to probable cause to believe the defendant keeps drugs at the residence. The evidence of probable cause in this case was weaker than in **Manzo**, because the officer did not provide a date for the first transaction. Nor did the warrant application even state defendant lived at the residence.

As in **Manzo**, the warrant here was so lacking as to fall outside the scope of the good faith exception. It would not be reasonable for an officer to rely on this warrant where the complaint contained fundamental errors related to probable cause – it did not establish defendant's relationship to the residence, did not provide dates and times for the transactions, and included no details about defendant's actions before or after the transactions. Thus, the fruits of the search were suppressed and defendant's drug convictions were reversed.

People v. McCavitt, 2019 IL App (3d) 170830 After defendant, a Peoria police officer, was found not guilty of criminal sexual assault, he sought return of his personal computer which the police had seized and searched pursuant to a warrant. The judge said he was denying the request until things "cooled down." The next day, a police department investigator conducted a forensic examination of a copy of defendant's hard drive and identified images of suspected child pornography. Another warrant was obtained, additional child pornography was found, and defendant was prosecuted for and convicted of possession of child pornography.

Defendant's motion to suppress the post-acquittal search of his computer files should have been granted. While an individual has a diminished expectation of privacy in items seized and searched by the police, his reasonable expectation of privacy is restored once he has been acquitted. All property seized must be returned to its rightful owner once criminal proceedings have terminated. No charges were pending at the time of the search, and defendant's computer should have been immediately returned upon his acquittal of the sexual assault charges.

Likewise, while it was not error for the police to create a mirror image of defendant's hard drive for use during the sexual assault investigation and trial, the police were not entitled to retain anything beyond the scope of the original warrant. Because the original warrant authorized a search of defendant's computer files for evidence of criminal sexual

assault, unlawful restraint, and unlawful video recording, it was error to retain a copy of defendant's entire hard drive and conduct a broader search after defendant's acquittal.

Finally, the investigator could not rely on the original warrant as providing a good faith basis for the subsequent search where he knew that the warrant had already been executed and that defendant had been acquitted.

People v. Strickland, 2019 IL App (1st) 161098 Warrantless acquisition of defendant's cell site location information (CSLI) violated the Fourth Amendment as established in **Carpenter v. United States**, 138 S. Ct. 2206 (2018). The State argued that the good-faith exception to the exclusionary rule should apply because **Carpenter** was decided nearly five years after the CSLI was obtained here. The Appellate Court found it unnecessary to reach the good-faith issue, however, because the error was harmless beyond a reasonable doubt where the evidence against defendant was overwhelming and the CSLI evidence was largely insignificant to the case.

People v. Brown, 2019 IL App (1st) 161204 Officers on routine patrol saw Brown take a sip from a beer while standing in a parking lot outside a 24-hour gas station. The officers arrested Brown for drinking alcohol "on the public way" in violation of the city code. They searched Brown and found a plastic bag containing a controlled substance.

The trial court improperly denied Brown's motion to quash his arrest and suppress the evidence because the police officers had no reasonable basis to believe that he violated the Municipal Code prohibiting consumption of alcohol on a "public way." The State conceded that the gas station parking lot, by definition, was not a "public way" as contemplated by the Municipal Code, but argued the mistake was reasonable. After a thorough review of the language of the code, Chicago PD directives giving examples of public ways, and caselaw, the Appellate Court disagreed, finding only an unreasonable interpretation of the code would cause officers to believe Brown violated the ordinance. The trial court erred in failing to grant the motion to quash and suppress.

The dissent would have affirmed, noting that the burden was on Brown at the motion to establish he was *not* on the public way, and he failed to present any evidence at the hearing. The dissent also would not have taken judicial notice of the directives because defendant had a duty to present such evidence to the trial court.

People v. Pruitte, 2019 IL App (3d) 180366 Trial court's decision quashing search warrant and suppressing items seized was affirmed. Confidential source's reliability was not established where there was no evidence that the police had any experience with the source and surveillance was not conducted to confirm the source's information. The fact that the source appeared personally before the judge was of little value where the judge specifically relied on the written application in issuing the warrant. The source provided no additional information during his appearance, affording the judge little opportunity to evaluate his reliability. While the warrant application described the place to be searched and the source's observation of a single incident of criminal activity in that apartment, probable cause was lacking in the absence of evidence of the source's reliability. The good faith exception did not apply because the warrant application provided only generic information and was lacking any indicia of reliability.

The dissenting judge would have deferred to the issuing judge's determination that the warrant was supported by probable cause and the confidential source was credible and reliable because he appeared in court, had experience with controlled substances, and was providing information in an effort to work off his own legal troubles.

People v. Lobdell, 2019 IL App (3d) 180385 At a *Krankel* hearing, defendant failed to show possible neglect from trial counsel's failure to file a motion to suppress statements obtained following defendant's warrantless arrest. The police had probable cause to arrest defendant where the complaining witness identified him in a photo array and said she had used defendant's phone to call her grandmother, a detail which was corroborated by telephone records. That fact that the police entered defendant's fenced-in backyard to arrest him, without a search warrant or consent, did not invalidate the arrest. Defendant was on parole and therefore had a diminished expectation of privacy in his home.

People v. Turner, 2018 IL App (1st) 170204 The good faith exception to the exclusionary rule applied because the police relied on established precedent when they ordered a blood draw from a DUI suspect following a fatal car accident. The Appellate Court recognized that in **People v. Eubanks**, 2017 IL App (1st) 142837, it had found unconstitutional section 11-501.2(c)(2) of the Illinois Vehicle Code, which allowed warrantless blood or urine testing when police have probable cause to believe that a motorist involved in a fatal or harmful accident is under the influence. The **Eubanks** court rejected the good faith exception, but unlike **Eubanks**, where the defendant physically resisted the blood draw, defendant here did not. Therefore, the blood draw here comported with the Illinois Supreme Court's decision in **People v. Jones**, 214 Ill. 2d 187 (2005), which was the controlling precedent at the time and allowed for compliance with section 11-501.2, as long as defendant did not physically resist. As such, the police in this case properly followed the law at the time and the good faith exception applied.

Aggravated DUI is misdemeanor DUI with an aggravating factor. Here, the misdemeanor was driving with a BAC over .08, and the aggravating factor was involvement in a fatal car accident proximately caused by the misdemeanor. Contrary to defendant's argument, the statute does not require proof that defendant's *intoxication* proximately caused the death. This misdemeanor form of DUI is a strict liability offense, and in such cases, the State need only show that defendant's *driving* caused the death. Thus, the lack of evidence showing defendant's impairment caused the accident did not render the evidence insufficient.

People v. Lindsey, 2018 IL App (3d) 150877 A warrantless dog sniff conducted at a motel room door violates the fourth amendment. When analyzing whether police conducted a "search" of property under the fourth amendment, courts first use the traditional property-based analysis. If the police did not intrude on constitutionally protected property, then the court should go on to consider whether defendant had a reasonable expectation of privacy in the area investigated by the officers.

Here, while the police did not impose on defendant's property (unlike the curtilage of a home or the door of an apartment unit, defendant has no property rights in the common area of hotels and motels), they did violate defendant's reasonable expectation of privacy behind his closed motel room door. By using the dog, a sense-enhancing tool not available to the public (like the thermal-imaging device in **Kyllo v. United States**, 533 U.S. 27 (2001)), to discern what was happening behind closed doors, the police conducted a "search" of the room. Because they did so without a warrant, it was unconstitutional.

The good-faith exception to the exclusionary rule does not apply where sufficient binding precedent should have alerted a reasonably trained officer of the need for a warrant before conducting a dog sniff at a motel door. Although no cases were directly on point, precedent established that motel guests enjoy an expectation of privacy in a hotel room, and

that dog sniffs at doorways are classified as searches.

People v. Walker, 2018 IL App (4th) 170877 Section 11-801(a)(2) of the Vehicle Code clearly allows a driver to turn left into any available lane of traffic. Therefore the trial court properly suppressed evidence following a stop of defendant's car based on his turning left into the right lane. Although the officer subjectively believed defendant violated the law, a police officer who is acting in defiance of the plain language of an existing statute or judicial order—instead substituting his own erroneous interpretation of the statute or decision—cannot be considered as acting in an objectively reasonable manner.

In re Maurice J., 2018 IL App (1st) 172123 An officer's mistaken belief that it is illegal to drive around a speed hump does not excuse an otherwise suspicionless traffic stop. While a good faith mistake may excuse an officer's reasonable misunderstanding of a law, the mistake here was not reasonable. The vehicle code and municipal code provisions governing the evasion of traffic devices clearly did not pertain to this situation, because they only prohibit driving on private property or through alleys and traffic islands. An officer's belief that it is illegal to avoid a speed hump while staying on the road is not a "misunderstanding of the law" but rather a "failure to know the law." The gun found during the stop must be suppressed.

People v. Allard, et al., 2018 IL App (2d) 160927 The trial court properly suppressed wiretaps of defendants' phone conversations because the State failed to comply with section 108B of the Code of Criminal Procedure. Pursuant to this statute, wiretap applications must be signed by "the State's Attorney or a person designated in writing or by law to act for the State's Attorney" in the case of absence or disability. In this case, two *assistant* State's attorneys signed the wiretap applications. Although the SA had designated one of these ASAs to apply for wiretaps in his stead, that ASA failed to comply with section 108B's requirement that the source of the applicant's authority appear in the application. Nor was the delegation the result of absence or disability, as the State conceded that the SA had been overseeing the entire investigation. The State's attempt to rely on the good-faith exception for police officers codified in section 114-12(b)(1) was both forfeited, as it was not raised below, and without merit, as that subsections specifically exempts wiretaps.

People v. Martin, 2017 IL App (1st) 143255 Defendant's mother owned a two-flat building. She lived in the first floor apartment and the second floor apartment was vacant. Defendant often stayed overnight in the first floor apartment. The two-flat had a locked outer door that led to a private vestibule that had doors leading to each of the apartments.

The police saw defendant standing in a vacant lot next to the two-flat. A man approached defendant and raised his index finger. Defendant went up on the two-flat's porch, reached inside the doorway to the vestibule, which was slightly ajar, and retrieved a blue plastic bag. He took a smaller bag out of the blue bag, put the blue bag on top of the doorway, and walked back to the man in the vacant lot. The man gave defendant money and defendant gave him the smaller bag. Defendant then gave the money to an unknown man in the vacant lot.

The police broke surveillance and detained defendant and the buyer. The buyer said he got "one blow" from defendant. The item he purchased was a small bag filled with white powder, suspected to be heroin. One officer went up on the porch, reached inside the doorway to the vestibule and recovered the blue bag. The blue bag contained smaller bags similar to the one recovered from the buyer. The smaller bags contained heroin.

The Appellate Court held that the officer's recovery of the blue bag constituted an illegal physical search inside a home without a warrant. For purposes of the Fourth Amendment, the type of building here, a two-flat occupied and owned by one family, should be considered the same as a single-family home. The area inside the home's entrance is a protected area under the Fourth Amendment. An officer without a warrant may do no more than a private citizen, which generally is limited to approaching the house and knocking.

Here the officer intruded into the inside of the home to retrieve evidence. It made no difference that the door was open since a private citizen would not feel entitled to breach the open door of a home and investigate its contents. Any invasion of a home's structure "by even a fraction of an inch" is impermissible.

The officers did not act in good-faith reliance on binding precedent at the time of the search holding that common areas in multi-unit apartment buildings open to other people were not constitutionally protected. Here, the building was a single-family home not a multi-unit apartment.

The court suppressed the recovered evidence and reversed defendant's conviction outright since without that evidence the State could not prove defendant's guilt.

People v. Paddy, 2017 IL App (2d) 160395 A traffic stop that exceeds the time reasonably required to handle the matter for which the stop was made violates the Fourth Amendment. Beyond deciding whether to issue a ticket, an officer's mission includes ordinary inquiries incident to a traffic stop, including checking the driver's license and proof of insurance.

The officer properly stopped a car with Minnesota plates for a traffic violation. The driver had a license but no proof of insurance. The officer took the driver back to his squad car, began preparing a warning ticket, and conducted a computer-records check which showed that the car was registered in Minnesota. Before the officer completed the warning ticket, he arranged for a dog sniff. After the warning ticket was ready, he went back to the car to further determine whether there was proof of insurance. In the meantime, the dog sniff officer arrived, and after the dog performed its search, the officers found contraband in the car.

The court held that the dog search violated the Fourth Amendment. The mission of the traffic stop was complete when the officer finished writing the warning ticket. The officer mistakenly believed he was authorized to further investigate whether the driver had proof of insurance. But Illinois law does not require drivers of out-of-state vehicles to provide proof of insurance. The officer's investigation thus unduly prolonged the traffic stop.

The court rejected the State's argument that the officer's mistake of law about the need for proof of insurance was objectively reasonable. Illinois law unambiguously provides that an out-of-state vehicle does not need to comply with Illinois insurance requirements. The officer clearly knew that the stopped vehicle was from Minnesota and thus he had no reasonable basis to believe the driver needed to provide proof of insurance.

People v. Thomas, 2016 IL App (1st) 141040 Defendant was arrested for being in possession of a firearm after police received a tip from an unidentified citizen, and was convicted of UUW by a felon based on possession of a weapon and ammunition. During the trial, approximately four years after the arrest, the Illinois Supreme Court issued **People v. Aguilar**, 2013 IL 112116. **Aguilar** held that the portion of the Illinois aggravated unlawful use of a weapon statute which created an absolute ban on the right to possess a weapon for self-defense outside the home was facially unconstitutional under the Second Amendment.

The Appellate Court held that although at the time of the arrest a tip by an unknown citizen was sufficient to justify a **Terry** stop, in light of **Aguilar** a tip which states merely

that a person is in possession of a gun does not provide reasonable suspicion for an investigatory stop.

The court also found that the gun recovered as a result of the **Terry** stop should have been suppressed despite the fact that the stop was justified when it was made. Noting that statutes declared unconstitutional on their face are void *ab initio*, the court refused to apply the good-faith exception to the exclusionary rule.

The United States Supreme Court has applied the good-faith exception where an officer acts in objectively reasonable reliance on a statute which was subsequently found to violate the Fourth Amendment. **Illinois v. Krull**, 480 U.S. 340 (1987). In **People v. Krueger**, 175 Ill. 2d 60, 675 N.E.2d 604 (1996), however, the Illinois Supreme Court found that the Illinois Constitution bars application of the good-faith exception under such circumstances. The court concluded that the same rationale applies to a **Terry** stop which is made under a statute which is subsequently held unconstitutional on its face.

People v. Harrison, 2016 IL App (5th) 150048 Since the sole purpose of the exclusionary rule is to deter future violations of the Fourth Amendment, it only applies when there is some degree of police culpability and the deterrence benefits of suppression outweigh its heavy costs. Therefore under the good faith exception, the exclusionary rule does not apply when the police obtain evidence through a search conducted in reasonable reliance on binding precedent.

An officer arrested defendant on suspicion of driving under the influence of alcohol. When defendant refused to take a breath test, the officer transported him to a hospital where a nurse drew two blood samples without a warrant and without defendant's consent. The samples were tested and showed that defendant had a blood alcohol level of .161.

At the time the blood samples were taken, Illinois law permitted warrantless, non-consensual blood tests such as the one taken in this case. Subsequently, the United States Supreme Court held that in drunk driving cases, the natural dissipation of alcohol does not necessarily create an exigency sufficient to justify blood tests without a warrant. Instead, the question of whether a warrantless blood test is permissible "must be determined case by case on the totality of the circumstances." **Missouri v. McNeely**, 560 U.S. ___, 133 S.Ct. 1552 (2013).

The Appellate Court applied the good faith exception and found that the officer reasonably relied on binding precedent in Illinois when he ordered the blood tests. Moreover, the State had no need to demonstrate that the officer actually knew about this binding precedent when he ordered the tests. An officer's subjective knowledge is irrelevant. Instead, the proper inquiry is whether a reasonably well-trained officer would have known the search was illegal. Here, the officer could have objectively relied on Illinois law as authorizing the blood tests.

Defendant's conviction was affirmed.

People v. Bravo, 2015 IL App (1st) 130145 Under **U.S. v. Jones**, 565 U.S. ____, 132 S. Ct. 945 (2012), the warrantless installation of a GPS device on a suspect's car constitutes a "search" in violation of the Fourth Amendment. Here, the police installed a GPS device on defendant's car before **Jones** was decided, and used the device to track defendant for approximately one month before arresting him after a suspected narcotics transaction.

The State conceded that the officers' actions violated **Jones**, but argued that the agents acted in good faith in accordance with the pre-**Jones** case law**.** In **People v. LaFlore**, 2015 IL 116799, the Illinois Supreme Court held that evidence which was discovered through

the warrantless use of a GPS need not be suppressed if at the time they attached the device the officers had a good faith belief that their actions were proper.

The State claimed that the officers acted in good faith reliance on **United States v. Garcia**, 474 F.3d 994 (7th Cir. 2007). The court rejected this argument, finding that in **Garcia** the Seventh Circuit expressly limited its holding to situations where a GPS device was installed with reasonable grounds to suspect criminal conduct and the car on which the device was installed was tracked for no more than a few days. The court concluded that "[n]o fair reading of **Garcia** can stretch the reasoning" to justify the officers' actions here, where the GPS was installed without any basis to suspect criminal activity and used to track defendant for one month before he was arrested. Under these circumstances, the trial court acted properly by granting the motion to suppress.

People v. Brown, 2015 IL App (1st) 140093 In **Davis v. United States**, 131 S.Ct. 2419 (2011), the Supreme Court extended the good-faith exception to the exclusionary rule to situations where the police conduct a search relying on binding precedence that is subsequently overruled. In **Davis**, the police conducted a search of a vehicle's passenger compartment incident to an occupant's arrest. At the time of the search, there was binding authority allowing such a search, but subsequently the Supreme Court held that this type of search was unconstitutional. **Davis** held that the evidence recovered from the search was admissible under the good-faith exception to the exclusionary rule.

Here the police obtained a search warrant after they conducted a dog sniff on the curtilage of defendant's home. The only basis for the warrant was that the dog alerted to the presence of drugs in defendant's home. After the search had been conducted, the Supreme Court held that a dog sniff on the curtilage of a home was unconstitutional. **Florida v. Jardines**, 133 S.Ct. 1409 (2013). Since the only basis for the search warrant came from the now-illegal dog sniff, the trial court suppressed the evidence recovered during the search.

The State argued on appeal that the evidence should be admissible under the good-faith exception since dog sniffs on the curtilage of a home were entirely lawful under existing law at the time of the search. The Appellate Court rejected the State's argument for two reasons. First, it held that **Davis** involved a situation where there was binding authority allowing the search at issue. In the present case, by contrast, there was no binding Illinois law allowing dog sniffs on the curtilage of a home at the time of the search.

Second, the Appellate Court predicted that the Illinois Supreme Court would not apply the good-faith exception in **Davis** to the present situation since it had previously declined to adopt a good-faith exception to searches based on statutes that were later declared unconstitutional. **People v. Krueger**, 175 Ill. 2d 60 (1996). Here the illegal search would be justified based solely on the officer's belief that the law would be extended to cover the search at issue. "Such a result would expand the good-faith exception beyond recognition."

The trial court's suppression of the evidence was affirmed.

People v. Harris, 2015 IL App (1st) 132162 After a canine alerted to a FedEx package, officers obtained a warrant, opened the parcel, and found cannabis. The package was addressed to "S. Harris" at an address in Lincolnwood. The officers then obtained an anticipatory warrant authorizing a search of "Harris or anyone taking possession" of the package at the address and "any premises or vehicle . . . that the . . . parcel is brought into once the parcel has been delivered." The complaint stated that the warrant would be executed only if the parcel was "accepted" into a location or vehicle.

At the same time, officers obtained an order to install an "electronic monitoring and

breakaway filament device" in the parcel. This device sends an electronic signal when a package is moved or opened. The officers then placed the package on the porch of the home to which it was addressed.

About an hour later, defendant, whose first initial was not "S," pulled into the driveway, retrieved the box, and put it in his vehicle. Defendant presented testimony that the house was owned by his grandmother, whose first name was "Sylvia," but that it had been empty for several years because Sylvia was in a nursing home. Defendant testified that as he was driving past the house he saw the package on the porch and decided to pick it up.

When defendant placed the package in his car, officers decided to execute the warrant although the electronic monitoring device did not indicate that the package had been opened or was being moved. The officers decided to act because "they did not want to get into a car chase in an unfamiliar area around school dismissal time." However, no evidence was presented concerning the proximity of any schools to the house.

The State presented testimony that after he was arrested, defendant made inculpatory statements. Defendant denied making those statements. Defendant was convicted of possession of cannabis but acquitted of possession of cannabis with intent to deliver.

The Appellate Court concluded that defendant's motion to suppress, which was based on the assertion that the triggering condition for execution of the anticipatory warrant had not occurred, should have been granted.

The court rejected the argument that the good faith exception applied and the evidence therefore need not be suppressed. The good faith exception to the exclusionary rule permits the admission of illegally-seized evidence where the officer had a reasonable belief that the search was authorized by a warrant.

The court concluded that the officers could not have reasonably believed that they were authorized to arrest defendant where they had personally participated in preparing the application for the warrant, including representing that the electronic monitoring and breakaway filament devices would likely "produce evidence of a crime," and knew that the device had not indicated that the package had been opened. In addition, the officers had no prior information to connect defendant to the package or its contents. Under these circumstances, the officers could not have reasonably believed that the warrant authorized a search of defendant merely because he picked up the package and put it in his car.

People v. Rojas, 2013 IL App (1st) 113780 The good-faith exception prevents suppression of evidence obtained by an officer acting in good faith and in reliance on a search warrant that is ultimately found to be without probable cause where the warrant was obtained by a neutral and detached magistrate, free from obvious defects other than non-deliberate errors in preparation, and containing no material misrepresentations. But the good-faith exception does not apply where the affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. If the officer who provided the affidavit did not possess an objectively reasonable belief in the existence of probable cause, suppression is the appropriate remedy. Whether the good-faith exception applies is reviewed *de novo*.

While the 20-page complaint in support of the warrant was not bare-bones, it is bare-bones with respect to probable cause to search defendant's residence. Probable cause to search other locations cannot be bootstrapped to supply probable cause, and by implication, good faith, for the search of defendant's residence. An objectively reasonable officer would not have found probable cause existed to search defendant's residence.

The Appellate Court affirmed the trial court's order suppressing a gun seized during

a search of defendant's residence pursuant to the warrant.

Epstein, J., dissented. The complaint did not establish probable cause to search defendant's residence, but the good-faith exception applies because the affidavit was not bare-bones.

People v. Lenyoun, 402 Ill.App.3d 787, 932 N.E.2d 63 (1st Dist. 2010) The issue of whether a search warrant is supported by probable cause and whether the good faith exception of **United States v. Leon**, 468 U.S. 897 (1984), entitles a police officer to rely on the search warrant are intertwined. If neither the judge issuing the warrant nor the officer executing the warrant could hold an objectively reasonable belief in the existence of probable cause, any search conducted pursuant to the warrant cannot be upheld.

In this case, the police first obtained a warrant authorizing a search of the defendant and his vehicle. The information the police possessed supporting the warrant was as follows: 1) in August 2001, the police arrested Paul Jones in an apartment leased by defendant where they found drugs and weapons; 2) on three different days in February 2004, surveillance officers observed defendant drive from 110 Hillside in Hillside, Illinois, and meet an individual on the street with whom defendant exchanged an item for currency; and 3) on one of those occasions the police stopped the person who had met with defendant, Darryl Cox, and recovered cocaine; Cox informed the police that he had arranged to purchase the drugs from defendant by calling defendant's cell phone and provided the police with that number.

The police executed the search warrant on defendant and his vehicle after they observed defendant depart the Hillside address. They found no contraband, but did find a list that contained the word "dope," and four business cards, one of which displayed the phone number Cox had given the police. The police connected that number to defendant but not to the Hillside address. A K-9 unit alerted to the interior of defendant's car and the $352 found on his person. Defendant refused to consent to a search of the Hillside address and denied that the Hillside address was his residence even though it was listed on his driver's license.

The police then obtained a warrant to search the Hillside address, relying on the same information they had submitted to obtain the first warrant, as well as the additional circumstances they learned during the execution of the first warrant.

The circuit court granted defendant's motion to quash the warrant and the Appellate Court affirmed. The Appellate Court acknowledged that the first warrant for the search of the vehicle was valid, but found that nothing submitted in support of the second warrant demonstrated a fair probability that contraband would be found at the Hillside address. It would be unprecedented to hold that a judicial determination of probable cause to search a vehicle established by an outdoor drug sale could to support a successive warrant for a search of the seller's residence. The good-faith doctrine did not save the search because neither the issuing judge nor the executing officer could have held an objectively reasonable belief in the existence of probable cause to search the residence.

People v. Bui, 381 Ill.App.3d 397, 885 N.E.2d 506 (1st Dist. 2008) Good faith exception would apply to "anticipatory warrant" that was not supported by probable cause.

People v. Anderson, 304 Ill.App.3d 454, 711 N.E.2d 24 (2d Dist. 1999) An arrest based on an invalid warrant is not legitimized by the officer's good-faith belief that a valid warrant existed.

People v. Mabry, 304 Ill.App.3d 61, 710 N.E.2d 454 (2d Dist. 1999) Under the good faith exception, evidence need not be suppressed when a warrant issued by a detached, neutral

magistrate is later determined to be invalid, if the officer who executed the warrant acted in objectively reasonable reliance on the warrant. However, a warrant that fails to indicate the scope of the authorized search contains such a fundamental defect that reliance on it is not objectively reasonable.

In addition, the exception is inapplicable where the magistrate fails to act with the "neutrality and detachment demanded of a judicial officer," and instead acts as "an adjunct law enforcement officer."

People v. Capuzi, Koroluk & Perez, 308 Ill.App.3d 425, 720 N.E.2d 662 (2d Dist. 1999) By failing to raise the issues in the trial court, the State waived arguments that the good faith exception applied and that the defendants lacked standing to raise Fourth Amendment challenges. See also, **People v. Damian**, 299 Ill.App.3d 489, 701 N.E.2d 171 (1st Dist. 1998) (State waived argument that the evidence was admissible under the "good-faith exception" where it failed to raise that argument during the hearing on the motion to suppress, in the motion to reconsider, during oral argument on the motion to reconsider, or in the notice of appeal).

People v. McPhee, 256 Ill.App.3d 102, 628 N.E.2d 523 (1st Dist. 1993) The good faith exception applies only where the police in good faith rely on a defective warrant, not where officers exceed the scope of a valid warrant.

People v. Reed, 202 Ill.App.3d 760, 559 N.E.2d 1169 (3d Dist. 1990) The good-faith exception does not apply to a search warrant that is based on a "bare bones" affidavit; the officers who executed a warrant cannot claim good-faith where the warrant was so facially overbroad that they could not have reasonably believed that it was valid.

People v. Taylor, 198 Ill.App.3d 667, 555 N.E.2d 1218 (3d Dist. 1990) Where a search warrant was obtained by telephone, was not signed by the judge at the time of its execution, and did not contain the date and time of issuance, it was invalid. Execution of the warrant did not come within the "good-faith" exception where the face of the warrant contained such "obvious defects."

§43-1(d)(3)
"Inevitable Discovery" Exception

United States Supreme Court

Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984) The "inevitable discovery" exception to the exclusionary rule permits the admission of evidence that would have ultimately been discovered even had no constitutional violation occurred. The record showed that search parties were approaching the location of the decedent's body and would have found the body even without defendant's statement, which was taken in violation of his right to counsel.

"If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received." See also, **People v. Hoskins**, 101 Ill.2d 209, 461 N.E.2d 941 (1984) (evidence in defendant's purse would have inevitably been found during inventory; thus, even if street search was improper, exclusion of evidence was not required).

Illinois Supreme Court

People v. Sutherland, 223 Ill.2d 187, 860 N.E.2d 178 (2006) Although the court acknowledged "concern" that a trial judge in Illinois issued a warrant authorizing police officers to execute a search in Montana, it found that the "inevitable discovery" exception would have applied. Because defendant had abandoned his car in Montana, and an abandoned vehicle may be searched without limitation, the evidence contained in the car would have been discovered. That evidence would have caused police to seek a warrant to search defendant's person and possessions, which would have led to the remaining evidence which was the subject of the motion to suppress.

People v. Hoskins, 101 Ill.2d 209, 461 N.E.2d 941 (1984) Even if a search incident to defendant's arrest was improper, the evidence need not be suppressed if it would have been inevitably discovered during a valid inventory search. Compare, **People v. Conrad,** 213 Ill.App.3d 1068, 572 N.E.2d 1203 (3d Dist. 1991) (inevitable discovery doctrine did not apply to discovery of coin purse where police would have had no reason to suspect defendant of a crime had they not illegally searched him and obtained the coin purse).

Illinois Appellate Court

People v. Baker, 2020 IL App (2d) 180300 The police did not have the right to confiscate cigarettes during a **Terry** frisk, but the trial court properly ruled they were admissible under the inevitable discovery doctrine. Though recovery of a non-weapon during a **Terry** frisk is not permitted, the police had the right to detain defendant pursuant to **Terry**, as he matched the description of the suspect of a nearby robbery. The detention could legally continue as the officers sought to confirm or refute their suspicions. Once the officers reviewed surveillance footage showing the robbery, they had probable cause to arrest, at which time the search incident to arrest would have yielded the cigarettes.

People v. Carter, 2016 IL App (3d) 140958 The police searched defendant's home pursuant to a search warrant. When the search had been completed and all the officers were outside the home, they received additional information that defendant had a gun inside the home which had not been discovered during the preceding search. The officers re-entered the home and retrieved the gun.

The trial court granted defendant's motion to suppress the gun. The State conceded on appeal that the search warrant did not authorize the re-entry and second search of the home. Instead, the State argued that the gun would have been found pursuant to the inevitable discovery doctrine because a second search warrant could have been obtained.

The Appellate Court rejected the State's argument. The State's claim that the discovery was inevitable because the police planned to get a search warrant would as a practical matter place police action beyond judicial review and emasculate the warrant requirement.

The trial court's order suppressing the evidence was affirmed.

People v. Butler, 2015 IL App (1st) 131870 Where defendant was present in a hospital emergency room for treatment of a gunshot wound, the community caretaking exception did not justify a search of his cell phone for the purpose of calling someone in defendant's family to inform them that he was at the hospital. Because defendant was alert and could have been asked whether he wanted anyone to be contacted, the search could have been accomplished

by better and less intrusive means.

In rejecting the State's argument that the balance between defendant's privacy interest and society's interest in the welfare of its citizens favors allowing an officer to search a cell phone to find contact information, the court noted the discussion in **Riley** that cell phones contain immense amounts of digital information and implicate privacy concerns beyond those involved in the search of objects such as purses or wallets.

Finally, the court rejected the State's argument that the search of the phone was justified by the inevitable discovery exception. The inevitable discovery exception applies where the prosecution can show that evidence would necessarily have been discovered in the absence of any police error or misconduct.

Although a search warrant was eventually obtained to gain access to the cell phone, that warrant was based on a text message which the officer saw during the improper search. Had the officer not searched the phone, the police would not have had such information on which to request a warrant. Because evidence obtained during an illegal search cannot justify issuance of a search warrant, the text message would not inevitably have been discovered.

People v. Davis, 398 Ill.App.3d 940, 924 N.E.2d 67 (2d Dist. 2010) Police improperly seized a suspected controlled substance and a digital scale which an officer observed while in the defendant's apartment to make a warrantless arrest. Therefore, the defense motion to suppress evidence should have been granted.

Absent exigent circumstances, police may not enter a private residence to make a warrantless search or arrest. The State bears the burden of demonstrating sufficient exigent circumstances to justify a warrantless entry to a residence.

Whether exigent circumstances justify a warrantless entry to a private residence depends on the facts of each case, considering factors such as: (1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by police during which a warrant could have been obtained; (3) whether a grave offense was involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting on a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though not consensual, was made peaceably. This list of factors is not exhaustive, but illustrates the type of evidence which is relevant to the question of exigency.

There were insufficient exigent circumstances to justify a warrantless entry to an apartment to arrest the defendant for battery. The evidence presented by the State did not suggest that defendant posed an immediate or real threat of danger or likelihood of flight, and the circumstances did not suggest that the delay required to obtain an arrest warrant would have impeded the investigation or prevented defendant's apprehension. Although battery involves a form of violence and defendant allegedly punched the complainant, there was nothing to indicate that the offense was particularly "grave," no evidence of any injury or medical treatment on the part of the complainant, and no reason to believe that defendant was armed or otherwise posed a threat.

There was also no evidence that defendant was likely to flee unless swiftly apprehended, especially where defendant did not appear to know that police were looking for him.

The court acknowledged that only a short period of time passed between the battery and the officer's arrival at defendant's apartment, and that there was no unjustifiable delay. In addition, there was probable cause for an arrest, the police had reason to believe defendant

was in the apartment, and the officer entered the apartment peaceably. However, "we are not persuaded that these circumstances, without more, necessitated prompt action by the police in the form of a warrantless entry and arrest."

The court rejected the State's argument that the evidence seized during the search of the apartment was admissible under the "inevitable discovery" doctrine, which holds that the exclusionary rule does not apply to improperly seized evidence if the State can prove by a preponderance that the evidence ultimately or inevitably would have been discovered by lawful means.

The court rejected the State's argument that the evidence would have been inevitably discovered by executing a search warrant issued on the complainant's tip, reiterating that the complainant's tip was insufficient to justify a warrant. Furthermore, there was no reason to believe that the girlfriend would have consented to a search of the apartment had she been told only of the proper factors - that the complainant had reported a battery and claimed that drugs were being sold from the apartment.

Because there was no valid exception to the Fourth Amendment to justify the warrantless entry to defendant's apartment, and the seizure of evidence and consent to search were obtained through exploitation of the illegal entry, the trial court should have granted defendant's motion to suppress. Because the State could not prevail at trial without the illegally seized evidence, the convictions were reversed outright.

People v. Nesbitt, 405 Ill.App.3d 823, 938 N.E.2d 600 (2d Dist. 2010) The Illinois Constitution, Article I, §6, contains both privacy and search-and-seizure clauses. While the search-and-seizure provision of the Illinois Constitution is interpreted in lockstep with the federal constitution, the privacy clause expands upon those rights and creates an additional right not covered by the search-and-seizure provision. This privacy clause protects an individual's bank records in any form, electronic or otherwise. A citizen does not waive any legitimate expectation of privacy in her financial records by resorting to the banking system. Since it is virtually impossible to participate in the economic life of contemporary society without maintaining a bank account, opening a bank account is not entirely volitional.

The Banking Act, 205 ILCS 5/48.1, does not exempt the State from obtaining a subpoena or a warrant for defendant's constitutionally-protected bank records. The Banking Act merely defines the obligations a bank owes to its customers. It does not attempt to regulate governmental intrusion into a customer's confidential bank records. While the Banking Act authorizes a bank to release records to law enforcement when it reasonably believes that it has been the victim of a crime, the State offered no evidence that this exception applied at the hearing on defendant's motion to suppress. Rather, the State stipulated that law enforcement initiated a request for the records and the bank complied.

Defendant's status as an employee of the bank did not alter the State's obligations to obtain a warrant or a subpoena for the records. While there is a diminished reasonable expectation of privacy in work-related situations, the issue was not the bank's search of defendant's work space or computer. An employee does not lose her constitutional protections merely because she is employed by an entity capable of accessing protected information.

The State cannot rely on the inevitable-discovery doctrine to justify the seizure of defendant's records. That doctrine requires that an independent investigation already be in progress when the evidence was unconstitutionally obtained. There was no evidence of such presented at the hearing on the motion to suppress. There was also no evidence that the State's failure to obtain a warrant or subpoena was due to a mistaken reliance on the Banking Act. Suppression of the bank records will serve the purpose of informing law enforcement that it must obtain a subpoena or a warrant to obtain constitutionally-protected materials

during a criminal investigation.

People v. Surles, 2011 IL App (1st) 100068 Defendant was a front-seat passenger in a car occupied by three men that was stopped by the police in a high-crime area for failing to stop at a stop sign. The officer approached the car with his hand on his weapon, but could not recall if the weapon was drawn. Four other officers arrived to assist the two officers who conducted the stop. The driver was placed under arrest when he was unable to produce a valid driver's license.

The police then ordered both passengers out of the car and handcuffed them preliminary to an inventory search of the car. The police had no familiarity with the three men and did not observe them doing anything that gave them concern for their safety. An officer observed a slight bulge in defendant's waistband, conducted a pat down, and recovered a gun. The officer who conducted the pat down testified, "We do protective pat downs on basically everybody."

The trial court denied the motion to suppress, finding the handcuffing of defendant inconsequential because the officers would have discovered the gun during a pat down without defendant being handcuffed.

An exception to the exclusionary rule exists where the evidence unlawfully obtained would have inevitably been discovered without the police violation. Therefore, before deciding whether the gun must be suppressed as evidence, the Appellate Court had to address whether defendant could have lawfully been subject to a **Terry** stop and frisk.

There was no evidence of any facts known to the police that tied the defendant to crime in the area. The police only knew him to an occupant of a vehicle. By their own admission, his conduct did not create any fear or threat of violence against them. Their "testimony that they 'do a protective pat down search on basically everybody' evinces the routine nature of their arresting and searching private citizens without any articulable suspicion of criminal activity."

Because suppression of the gun and its taking from defendant would destroy any opportunity the State had to prevail at a new trial on the charges surrounding defendant's possession of the gun, the court reversed defendant's conviction for armed habitual criminal.

People v. Wells, 403 Ill.App.3d 849, 934 N.E.2d 1015 (1st Dist. 2010) The police received a call of a domestic disturbance at 2 a.m. The caller reported that her former boyfriend was ringing her bell and "threatening to kill her over the phone," but that she did not want him arrested. The police saw the defendant leaving her apartment on their arrival. Ten minutes later, they received a second call that he had returned, was again ringing her bell and threatening to "call her over the phone." The police saw defendant walking down the street when they responded, and decided to stop defendant and conduct a field interview.

Before asking any questions, the police handcuffed the defendant, then patted him down and found a gun in his sock. The Appellate Court acknowledged that while handcuffs are generally indicative of an arrest, handcuffing does not invariably convert a **Terry** stop into an arrest if circumstances warrant it for the safety of the police or the public. The court concluded that the defendant was arrested without probable cause, because there were no circumstances that would justify handcuffing defendant in order to conduct a **Terry** stop. Defendant was immediately restrained and searched, the police conducted no investigation prior to handcuffing defendant, and defendant was cooperative and did not attempt to flee or struggle.

The fact that the calls related to a domestic disturbance did not by itself justify a search for weapons. The police had no reason to believe that the defendant was armed.

The police asked the defendant at the police station following his arrest if he had a car. They found defendant's car illegally parked and had it towed. The police searched the car before it was towed and found ammunition. The court concluded that the bullets were the fruit of the illegal arrest. There was no break in the chain of events sufficient to attenuate the recovery of the bullets from the illegal arrest. Each event followed and flowed from the initial illegality.

The inevitable discovery doctrine permits the admission of evidence where the State can show that the evidence would invariably have been discovered without reference to the police error or misconduct. The doctrine had no application to the bullets where their discovery was inextricably linked to the illegal arrest.

§43-1(d)(4)
"Independent Source" Exception

United States Supreme Court

Segura v. U.S., 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984) The exclusionary rule does not apply if the police had an "independent source for the discovery of the evidence." Police had an "independent source," other than an illegal, warrantless entry to defendant's apartment, where a search warrant was based on probable cause which existed before the illegal entry, but the warrant was not issued until after the improper entry. See also, **Murray v. U.S.**, 487 U.S. 533, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988) (evidence which is initially discovered during an unlawful search may be used at trial if it is later discovered during a lawful search).

U.S. v. Karo, 468 U.S. 705, 104 S.Ct. 3296, 82 L.Ed.2d 530 (1984) Although police acted improperly by monitoring a beeper located in a can of ether after the can was taken inside a private residence, suppression was not required where the affidavit for search warrant established probable cause without consideration of the information stemming from the unlawful monitoring.

U.S. v. Crews, 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537 (1980) An in-court identification by a robbery victim was not the fruit of an illegal arrest, and was therefore admissible although the victim also observed the defendant in a lineup and a photograph that were both fruits of the improper arrest.

A victim's in-court identification has three distinct elements: (1) the victim is present at trial to testify as to what happened and to identify the defendant, (2) the victim possesses knowledge of and the ability to reconstruct the prior criminal occurrence and to identify the defendant from her observations of him at the time of the crime, and (3) the defendant is present at trial so that the victim can observe him and compare his appearance to that of the offender.

None of the above elements were obtained by exploitation of the unlawful arrest. The victim's presence in the courtroom was not the product of police misconduct, because her identity was known long before the defendant's arrest. The victim's ability to identify the defendant was based on her observations at the time of the robbery (and not on what occurred after the unlawful arrest) where the trial court expressly found that the courtroom identification rested on an independent recollection of the initial encounter with the assailant and was not influenced by the pre-trial identifications. Finally, although defendant's presence at trial is traceable to his unlawful arrest, the illegality of one's detention cannot

deprive the prosecution of the opportunity to prove guilt by evidence wholly untainted by the police misconduct.

Illinois Supreme Court

Illinois Appellate Court

People v. Harris, 2020 IL App (3d) 190504 Evidence obtained in violation of the eavesdropping statute is inadmissible in a criminal trial. 720 ILCS 5/14-5. This includes not just the recording itself, but any testimony about the recorded conversation, if the recording led to the conversation and the evidence about the conversation did not come from an independent source.

The trial court suppressed an audio and video recording made by a confidential informant of a suspected drug dealer, and also suppressed any evidence about the conversation as well as the testimony of the informant herself. The recording was made after police and prosecutors attempted to use, but failed to comply with, an exception to the eavesdropping statute contained in section 14-3(q). On appeal from the suppression order, the State conceded that prosecutors and police failed to comply with the exception, and that as a result the recording must be suppressed. But it argued that the informant should still be allowed to testify to the conversation because her observations were made independently of the recording device. The majority disagreed, finding that the conversation took place as a direct result of the attempt to eavesdrop, making all evidence about the conversation fruit of the poisonous tree. The informant's testimony about the conversation could not be characterized as an independent source under these circumstances.

The dissent favored a narrower interpretation of whether evidence is obtained in violation of the eavesdropping statute. It would have found that while the audio recording violated the statute, the video, as well as the conversation itself, did not. It would have admitted the video recording and the informant's testimony independently of the audio recording.

People v. Wells, 403 Ill.App.3d 849, 934 N.E.2d 1015 (1st Dist. 2010) The police received a call of a domestic disturbance at 2 a.m. The caller reported that her former boyfriend was ringing her bell and "threatening to kill her over the phone," but that she did not want him arrested. The police saw defendant walking down the street when they responded, and decided to stop defendant and conduct a field interview.

Before asking any questions, the police handcuffed the defendant, then patted him down and found a gun in his sock. The court concluded that the defendant was arrested without probable cause, because there were no circumstances that would justify handcuffing defendant in order to conduct a **Terry** stop. The police asked the defendant at the police station following his arrest if he had a car. They found defendant's car illegally parked and had it towed. The police searched the car before it was towed and found ammunition. The court concluded that the bullets were the fruit of the illegal arrest. There was no break in the chain of events sufficient to attenuate the recovery of the bullets from the illegal arrest. Each event followed and flowed from the initial illegality.

The inevitable discovery doctrine permits the admission of evidence where the State can show that the evidence would invariably have been discovered without reference to the police error or misconduct. The doctrine had no application to the bullets where their discovery was inextricably linked to the illegal arrest.

The search of the car was not justified as an inventory search. The towing of an

illegally parked car provides no reason to conduct an inventory search or provide independent probable cause to search the car.

People v. Tate, 323 Ill.App.3d 905, 753 N.E.2d 347 (1st Dist. 2001) The "independent source" doctrine is based on the proposition that "while the government should not profit from its illegal activity, neither should it be placed in a worse position than it would otherwise had occupied." Thus, if a "later, lawful seizure is genuinely independent of an earlier, tainted one . . . there is no reason why the independent source doctrine should not apply."

People v. Carter, 284 Ill.App.3d 745, 672 N.E.2d 1279 (5th Dist. 1996) Under Illinois law, the "independent source" rule applies only where two conditions are satisfied: (1) the illegality in question must not have influenced the decision to seek the warrant, and (2) the information obtained through the illegal search must not have affected the magistrate's decision to issue the warrant.

§43-1(e)
Fruit of the Poisonous Tree

§43-1(e)(1)
Generally

United States Supreme Court

Kaupp v. Texas, 538 U.S. 626, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003) A confession obtained as a result of an illegal arrest must be suppressed unless it was an act of free will sufficient to "purge the primary taint of the unlawful invasion." The State has the burden to establish that a confession was not the fruit of an illegal arrest. Among the factors to be considered are whether **Miranda** warnings were given, the time lapse between the illegal arrest and the confession, the presence of any intervening circumstances, and the purpose and flagrancy of the official misconduct.

The mere fact that **Miranda** warnings are given does not necessarily break the causal connection between an illegal arrest and a confession. Here, the remaining factors favor a finding that the confession was the result of the illegal arrest - no substantial time passed between the arrest and the confession, defendant was at all times partially clothed and in the physical custody of several police officers (at least some of whom knew they had no probable cause for the arrest), and there was no meaningful intervening event between the illegal arrest and defendant's confession.

U.S. v. Havens, 446 U.S. 620, 100 S.Ct. 1912, 64 L.Ed.2d 559 (1980) Evidence obtained as the result of an unlawful search and seizure may be used to impeach a defendant's testimony given in response to proper cross-examination. The Court refused to limit the use of such evidence to those instances in which it contradicts a specific statement made by the defendant on direct examination.

Dunaway v. N.Y., 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979) Applying the **Brown v. Illinois** factors, the Court held that defendant's confession must be suppressed as the fruit of his unlawful arrest. The confession was obtained less than two hours after the arrest, there were no intervening factors, and the arrest was without probable cause and for the purpose of obtaining a confession.

Gerstein v. Pugh, 420 U.S. 139, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) An illegal arrest does not affect the jurisdiction of the court to try a defendant.

Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975) Giving **Miranda** warnings after an unlawful arrest does not *per se* dissipate the taint of the unlawful arrest. The question is whether the statement was sufficiently an act of free will to purge the taint of the illegality. The burden is on the State to prove admissibility; factors to be considered (in addition to the **Miranda** warnings) include the temporal proximity of the arrest and statement, the presence of intervening circumstances, and especially the purpose and flagrancy of the official misconduct.

Davis v. Mississippi, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969) Fingerprints obtained from defendant following an illegal arrest are inadmissible.

Harrison v. U.S., 392 U.S. 219, 88 S.Ct. 2008, 20 L.Ed.2d 1047 (1968) Defendant's testimony, which occurred after the improper admission into evidence of an unlawfully obtained confession, was the fruit of the unlawful confession.

Fahy v. Connecticut, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed.2d 171 (1963) A confession or admission induced by illegally seized evidence is not admissible in a criminal trial.

Wong Sun v. U.S., 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) Statements made by a suspect after an illegal entry into his home, and a search based on the statements, were fruits of the primary illegality.

Nardone v. U.S., 308 U.S. 338, 60 S.Ct. 266, 84 L.Ed. 307 (1939) The Court used the term "fruit of the poisonous tree" for the first time.

Illinois Supreme Court

People v. Davis, 2021 IL 126435 Pursuant to 720 ILCS 5/14-3(q), the Kankakee County State's Attorney authorized the Kankakee Area Metropolitan Enforcement Group (KAMEG) to secretly record a controlled buy between a confidential informant and another individual, not defendant. The CI went to the target's home wearing a concealed recording device. When the CI did not locate the target, he walked to a different home and conducted a drug transaction with defendant, instead. Defendant was charged with unlawful delivery of a controlled substance.

Defendant filed a motion to suppress the recording of the drug transaction, as well as the CI's testimony about the transaction, pursuant to 720 ILCS 5/14-5 because he was not the named target of the authorized eavesdropping. The State conceded that the audio portion of the recording should be suppressed because it violated the eavesdropping statute, but argued that the video recording and the testimony of the CI need not be suppressed. The circuit court granted the motion to suppress in total, barring admission of the audio, video, and testimony.

The Appellate Court reversed as to the video and the CI's testimony, holding that the video did not derive from the eavesdropping activity and that the CI was a party to the conversation and therefore did not eavesdrop.

The Supreme Court agreed and held that only the audio recording violated the eavesdropping statute, which is concerned with the unlawful transmission or recording of oral conversation. Relying on **People v. Gervasi**, 89 Ill. 2d 522 (1982), the Court also held that the fruit of the poisonous tree doctrine did not require exclusion of the video or the CI's testimony. The CI was a participant in the conversation with defendant, so his testimony about the drug transaction was not derived from the illegal audio recording. Similarly, the video recording was made simultaneously with the audio recording and therefore could not have been derived from it. Thus, neither the CI's testimony nor the video recording were fruits of the illegal audio recording and suppression was not required.

People v. Henderson, 2013 IL 114040 An anonymous tip may supply sufficient suspicion for a **Terry** stop if the information carries sufficient *indicia* of reliability. The tip in this case was insufficient to justify a traffic stop. An individual flagged down police officers to advise them that there might be a gun in a tan, four-door Lincoln. The individual, who was not known to the officer, gave the number of persons in the car but included no other information. The officers stopped a tan, four-door Lincoln about five minutes later, although they did not observe the occupants violating any laws. During the stop, the defendant, who was a back seat passenger, dropped a handgun while fleeing the scene.

However, the weapon was not required to be suppressed as a fruit of the improper stop. The "fruit of the poisonous tree" doctrine stems from the Fourth Amendment exclusionary rule, and provides that evidence obtained by exploiting a Fourth Amendment violation is subject to suppression. Whether the doctrine requires exclusion of evidence depends on whether the chain of causation stemming from the unlawful conduct was sufficiently interrupted by intervening circumstances to attenuate the taint of the illegality. Factors relevant to the attenuation analysis include the temporal proximity of the illegal police conduct and the discovery of the evidence, the presence of any intervening circumstances, and the purpose and flagrancy of the official misconduct.

The United States Supreme Court has rejected a "but for" test for exclusion of evidence under the fruit of the poisonous tree doctrine. Thus, evidence is not inadmissible merely because it would not have been discovered "but for" the illegal actions of the police. In other words, the fact that evidence comes to light through a chain of causation that began with an illegal seizure does not necessarily require suppression.

The court presumed that the first attenuation factor – the temporal proximity between the violation and the discovery of the evidence – favored defendant, although the record did not indicate how much time passed between the illegal stop and the discovery of the handgun. However, the court concluded that defendant's flight from the scene constituted an intervening circumstance which broke the causation between the illegal stop and the discovery of the handgun. Although a passenger who submits to a show of authority has been "seized" for purposes of the Fourth Amendment, under **California v. Hodari D.**, 499 U.S. 621 (1991), a suspect who flees rather than submit is not "seized" until he submits. Here, defendant dropped the weapon during his flight, when he was not "seized."

The court acknowledged that parts of the **Hodari D.** opinion are *dicta*, but found that *dicta* to be persuasive.

Concerning the third factor, although the officers acted improperly by making a traffic stop based upon an anonymous tip which did not provide sufficient *indicia* of reliability, the court found that the misconduct was not flagrant.

Because defendant's flight interrupted the chain of causation between the officers' misconduct and the discovery of the gun, the fruit of the poisonous tree doctrine did not apply.

Because there were no grounds on which a motion to suppress would have been granted, defense counsel was not ineffective for failing to file such a motion.

People v. Villarreal, 152 Ill.2d 368, 604 N.E.2d 923 (1992) Evidence of crimes against officers who are making an illegal arrest may not be suppressed as fruits of that illegal arrest. It is illegal to resist even an illegal arrest; furthermore, the exclusionary rule applies only to evidence of past or ongoing criminal activity and not to evidence of crimes committed in response to an illegal search.

People v. Scaramuzzo, 352 Ill. 248, 185 N.E. 578 (1933) Search warrant based on information obtained in a prior unlawful search is invalid. See also, **People v. Bessler**, 191 Ill.App.3d 374, 548 N.E.2d 52 (2d Dist. 1989).

Illinois Appellate Court

People v. McClendon, 2022 IL App (1st) 163406 Following his conviction of armed habitual criminal, defendant appealed. Defendant argued that trial counsel provided ineffective assistance on his motion to suppress evidence. Specifically, defendant argued that counsel should have argued that he was illegally seized, and that the gun and defendant's statement were the fruits of that illegal seizure. The Appellate Court agreed.

Police responded to a call of shots fired. They did not have a description of the shooter or any information about whether a vehicle was involved in the incident. About four blocks away from the area, responding officers observed defendant and another man sitting in a parked vehicle. An officer testified that the men slumped down in their seats when the police passed by and then drove away when the officers parked and started to approach. Eventually, other officers were directed to a parking lot where the vehicle had gone after driving away. Defendant and the other man were located on the porch of an adjacent residence, knocking on the door. Officers approached with their guns drawn, and one of the officers said defendant took out a gun and dropped it behind a couch on the porch. It was alleged that defendant later made a statement admitting he had possessed the gun.

The trial court found that defendant had abandoned the gun prior to being seized, and therefore denied the motion to suppress. At the suppression hearing, trial counsel failed to argue that defendant had been seized before abandoning the gun and that it was the illegal seizure that caused the abandonment. The Appellate Court concluded that the motion to suppress would have had merit had counsel made those arguments. Defendant was seized when officers approached the porch with their guns drawn, causing defendant to submit to that show of authority. Further, the police lacked probable cause or reasonable suspicion to seize defendant. No evidence connected him to the call of shots fired, and no officers saw defendant engage in any crime prior to the seizure. Defendant only dropped the gun in response to being seized, thus the gun was the fruit of the illegal seizure.

The Appellate Court reversed defendant's conviction outright. Without the gun, or defendant's later statement, the State had no evidence to support the charge.

People v. Harris, 2020 IL App (3d) 190504 Evidence obtained in violation of the eavesdropping statute is inadmissible in a criminal trial. 720 ILCS 5/14-5. This includes not just the recording itself, but any testimony about the recorded conversation, if the recording led to the conversation and the evidence about the conversation did not come from an independent source.

The trial court suppressed an audio and video recording made by a confidential informant of a suspected drug dealer, and also suppressed any evidence about the conversation as well as the testimony of the informant herself. The recording was made after police and prosecutors attempted to use, but failed to comply with, an exception to the eavesdropping statute contained in section 14-3(q). On appeal from the suppression order, the State conceded that prosecutors and police failed to comply with the exception, and that as a result the recording must be suppressed. But it argued that the informant should still be allowed to testify to the conversation because her observations were made independently of the recording device. The majority disagreed, finding that the conversation took place as a direct result of the attempt to eavesdrop, making all evidence about the conversation fruit of the poisonous tree. The informant's testimony about the conversation could not be characterized as an independent source under these circumstances.

The dissent favored a narrower interpretation of whether evidence is obtained in violation of the eavesdropping statute. It would have found that while the audio recording violated the statute, the video, as well as the conversation itself, did not. It would have admitted the video recording and the informant's testimony independently of the audio recording.

People v. Lopez, 2018 IL App (1st) 153331 An anonymous tip can support a traffic stop if the tip is reliable and provides reasonable suspicion for the stop. Here, however, the tip was neither reliable nor sufficiently detailed to provide grounds for the stop. The Court distinguished **Navarette v. California**, 572 U.S. 393 (2014), where a caller made a 911 call describing having been run off the road by a particular vehicle. Here, the tip did not describe what conduct the caller witnessed, but only included a conclusory statement about there being a "DUI driver." And, the identity of the tipster was unknown here, while the 911 call in **Navarette** was traceable.

As a matter of first impression, the Court held that a defendant's identity learned during the course of an unlawful traffic stop is suppressible as fruit of the poisonous tree. The Court declined to apply the holding in **INS v. Lopez-Mendoza**, 468 U.S. 1032 (1984), that "the 'body' or identity of a defendant or respondent in a criminal or civiel proceeding is never itself suppressible as a fruit of an unlawful arrest." **Lopez-Mendoza** involved only a question of personal jurisdiction, and did not concern the admissibility of evidence of identification in the face of a fourth amendment challenge. Further, the officer's observation of the defendant in actual physical control of the vehicle provided the sole evidence of this element of DWLS, and would not have occurred but for the illegal stop. As such, the suppression of this evidence required outright reversal of the conviction.

People v. Shipp, 2015 IL App (2d) 130587 Police received a 911 call at 5 a.m. about a fight involving weapons. Several officers went to the area where the fight had been reported. One of the officers, arriving less than a minute after the dispatch, saw defendant and a female walking on the street less than a block from the reported location of the fight. The officer got out of his car, told them to stop and said they were not free to leave. After other officers arrived, the first officer asked defendant if he could pat him down for weapons. Defendant became agitated, refused the pat-down, and put his hands in pockets. The officers attempted to grab his arms, but defendant broke free and fled a short distance before he was apprehended. The officers searched defendant and found a loaded gun and drugs.

The Appellate Court held that the officer conducted an illegal **Terry** stop without reasonable suspicion. Apart from the improper stop, the police did not have reasonable

grounds to frisk defendant. In order for a frisk to be permissible, the officer must reasonably believe that defendant is armed and dangerous.

The Court rejected the State's argument that defendant's flight broke the causal connection between the illegal stop and the discovery of the gun and drugs. Courts apply a three-part test to determine whether the causal chain between illegal police conduct and the discovery of evidence is sufficiently attenuated to allow the admission of the evidence: (1) the amount of time between the illegality and the acquisition of the evidence; (2) any intervening circumstances; and (3) the purpose and flagrancy of the police misconduct.

Here there was a very short time between the stop and the search and the police conduct in stopping defendant, while not flagrant, was still based on nothing other than defendant's mere presence in the area. The "discovery of the contraband was so tainted by the illegal stop that suppression was appropriate."

People v. Wells, 403 Ill.App.3d 849, 934 N.E.2d 1015 (1st Dist. 2010) The police received a call of a domestic disturbance at 2 a.m. The caller reported that her former boyfriend was ringing her bell and "threatening to kill her over the phone," but that she did not want him arrested. The police saw defendant walking down the street when they responded, and decided to stop defendant and conduct a field interview.

Before asking any questions, the police handcuffed the defendant, then patted him down and found a gun in his sock. The court concluded that the defendant was arrested without probable cause, because there were no circumstances that would justify handcuffing defendant in order to conduct a **Terry** stop. The police asked the defendant at the police station following his arrest if he had a car. They found defendant's car illegally parked and had it towed. The police searched the car before it was towed and found ammunition. The court concluded that the bullets were the fruit of the illegal arrest. There was no break in the chain of events sufficient to attenuate the recovery of the bullets from the illegal arrest. Each event followed and flowed from the initial illegality.

The inevitable discovery doctrine permits the admission of evidence where the State can show that the evidence would invariably have been discovered without reference to the police error or misconduct. The doctrine had no application to the bullets where their discovery was inextricably linked to the illegal arrest.

The search of the car was not justified as an inventory search. The towing of an illegally parked car provides no reason to conduct an inventory search or provide independent probable cause to search the car.

People v. Elliot, 314 Ill.App.3d 187, 732 N.E.2d 30 (2d Dist. 2000) Where police lacked any reason to detain defendant for custodial interrogation, a controlled substance which defendant surrendered during the questioning was clearly a fruit of the improper interrogation. Because the evidence was obtained within seconds after the interrogation, "almost no time elapsed and no intervening circumstances occurred." In addition, the purpose of the interrogation was investigatory, because the police "embarked upon this expedition in the hope that something might turn up."

People v. Crane, 244 Ill.App.3d 721, 614 N.E.2d 66 (1st Dist. 1993) Defendant's statements were fruits of his illegal arrest where, although **Miranda** warnings had been given, neither a substantial length of time nor any significant intervening circumstances separated the arrest and the statements. See also, **People v. Parker**, 284 Ill.App.3d 860, 672 N.E.2d 813 (1st Dist. 1996) (State failed to establish any intervening events between the illegal seizure

and the defendant's statement).

People v. Smith, 232 Ill.App.3d 121, 596 N.E.2d 789 (1st Dist. 1992) Lineup identifications were fruits of an illegal arrest where only three to six hours elapsed between the arrest and the lineups, police arrested defendant as a pretext to place him in a lineup, and there were no intervening circumstances sufficient to dissipate the effect of the illegal arrest.

§43-1(e)(2)
Attenuation

United States Supreme Court

Utah v. Strieff, 579 U. S. ___, 136 S.Ct. 2056, _195 L.Ed.2d 400 (2016) The Fourth Amendment exclusionary rule requires that courts exclude both primary evidence obtained as a direct result of an illegal search and any evidence subsequently discovered as a result of the illegal search. However, due to the significant cost of the exclusionary rule, the U.S. Supreme Court has limited its applicability to instances where the deterrent effect outweighs the substantial social cost.

Thus, several exceptions to the exclusionary rule are recognized, including the attenuation doctrine. This doctrine holds that evidence obtained as a result of a Fourth Amendment violation is admissible where the connection between the unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance such that the interests protected by the Fourth Amendment would not be served by suppressing the evidence.

The court concluded that the attenuation doctrine examines the "causal link" between the government's unlawful act and the discovery of the evidence, and does not require an independent, voluntary act of the defendant (such as a confession leading to the discovery of evidence or consent to a search). Thus, the Utah Supreme Court erred by finding that the attenuation doctrine applies only where the intervening event between an unlawful arrest and the recovery of evidence consists of a voluntary act by the arrestee.

Whether the discovery of evidence is sufficiently attenuated from the constitutional violation is determined by the three factors articulated in **Brown v. Illinois**, 422 U. S. 590 (1975): (1) the "temporal proximity" between the unconstitutional conduct and the discovery of evidence, (2) the presence of any intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. Of these factors, the third is the most important.

Here, the discovery of evidence on defendant's person was sufficiently attenuated from the unconstitutional stop to preclude application of the exclusionary rule.

During intermittent surveillance over one week, an officer who was investigating a tip concerning narcotics activity observed that several visitors left a particular residence within a few minutes after arriving. The officer observed defendant leave the house and go toward a nearby convenience store. Although he did not suspect any wrongdoing by defendant, the officer detained defendant, identified himself, and asked what defendant was doing at the residence.

As part of the stop, the officer requested defendant's identification. The officer relayed the information to a police dispatcher, who reported that defendant had an outstanding arrest warrant for a traffic violation. The officer arrested defendant pursuant to the warrant, and performed a search incident to arrest which disclosed a bag of methamphetamine and drug paraphernalia.

Throughout the proceedings, the prosecution conceded that the officer lacked

reasonable suspicion for the stop. The prosecution argued, however, that the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband. The Supreme Court agreed.

The court concluded that the only the first **Brown** factor favored suppression, because substantial time did not elapse between the illegal detention and the discovery of the contraband. The court concluded that the second factor favored the State, however, because the arrest warrant was valid, predated the unconstitutional stop, was unconnected to the stop, and required the officer to make an arrest.

The court concluded that the third factor - the purpose and flagrancy of the officer's misconduct - also favored the State. The purpose of the exclusionary rule is to deter police misconduct. The court found that the officer here was "at most negligent," because he made "two good-faith mistakes" by stopping defendant "without a sufficient basis to suspect" that he was a short-term visitor who was consummating a drug transaction and by detaining defendant instead of merely asking to speak to him. "[T]hese errors in judgment hardly rise to a purposeful or flagrant violation of [defendant's] Fourth Amendment rights."

The court also stressed that there was no indication the stop was made as part of a systematic pattern of misconduct, the officer's conduct was lawful after the decision to make an improper stop, the warrant check was a precaution to assure officer safety, and the contraband was discovered as part of a lawful search incident to arrest. Under these circumstances, the outstanding warrant was a critical intervening circumstance which was independent of the illegal stop and which broke the causal connection between the illegal stop and the discovery of the evidence.

In the course of its holding, the court rejected the argument that conducting a suspicionless stop constitutes flagrant misconduct. The court found that police action can be "flagrant" only if it is "more severe" than merely making an unjustified stop.

U.S. v. Ceccolini, 435 U.S. 268, 98 S.Ct. 1054, 55 L.Ed.2d 268 (1978) In holding that it was error to exclude the testimony of a witness as the fruit of an unlawful search, the Court rejected both a "*per se*" rule that the testimony of a live witness should never be excluded at trial and a "but for" rule that would require exclusion of any testimony that comes to light through a chain of causation that began with a Fourth Amendment violation. Because the cost of excluding live-witness testimony is often greater than excluding an inanimate object - because a witness is forever disabled from testifying about relevant and material facts - a closer and more direct link between the illegality and live-witness testimony is required for exclusion.

The Court concluded that the exclusionary rule should not be invoked here, because "the cost of permanently silencing [the witness] is too great for an evenhanded system of law enforcement to bear in order to secure such a speculative and very likely negligible deterrent effect." Factors relied upon in making this determination were: (1) the testimony of the witness was an act of her own free will and not coerced or induced by authorities as a result of the unlawful seizure, (2) the items unlawfully seized (policy slips) were not used in questioning the witness, (3) a substantial period of time elapsed between the illegal search and the initial contact with the witness (four months) and between the initial contact and the testimony in question (one year), (4) the identity of the witness and her relationship with the defendant were well known to investigators, and (5) the unlawful search was not conducted with the intent to find evidence of gambling or to find a knowledgeable witness to testify against the defendant.

Johnson v. Louisiana, 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) A lineup was not the fruit of an unlawful arrest where, before the line-up, defendant was taken before a magistrate, advised of his rights, and had bail set. In addition, defendant was represented at the line-up by counsel.

Illinois Supreme Court

People v. Henderson, 2013 IL 114040 An anonymous tip in this case was insufficient to justify a traffic stop. An individual flagged down police officers to advise them that there might be a gun in a tan, four-door Lincoln. The individual, who was not known to the officer, gave the number of persons in the car but included no other information. The officers stopped a tan, four-door Lincoln about five minutes later, although they did not observe the occupants violating any laws. During the stop, the defendant, who was a back seat passenger, dropped a handgun while fleeing the scene.

However, the weapon was not required to be suppressed as a fruit of the improper stop. The "fruit of the poisonous tree" doctrine stems from the Fourth Amendment exclusionary rule, and provides that evidence obtained by exploiting a Fourth Amendment violation is subject to suppression. Whether the doctrine requires exclusion of evidence depends on whether the chain of causation stemming from the unlawful conduct was sufficiently interrupted by intervening circumstances to attenuate the taint of the illegality. Factors relevant to the attenuation analysis include the temporal proximity of the illegal police conduct and the discovery of the evidence, the presence of any intervening circumstances, and the purpose and flagrancy of the official misconduct.

The United States Supreme Court has rejected a "but for" test for exclusion of evidence under the fruit of the poisonous tree doctrine. Thus, evidence is not inadmissible merely because it would not have been discovered "but for" the illegal actions of the police. In other words, the fact that evidence comes to light through a chain of causation that began with an illegal seizure does not necessarily require suppression.

The court presumed that the first attenuation factor – the temporal proximity between the violation and the discovery of the evidence – favored defendant, although the record did not indicate how much time passed between the illegal stop and the discovery of the handgun. However, the court concluded that defendant's flight from the scene constituted an intervening circumstance which broke the causation between the illegal stop and the discovery of the handgun. Although a passenger who submits to a show of authority has been "seized" for purposes of the Fourth Amendment, under **California v. Hodari D.**, 499 U.S. 621 (1991), a suspect who flees rather than submit is not "seized" until he submits. Here, defendant dropped the weapon during his flight, when he was not "seized."

The court acknowledged that parts of the **Hodari D.** opinion are *dicta*, but found that *dicta* to be persuasive.

Concerning the third factor, although the officers acted improperly by making a traffic stop based upon an anonymous tip which did not provide sufficient *indicia* of reliability, the court found that the misconduct was not flagrant.

Because defendant's flight interrupted the chain of causation between the officers' misconduct and the discovery of the gun, the fruit of the poisonous tree doctrine did not apply. Because there were no grounds on which a motion to suppress would have been granted, defense counsel was not ineffective for failing to file such a motion.

People v. Foskey, 136 Ill.2d 66, 554 N.E.2d 192 (1990) Although an entry to defendant's residence and his warrantless arrest were unlawful, neither heroin nor defendant's

statement need be suppressed where defendant's wife consented to a search after the illegal entry. The court held that the heroin and the statement were obtained as a result of an intervening circumstance - the wife's consent - and were not a result of the police misconduct.

Illinois Appellate Court

People v. Schreiner, 2021 IL App (1st) 190191 Police officers responded to the scene of a hit-and-run car collision and followed a trail of fluids and car parts to defendant's home nearby. Defendant's wife testified that she and defendant were both asleep in the home when police arrived and began banging on the door and shining lights into their house. After the wife answered the door and spoke with the police for a few minutes, officers entered the home, retrieved defendant from the bedroom, and obtained inculpatory statements from him. The officers then entered the garage where defendant's damaged vehicle was located, and also conducted field sobriety tests on defendant. Defendant sought to suppress all of this evidence on the basis that it was the result of a warrantless search. The trial court denied defendant's motion, concluding that the officers had consent.

The Appellate Court reversed. Defendant's wife testified that she did not consent to the officers' entry to her home. There was no written consent-to-search form, and the officers involved in the encounter at the front door did not testify that the wife consented to their entry. Thus, there was no affirmative evidence of consent.

And, while consent can be nonverbal, mere acquiescence to authority is not necessarily consent. Instead, it must be unmistakably clear from an individual's conduct that he or she intended to voluntarily consent to the warrantless entry. Here, the wife testified that she spoke with the police at her front door, went to another room to retrieve her driver's license at the officers' request, and returned to find the officers had entered her home without her consent. The State offered no further details about the encounter at the doorway. Accordingly, even if the court disbelieved the wife's testimony, there was no evidence from which consent could be found. "The fact that a defense witness, who claimed consent was *not* given, is not a credible witness is no substitute for affirmative proof that consent *was* given."

Defendant had requested suppression of inculpatory statements, field sobriety tests, blood alcohol results, and his damaged vehicle. Noting that the State had not had the opportunity to argue attenuation as to any of that evidence, the Appellate Court remanded the matter for an attenuation hearing with specific directions for how to proceed depending on the outcome of that hearing.

In re K.M., 2019 IL App (1st) 172322 The police received a call that people entered respondent's residence carrying a television and other items. They later received a call from a burglary victim indicating a television and other items had been removed from his home, which was near respondent's residence. Responding officers found some of the missing items in respondent's garbage can, which was inside a fence in the curtilage of his garage. They entered the garage and found more items, then called the homeowner, respondent's mother, and asked her to come home. After discussing their discovery with her, she went inside and returned with respondent and the victim's television. Police arrested respondent and he provided an inculpatory statement at the station. Before trial, the trial court suppressed the items found in the garage, but not the television or the statement.

The Appellate Court held that the trial court properly suppressed the evidence found in the respondent's garbage can and garage, but erred in failing to suppress the television as fruit of the poisonous tree. Without the initial discovery of the proceeds in the garage and garbage can, the officers had nothing more than a call of people entering a residence with a

television in proximity to an alleged burglary. This falls short of probable cause. The discovery of the television was not attenuated where there was a short and direct link between the illegal search and the respondent's mother's decision to comply with the officers' investigation by retrieving the television. However, the record was inadequate to determine whether the confession was attenuated, so the court remanded for an attenuation hearing.

People v. Marcella, 2013 IL App (2d) 120585 The Appellate Court affirmed the trial court's order granting defendant's motion to suppress evidence, finding that the officers lacked probable cause for an arrest or valid consent for a search. The court also held that even if there was adequate suspicion to justify a **Terry** stop, the officers' actions exceeded the scope of a valid stop.

The parties did not contest that defendant was "seized" where, after landing his plane at DuPage Airport after a flight from Marana, Arizona, he was confronted by several armed agents of the Department of Homeland Security who landed at defendant's hangar in a military helicopter. Defendant and a friend who had helped push defendant's plane into the hangar were handcuffed and frisked by the agents, who had their weapons drawn. Defendant was then questioned about his identity, his flight, and the contents of the plane.

The court rejected the State's argument that the trial court erred by finding that an agent acted without consent when he entered the plane to retrieve the airworthiness certificate, which the agents demanded from defendant in addition to his pilot's license and medical certificate. The trial judge did not resolve whether defendant consented to the entry, but found that any consent was the fruit of an illegal arrest.

A consent to search that is tainted by an illegal arrest may be valid if the State establishes that the taint of the officers' illegal action was attenuated from the consent. Factors in determining whether the taint is attenuated include: (1) the temporal proximity between the seizure and the consent, and (2) the presence of any intervening circumstances.

The court concluded that where defendant was arrested without probable cause and subjected to a document check, and any consent to allowing an agent to enter the plane occurred relatively quickly after the illegal arrest, the seizure and consent were "inextricably connected" in time. Furthermore, there were no intervening circumstances which would have broken the link between the illegal arrest and the consent. Under these circumstances, the trial court did not err by finding that items seized from the plane were fruits of the illegal arrest.

People v. Bates, 267 Ill.App.3d 503, 642 N.E.2d 774 (1st Dist. 1994) Neither an involuntary statement nor evidence recovered as a result thereof can be used to establish a lack of taint for attenuation purposes. The Court concluded that in light of a detective's commingling of untainted and tainted evidence, the State could not possibly show that defendant decided to confess solely because of the untainted evidence.

People v. Nash, 78 Ill.App.3d 172, 397 N.E.2d 480 (1st Dist. 1979) A statement made by defendant about 2½ hours after his unlawful arrest, and a gun recovered as a result of the statement, were properly suppressed because there were no intervening circumstances to attenuate the taint of the unlawful arrest. In addition, another statement made 6½ hours after the arrest was properly suppressed because it was induced by the unlawfully seized gun.

People v. Love, 24 Ill.App.3d 477, 321 N.E.2d 419 (1st Dist. 1974) An illegal arrest does

not *ipso facto* require suppression of all evidence that follows the arrest. It was not necessary to suppress the identification of defendant following his illegal arrest — the complaining witness had known defendant previously and had ample opportunity to view him during the incident.

§43-2
Searches

§43-2(a)
Generally

United States Supreme Court

Collins v. Virginia, 584 U.S. ___, 138 S. Ct. 1663, 201 L. Ed. 2d 9 (2018) The automobile exception to the warrant requirement does not permit the warrantless entry to the curtilage of a home in order to search a vehicle parked therein. Here, the police had probable cause to believe that defendant was in possession of a stolen motorcycle. From the street in front of defendant's girlfriend's home, an officer could see a tarp covering what appeared to be a motorcycle. The officer walked up the home's driveway to where the motorcycle was parked, adjacent to the home in an area partially enclosed by side and back walls which were approximately the height of a car. The officer lifted the tarp, ran a search of the motorcycle's license plate and vehicle identification numbers, photographed the motorcycle, and returned to his squad car to await defendant's return home. When defendant arrived, he was arrested. The intrusion of the curtilage of the home violated the Fourth Amendment.

U.S. v. Jacobson, 466 U.S. 109, 104 S. Ct. 1652, 80 L.Ed.2d 85 (1984) The Fourth Amendment is implicated only where an intrusion by police exceeds the scope of a preceding private search. Where the agents' inspection of the package did not enable them to learn anything beyond what was learned during the private search by the freight company employees, they did not infringe on a legitimate expectation of privacy and did not conduct a "search" within the meaning of the Fourth Amendment. Therefore, no warrant was required.

A field test of suspected contraband was not improper although it exceeded the scope of a prior private search. The field test merely disclosed whether a particular substance was cocaine, and did not compromise any legitimate interest in privacy.

Illinois v. Andreas, 463 U.S. 765, 103 S. Ct. 3319, 77 L.Ed.2d 1003 (1983) Where airport customs inspectors opened a locked container and discovered marijuana, police did not violate the Fourth Amendment by subsequently opening the container without a warrant. Reopening the container at the police station did not constitute a "search" within the meaning of the Fourth Amendment.

Katz v. U.S., 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment - subject only to a few specifically established and well delineated exceptions."

Illinois Supreme Court

People v. Burns, 2016 IL 118973 For Fourth Amendment purposes, "curtilage" consists of the area immediately surrounding and intimately associated with a home. In **Florida v.**

Jardines, 569 U.S. ___, 133 S. Ct. 1409, 185 N.E.2d 495 (2013), the United States Supreme Court held that the porch of a private residence was part of the curtilage, and that a dog sniff conducted by a canine which was brought onto the porch therefore constituted a "search" under the Fourth Amendment.

The **Jardines** majority based its holding on the homeowner's property rights, but a concurring opinion found that the search also constituted a Fourth Amendment violation based on privacy grounds. The majority stressed that because there was a physical intrusion into a protected area, it need not conduct a "reasonable expectation of privacy" analysis.

In the course of the **Jardines** opinion, the court noted that although there is an implicit license for individuals to approach a home, knock, wait to be received, and leave unless invited to stay, that implicit license does not extend to bringing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence.

Here, the court rejected the argument that **Jardines** applies only to single-family residences and not to leased apartments or condominiums where a canine sniff is conducted from common areas of multi-unit buildings. Police received an anonymous tip that defendant was selling marijuana out of her apartment, and gained access to the common area of her three-story apartment building by knocking on the door and being allowed in by another resident. The common areas of the building were not accessible to the general public.

Officers then used a trained dog to conduct a sniff of the third floor landing outside defendant's apartment. One other apartment and a storage closet shared the landing. The dog alerted outside defendant's door.

The court rejected the State's argument that the landing was not part of the "curtilage" of defendant's apartment. The curtilage consists of areas that are intimately connected to the activities of the home. Defendant lived in a locked building to which the public had no access unless admitted by a resident. The landing was immediately in front of defendant's apartment door, and by its nature was limited to use by defendant and the occupants of the other apartment on the third floor. The court also noted that the search occurred in the early morning hours, when a resident might reasonably expect that persons will not come to the door without an invitation. Under these circumstances, the landing qualified as curtilage.

The court rejected the State's argument that the good faith exception should apply. Under 725 ILCS 5/114-12(b)(1), (b)(2), the trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer pursuant to: (1) a search or an arrest warrant obtained from a neutral and detached judge where the warrant was free from obvious defects other than non-deliberate errors in preparation, contained no material misrepresentation by any agent of the State, and was reasonably believed by the officer to be valid, or (2) a warrantless search incident to an arrest for violation of a statute or local ordinance which is later declared unconstitutional. The U.S. Supreme Court has expanded the good-faith exception to include good-faith reliance upon binding appellate precedent that specifically authorized a particular practice but was subsequently overruled. **Davis v. United States**, 564 U.S. 229, ___, 131 S. Ct. 2419, 2429 (2011).

The court concluded that there was no binding Illinois precedent permitting the canine search which occurred here, and that there is precedent from the Appellate Court that the Fourth Amendment applies to the common areas of a locked apartment building. Under these circumstances, there was no binding precedent authorizing the search on which the officers could rely.

The court rejected the argument that the anonymous tip and the corroboration

obtained by police were sufficient to constitute probable cause even without the alert by the drug dog.

The Appellate Court's order affirming the suppression order entered by the trial court was affirmed.

Illinois Appellate Court

People v. Teague, 2019 IL App (3d) 170017 Where a defendant is seen leaving his residence and proceeds directly to a drug deal, police generally have established a sufficient nexus between the illegal activity and the residence such that a magistrate could find probable cause to issue a search warrant for the residence.

Here, police used an informant to set up a controlled buy. Surveillance officers observed defendant leave his residence and drive directly to the location of the buy, where he sold narcotics to the informant. The officers obtained a warrant to search defendant's person, car, and residence. Inside the residence, officers discovered narcotics, and defendant was charged with possession of a controlled substance with intent to deliver. Unlike **People v. Manzo**, 2018 IL 122761, where the court on similar facts struck down a warrant issued for a third-party's residence from which defendant proceeded to a drug deal, the defendant here left his own residence before immediately proceeding to the drug deal. Moreover, the warrant affidavit here included additional details not present in **Manzo**, including descriptions of the officer's experience with drug investigations and drug dealers.

People v. Pratt, 2018 IL App (5th) 170427 The Appellate Court upheld the suppression of a warrantless blood draw. Defendant was involved in a car accident resulting in the death of his passenger. He was taken to the hospital where his blood was drawn pursuant to police request. Based on the results, he was charged with aggravated DUI. The defense moved to suppress, citing the lack of a warrant. The State argued that the implied consent provisions in section 11-501.2(c)(2) applied. The trial court disagreed and the Appellate Court affirmed. Although this section doesn't say so explicitly, reading the statute as a whole makes clear that the implied consent provisions of the DUI statutes apply only after arrest. Even if an arrest is not required, probable cause is. Here, the officers did not have probable cause because the officer who requested the blood draw did not observe sufficient indicia of intoxication, such as bloodshot eyes or the smell of alcohol. The fact that defendant was semi-conscious and had difficulty walking could have been the result of the accident, not alcohol, and there was no evidence defendant drank from the open bottle of liquor found in the car.

People v. Bravo, 2015 IL App (1st) 130145 Under **U.S. v. Jones**, 565 U.S. ____, 132 S. Ct. 945 (2012), the warrantless installation of a GPS device on a suspect's car constitutes a "search" in violation of the Fourth Amendment. Here, the police installed a GPS device on defendant's car before **Jones** was decided, and used the device to track defendant for approximately one month before arresting him after a suspected narcotics transaction.

The State conceded that the officers' actions violated **Jones**, but argued that the agents acted in good faith in accordance with the pre-**Jones** case law**.** In **People v. LaFlore**, 2015 IL 116799, the Illinois Supreme Court held that evidence which was discovered through the warrantless use of a GPS need not be suppressed if at the time they attached the device the officers had a good faith belief that their actions were proper.

The State claimed that the officers acted in good faith reliance on **United States v. Garcia**, 474 F.3d 994 (7th Cir. 2007). The court rejected this argument, finding that in **Garcia** the Seventh Circuit expressly limited its holding to situations where a GPS device

was installed with reasonable grounds to suspect criminal conduct and the car on which the device was installed was tracked for no more than a few days. The court concluded that "[n]o fair reading of **Garcia** can stretch the reasoning" to justify the officers' actions here, where the GPS was installed without any basis to suspect criminal activity and used to track defendant for one month before he was arrested. Under these circumstances, the trial court acted properly by granting the motion to suppress.

People v. Hampton, 307 Ill.App.3d 464, 718 N.E.2d 591 (1st Dist. 1999) Under **Texas v. Brown**, 460 U.S. 730 (1983), using a flashlight to illuminate the interior of a vehicle is not a "search" within the meaning of the Fourth Amendment. In **Brown**, the court held that because any citizen can "peer into the interior of a car, there is no reason why a police officer should be precluded from observing what would be entirely visible to him as a private citizen."

§43-2(b)
Reasonable Expectation of Privacy/Standing

United States Supreme Court

Byrd v. United States, 584 U. S. ___, 138 S.Ct. 1518, 200 L.Ed.2d 805 (2018) The trial court erred when it found that, because defendant was driving his friend's rental car in violation of the rental agreement, he had no expectation in privacy in the car. Like the defendant who has a reasonable expectation of privacy in a friend's apartment (see **Jones v. United States, 362 U.S. 257 (1960)**), the driver of another's rental car has complete control and dominion over the car. The fact that the driver is in breach of the rental contract is not relevant to the Fourth Amendment. The Supreme Court remanded for further proceedings to consider whether the defendant committed a crime in having a friend rent the car, and if so, whether this negated his expectation of privacy. If not, the lower courts could consider whether the officers had probable cause.

Carpenter v. United States, 585 U.S. _____, 138 S. Ct.2206, 201 L. Ed. 2d 507 (2017) Each time a cell phone connects to a cell tower, it generates a record known as cell site location information (CSLI). CSLI data shows the time and location of the connection. Cell phone companies store this data, often for several years. In the instant case, the FBI obtained a court order under the Stored Communications Act for several months of CSLI relating to defendant's cell phone. This data was used to link defendant to a number of commercial robberies, including the robberies of several cell phone stores.

The Supreme Court determined that an individual has a legitimate expectation of privacy in his CSLI. CSLI is similar to GPS tracking, which was at issue in **United States v. Jones**, 565 U.S. 400, in that it gives detailed location information and is easily compiled. Cell phone users also are continuously revealing location information to cell phone companies, making CSLI similar to third-party information like the pen register at issue in **Smith v. Maryland**, 442 U.S. 735, and banking information at issue in **United States v. Miller**, 425 U.S. 435.

Cell phone users retain a legitimate expectation of privacy in the records of their physical movements. The majority concluded that CSLI is even more revealing than GPS data because cell phones are almost a "feature of human anatomy" where individuals "compulsively" carry them. Also, while GPS data can only be gathered from a specific time forward, CSLI is "retrospective" because cell phone companies store the data for years. Given the unique nature of CSLI, the Court declined to extend the third-party doctrine here.

The government's acquisition of CSLI is a search for Fourth Amendment purposes, even though the data is stored by a third party. In the absence of an exception, a search warrant supported by probable cause is required for the government to obtain CSLI. The court order under the Stored Communications Act was inadequate because the Act requires only "reasonable grounds" to support obtaining information.

Justice Kennedy authored a dissent joined by Justices Alito and Thomas which concluded that the third-party doctrine applied to defeat defendant's privacy interest in the CSLI records. Accordingly, the government did not search anything belonging to defendant when it obtained his CSLI records from his cellular provider.

In a separate dissent, Justice Thomas explained that the issue was not whether a search occurred but rather whose property was searched. Because the CSLI records were created, maintained, and controlled by the cellular providers, they were not the defendant's property. Justice Thomas maintained his longstanding criticism of the reasonable-expectation-of-privacy test.

Justice Alito also separately dissented and would have concluded that there was no Fourth Amendment search where the records were obtained by a court order for the production of documents. Because there was no search, a showing of probable cause was not required. Justice Alito also noted that the CSLI records belong to the cell service provider, not defendant, and therefore the defendant should have no right to object to their production.

Justice Gorsuch also dissented and criticized the third-party doctrine, suggesting it should be abandoned. He also suggested that the reasonable-expectation-of-privacy analysis was problematic in that it calls upon courts to determine what privacy interests should be recognized as legitimate with little or no guidance from the Supreme Court. Justice Gorsuch would employ a "more traditional Fourth Amendment approach" but because no property-based argument was made here, it was forfeited.

Minnesota v. Carter & Johns, 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998) To claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable.

Although an "overnight social guest" has a legitimate expectation of privacy in the house of his host, a person who is merely present with the consent of the owner does not necessarily have a legitimate expectation of privacy. Where defendants were in an apartment solely to bag cocaine for distribution, were on the premises for only a few hours, and had no previous connection with the residence, they were present for "purely commercial" reasons and lacked a sufficient expectation of privacy to afford them Fourth Amendment protection.

U.S. v. Padilla, 508 U.S. 77, 113 S.Ct. 1936, 123 L.Ed.2d 635 (1993) A defendant has standing to challenge a search only if his *personal* Fourth Amendment rights were violated. The fact that co-defendants or co-conspirators are affected when evidence is introduced against them does not afford standing where their individual Fourth Amendment rights were not implicated by the search. In other words, there is no "co-conspirator exception" to the standing doctrine.

Florida v. Riley, 488 U.S. 445, 109 S.Ct. 693, 102 L.Ed.2d 835 (1989) The owner of a partially covered greenhouse inside the curtilage had no reasonable expectation of privacy as to a warrantless observation from a police helicopter at an altitude of 400 feet. But see, **Kyllo v. U.S.**, 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001) (reasonable expectation of privacy violated by officer's use of advanced technology that is not in general public use to explore details of a home which would not otherwise be subject to scrutiny without a physical

intrusion).

California v. Greenwood, 486 U.S. 35, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988) The Fourth Amendment does not prohibit the warrantless search of trash left for collection on or at the side of a public street. There is no reasonable expectation of privacy in discarded trash. See also, **People v. Burmeister**, 313 Ill.App.3d 152, 728 N.E.2d 1260 (2d Dist. 2000) (by placing trash on the curb for collection, defendant terminated any possessory or ownership interest in it; because there is no longer any expectation of privacy, the Fourth Amendment does not apply).

O'Conner v. Oretga, 480 U.S. 709, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987) A government employee has a reasonable expectation of privacy in his desk and file cabinets at his workplace; however, such areas may be searched by the employer when there are reasonable grounds to suspect the area contains evidence of work-related misconduct. See also, **Mancusi v. DeForte**, 392 U.S. 364, 88 S.Ct. 2120, 20 L.Ed.2d 1154 (1968) (defendant had standing to object to the seizure of union papers from a part of an office he shared with other union officials; although the office was a large room shared with several other officials, there was a reasonable expectation of freedom from governmental intrusion). Compare, **People v. Neal**, 109 Ill.2d 216, 486 N.E.2d 898 (1985) (state police officer had no expectation of privacy in his patrol car; by policy, the car was subject to periodic inspections).

California v. Ciraolo, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986) The warrantless, naked-eye observation of a fenced-in yard, from an airplane in public airspace, was lawful even though the observation was particularly directed at identifying marijuana plants. There is no reasonable expectation of privacy from such observations.

Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984) A prison inmate has no reasonable expectation of privacy in his prison cell, and thus is not entitled to protection against unreasonable searches and seizures of the cell.

U.S. v. Salvucci, 448 U.S. 83, 100 S.Ct. 2547, 65 L.Ed.2d 619 (1980) The Court overruled the "automatic standing" rule announced in **Jones v. U.S.**, 362 U.S. 275 (1960), and held that defendants charged with crimes of possession may claim the benefit of the exclusionary rule only if their own Fourth Amendment rights have been violated. Since defendants charged with mail fraud did not establish a legitimate expectation of privacy in an apartment rented by the mother of one of the defendants, they could not challenge the search. Remanded to allow defendants an opportunity to demonstrate that their own Fourth Amendment rights had been violated.

Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2557, 65 L.Ed.2d 633 (1980) Defendant could not challenge the legality of the search of another person's purse, because he had no legitimate expectation of privacy in it at the time of the search. The mere fact that the defendant claimed ownership of drugs seized from the purse did not give him standing to challenge the search. See also, **U.S. v. Payner**, 447 U.S. 727, 100 S.Ct. 2439, 65 L.Ed.2d 468 (1980) (defendant lacked standing to challenge search of third party's briefcase where he had no expectation of privacy in either the briefcase or the documents seized).

Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978) Passengers in an

automobile, who did not claim an interest in the vehicle or the items seized therefrom, did not have standing to challenge the seizure of items discovered in a search of the vehicle. A person does not have standing merely because he is lawfully on the premises at the time of a search; standing depends on whether the person has a legitimate expectation of privacy in the premises searched or the property seized. See also, **People v. Manke**, 181 Ill.App.3d 374, 537 N.E.2d 13 (3d Dist. 1989) (passenger normally has no expectation of privacy in areas of the automobile that would be of no concern to a passenger (such as the trunk, glove compartment and areas under the seats), but has standing to challenge the search of his or her own property or containers in the automobile); **People v. Sparks & Nunn**, 315 Ill.App.3d 786, 734 N.E.2d 216 (4th Dist. 2000) (defendant had reasonable expectation of privacy, and therefore had standing, in the interior of the car and in his personal belongings; defendant was a welcome passenger in a car during an extended trip, stored his clothes in the car, and possessed a set of car keys); **People v. Taylor & Londergon**, 245 Ill.App.3d 602, 614 N.E.2d 1272 (3d Dist. 1993) (girlfriend of the owner of car had standing to challenge a search of the vehicle, though she had no ownership or possessory interest in the vehicle, because a person traveling from Joliet to Colorado with her boyfriend has a reasonable expectation of privacy in the interior of the car).

U.S. v. Miller, 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) Defendant had no standing to challenge a subpoena directed at a bank for records showing the bank's transactions with the defendant.

Couch v. U.S., 409 U.S. 322, 93 S.Ct. 611, 34 L.Ed.2d 548 (1973) Taxpayer who delivered her tax records to an accountant had no standing to challenge a subpoena directed at the accountant.

Illinois Supreme Court

People v. Hagestedt, 2025 IL 130286 Police officers entered defendant's home in response to a gas leak. The fire department had already determined that the source of the gas was the stove and had begun ventilating the residence. The odor of gas was still strong, though, and one of the officers (Liebich) went to the kitchen to check for damage to the stove. Finding none, Liebich turned to exit the kitchen, at which point he observed an upper cabinet secured with a chain and padlock through its handles. This "admittedly suspicious" cabinet was ajar about an inch, and Liebich leaned in and used his flashlight to peer into the gap, observing a green leafy substance and syringes inside. Liebich called over the other officer, Stanish, who could not immediately see inside the cabinet. Stanish pulled on the cabinet doors, opening them another inch or two, and observed suspected cannabis inside. He also noted the presence of a camera on top of the refrigerator, pointed directly at the padlocked cabinet. A search warrant was obtained based upon the officers' observations of the contents of the cabinet, and the items inside were seized. Defendant was charged with various drug offenses.

Defendant filed a motion to suppress, which was denied based on the trial court's conclusion that the officers were operating within the scope of their community care taking function and observed the contents of the cabinet in the course of providing aid during an emergency. The trial judge concluded that Liebich's use of a flashlight to see inside the cabinet fell within the plain view doctrine. And, while Stanish violated the fourth amendment when he pulled on the cabinet door, that violation was harmless because Liebich had already made his observations. Following a stipulated bench trial, defendant appealed. The appellate court affirmed.

The Supreme Court reversed. At the outset, the Court rejected as forfeited the State's argument that defendant had not established a cognizable privacy interest because he presented no evidence at the suppression hearing that he owned, rented, or was a guest in the home, and no evidence that he used, secured, or had a key to the cabinet. The State had not raised this challenge below, but rather had taken the position at the suppression hearing that it was defendant's home. And, regardless, the Court concluded that "[b]y chaining and locking a cabinet in his kitchen, defendant took actions to protect his privacy..." thus establishing a fourth amendment interest.

As to the substantive fourth-amendment challenge, the Court went on to find that Liebich exceeded the scope of his role as a community caretaker and conducted a warrantless search by peering into the cabinet. While Liebich did not reach out and touch the cabinet doors like Stanish did, his act of looking through a small gap in a closed and locked cabinet with a flashlight invaded defendant's privacy in a way that was unrelated to the reported gas leak. Although the cabinet was in plain view, its contents were not. Those contents were secured behind closed doors, locked with a chain and a padlock.

While there are cases holding that the use of a flashlight to illuminate an area is not, itself, a search, the nature of the opening through which a flashlight was used was an important consideration. For instance, looking through a vehicle's window, an open bedroom door, an open closet, and a barn opening covered with see-through netting with the aid of a flashlight were all held not to be a search. Here, on the other hand, Liebich had to position himself at an angle and shine his flashlight into a small gap in a cabinet with solid wood doors, rendering his view "embellished and not plain." This was an unconstitutional warrantless search.

The Court also noted that the second officer, Stanish, had testified that he had reentered the home after defendant had been removed and had detected the odor of cannabis at that time. This was rejected as a separate, independent basis to uphold the issuance of the warrant. The officer's reentry after the gas leak was resolved was beyond the scope of his community care taking function. Accordingly, his detection of the odor of the cannabis at that time was pursuant to a warrantless search. Additionally, the events in question here occurred in 2017, at a time when the legislature was in the process of decriminalizing and legalizing the use and possession of cannabis, such that the odor of cannabis in a home, without more, no longer inherently indicated the commission of a crime.

The evidence obtained from the unlawful search of defendant's kitchen cabinet should have been suppressed. Without that evidence, the State could not prove the charges, and defendant's conviction was reversed outright.

People v. Turner, 2024 IL 129208 Defendant was charged with murder arising out of a shooting incident during which he was also shot. Prior to trial, he filed a motion to suppress evidence arguing that the warrantless seizure of his clothing while he was being treated in a trauma room in the hospital's emergency department violated his fourth amendment rights and the search and seizure clause of the Illinois constitution.

In determining whether a person has a reasonable expectation of privacy in a particular place, courts typically consider six factors: (1) ownership of the property searched; (2) whether the person was legitimately present in the area searched; (3) whether the person has a possessory interest in the area or property searched; (4) prior use of the area searched or property seized; (5) the ability to control or exclude others from the use of the property; and (6) whether the person had a subjective expectation of privacy in the property.

Applying those factors to the hospital setting has led to mixed results in Illinois courts. In **People v. Hillsman**, 362 Ill. App. 3d 623 (2005), and **People v. Torres**, 144 Ill. App. 3d

187 (1986), the courts determined there was no reasonable expectation of privacy in a hospital emergency room. In **People v. Gill**, 2018 IL App (3d) 150594, the court found that the defendant did have a reasonable expectation of privacy in a private hospital room on an upper floor of the building, distinguishing that space from an emergency room given that the emergency room is typically meant for a temporary stay where a patient is unable to restrict the access of others. And, in **People v. Pearson**, 2021 IL App (2d) 190833, the court found a reasonable expectation of privacy in an emergency department trauma room where the door to the room was closed when the police entered and where there was limited access to the emergency department because it was separated from the waiting room by locked doors.

Defendant had no reasonable expectation of privacy in the trauma room here. He had no ownership or possessory interest in the room, so the first and third factors weighed against him. But the second factor weighed in his favor because he was legitimately present in the trauma room, receiving treatment for an injury. The fourth factor – prior use – is irrelevant to determining whether an individual has a reasonable expectation of privacy in an emergency department trauma room. An individual's expectation of privacy would not change regardless of whether it was his first time in the room or whether he had been treated there previously. With regard to defendant's ability to control or exclude others from the room, the only evidence was his mother's testimony that she was not allowed to go into the room for at least an hour after she arrived. While this established that the *hospital* had the ability to exclude others from defendant's room, it was not evidence that defendant had any similar ability. And, the court rejected defendant's argument that his position as a patient in a trauma room should give him similar rights of exclusion as a hotel guest, noting among other things that the hospital was required by law to notify the police that a gunshot victim was being treated there. Finally, defendant failed to introduce any evidence that he had even a subjective interest of privacy in the trauma room. Instead, the evidence was that he willingly spoke to the police when they entered the room through its open door, that he did not ask for the door to be closed or for the detectives to leave, and that he was generally cooperative.

Accordingly, under the totality of the circumstances here, defendant failed to establish a reasonable expectation of privacy. Each case must be decided on its individual facts, such that an expectation of privacy might be found in an emergency department trauma room in some other case under some other circumstances, but defendant did not meet his burden here.

People v. McCavitt, 2021 IL 125550 A woman reported that defendant, a police officer, had sexually assaulted her in his home, and she described hearing the sound of a camera shutter during the assault. Police obtained a warrant to search the home for evidence of the assault, including any equipment that could be used to take and store photos and video. During the search, the police recovered defendant's computer, as well as recording equipment. A preliminary review of the computer's files revealed surreptitious recordings of two other women in defendant's bathroom. Police then obtained a second warrant to search the computer hard drive for evidence of the criminal sexual assault, as well as unlawful video recording.

While executing the warrant to search the computer, the police found evidence related to the sexual assault. They made an EnCase digital copy of defendant's hard drive, but did not search further at that time. Defendant was prosecuted for criminal sexual assault and was acquitted. After the acquittal, the police conducted a search of the EnCase digital copy and found two images of child pornography. They then sought and obtained a new warrant to search the EnCase file for child pornography, and additional images were discovered.

Defendant filed a motion to suppress the child pornography files, which was denied. The Supreme Court affirmed. The Court first held that defendant's privacy interest in the digital copy was equal to his interest in the hard drive itself. An individual's Fourth Amendment interests cannot be extinguished simply by making a copy of evidence in which he has a reasonable expectation of privacy.

Further, defendant's criminal sexual assault acquittal restored his reasonable expectation of privacy in any data that was evidence of the criminal sexual assault because double jeopardy principles would bar re-prosecution on that offense. But, the acquittal did not completely restore his privacy interest in all of the data on the copy of his hard drive where the warrant also authorized a search for evidence of the offense of unauthorized video recording. Thus, the warrant authorized the additional search for digital files which were evidence of the video recording offense, and the child pornography was discovered during that authorized search.

The Supreme Court noted:

> This case presents the most common use of the plain view doctrine in the context of digital data, which occurs when law enforcement examines a computer pursuant to a search warrant and discovers evidence of a separate crime that falls outside the scope of the search warrant. The inquiry focuses on whether an officer is exploring hard drive locations and opening files responsive to the warrant, considering both the types of files accessed and the crimes specified in the warrant.

Because the child pornography was discovered in "plain view" during a proper search, it was admissible. Finally, the eight-month delay between the issuance of the warrant and the second search was not unreasonable given the intervening criminal sexual assault prosecution.

People v. Bonilla, 2018 IL 122484 In **People v. Burns**, 2016 IL 118973, the Supreme Court held that a defendant had a reasonable expectation of privacy in the common-area hallway outside of his apartment door, located in a locked apartment building. In this case, the court extended this reasoning to unlocked apartment buildings. The threshold of an apartment door is comparable to the curtilage of his home, and does not depend on whether the exterior doors are locked. The Supreme Court affirmed the lower courts' decision to quash the search warrant based on a dog sniff made at the threshold of defendant's apartment door.

The Supreme Court refused to apply the good-faith exception to the exclusionary rule. The police could not reasonably rely on prior cases finding that a dog sniff does not constitute a "search" because those cases involved public places, and the officer should have known that the home has heightened expectations of privacy. Nor could the police rely on **People v. Smith**, 152 Ill. 2d 229 (1992), which found no fourth amendment violation when the police overheard a conversation in defendant's apartment while standing in a common-area hallway. The use of a drug-sniffing dog is not comparable to overhearing a conversation. On the other hand, **Burns** had already been decided in the appellate court and provided the police with persuasive authority that a warrantless dog sniff occurring outside an apartment door was an illegal search.

People v. Johnson, 237 Ill.2d 81, 927 N.E.2d 1179 (2010) To claim the protection of the 4th Amendment, a citizen must show that he or she has a legitimate expectation of privacy in the place searched. The concept of "standing" is no longer used to determine whether the 4th Amendment is applicable in a particular context.

Relevant factors in determining whether there is a reasonable expectation of privacy are the litigant's: (1) ownership or possessory interest in the property; (2) prior use of the property; (3) ability to control or exclude others' use of the property, and (4) subjective expectation of privacy.

Defendant, a passenger in a car that had just been parked and away from which he and the driver were walking when they were approached by a police officer, lacked a legitimate expectation of privacy in the vehicle. There was no evidence that defendant had any ownership or possessory interest in the vehicle, had previously used the vehicle, could control another's use, or had a subjective expectation of privacy.

Because defendant had no legitimate expectation of privacy, he could not challenge a warrantless search which disclosed a firearm under the seat where he had been sitting.

City of Champaign v. Torres, 214 Ill.2d 234, 824 N.E.2d 624 (2005) A mere party guest did not have a legally cognizable right to challenge the constitutionality of an officer's attempt to enter the premises. A person claiming the protection of the Fourth Amendment must demonstrate that he has a reasonable expectation of privacy in the place searched.

People v. Rosenberg, 213 Ill.2d 69, 820 N.E.2d 440 (2004) The court declined to decide whether due process was violated by the trial court's refusal to compel the State to grant immunity to a witness who could testify whether defendant had any ownership or possessory interest in the property seized. Defendant could have testified concerning his subjective expectation of privacy, and under **Simmons v. U.S.**, 390 U.S. 377 (1968), his testimony could not have been admitted at trial on the issue of guilt. Thus, defendant had options by which to establish his right to claim a Fourth Amendment violation even without the witness's testimony.

The court also noted that the trial court's ruling on the motion to compel a grant of immunity remained open until final judgment, and defendant could have asked the trial court to reopen the suppression hearing after the accomplice testified at trial.

People v. Pitman, 211 Ill.2d 502, 813 N.E.2d 93 (2004) To claim Fourth Amendment protection, a defendant must demonstrate an expectation of privacy which society is prepared to recognize as reasonable. Society recognizes a higher expectation of privacy in one's home, including the curtilage, than in open fields. To determine whether a particular area falls within the curtilage, the court must determine whether it harbors intimate activities commonly associated with the sanctity of the home. Factors to be considered include: (1) the proximity of the area to the home, (2) whether the area is within an enclosure that also surrounds the home, (3) the nature of the uses of the area, and (4) any steps taken to protect the area from observation.

A barn located some 40 to 60 yards from a farmhouse and trailer was not part of the curtilage. The barn was not within an enclosure surrounding either of the two residences, was not used for intimate activities or agriculture purposes, and could be observed by persons standing in the surrounding fields. In addition, the land between the residences and the barn was open.

Although the barn was not within the curtilage, it carried Fourth Amendment protection if the defendant had a reasonable expectation of privacy in its contents. The court concluded that defendant had a legitimate expectation of privacy, rejecting the Appellate Court's finding that the barn was "essentially abandoned" because it was used only for the non-agricultural purpose of storing rolls of carpet.

Defendant clearly had not relinquished his expectation of privacy in the barn - he lived

on the farm and looked after it at the request of the owner (his mother), and used the barn to store carpet. In addition, defendant had power of attorney over the farm for at least some purposes, and at no time explicitly relinquished his interests.

Although parts of the barn's interior could be observed from outside, defendant did not open the entire interior to the general public. Finally, the fact that defendant used the property to commit a criminal offense did not make his expectation of privacy unreasonable.

Because defendant had a reasonable expectation of privacy in the barn, a warrantless search violated the Fourth Amendment unless an exception to the warrant requirement applied.

People v. Parker, 312 Ill.App.3d 607, 728 N.E.2d 588 (1st Dist. 2000) A defendant has standing where he has a reasonable expectation of privacy concerning the premises that are searched. Relevant factors include: (1) ownership of the property searched, (2) whether defendant was legitimately in the area, (3) whether defendant had a possessory interest in the area, (4) whether defendant used the area or property, (5) whether defendant could control or exclude others from using the property, and (6) whether the defendant had a subjective expectation of privacy. Standing may be conferred by storing personal effects and other indicia of residence in an area.

Defendant had standing where he had a reasonable expectation of privacy in his mother's home, although he lived elsewhere. First, defendant clearly had an ownership interest in his own clothes, which were among the items seized. In addition, "the fact that defendant kept personal effects in a bedroom at his mother's home demonstrates not only that defendant was legitimately present[,] but that he had a possessory interest . . . ." Third, defendant was clearly using the bedroom "sometime prior to the search," raising a reasonable inference that he had authority to exclude others from using his personal belongings. Finally, there was stipulated testimony that defendant lived in the house. Under these circumstances, there was "little doubt" that defendant had a subjective expectation of privacy even if his primary residence was elsewhere.

People v. Smith, 152 Ill.2d 229, 604 N.E.2d 858 (1992) The Fourth Amendment was not violated where police listened to a conversation from outside defendant's apartment door. No "search" occurred, because there was no intrusion of an expectation of privacy which society recognizes as reasonable. In addition, defendant's voice was raised, the officers used no artificial means to enhance their ability to hear, and they had a legal right to be in the area from which the conversation was heard.

People v. Johnson, 114 Ill.2d 170, 499 N.E.2d 1355 (1986) Defendant lacked standing to challenge the search of his stepfather's truck. Defendant failed to show he had access to the truck or had ever stored his property in it, and he did not claim any property interest in the items seized.

People v. Holloway, 86 Ill.2d 78, 426 N.E.2d 871 (1981) On a State appeal from an order granting defendant's motion to suppress, the prosecution was held to have waived an issue of defendant's standing that it did not raise in the trial court. Compare, **People v. Keller**, 93 Ill.2d 432, 444 N.E.2d 118 (1982) (State did not waive the issue of standing where it prevailed, on another ground, on the motion to suppress); **People v. Williams**, 186 Ill.App.3d 467, 542 N.E.2d 484 (3d Dist. 1989) (State did not waive the issue of standing by failing to raise it until motion for reconsideration).

Illinois Appellate Court

People v. Turner, 2022 IL App (5th) 190329 Defendant sought to suppress evidence obtained as a result of police officers having seized his clothing while he was being treated in a trauma room of a hospital emergency department. While the clothing was in plain view once the officers entered the trauma room, and defendant consented to their taking it, defendant argued that the officers violated his fourth amendment rights because he had a reasonable expectation of privacy in the trauma room and police failed to secure a warrant to search the room prior to entering.

The Appellate Court agreed that the consent and plain view exceptions to the warrant requirement only apply when the police have not violated the fourth amendment in arriving at the place where they obtained the consent or viewed the evidence. Here, though, the Court held that defendant did not have a reasonable expectation of privacy in the ER trauma room.

The Court looked to the factors set out in **People v. Johnson**, 114 Ill. 2d 170 (1986), specifically whether defendant: (1) owned the area search, (2) was legitimately present in the area, (3) had a possessory interest in the area, (4) used the area before, (5) had the ability to control or exclude others from the area, and (6) had a subjective expectation of privacy in the area. Here, the Court found only the second factor was present; defendant was legitimately present in the trauma room to seek medical treatment. But, he did not own the room or have a possessory interest in it. Defendant had only been in the room for a short time before officers arrived, and there was no evidence that he could exclude other persons from it. And, given that defendant voluntarily spoke to and cooperated with the officers, the record did not support a finding that he had even a subjective expectation of privacy in the trauma room.

People v. James, 2021 IL App (1st) 180509 Counsel was not ineffective for failing to file a motion to suppress evidence. There was no merit to defendant's assertion that the police violated his constitutional right to privacy in his "effects" when they entered an open garage from which they had seen defendant retrieve items that they suspected to be drugs and deliver them to other individuals in exchange for cash in what are commonly known as "hand-to-hand" transactions. The record was silent as to who owned the garage, whether it was a commercial business or residential garage, whether defendant had the ability to exclude others from the garage, and whether defendant had any connection to the property or any ability to exclude others from it. Accordingly, the officer's entry to the garage and search and seizure of a glove in which the drugs were kept did not violate any recognized fourth amendment interest.

People v. Pearson, 2021 IL App (2d) 190833 Defendant had a subjective expectation of privacy in a trauma room where he was undergoing surgery for a gunshot wound, and therefore the trial court should have suppressed drugs an officer found in his removed jeans. The officer testified that he knew defendant had been shot in the leg and the jeans had evidentiary value, but this did not authorize him to reach into the pockets without probable cause.

A hospital room is *sui generis* in terms of privacy expectations, and must be analyzed on a case-by-case basis. Here, the Appellate Court found the analysis of **People v. Gill**, 2018 IL App (3d) 150594 persuasive. Following **Gill**, the court found that several factors weighed in favor of finding an expectation of privacy, including the fact that the room was enclosed, defendant was lawfully on the premises, and the public was not authorized to enter either the room or the emergency area in which the room was located. The factors outweighed the fact that the hospital staff notified the police, as required by state law when a gunshot victim

is admitted, and buzzed the officer into the room, as neither of these facts undermined defendant's subjective expectation of privacy.

People v. Horton, 2019 IL App (1st) 142019-B As two officers were driving down the street one of the officers saw defendant in front of a house with a "metallic object" that may have been a gun in his waistband. The officers stopped the car and got out. Defendant ran inside the house and locked the door. The officers found keys on the front porch and unlocked the door. They entered the house and went upstairs where they found defendant in a bedroom crouched by the side of a bed. One officer entered the bedroom with his gun drawn. He told defendant to raise his hands and come out. When defendant complied, the officer took defendant downstairs while the other officer searched the bedroom, saw a bulge in the mattress, and found a gun underneath the mattress.

The Appellate Court held that the officers did not have probable cause to arrest defendant. First, defendant had standing to challenge the arrest despite the fact that it occurred in a home in which he had no possessory interest. Defendant challenged the reasonableness of his arrest, which does not depend on his location but rather on the existence of probable cause.

While the officer testified that he saw defendant with a gun, he conceded under questioning from defense counsel that he saw only a metallic object that may or may not have been a gun. The Appellate Court found this language suggested the officer had a "mere hunch" that defendant had a gun, and therefore did not have enough information to make an arrest based on probable cause. Although this evidence was elicited at trial and not the suppression hearing, the Appellate Court could consider the evidence when reviewing the ruling on the motion to suppress because defendant re-raised the issue in a post-trial motion.

Moreover, defendant was near a house, and the officers would not have known whether he was on his own land, an exception under the AUUW statute. Finally, defendant's flight may have been relevant to a finding of reasonable suspicion, but no **Terry** stop occurred here because defendant fled prior to being seized. Flight plus possession of a metallic object does not equate to probable cause to arrest. Nor could the doctrine of "hot pursuit" save the arrest, as the officers must have probable cause before the pursuit begins.

People v. Brandt, 2019 IL App (4th) 180219 The circuit court erred when it quashed the search warrant for being based on fruit of an illegal search. After receiving an anonymous tip describing drug dealing, police drove to defendant's rural home to conduct a "knock and talk." They parked in a gravel area near defendant's open kitchen window. A fan in the window was blowing outwards, and officers immediately smelled "fresh cannabis." Based on this information, one officer left to obtain a warrant, and the subsequent execution of the warrant turned up nine grams of cannabis.

Although the circuit court believed that the officer's positioning under defendant's open window was an unlawful search of the home's curtilage, similar to a drug-sniffing dog, the Appellate Court disagreed. The police have the same right as every other citizen to approach one's door and knock. Here, it just so happened that on their way to speak with defendant, they were put in a position to detect the cannabis in "plain smell." The court rejected the circuit court's finding that the police did anything unreasonable in approaching the door, as the officers parked in a driveway area that was covered in the same gravel as the road, so as to avoid parking in the grass. This appeared to be the expected place to park, and their approach was therefore reasonable. Thus, the circuit court erred in refusing to consider the odor of cannabis when assessing the reasonableness of the search warrant.

People v. Thomas, 2019 IL App (1st) 170474 Appellate court reversed trial court's order quashing arrest and suppressing handgun. Defendant failed to make prima facie showing of a violation of the fourth amendment. Defendant's flight from police in area known for criminal activity was suggestive of criminal activity justifying further investigation. The officer's pursuit of defendant and another man into the common area of an unlocked apartment building was justified. Further, the building's entryway was not curtilage like the apartment door threshold in **People v. Bonilla**, 2018 IL 122484, and there was no search where the officer saw defendant with a gun in his hand in that common area.

After **People v. Aguilar**, 2013 IL 112116, firearm possession, alone, is not enough to establish probable cause; but firearm possession is still subject to certain regulations including the FOID Card Act and Concealed Carry Act. Here, defendant's firearm possession coupled with his initial flight from the police, his handing off of the weapon to another man inside the apartment building, and his further flight into an apartment unit was sufficient to establish probable cause to believe defendant illegally possessed the gun.

Also, defendant abandoned the gun when he gave it to another individual, who further abandoned it by tossing it down on the second-floor landing of the building. Therefore, there was no fourth amendment protection because there is no search or seizure when police take possession of an abandoned item.

Finally, defendant's warrantless arrest in his girlfriend's apartment unit was proper, regardless of whether there was consent to the police entry. No warrant is required for an officer to enter a residence and arrest a defendant where he committed an offense in the presence of the officer. Also, defendant failed to prove he had an expectation of privacy in the apartment, so he lacked standing to challenge the entry

People v. McCauley, 2018 IL App (1st) 160812 An undercover officer knocked on the door of a home and was allowed inside by defendant, who proceeded to sell her drugs. The drugs were on a table near the door. After the sale, arresting officers approached the front door. The door was open, and officers arrested defendant just outside the home, then went in and recovered the drugs. Defendant argued that the warrantless entry was illegal because the home belonged to his friend, he was allowed inside to clean and to take care of his friend's dog, and he therefore had a reasonable expectation of privacy. The trial court denied the motion based on the theory that defendant lacked "standing" as an "invitee."

The Appellate Court affirmed, but on different grounds, as the terms "standing" and "invitee" are not relevant to the fourth amendment. Rather, defendant could not establish a reasonable expectation of privacy in the home. Although in some circumstances a pet-sitter or house cleaner may be given sufficient control of the home to establish a privacy interest, defendant did not provide sufficient evidence of such control here. Moreover, defendant left the door open and kept the drugs so that they could be seen from the porch, diminishing his expectation of privacy.

People v. Gill, 2018 IL App (3d) 150594 As a matter of first impression, the Appellate Court concluded that defendant had a reasonable expectation of privacy in his seventh-floor, single occupancy hospital room, relying on the factors set out in **People v. Pitman**, 211 Ill. 2d 502 (2004). Although defendant only occupied the room for a matter of hours, it was of the type often used for longer stays. Defendant had a subjective expectation of privacy, and "concepts of privacy and confidentiality are tantamount concerns in a hospital."

The Fourth Amendment was triggered by a nurse's entry to defendant's hospital room to retrieve defendant's clothing for the police. While the nurse testified at the suppression hearing that he had retrieved the clothing from a nurse's station in a common area, he

corrected that testimony at trial to explain he had obtained the clothing from defendant's room and had confused defendant's case with another at the motion hearing. The nurse's trial testimony was clear and unbiased, and the trial court's factual finding that defendant's clothing had been at the nurse's station was "severely undermined" and no longer supported by the manifest weight of the evidence given the trial testimony. Because defendant renewed his motion to suppress in his post-trial motion, the trial evidence was properly considered on review.

Where there had been a suspicious residential fire, the scene smelled of gasoline, defendant had argued with a resident of the home just prior to the fire, and a nurse had informed police that defendant's clothing smelled of gasoline, the police had probable cause to search for defendant's clothing as part of there arson investigation but should have obtained a warrant. The Appellate Court reversed the denial of defendant's motion to suppress his clothing, as well as a canine-alert to that clothing after its seizure.

The Appellate Court went on to consider and reject a challenge to the warrantless seizure of defendant's truck which had been left in a Denny's parking lot when defendant was taken to the hospital. There was a gas can and rag in the bed of defendant's truck. Coupled with the suspicious residential fire and defendant's argument with the resident of the home, there was probable cause to seize the truck. The absence of a warrant was not fatal because of the inherent mobility of automobiles and the potential for weather to degrade evidence in the bed of the truck.

Finally, the Appellate Court concluded that an East Peoria police officer did not act without authority when he seized defendant's truck in North Pekin. The extra-judicial arrest statute [65 ILCS 5/7-4-8] allows an officer to conduct an investigation outside of his jurisdiction, and the Court determined that by implication, an officer may collect evidence as part of such an investigation.

People v. Lindsey, 2018 IL App (3d) 150877 A warrantless dog sniff conducted at a motel room door violates the fourth amendment. When analyzing whether police conducted a "search" of property under the fourth amendment, courts first use the traditional property-based analysis. If the police did not intrude on constitutionally protected property, then the court should go on to consider whether defendant had a reasonable expectation of privacy in the area investigated by the officers.

Here, while the police did not impose on defendant's property (unlike the curtilage of a home or the door of an apartment unit, defendant has no property rights in the common area of hotels and motels), they did violate defendant's reasonable expectation of privacy behind his closed motel room door. By using the dog, a sense-enhancing tool not available to the public (like the thermal-imaging device in **Kyllo v. United States**, 533 U.S. 27 (2001)), to discern what was happening behind closed doors, the police conducted a "search" of the room. Because they did so without a warrant, it was unconstitutional.

The good-faith exception to the exclusionary rule does not apply where sufficient binding precedent should have alerted a reasonably trained officer of the need for a warrant before conducting a dog sniff at a motel door. Although no cases were directly on point, precedent established that motel guests enjoy an expectation of privacy in a hotel room, and that dog sniffs at doorways are classified as searches.

People v. Ferris, 2014 IL App (4th) 130657 The Appellate Court upheld the suppression of drugs found in defendant's book bag located in the trunk of a friend's car. Police stopped the car for speeding and the driver did not completely pull the car onto the shoulder, even though

there was ample room, so it remained partially in the roadway. The officer arrested the driver for driving on a suspended license, and determined from a field sobriety test that defendant was unfit to drive. Defendant refused to allow the officer to search the car. Against the wishes of defendant, the officer had the car towed, and transported the driver to the police station in a nearby town.

The police searched the driver's purse at the station and found drugs. The police placed a hold on the car and arranged for a dog to conduct a drug sniff of the car. After the dog alerted during the drug sniff, the police obtained a search warrant, searched the car and its contents, and discovered drugs in defendant's book bag.

The court first held that defendant had a legitimate expectation of privacy in her friend's car. Although defendant had no ownership interest, he was legitimately present in the car during the road trip. He had a possessory interest in his book bag, clothing and other personal items stored in the trunk. Under these facts, defendant had an expectation of privacy in the car that society would regard as reasonable.

The court also held that the officer unreasonably prolonged the seizure of the car by towing it and later placing a hold on it. The reason for the traffic stop was speeding. Once the officer arrested the driver, however, the seizure of the car should have ended unless towing the car was a reasonable exercise of the community-caretaking function.

Under the caretaking function, there must be a standard police procedure that authorizes towing. Otherwise, the police may use unbridled discretion to create an opportunity for an inventory search. In the present case, the court found it unclear whether any statute or other standard procedure authorized towing a mechanically sound vehicle attended by its owner.

The police do have authority to remove cars that impede traffic or threaten public safety, and here the car was partially parked in the roadway. But that just happened to be where Biddle stopped the car, and the officer could give no reason why he did not have her pull completely onto the shoulder, where it would have been legal to leave the car for up to 24 hours. If the justification for the tow was the location of the car in the roadway, then it was the officer's responsibility to have Biddle pull the car completely onto the shoulder. Alternatively, the officer and the occupants could have pushed the car onto the shoulder. Because the officer did neither of these things, the State cannot rely on illegal parking as a justification for community-caretaking.

The court also found that the police further prolonged the seizure by placing a hold on the car while waiting for the drug-sniffing dog. The discovery of contraband in the driver's purse did not provide grounds for refusing to relinquish the car to its owner.

If the police had not towed the car and placed a hold on it, they never would have been able to conduct the drug sniff, and they would have never acquired probable cause for the search warrant, which in turn led to the search of the car and the book bag in the trunk. The discovery of drugs inside defendant's book bag was thus the fruit of the illegal seizure of the car. The court affirmed the suppression of the evidence.

People v. Edward, 402 Ill.App.3d 555, 930 N.E.2d 1077 (1st Dist. 2010) To claim the protection of the Fourth Amendment, defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable. **Minnesota v. Carter & Johns**, 525 U.S. 83 (1998).

The police stopped defendant and two others they observed pulling a City of Chicago garbage can down a sidewalk at 2:30 am. The police searched the can and found clothing with retail tags attached. They then discovered that a clothing store in the neighborhood had been

broken into. The court held that defendant had no standing to object to the search of the garbage can because he had no reasonable expectation of privacy in the can, which was the property of the City of Chicago.

People v. Meyer, 402 Ill.App.3d 1089, 931 N.E.2d 1274 (4th Dist. 2010) The Fourth Amendment does not protect against anything that the defendant knowingly exposes to another member of the public, including a government agent.

A police informant wore a buttonhole video camera during his controlled purchase of narcotics from defendant in defendant's home. The video was admitted as evidence at defendant's trial. Defendant complained that his attorney was ineffective in failing to suppress the video.

Relying on **Hoffa v. United States**, 385 U.S. 293 (1966), and **Lopez v. United States**, 373 U.S. 427 (1963), the Appellate Court concluded that defendant had no state or federal constitutionally-protected privacy interest in anything that the informant viewed in his home. The video camera merely captured the most reliable evidence of the events that the informant witnessed. Therefore, counsel's failure to move to suppress was not deficient, nor did defendant suffer any prejudice as the motion would fail.

Appleton, J., dissented on the ground that defendant has a constitutionally-protected privacy interest to prohibit the video recording of his home.

People v. Frias, 393 Ill.App.3d 331, 912 N.E.2d 1236 (2d Dist. 2009) A defendant who objects to the search of a particular area must prove a legitimate expectation of privacy in the area searched or the items seized. Several factors are considered in determining whether there is a legitimate expectation of privacy: (1) property ownership; (2) whether the defendant was legitimately present in the area; (3) whether defendant had a possessory interest in the area searched or the property seized; (4) any prior use of the area searched or property seized; (5) the defendant's ability to control or exclude others from using the property; and (6) whether the defendant exhibits a subjective expectation of privacy. Whether a defendant has an expectation of privacy sufficient to invoke the Fourth Amendment protection is determined by the totality of the circumstances.

A defendant who was charged with unlawful possession of a fraudulent identification card failed to show that he had a legitimate expectation of privacy in his girlfriend's purse, in which fraudulent social security cards had been found. The girlfriend testified that she owned the purse, that she held it in her lap while she was seated in a car during a traffic stop, and that she kept the purse on her shoulder when ordered by an officer to exit the vehicle. There was no evidence that defendant had ever used the purse or given items to the girlfriend with an understanding that she would conceal them in her purse. Furthermore, defendant presented no evidence that he had a subjective expectation of privacy in the purse, although he could have testified at the suppression hearing without having that testimony admitted at trial.

The only fact tending to establish an expectation of privacy – defendant's relationship with the purse's owner – was insufficient to establish a legitimate expectation.

The trial court's suppression order was reversed and the cause remanded for further proceedings.

People v. Payton, 317 Ill.App.3d 909, 741 N.E.2d 302 (3d Dist. 2000) Even an object in an area accessible to the public is protected by the Fourth Amendment if the defendant exhibits an actual expectation of privacy which society is willing to recognize as reasonable. Defendant

exhibited a reasonable expectation of privacy in a barbeque grill on the porch of his mother's home where he closed the opaque lid after placing drugs inside. Furthermore, society recognizes an such expectation of privacy as reasonable.

People v. Dale, 301 Ill.App.3d 593, 703 N.E.2d 927 (4th Dist. 1998) Fourth Amendment protections apply to a rented motel room as well as to a home. Motel personnel cannot waive the constitutional rights of their guests.

People v. Kozlowski, 278 Ill.App.3d 40, 662 N.E.2d 630 (2d Dist. 1996) Defendant had subjective expectation of privacy in motel room where: (1) he paid his rent before the search in question began, (2) the room had not been re-rented while defendant's rent was in arrears, (3) he still had a key to the room, and (4) he had not been asked to surrender the key or take a different room in place of the one he had been occupying.

People v. Bower, 291 Ill.App.3d 1077, 685 N.E.2d 393 (3d Dist. 1997) In an issue of first impression, the Appellate Court held that a person who is in sole possession of a car rented by another, without the consent of the rental company and under a rental agreement providing that only the third party could legally operate the vehicle, lacked standing to challenge a search of the vehicle. The Court noted that defendant had no property ownership interest in the vehicle and knew that the third party lacked authority to give him the car. Under these circumstances, any subjective expectation of privacy was unreasonable. Compare, **People v. Ruffin,** 315 Ill.App.3d 744, 734 N.E.2d 507 (3d Dist. 2000) (**Bower** did not control where there was no evidence that defendant or the third party knew that the latter lacked authority to give defendant the car and the rental company had not withdrawn the third party's authority; defendant had reasonable expectation of privacy).

People v. Alexander, 272 Ill.App.3d 698, 650 N.E.2d 1038 (1st Dist. 1995) Defendant had standing to challenge the seizure of auto parts from the yard and garage of his sister's home. Although defendant did not own the home, reside there, or have a key to the garage, he stored tools there, used the garage to work on cars with his brother-in-law, had once lived on the premises, and still operated a business there. Finally, defendant had a subjective expectation of privacy in the garage since he stored his personal property there.

People v. Bookout, 241 Ill.App.3d 72, 608 N.E.2d 598 (5th Dist. 1993) The unregistered guest of a motel room occupant has a reasonable expectation of privacy in that room. Defendant could not be considered a trespasser to motel property, although a police officer told defendant that he would have to leave the motel, where defendant was present at the express invitation of a registered guest. In addition, defendant was arrested before he could have obeyed the order to leave.

People v. Lee, 226 Ill.App.3d 1084, 590 N.E.2d 1000 (3d Dist. 1992) Defendant had standing to contest search of vehicle which he told police he no longer owned, and in which controlled substances were found. The court distinguished between cases where a defendant denies ownership at the suppression hearing and cases in which he merely tells police that he has no ownership interest in particular property. In the latter situation, standing is retained.

People v. Walters, 187 Ill.App.3d 661, 543 N.E.2d 508 (2d Dist. 1989) Defendant had standing to challenge search of apartment; although the defense failed to present evidence of

standing, two police officers gave unrebutted testimony that defendant lived in the apartment.

People v. Davis, 187 Ill.App.3d 265, 543 N.E.2d 154 (1st Dist. 1989) Defendant had standing to challenge the seizure of heroin from his shirt pocket, though he testified that no drugs were confiscated from him.

§43-2(c)
Technological and Enhanced Searches

§43-2(c)(1)
Eavesdropping

United States Supreme Court

Dalia v. U.S., 441 U.S. 238, 99 S.Ct. 1682, 60 L.Ed.2d 177 (1979) The Fourth Amendment does not *per se* prohibit covert entry for the purpose of installing otherwise legal electronic bugging equipment. In addition, in authorizing the installation of such equipment the judge is not required to explicitly authorize covert entries.

Smith v. Maryland, 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979) The use of a telephone pen register (which is installed on telephone company property to record phone numbers dialed) does not constitute a search. Thus, a warrant is not required.

A pen register differs significantly from a listening device, because the latter acquires the contents of conversations. An individual has no legitimate expectation of privacy in the phone numbers he dials.

U.S. v. New York Telephone, 434 U.S. 159, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977) A federal court may properly order a telephone company to provide law enforcement officials with facilities and technical assistance necessary to operate pen registers (which record the numbers dialed from a telephone), in order to implement the court's order authorizing the use of pen registers to investigate offenses which there was probable cause to believe were being committed by telephone.

U.S. v. Chavez, 416 U.S. 562, 94 S.Ct. 1849, 40 L.Ed.2d 380 (1974) The misidentification of the officer authorizing the wiretap application does not invalidate the wiretap. Here, the application named the Assistant Attorney General as the person who approved the request, when in fact it had been approved by the Attorney General himself.

U.S. v. White, 401 U.S. 745, 91 S.Ct. 1122, 28 L.Ed.2d 453 (1971) Police eavesdropping on conversations between accused and informant, by means of radio transmitter concealed on the informant's person, does not violate the Fourth Amendment.

Alderman v. U.S., 394 U.S. 165, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969) The owner of premises has standing to object to evidence obtained as fruit of illegal eavesdropping on such premises, even if he was not present and did not participate in the overheard conversations. Unless the government prefers to dismiss the case, it must disclose all information obtained through illegal eavesdropping.

Lee v. Florida, 392 U.S. 378, 88 S.Ct. 2096, 20 L.Ed.2d 1166 (1968) Evidence obtained in violation of the Federal Communication Act is inadmissible in a State trial.

Katz v. U.S., 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) The Fourth Amendment protects people, not places. It is unlawful to use an electronic device to infringe on a person's reasonable expectation of privacy in a telephone booth.

Berger v. New York, 388 U.S. 41, 87 S.Ct. 1873, 18 L.Ed.2d 1040 (1967) State wiretap law was invalid where it did not require that conversations be specifically described or probable cause that a specific offense was being committed. Additionally, the statute allowed the tap to continue for too long a period and did not require a return on the warrant.

Illinois Supreme Court

People v. Davis, 2021 IL 126435 Pursuant to 720 ILCS 5/14-3(q), the Kankakee County State's Attorney authorized the Kankakee Area Metropolitan Enforcement Group (KAMEG) to secretly record a controlled buy between a confidential informant and another individual, not defendant. The CI went to the target's home wearing a concealed recording device. When the CI did not locate the target, he walked to a different home and conducted a drug transaction with defendant, instead. Defendant was charged with unlawful delivery of a controlled substance.

Defendant filed a motion to suppress the recording of the drug transaction, as well as the CI's testimony about the transaction, pursuant to 720 ILCS 5/14-5 because he was not the named target of the authorized eavesdropping. The State conceded that the audio portion of the recording should be suppressed because it violated the eavesdropping statute, but argued that the video recording and the testimony of the CI need not be suppressed. The circuit court granted the motion to suppress in total, barring admission of the audio, video, and testimony.

The Appellate Court reversed as to the video and the CI's testimony, holding that the video did not derive from the eavesdropping activity and that the CI was a party to the conversation and therefore did not eavesdrop.

The Supreme Court agreed and held that only the audio recording violated the eavesdropping statute, which is concerned with the unlawful transmission or recording of oral conversation. Relying on **People v. Gervasi**, 89 Ill. 2d 522 (1982), the Court also held that the fruit of the poisonous tree doctrine did not require exclusion of the video or the CI's testimony. The CI was a participant in the conversation with defendant, so his testimony about the drug transaction was not derived from the illegal audio recording. Similarly, the video recording was made simultaneously with the audio recording and therefore could not have been derived from it. Thus, neither the CI's testimony nor the video recording were fruits of the illegal audio recording and suppression was not required.

People v. Coleman, 227 Ill.2d 426, 882 N.E.2d 1025 (2008) Electronic surveillance evidence gathered pursuit to federal law, but in violation of the Illinois eavesdropping statute, is admissible in state prosecutions unless there is evidence that state and federal agents colluded to avoid the requirements of state law. Collusion is defined as a "secret agreement" or "secret cooperation for a fraudulent or deceitful purpose."

There was no evidence of collusion where State and federal authorities were cooperating in a drug investigation that was intended to result in a federal prosecution. Thus, recordings of conversations between the defendant and the State's confidential informant

were admissible in State prosecutions for controlled substances violations, although the recordings violated Illinois law because the police had neither a judicial order nor consent from all parties. See also, **People v. Barrow**, 133 Ill.2d 226, 549 N.E.2d 240 (1989) (evidence legally obtained through eavesdropping which occurs in another State is not inadmissible because the actions would have violated the Illinois eavesdropping statute); **People v. Burnom**, 338 Ill.App.3d 495, 790 N.E.2d 14 (1st Dist. 2003) (where federal and state agents were engaged in a joint investigatory enterprise, a violation of the Illinois eavesdropping statute does not require suppression of electronically obtained evidence so long as the agents complied with federal law and there was no collusion to evade the Illinois statute).**People v. Ceja**, 204 Ill.2d 332, 789 N.E.2d 1228 (2003) The Supreme Court rejected defendant's argument that police violated the Illinois eavesdropping statute by electronically monitoring conversations between defendant and a co-defendant while they were being detained in the Elmhurst Police Station. 720 ILCS 5/14-2(a)(1) defines eavesdropping as using an "eavesdropping device" to hear or record a conversation, unless one acts with the consent of the parties to the conversation.

Consent to eavesdropping may be either express or implied. Implied consent occurs where a person's behavior manifests acquiescence to being overheard "or a comparable voluntary diminution of his or her otherwise protected rights." Ordinarily, implied consent "will include language or acts which tend to prove that a party knows of, or assents to, encroachments on the routine expectation that conversations are private."

Where speakers for the electronic monitoring system were visible in each cell and emitted a "pinging" sound when activated, a jail employee repeatedly told the defendant and co-defendant to be quiet and warned them that their conversations could be monitored electronically, and defendant said to the co-defendant, "[H]ey, they can hear what we are saying," the record showed that defendant knew his conversations were being monitored. Under these circumstances, the trial court's finding that defendant acquiesced in the monitoring was not manifestly erroneous.

People v. Herrington, 163 Ill.2d 507, 645 N.E.2d 957 (1994) Under the version of the Illinois eavesdropping statute then in effect, eavesdropping did not occur when a conversation was recorded with one party's consent. Subsequently, the Illinois statute has been amended to prohibit the recording of a conversation without the consent of all participants, unless specified procedures for obtaining judicial approval are followed. (See **People v. Nestrock**, 316 Ill.App.3d 1, 735 N.E.2d 1101 (2d Dist. 2000)).

People v. Beardsley, 115 Ill.2d 47, 503 N.E.2d 346 (1986) The nonconsensual recording of two police officers' conversations by a defendant who was seated in the back seat of the squad car was not eavesdropping within the meaning of the Illinois statute. The eavesdropping statute was intended to protect individuals from the surreptitious monitoring of conversations that were intended to be kept private. The statute in effect at the time did not prohibit the recording of a conversation by a party to that conversation or one who is known by the parties to be present and in a position to overhear the conversation.

People v. Gaines, 88 Ill.2d 342, 430 N.E.2d 1046 (1981) An extension telephone is not an eavesdropping device. See also, **People v. Shinkle**, 128 Ill.2d 480, 539 N.E.2d 1238 (1989) (extension phone was not an eavesdropping device where officer held his hand over the mouthpiece while listening to conversation between defendant and a co-defendant). Compare, **People v. Gervasi**, 89 Ill.2d 522, 434 N.E.2d 1112 (1982) (an extension telephone with the

speaking element removed is an eavesdropping device).

Illinois Appellate Court

People v. Spears, 2024 IL App (1st) 181491 At defendants' trial for racketeering conspiracy under Illinois's RICO statute and criminal drug conspiracy, the court allowed the admission of evidence obtained pursuant to electronic surveillance orders (ESO) over a defense objection. Wiretap applications had been signed and submitted by an assistant State's Attorney, and those applications were approved and then extended several times by a judge. The defendants argued that the ESO applications violated state and federal law because they were not authorized by the Cook County State's Attorney herself, as required by statute.

The appellate court agreed, following **People v. Allard**, 2018 IL App (2d) 160927. Federal law requires that the application for a wiretap be made by "the principal prosecuting attorney," and the relevant Illinois statute, 725 ILCS 5/108B-2(a), requires it be made by "the State's Attorney, or a person designated in writing or by law to act for him and to perform his duties during his absence or disability." There was no evidence that the State's Attorney had delegated application authority in conformance with the statute. Accordingly, the applications signed by an assistant State's Attorney were invalid, and the ESO evidence should have been suppressed.

But, the court found the error harmless because the remaining evidence overwhelmingly supported conviction. Exclusion of the wiretap evidence would not have detracted from evidence that the defendants were engaged in "a systemic and far-reaching" conspiracy to distribute drugs.

People v. Harris, 2022 IL App (3d) 190504-B On remand for reconsideration in light of **People v. Davis**, 2021 IL 126435, the Appellate Court held that the trial court erred in suppressing the testimony of a confidential informant and the video portion of a recording of an alleged transaction between the informant and defendant where the audio portion of the recording was made in violation of the eavesdropping statute. An informant's testimony about a conversation to which he was a party does not constitute eavesdropping and is not evidence obtained in violation of the eavesdropping statute simply because it was also improperly recorded. Similarly, the video portion of the recording, when separated from the audio, does not violate the eavesdropping statute. Under **Davis**, neither the informant's testimony nor the video were "derived from" the audio recording, and therefore both should have been ruled admissible.

People v. Nevilles, 2021 IL App (3d) 190645 The trial court erred in granting a motion to suppress based on the fact that the officer's eavesdrop request failed to establish reasonable cause. Under section 14-3(q) of the Criminal Code, officers may petition the state's attorney for permission to eavesdrop. The statute only requires a statement of reasonable cause if the officer does not include the target's name and description. Here, the request included the target's name and description, so no statement of reasonable cause was required.

People v. Harris, 2020 IL App (3d) 190504 Evidence obtained in violation of the eavesdropping statute is inadmissible in a criminal trial. 720 ILCS 5/14-5. This includes not

just the recording itself, but any testimony about the recorded conversation, if the recording led to the conversation and the evidence about the conversation did not come from an independent source.

The trial court suppressed an audio and video recording made by a confidential informant of a suspected drug dealer, and also suppressed any evidence about the conversation as well as the testimony of the informant herself. The recording was made after police and prosecutors attempted to use, but failed to comply with, an exception to the eavesdropping statute contained in section 14-3(q). On appeal from the suppression order, the State conceded that prosecutors and police failed to comply with the exception, and that as a result the recording must be suppressed. But it argued that the informant should still be allowed to testify to the conversation because her observations were made independently of the recording device. The majority disagreed, finding that the conversation took place as a direct result of the attempt to eavesdrop, making all evidence about the conversation fruit of the poisonous tree. The informant's testimony about the conversation could not be characterized as an independent source under these circumstances.

The dissent favored a narrower interpretation of whether evidence is obtained in violation of the eavesdropping statute. It would have found that while the audio recording violated the statute, the video, as well as the conversation itself, did not. It would have admitted the video recording and the informant's testimony independently of the audio recording.

People v. Davis, 2020 IL App (3d) 190272 Where police obtained an overhear authorization to record a specific individual, but ultimately recorded a different individual (defendant), the parties agreed that suppression of the audio portion of the recording was appropriate since it was made in violation of the eavesdropping statute and was not within the scope of the overhear authorization. The trial court also granted suppression of the video portion of the recording, but the Appellate Court reversed. The Appellate Court held that the video evidence did not derive from a violation of the eavesdropping statute and therefore it was not rendered inadmissible by 720 ILCS 5/14-5. Likewise, the confidential informant who made the recording could testify to the events contained on the recording. The informant's knowledge of those events stemmed from his direct participation in them, not from the illegal eavesdropping.

The dissenting justice would have held that the video recording and testimony of the informant were the product of the illegal eavesdropping and would have affirmed the trial court's suppression order.

People v. Allard, et al., 2018 IL App (2d) 160927 The trial court properly suppressed wiretaps of defendants' phone conversations because the State failed to comply with section 108B of the Code of Criminal Procedure. Pursuant to this statute, wiretap applications must be signed by "the State's Attorney or a person designated in writing or by law to act for the State's Attorney" in the case of absence or disability. In this case, two *assistant* State's attorneys signed the wiretap applications. Although the SA had designated one of these ASAs to apply for wiretaps in his stead, that ASA failed to comply with section 108B's requirement that the source of the applicant's authority appear in the application. Nor was the delegation the result of absence or disability, as the State conceded that the SA had been overseeing the entire investigation. The State's attempt to rely on the good-faith exception for police officers codified in section 114-12(b)(1) was both forfeited, as it was not raised below, and without merit, as that subsections specifically exempts wiretaps.

People v. Brindley, 2017 IL App (5th) 160189 Two separate statutory provisions govern eavesdropping under Illinois law. 720 ILCS 5/108A-1 thru 108A-11 concern the judicial supervision of the use of eavesdropping devices, and provide that the State's Attorney may apply to the circuit court for authority to allow a law enforcement officer to use an eavesdropping device to record a conversation where one party to the conversation has consented.

By contrast, 720 ILCS 5/14-1 defines the criminal offense of eavesdropping. 720 ILCS 5/14-3 defines several exemptions to that offense. When this case arose, 720 ILCS 5/14-3(q)(1) provided that the State's Attorney may approve an overhear lasting no more than 24 hours where a law enforcement officer or a person acting at the direction of a law enforcement officer is a party to the conversation and has consented to the overhear, and the State's Attorney determines that there is reasonable cause to believe that a drug offense will be committed. 720 ILCS 5/14-3(q)(4) provides that evidence obtained in the overhear is admissible in the prosecution of a drug offense.

The Appellate Court concluded that the statutes provide separate and alternative methods for the use of eavesdropping devices. Noting that the legislature unambiguously provided that evidence obtained in overhears conducted under §14-3(q) is admissible in drug prosecutions, the court rejected defendant's argument that even where the criteria of §14-3(q) is satisfied, the State's Attorney must also seek judicial approval under Article 108A.

People v. Burk, 2013 IL App (2d) 120063 Evidence obtained in violation of the Illinois Eavesdropping Act is not admissible in a criminal trial. 720 ILCS 5/14-5. However, certain activities are exempt from the Act, including "[r]ecordings of utterances made by a person while in the presence of a uniformed peace officer and while an occupant of a police vehicle." 720 ILCS 5/14-3(h-5).

Statements that defendant made while seated in a squad car were recorded by a device inside the squad car. At issue was whether defendant was "in the presence" of a police officer where the officer was not in the squad car when defendant made the recorded statements. The officer testified that he was never more than 10 or 15 feet from the squad car.

A court's task in interpreting a statute is to give effect to the legislative intent. If a statute is capable of two interpretations, a court should give it the one that is reasonable and that will not produce an absurd, unjust, unreasonable, or inconvenient result that the legislature could not have intended.

The dictionary definition of "presence" is "in the vicinity of or in the area immediately near." Nothing in the Act indicates a legislative intent to ascribe any meaning to the term "presence" different from its commonly understood meaning. Therefore, "in the presence" of an officer means in the vicinity of or immediately near an officer. Nothing in the statute supports an interpretation requiring that the officer be inside the squad car when the statement is recorded. Had the legislature so intended, it would have used more limiting language. The court refused to read into the statute a limitation that was not expressed.

Because defendant made no argument that he was not in the vicinity of the officer when the statement was recorded, the court concluded that the exemption applied to defendant's statements.

People v. Brock, 2012 IL App (4th) 100945 The Illinois Constitution provides in pertinent part: "The people have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of

communications by eavesdropping devices or other means." Ill. Const. 1970, art. I, §6. The language referencing "invasions of privacy or interceptions of communications by eavesdropping devices or other means" expands upon the rights in the federal constitution. This language was added in response to a concern that the government might use newly available technology to develop a general information bank to monitor and collect personal information.

The plain language of this section prohibits only unreasonable eavesdropping, not all non-consensual eavesdropping. Given the intent of this clause creating the additional right to privacy, and the fact that the defendant invited the confidential informant into his home, the Appellate Court concluded that defendant had no constitutionally-protected privacy interest in any activity recorded by the informant using a buttonhole camera during a controlled purchase of narcotics in defendant's home.

Cook, J., specially concurring, concluded that more is required for the admission of a video recording than that the defendant invited the informant into his home. Defendant invited the informant into his home to commit an unlawful act. When a "home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater sanctity than if it were carried on in a store, a garage, a car, or on the street." **Lewis v. United States**, 385 U.S. 206, 211 (1966).

The special concurrence also found it interesting to note that if the informant had been using an audio recording device, the audio recording would have been inadmissible under Illinois eavesdropping statutes which prohibit recording conversations unless all of the parties consent or one party consents and prior judicial authorization is obtained. 720 ILCS 5/14-5; 725 ILCS 5/108A-9(a)(1); 725 ILCS 5/108B-12(c)(1).

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.

The court held that the trial judge erred by admonishing defendant's son that if his testimony showed that he had overheard the conversation between the officer and his father, he could be charged with eavesdropping. In response to the admonishment, the son exercised his Fifth Amendment privilege and declined to testify.

A person commits eavesdropping when he or she knowingly and intentionally uses an "eavesdropping device" for the purpose of hearing a conversation, unless he does so with consent of all parties to the conversation. (720 ILCS 5/14-2(a)(1)). Under Illinois law, a phone does not constitute an "eavesdropping device" unless it has been altered in such a manner that it can no longer perform its customary functions of transmitting and receiving sounds. An unaltered phone is not an "eavesdropping device" even where the receiver is tilted so that another person may listen in or where a person listens on an extension. (See **People v. Armbrust**, 2011 IL App (2d) 100955).

Thus, a cell phone is not an "eavesdropping device" unless it has been functionally altered. Because there was no evidence that defendant's phone had been altered, there was no possibility that defendant's son could have been charged with eavesdropping when he overheard his father's conversation with the officer. Therefore, the trial court erred by admonishing the son that he could be charged with eavesdropping.

The court found that defendant was prejudiced by the exclusion of his wife and son's testimony, because the defendant was required to testify to fill the "significant gaps" in his defense which existed because his witnesses were not allowed to testify.

The conviction was reversed.

People v. Graves, 2012 IL App (4th) 110536 720 ILCS 5/14-2(a)(1) provides that a person commits eavesdropping by knowingly and intentionally using an "eavesdropping device" to hear or record a conversation without the consent of all parties to the conversation. At his trial for aggravated DUI, defendant challenged the admission of videotaped evidence of a traffic stop. The recording included audio and video recordings of the period immediately before the stop, after the stop while defendant was performing field sobriety tests, and immediately following the arrest while defendant was in the back of a squad car.

Where defendant was told at the beginning of the traffic stop that he was being recorded, and did not object, he gave implied consent to the taping. Therefore, the eavesdropping statute did not prohibit admission of the recording at trial.

The court rejected the argument that the implied consent should be deemed to apply only to the taping of the initial stop, and not to the period after the arrest and while the defendant was in the squad car. Because the entire recording was made within a relatively short period of time and during the course of the traffic stop, the consent applied to the entire recording.

At the time of defendant's arrest, 720 ILCS 5/14-3(h) exempted from the offense of eavesdropping a recording that was made simultaneously with a video recording of an oral conversation between a police officer and a person who has been stopped for investigation of an offense under the Vehicle Code. The court rejected the argument that the exemption did not apply to recordings made after an arrest, because at that point officers are no longer conducting an investigatory stop. "[D]efendant's arrest did not necessarily signal the end of the police officer's investigation."

After the arrest, §14-3 was amended to exempt from the eavesdropping statute statements which are made while the declarant is an occupant of a police vehicle. The court rejected the argument that the fact of the amendment indicated that at the time of defendant's arrest, such statements were intended to be within the offense of eavesdropping. **People v. Armbrust**, 2011 IL App (2d) 100955 Evidence obtained in violation of the Illinois eavesdropping statute is inadmissible. The eavesdropping statute prohibits the use of an eavesdropping device to hear or record all or any part of a conversation. 720 ILCS 5/14-2(a)(1). An eavesdropping device is any device "capable of being used to hear or record oral conversation . . . whether such conversation . . . is conducted in person, by telephone, or by any other means." 720 ILCS 5/14-1(a).

A phone does not constitute an eavesdropping device unless it has been altered in such a manner that it can no longer perform its customary functions of transmitting and receiving sounds. The addition of a separate device to a phone to allow others to hear the conversation does convert a phone into an eavesdropping device.

The use of a speakerphone feature on a cell phone does not transform a cell phone into an eavesdropping device. Use of the speakerphone feature does not functionally alter the cell phone's ability to transmit and receive sounds, nor is the speakerphone a separate device. It is simply a feature that increases the sound to such a level that it is unnecessary to hold the phone to one's ear. It is analogous to another person listening in on an extension, or to holding the phone to allow another person to listen, neither of which violate the eavesdropping statute.

People v. Bradley, 406 Ill.App.3d 1030, 943 N.E.2d 759 (3d Dist. 2011) By statute, the content of any conversation overheard by an eavesdropping device shall, if possible, be recorded on tape or a comparable device in such a way that will protect the recording from editing or other alterations. 725 ILCS 5/108A-7(a). All such recordings are required to be made available to the judge who issued the eavesdrop order in a timely manner to allow the judge to listen to the tapes to determine if the recorded conversations are within the judge's order. The tapes must then be sealed and kept in custody as ordered by the judge for 10 years unless in the interim the judge orders the tapes destroyed. 725 ILCS 5/108A-7(b). The statute also requires that parties to the recorded conversation be given notice of the eavesdropping order and whether conversations were recorded pursuant to the order. 725 ILCS 5/108A-8.

Where the State fails to comply with these statutory requirements, whether the recordings are admissible depends on whether the particular safeguard is a central or functional safeguard in the scheme to prevent abuses, whether the purpose that the particular procedure was designed to accomplish has been satisfied in spite of the error, and whether the statutory requirement was deliberately ignored, and, if so, whether there was any tactical advantage gained by the prosecution.

The court held that the recorded conversation was properly admitted even though the original recording was downloaded to a computer file and burned to a disk, and the data was not maintained on the devices on which the conversations were originally recorded. The original recording device was not a medium from which the conversations could be replayed to a listener. Nothing in the statute requires that the original recording be preserved. Although the recording was not preserved in a manner that protected it from editing or other alteration, the defense did not claim that the recording was substantively altered in any meaningful way. Moreover, the trial court found that there were no changes made to the recording, the recording had been properly preserved, the police had substantively complied with the overhear order and the court's review order, and there was no intention on the part of the State to defraud the defendant. Under these circumstances, although the recording introduced at trial was not the original, it was handled in such a way as to protect it from editing or alterations as required by statute. Although the State also failed to comply with the notice requirement of § 108A-8, the purpose of the requirement, to make the defendant aware of the recorded conversations and enable him to make appropriate motions, was satisfied by the discovery procedures.

People v. Nunez, 325 Ill.App.3d 35, 756 N.E.2d 941 (2d Dist. 2001) Under 725 ILCS 5/108A-9(b), a motion to suppress evidence obtained by electronic surveillance should be made before trial, unless there was no opportunity to raise the issue or the defendant was not aware of any grounds for the motion.

The State may use an alias in an application for a consensual overhear order, but must inform the judge from whom the order is sought that the name is fictitious. The purpose of the eavesdropping statute is to insure that eavesdropping is subject to judicial supervision and to prevent unwarranted intrusions into privacy. "We are unable to see how a judge can render proper supervision when the judge does not know the true identity of the individual consenting to be subject to eavesdropping or at least that the individual was operating under an assumed name."

People v. Eddington, 47 Ill.App.3d 388, 362 N.E.2d 103 (4th Dist. 1977) The trial court

erred by holding that eavesdropping was unreasonable due to the lack of the quality of the recording obtained. The reasonableness of a search does not depend on the quality of the tape. Instead, whether the tape is adequate to accurately inform the jury is a separate question. See also, **People v. Hunt**, 381 Ill.App.3d 790, 886 N.E.2d 409 (1st Dist. 2008) (a partly inaudible sound recording is inadmissible if the inaudible portions are so substantial as to render the recording untrustworthy as a whole; whether a partially audible recording should be admitted is a matter of the trial court's discretion; the trial court did not abuse its discretion by finding that tapes were so inaudible as to be useless).

§43-2(c)(2)
Canine Sniffs

United States Supreme Court

Florida v. Harris, 568 U.S. 237, 133 S. Ct. 1050, 185 L. Ed. 2d 61 (2013) An officer has probable cause to conduct a search when the facts would lead a person of reasonable caution to believe that contraband or evidence of a crime is present. Whether probable cause exists depends on the totality of the circumstances in each case. Probable cause does not depend on whether rigid rules or standards are satisfied.

The Florida Supreme Court erred by holding that an alert by a drug sniffing canine constitutes probable cause only if the State presents the dog's training records, certification records, and "field performance records" showing the number of times the dog alerted but no contraband was found. The Supreme Court concluded that the lower court's ruling created an inflexible checklist for determining probable cause. Furthermore, a dog's field performance history would likely be misleading because it would not reflect "false negatives," where controlled substances were present but no search was performed because the dog failed to alert. The court added that what appears to be a false positive may in fact be the dog's accurate response to drug residue which remains from controlled substances that were previously in the vehicle.

The court found that the most reliable indicators of a dog's reliability are training and certification records, because training and certification are performed in controlled settings where the trainer knows the location of the samples and when the dog should alert. Because "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert," if a dog has gone through a recent certification or training program in a controlled setting, a court may presume ("subject to any conflicting evidence offered") that the alert in and of itself provides probable cause for a search.

The court stressed, however, that the defendant must be allowed to challenge the evidence of the dog's training by introducing his own evidence or by cross-examining State witnesses. For example, the defense might contest the adequacy of a certification or training program, and "examine how the dog (or handler) performed in the assessments made in those settings." Furthermore, under some circumstances evidence of the field history of the dog or handler may be relevant. Finally, even where a dog is shown to be generally reliable, a particular alert may be unreliable under the circumstances, such as where the handler cued the dog either consciously or inadvertently or where the team was working under unfamiliar conditions.

Here, the record supported the trial court's finding that the dog's alert signified probable cause for the search of defendant's truck. The prosecution presented evidence of the dog's proficiency, including that within the previous two years he had completed a 120-hour training course, received a certification by a private testing company, completed a 40-hour

refresher course, and undergone four hours of training exercises each week. Although the certification had expired by the time of the alert in this case, Florida law does not require a private certification.

The court also noted that defendant did not challenge the dog's training in the lower court, and rejected his efforts to do so for the first time on appeal.

The court also rejected the argument that the reliability of the dog's alert was undercut because in the first search, the dog alerted to methamphetamine but the search revealed only precursors to methamphetamine, and when the dog alerted to defendant's truck on a subsequent occasion a search revealed no controlled substances. On each occasion the dog alerted to the door handle of the truck, and dogs may alert to residue odors left by drugs which are no longer in the vehicle. Furthermore, "we do not evaluate probable cause in hindsight, based on what a search does or does not turn up."

The trial court's finding that the dog alert provided probable cause for a search was affirmed.

Florida v. Jardines, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013) A "search" occurs when the government obtains information by physically intruding upon one's person, house, papers or effects. (**U.S. v. Jones**, 565 U.S. ___, 132 S.Ct. 945 (2012)). Although **Katz v. U.S.**, 389 U.S. 347 (1967), added an additional layer of protection to the Fourth Amendment based on a reasonable expectation of privacy analysis, it did not alter the Fourth Amendment's "simple baseline" that a physical intrusion to a constitutionally protected area constitutes a "search."

In the absence of a warrant or implied or express consent, the police may not intrude upon a constitutionally protected area for the purpose of using specialized tools to obtain evidence. The porch of a home is part of the "curtilage" - the area surrounding a home which is intimately linked to the home and entitled to Fourth Amendment protection. Thus, in the absence of a warrant or consent, police violated the Fourth Amendment by taking a drug-sniffing canine onto defendant's front porch to determine if odors connected to marijuana cultivation could be detected.

The law of trespass holds that a passerby has an implied invitation to approach a house, knock on the door, and seek to engage the homeowner. Although the Fourth Amendment allows a police officer to do the same, this implied invitation does not extend to bringing a trained police dog to the home to seek evidence of criminal activity. "The scope of a license - express or implied - is limited not only to a particular area but also to a specific purpose. . . . The background social norms that invite a visitor to the front door do not invite him there to conduct a search."

The court rejected the argument that an investigation by a forensic narcotics dog does not implicate any legitimate privacy interest, and therefore does not violate the Fourth Amendment. The court acknowledged its case law holding that a canine sniff in a public area does not violate the Fourth Amendment because no reasonable expectation of privacy is involved. Because in this case the physical intrusion to the curtilage of defendant's home violated the Fourth Amendment, there was no need to decide whether the **Katz** "reasonable expectation of privacy" test was also violated.

In a concurring opinion, Justices Kagan, Ginsburg and Sotomayor stated that in addition to the "physical trespass" ground upon which the majority relied, they would have found that defendant's reasonable expectation of privacy in his home was violated by the officers' use of a device not commonly available to the general public (i.e., a trained police dog) to "explore details of the home . . . that they would not otherwise have discovered without

entering the premises."

Illinois v. Caballes, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005) The use of a narcotics detection dog to sniff a vehicle during a legitimate traffic stop does not violate the Fourth Amendment, at least where the stop is not prolonged beyond the time necessary to write a traffic citation and the sniff does not reveal the presence of items that are not contraband. The court concluded that a search which reveals only contraband does not compromise any legitimate privacy interest.

U.S. v. Place, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) Exposing luggage located in a public place to a sniff by a trained narcotic detection dog does not constitute a search. See also, **Illinois v. Caballes**, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005) (use of a narcotics detection dog to sniff a vehicle during a legitimate traffic stop does not violate the Fourth Amendment, at least where the stop is not prolonged beyond the time necessary to write a traffic citation and the sniff does not reveal the presence of non-contraband; a search which reveals only contraband does not compromise any legitimate privacy interest; J. Souter's dissent held that there is an unacceptable risk of false alerts by narcotics-detection dogs, creating a high risk that non-contraband items will be revealed when canine sniffs are used as justification for opening containers during a traffic stop).

Officers may temporarily detain luggage based upon reasonable suspicion. However, in the absence of probable cause, a 90-minute detention was unreasonable.

Illinois Supreme Court

People v. Lindsey, 2020 IL 124289 A 4-2 majority of the court held that a warrantless dog sniff outside of the defendant's motel room door was not an unreasonable search.

Fourth amendment jurisprudence involves both property-based and privacy-based protections. Although the parties agreed that the question of a dog sniff outside of an open-air motel room door implicates only the privacy-based approach, the court began its analysis with the property-based approach. It held that unlike the curtilage of a home or the hallway of an enclosed apartment building, the defendant had no property interest in the alcove outside of his motel room door. The court found no evidence that the room was defendant's residence, and while the area immediately outside the door was an enclosed alcove, the door to this alcove was open, it shared the alcove with another room, and nobody was prohibited from entering the alcove. Thus, defendant did not have a property-based fourth amendment interest in the area outside his motel room door.

As for the privacy-based approach, the majority found that while defendant had a privacy interest in the interior of his room, the dog sniff did not intrude on that interest. Rather, the dog and the officer remained outside, in the common area, and the dog detected odors only outside of the room. The dog's "free air sniff did not detect the odor of narcotics inside Room 130 but rather outside." The dog "did not teleport through the door and smell the air in the room; [it] smelled the air in the alcove."

As the dissent pointed out, the majority acknowledges but never distinguishes clear United States Supreme Court precedent holding that the fourth amendment is violated when law enforcement uncovers evidence about private property, over which the defendant has an expectation of privacy, even without physical intrusion. This precedent includes **Katz v. United States**, 389 U.S. 347 (1967), where police deduced the contents of a home by imaging heat emanations outside the home. The dissent also pointed out that if the dog was not actually sniffing the contents of the room, but rather the air outside, it raises questions about

probable cause. A second room shared the same alcove, so a sniff of the alcove would not narrow down which of the two rooms contributed the odor. Notably, the search warrant application referenced a sniff of the room, not the air outside. The majority never explains how the police would obtain probable cause to search a room if the sniff only provided information about what is in the alcove.

People v. Bonilla, 2018 IL 122484 In **People v. Burns**, 2016 IL 118973, the Supreme Court held that a defendant had a reasonable expectation of privacy in the common-area hallway outside of his apartment door, located in a locked apartment building. In this case, the court extended this reasoning to unlocked apartment buildings. The threshold of an apartment door is comparable to the curtilage of his home, and does not depend on whether the exterior doors are locked. The Supreme Court affirmed the lower courts' decision to quash the search warrant based on a dog sniff made at the threshold of defendant's apartment door.

The Supreme Court refused to apply the good-faith exception to the exclusionary rule. The police could not reasonably rely on prior cases finding that a dog sniff does not constitute a "search" because those cases involved public places, and the officer should have known that the home has heightened expectations of privacy. Nor could the police rely on **People v. Smith**, 152 Ill. 2d 229 (1992), which found no fourth amendment violation when the police overheard a conversation in defendant's apartment while standing in a common-area hallway. The use of a drug-sniffing dog is not comparable to overhearing a conversation. On the other hand, **Burns** had already been decided in the appellate court and provided the police with persuasive authority that a warrantless dog sniff occurring outside an apartment door was an illegal search.

People v. Burns, 2016 IL 118973 The court rejected the argument that **Jardines** applies only to single-family residences and not to leased apartments or condominiums where a canine sniff is conducted from common areas of multi-unit buildings. Police received an anonymous tip that defendant was selling marijuana out of her apartment, and gained access to the common area of her three-story apartment building by knocking on the door and being allowed in by another resident. The common areas of the building were not accessible to the general public.

Officers then used a trained dog to conduct a sniff of the third floor landing outside defendant's apartment. One other apartment and a storage closet shared the landing. The dog alerted outside defendant's door.

The court rejected the State's argument that the landing was not part of the "curtilage" of defendant's apartment. The curtilage consists of areas that are intimately connected to the activities of the home. Defendant lived in a locked building to which the public had no access unless admitted by a resident. The landing was immediately in front of defendant's apartment door, and by its nature was limited to use by defendant and the occupants of the other apartment on the third floor. The court also noted that the search occurred in the early morning hours, when a resident might reasonably expect that persons will not come to the door without an invitation. Under these circumstances, the landing qualified as curtilage.

People v. Bartelt, 241 Ill.2d 217, 948 N.E.2d 52 (2011) A police officer conducted surveillance at defendant's apartment for one and one-half hours, and observed that defendant's truck was parked on the sidewalk. When defendant left the apartment and drove off in the truck, the officer followed to make a stop for the parking violation. Because the

officer had heard that defendant used methamphetamine, the officer called for a canine unit to make a dog sniff during the stop.

Within three minutes of the initial stop, while the officer was conducting a computer check of the defendant's driver's license and insurance information, the canine team arrived. One of the officers instructed defendant to roll up her windows and turn the blowers on high. The officer testified that this "set-up procedure" was done to force air from inside the vehicle out through the seams, facilitating the canine sniff. While the original officer was finishing the computer check, but before he started to write a citation for the parking violation, the dog alerted on both doors of truck.

A search of defendant and her passenger disclosed nothing suspicious. However, a search of the truck and defendant's purse revealed a digital scale containing white powder residue, several burnt pieces of tinfoil, and a pen casing with a burnt end and a powder substance on the inside. Defendant was charged with unlawful possession of methamphetamine.

The State conceded that defendant was ordered to comply with the set-up procedure and was not informed that she could refuse. The trial court granted a motion to suppress, finding that although a canine sniff is not a "search" under **Illinois v. Caballes**, 443 U.S. 405 (2005), compelling a suspect to perform the set-up procedure allows officers to manipulate the air within a vehicle in a way which exposes the ambient air to the canine in a way that would not occur naturally.

The Appellate Court reversed, finding that a dog sniff is not a "search" under the Fourth Amendment and that the set-up procedure did not interfere with any reasonable expectation of privacy. The court also noted that the procedure insures that the dog remains outside the vehicle during the sniff.

After noting that the case presented an issue of first impression nationwide, the Supreme Court found that the only issue properly before it was whether the "set-up procedure" constituted an illegal "search." A "search" occurs when police action infringes upon an expectation of privacy which society is prepared to recognize as reasonable. Conduct which does not compromise any legitimate expectation of privacy does not constitute a "search."

A citizen has no legitimate interest in possessing contraband. Under **Caballes**, a canine sniff by a well-trained narcotics detection dog is not a "search" because the sniff discloses only the presence or absence of contraband, which may not be legally possessed. Because the dog sniff was conducted from outside defendant's truck, without any intrusion on an expectation of privacy which society would recognize as reasonable, it did not constitute a "search." Because no unreasonable "search" occurred, the trial court erred by granting suppression.

The court also found that the set-up procedure was analogous to the luggage "prepping" procedure approved in **United States v. Viera**, 644 F.2d 509 (5th Cir. 1981). In **Viera**, the Fifth Circuit Court of Appeals approved a procedure by which agents pressed luggage lightly with their hands and slowly circulated the air, in order to cause a scent to emit from the baggage so that a canine sniff could be conducted.

People v. Bew, 228 Ill.2d 122, 886 N.E.2d 1002 (2008) **People v. Cox**, 202 Ill.2d 462, 782 N.E.2d 275 (2002), which held that the Fourth Amendment requires a reasonable, articulable suspicion of criminal behavior before police may conduct a canine sniff of a vehicle during a traffic stop, was overruled by **Illinois v. Caballes**, 543 U.S. 415, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005). In **Caballes**, the United States Supreme Court held that privacy interests are

not infringed by the use of a well-trained narcotics detection dog, because the dog exposes only the existence of contraband and not items in which there is a legitimate expectation of privacy.

However, the second holding of **Cox** - that the Fourth Amendment may be violated where a detention is prolonged so a narcotics dog can conduct a drug sniff - survives **Caballes**. In addition, other issues may be raised, including the propriety of the initial detention and the training and reliability of the dog and its handler.

Illinois Appellate Court

People v. Stribling, 2022 IL App (3d) 210098 Warrantless searches are presumptively unreasonable, subject to certain limited exceptions. One such exception is the automobile exception, recognized in **Carroll v. United States**, 267 U.S. 132 (1925), which holds that a warrantless search of a vehicle is not *per se* unreasonable given the transient nature of vehicles which renders it impracticable to secure a warrant before a vehicle leaves the jurisdiction, potentially taking with it contraband or evidence of a crime. Thus, a warrantless search of a vehicle is allowed so long as the police have probable cause. Probable cause to search a vehicle exists where the facts and circumstances known to the officer at the time would warrant a reasonable person to believe there is a reasonable probability that the vehicle contains contraband or evidence of a crime.

Here, defendant was stopped for a traffic violation. When the officer approached defendant's vehicle, the officer detected a strong odor of burnt cannabis emanating from inside. Defendant told the officer that someone had smoked inside the vehicle "a long time ago." The officer then searched the vehicle, finding a handgun in the process.

In **People v. Stout**, 106 Ill. 2d 77 (1985), the Illinois Supreme Court held that the odor of cannabis, alone, provided sufficient probable cause to search a vehicle under the automobile exception. **Stout** was decided at a time when all possession or use of cannabis was illegal. Since that time, however, cannabis law has changed. Illinois has allowed for medical use and possession of cannabis since 2013. And, Illinois has now legalized cannabis for adult, recreational use.

Given the changes in cannabis law, the Court held that the facts presented here did not provide the officer with probable cause to search the vehicle. More specifically, the smell of burnt cannabis, coupled with defendant's admission that someone had smoked in the car a long time ago, was insufficient for a reasonable person to believe there was a reasonable probability that the vehicle contained contraband or evidence of criminal activity. It was legal for defendant to possess some cannabis and even to drive after having smoked cannabis so long as the concentration in his system did not exceed the legal threshold. The officer here did not express any concerns that defendant's driving was impaired.

The odor of burnt cannabis, without any corroborating evidence, is not enough to establish probable cause to search a vehicle. Thus, the circuit court did not err in granting defendant's motion to suppress a handgun that was found during the warrantless search of his vehicle. While the appellate court could not overrule the Supreme Court's decision in **Stout**, it did hold that **Stout**'s holding is no longer applicable to post-legalization fact patterns.

People v. Bujari, 2020 IL App (3d) 190028 A state trooper performed a "Level 3" commercial vehicle inspection on a semi-truck driven by defendant. These inspections authorize an officer to request documentation from a truck driver to ensure compliance with regulations. During the inspection, the officer noticed irregularities in the closing and locking of the truck's rear

doors, and in the driver's log book. Nevertheless, he handed the defendant his report and told him he was free to go. But he then asked consent to conduct a dog sniff. Defendant both protested and consented, but ultimately got in the truck to leave. As defendant prepared the truck to leave, the officer escorted his canine around the vehicle and the canine alerted. The officer arrested defendant. Before trial, a motion to suppress was denied and defendant was convicted of possession with intent to deliver more than 5000 grams of cannabis.

The Appellate Court held that this encounter did not violate the Fourth Amendment. First, the initial encounter was a valid inspection under the administrative code, and administrative searches implicate lesser privacy concerns. Moreover, the court found that the officer had reasonable suspicion to prolong the stop due to the irregularities he discovered during the inspection. Nevertheless, the officer did not prolong the stop, instead telling defendant he was free to go. Thus, at the time of the dog sniff, defendant was not detained. Dog sniffs occurring without a seizure do not implicate the Fourth Amendment.

People v. Lindsey, 2018 IL App (3d) 150877 A warrantless dog sniff conducted at a motel room door violates the fourth amendment. When analyzing whether police conducted a "search" of property under the fourth amendment, courts first use the traditional property-based analysis. If the police did not intrude on constitutionally protected property, then the court should go on to consider whether defendant had a reasonable expectation of privacy in the area investigated by the officers.

Here, while the police did not impose on defendant's property (unlike the curtilage of a home or the door of an apartment unit, defendant has no property rights in the common area of hotels and motels), they did violate defendant's reasonable expectation of privacy behind his closed motel room door. By using the dog, a sense-enhancing tool not available to the public (like the thermal-imaging device in **Kyllo v. United States**, 533 U.S. 27 (2001)), to discern what was happening behind closed doors, the police conducted a "search" of the room. Because they did so without a warrant, it was unconstitutional.

The good-faith exception to the exclusionary rule does not apply where sufficient binding precedent should have alerted a reasonably trained officer of the need for a warrant before conducting a dog sniff at a motel door. Although no cases were directly on point, precedent established that motel guests enjoy an expectation of privacy in a hotel room, and that dog sniffs at doorways are classified as searches.

People v. Lee, 2018 IL App (3d) 170209 The trial court properly suppressed evidence discovered while the police unlawfully extended a traffic stop beyond its scope. After pulling over the vehicle for a traffic violation and issuing a citation, the officers asked the occupants to wait while they summoned a drug-sniffing dog. The State conceded that the officers lacked probable cause or reasonable suspicion to extend the stop, having only a hunch that defendant was transporting cannabis, but argued that any encounter after the issuance of the citation was consensual because the officers told the defendant and his passenger they were free to go. Analyzing the encounter under factors found in **United States v. Mendenhall**, 446 U.S. 544 (1980), the Appellate Court noted that the officers commanded the defendant to stop talking and ordered him over to his car, actions which would cause a reasonable person to believe he was not free to leave.

People v. Pulling, 2015 IL App (3d) 140516 A traffic stop is an investigative detention and may not last longer than necessary to effectuate the purpose of the stop. An initially lawful seizure can become illegal if it is prolonged beyond the time reasonably required to complete the stop.

An officer lawfully stopped the car in which defendant was a passenger, and began preparing citations for speeding and driving on a suspended license. Approximately four minutes into the stop, the officer had all the information needed to issue the citations when he became suspicious of inconsistencies in the answers defendant and the driver gave. The officer stopped writing the citations and conducted a free-air sniff for drugs, eventually discovering contraband in the car.

The Court held that the free-air sniff was illegal. The officer deviated from the purpose of the traffic stop to conduct a drug investigation that was not supported by independent reasonable suspicion, and thereby unlawfully prolonged the duration of the stop. Although the drug search occurred before the traffic stop had ended, the "positional" point at which the search occurred did not change the outcome.

The trial court's judgment suppressing the evidence was affirmed.

People v. Thomas, 2014 IL App (3d) 120676 The police lawfully stopped a car because the driver did not dim his bright lights. (Defendant was the owner of the car and a passenger.) An officer approached the driver, obtained the necessary documentation, and told the driver that he was going to conduct a free-air canine sniff. The sniff began five to seven minutes into the stop.

The court rejected defendant's argument that the stop was unreasonably prolonged, not simply because of the duration of the stop, but because the officer's purpose deviated from stopping the car for a headlight infraction to conducting a free-air sniff. The officer had a drug-sniffing dog in his patrol car and conducted the sniff without delay. The officer posed no additional questions to delay defendant and no additional probable cause was needed to conduct the sniff. The change in purpose thus did not create an unreasonable delay.

The court also rejected defendant's argument that he was subjected to an illegal search when the police ordered him to roll up the windows and turn on the heater prior to the canine sniff. The court pointed out that the Illinois Supreme Court has already held that this procedure was not sufficiently intrusive to offend the fourth amendment. **Bartelt**, 241 Ill. 2d 217 (2011).

Although the court was bound by **Bartelt**, it believed that the United States Supreme Court would ultimately overrule **Bartelt**. Although a person has a lesser expectation of privacy in a motor vehicle, the procedure employed here was not a free-air sniff of the exterior of the car. Instead, the police forced the car's occupants to make available to the police something that is normally on the interior of the car. This procedure is analogous to ordering a person to empty his pockets and throw the contents onto the ground, at which point the police discover contraband. Such a procedure involves a search governed by the fourth amendment.

People v. Neuberger, 2011 IL App (2d) 100379 Defendant was the front-seat passenger in a vehicle lawfully stopped by the police. The search of defendant's person after a drug-detection dog alerted when the dog reached the handle of the front passenger door was therefore lawful. The court did not err in refusing to suppress drugs recovered from defendant's shoe in the course of that search.

The court rejected the approach taken in **People v. Fondia**, 317 Ill.App.3d 966, 740 N.E.2d 839 (4th Dist. 2000), that a drug-sniffing dog's alert to a vehicle does not justify a search of the occupants of the vehicle unless the occupants are first sniffed individually. The existence of probable cause may depend not only on what information is known to the police, but also on whether the police refrained from obtaining readily available information. But

the dog-sniff scenario presented in this case did not violate that rule. The court declined to second-guess the officer's decision not to have the dog sniff the defendant, which appeared to the court to be consistent with the officer's training and justified by the risk of injury to the defendant. The burden was on the defendant to establish that a particular investigative technique should have been employed, and the defendant failed to sustain that burden.

People v. Fondia, 317 Ill.App.3d 966, 740 N.E.2d 839 (4th Dist. 2000) Where a canine sniff of a vehicle which contains several occupants results in an alert for the presence of contraband, but there is no "indicia of suspicion" concerning any particular occupant, police are required to conduct separate canine sniffs of each individual to obtain probable cause to search any of the occupants. By failing to conduct individualized canine sniffs of the occupants, the officers "willfully denied themselves . . . critical information that would have sharpened their focus on whom to search." Compare, **People v. Staley**, 334 Ill.App.3d 358, 778 N.E.2d 362 (4th Dist. 2002) (probable cause exists when the facts would lead a reasonable officer to conclude that a crime has been committed by the defendant; police had probable cause to search defendant's person where they knew defendant had made a short visit to a known drug house, returned to a car parked in an unusual place, and acted suspiciously during a traffic stop, and a narcotics dog had alerted on the door next to where the defendant had been sitting).

§43-2(c)(3)
GPS Tracking Devices

United States Supreme Court

Grady v. North Carolina, 565 U.S. ___, 135 S.Ct. 1368, 191 L.Ed.2d 458 (2015) In a *per curiam* opinion, the Supreme Court held that a "search" occurs under the Fourth Amendment where police attach a device to the body of a convicted sex offender to allow nonconsensual satellite-based monitoring of his or her whereabouts. The cause was remanded for the lower court to determine whether the search was reasonable under the circumstances.

United States v. Jones, 565 U.S. 400, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012) At the time of adoption, the Fourth Amendment clearly protected against a law enforcement agent's trespass to one's house, papers, and effects for the purpose of obtaining information. Although **Katz v. United States**, 389 U.S. 347 (1967) deviated from an "exclusively property-based approach" by adopting the "reasonable expectation of privacy" test, **Katz** should not be viewed as having extinguished the common law test involving a trespass to one's property. In other words, "the **Katz** reasonable-expectation-of-privacy test has been ***added to***, not ***substituted for***, the common-law trespassory test." (Emphasis in original).

The court stressed that the Fourth Amendment does not protect against all trespasses for the gathering of evidence, but only against trespassory searches of the items ("persons, houses, papers, and effects") that are enumerated.

Officers acting without a valid warrant attached a GPS device to the undercarriage of the defendant's vehicle while it was parked in a public parking lot, and used that device to track the vehicle's movements for 28 days. The court concluded that the officer's actions constituted a trespass to the defendant's "effects" which violated the Fourth Amendment. Thus, evidence related to the tracking of the vehicle should have been suppressed.

The court distinguished **U.S. v. Knots**, 460 U. S. 276, 281 (1983), and **U.S. v. Kara**, 468 U. S. 705 (1984), which rejected Fourth Amendment challenges where the police placed

electronic beepers in containers in order to track their locations. In both cases, the issue of a trespass was not involved because the beepers were installed before the containers came into the defendants' possession and with the consent of the owners.

The court acknowledged that in this case the police would not have violated the Fourth Amendment had they physically observed the movements of defendant's vehicle, without committing a trespass to attach an electronic tracking device. Mere observation of public movements does not constitute a "search." The court also noted that the police might have been able to obtain the same results through electronic means that did not require a trespass, but found that this case did not present the issue whether such actions would create an unconstitutional invasion of privacy.

The government argued that attaching the GPS device was a reasonable and lawful search based on probable cause to believe that defendant was a leader in a large cocaine distribution conspiracy. The court declined to address this argument, noting that it had not been raised in the lower courts.

In a concurring opinion, Justices Alito, Ginsburg, Breyer, and Kagan found that modern Fourth Amendment protection depends solely on the "reasonable expectation of privacy" test of **Katz**. The concurring justices found that the long-term monitoring (28 days) in this case constituted an unreasonable search under the **Katz** standard. However, the concurring justices would find that short term monitoring of a person's movement on public streets does not violate a reasonable expectation of privacy. The concurring opinion also found that where there is a "dramatic technological change" in society, "the best solution to privacy concerns may be legislative" rather than judicial.

Illinois Supreme Court

People v. LeFlore, 2015 IL 116799 Police officers who were investigating several burglaries received a Crime Stoppers tip concerning defendant. Acting without a warrant, an officer placed a GPS device under the rear bumper of the car which defendant drove but which belonged to his girlfriend. The officer placed the GPS device while the car was parked in a lot at the apartment complex where defendant and his girlfriend lived. The trial court denied a motion to suppress evidence obtained by tracking the car's movements by use of the GPS device.

While the case was pending on appeal, the United States Supreme Court decided **U.S. v. Jones**, 565 U.S. ___, 132 S. Ct. 945 (2012), which held that placement of a GPS tracking device constitutes an unlawful "trespass" and requires a warrant. **Jones** also held that the use of a GPS device to monitor a vehicle's movements on public streets constitutes a "search" under the Fourth Amendment.

While this case was pending on appeal, the Supreme Court also decided **Davis v. U.S.,** 564 U.S. ___, 131 S. Ct. 2419 (2011), which applied the good-faith exception to the exclusionary rule where a state police officer searched a car incident to the occupant's arrest. **Davis** concluded that the good-faith exception applied where the officer acted in "objectively reasonable reliance on binding judicial precedent" which set forth a bright-line rule allowing the search. The search in **Davis** occurred before **Arizona v. Gant**, 556 U.S. 332 (2009), adopted a new rule concerning searches of cars incident to arrest.

The Illinois Supreme Court held that even if installing the GPS violated the Fourth Amendment, the good-faith exception to the exclusionary rule applied. At the time of the officer's actions, **United States v. Knotts**, 460 U.S. 276 (1983) and **United States v. Karo**, 468 U.S. 705 (1984) constituted "binding judicial precedent" on which the officer could reasonably rely. The court rejected defendant's argument that for purposes of the good-faith

exception, "binding judicial precedent" exists only if the authority in question is from the same jurisdiction, is followed by police to the "letter," and is on all fours with the case to be decided. Although **Knotts** and **Karo** involved placing beepers in containers which the defendants then unknowingly took into their vehicles, the court held that the rationale of those cases would have led the officer in this case to reasonably believe that the Fourth Amendment would not be violated by installing an electronic device on defendant's car. In the course of its holding, the court noted that every Federal Court of Appeals decision to address the issue concluded that **Knotts** and **Karo** would have allowed the GPS tracker to be placed.

Illinois Appellate Court

People v. Bravo, 2015 IL App (1st) 130145 Under **U.S. v. Jones**, 565 U.S. ____, 132 S. Ct. 945 (2012), the warrantless installation of a GPS device on a suspect's car constitutes a "search" in violation of the Fourth Amendment. Here, the police installed a GPS device on defendant's car before **Jones** was decided, and used the device to track defendant for approximately one month before arresting him after a suspected narcotics transaction.

The State conceded that the officers' actions violated **Jones**, but argued that the agents acted in good faith in accordance with the pre-**Jones** case law**.** In **People v. LaFlore**, 2015 IL 116799, the Illinois Supreme Court held that evidence which was discovered through the warrantless use of a GPS need not be suppressed if at the time they attached the device the officers had a good faith belief that their actions were proper.

The State claimed that the officers acted in good faith reliance on **United States v. Garcia**, 474 F.3d 994 (7th Cir. 2007). The court rejected this argument, finding that in **Garcia** the Seventh Circuit expressly limited its holding to situations where a GPS device was installed with reasonable grounds to suspect criminal conduct and the car on which the device was installed was tracked for no more than a few days. The court concluded that "[n]o fair reading of **Garcia** can stretch the reasoning" to justify the officers' actions here, where the GPS was installed without any basis to suspect criminal activity and used to track defendant for one month before he was arrested. Under these circumstances, the trial court acted properly by granting the motion to suppress.

§43-2(c)(4)
Cell Phones

§43-2(c)(4)(a)
Searches of Cell Phones

United States Supreme Court

Riley v. California; U.S. v. Wurie (consolidated) 573 U.S. ___, 134 S.Ct. 2473, 189 L.E.2d 430 (2014) The search incident to arrest doctrine does not permit the warrantless search of a cell phone that is found on the person of an arrestee. Generally, whether a given type of search is exempt from the warrant requirement is determined by balancing the degree to which the search intrudes upon an individual's privacy and the extent to which the search is needed to promote legitimate governmental interests. Here, that balance favors requiring a warrant before police may search an arrestee's cell phone.

The basic interests underlying the search incident to arrest doctrine - officer safety and destruction of evidence - are typically not at issue in searches of digital data. Although the arresting officer may examine the physical aspects of a cell phone to ensure that the

phone itself cannot be used as a weapon, in most cases digital data on a phone poses no threat to officer safety.

The court added that where the search of a cell phone could alert officers to danger (such as where confederates of the arrestee are headed to the scene), it would be preferable to apply case-specific exceptions to the warrant requirement such as the exigent circumstances doctrine instead of adopting a general rule for all searches incident to arrest. The court also noted that permitting a search of a cell phone in order to discover possible movements by other people would shift the focus of the search incident to arrest doctrine from the arrestee to third parties who are even not at the scene. Finally, the court found that the prosecution's arguments concerning the possibility that cell phones searches would disclose threats to officer safety were based on conjecture rather than actual experience.

Similarly, it is not likely that searching a cell phone incident to arrest will prevent the destruction of evidence. The defendants conceded that the officers could have seized and secured their cell phones to prevent the destruction of evidence while a warrant was sought. Once a phone has been seized and secured, there is no risk that the arrestee will be able to delete incriminating data.

The court acknowledged the State's concern that data on a cell phone may be vulnerable to remote wiping or data encryption, but reiterated that such concerns shift the focus of the search incident to arrest doctrine to parties other than the arrestee. The court also stated that because officers have reasonable ways to prevent remote wiping or data encryption, a broad exception to the warrant requirement for the cell phones of all arrestees is unwarranted.

The court acknowledged that where the circumstances suggest that a phone may be the target of an imminent attempt to remotely wipe data, the exigent circumstances doctrine may permit an immediate search. Similarly, if officers happen to seize a phone that is in an unlocked state, they may disable the automatic lock feature as part of the reasonable steps which law enforcement may take to secure the scene and preserve evidence while a warrant is requested.

4. The search incident to arrest doctrine is also based in part on the lowered expectation of privacy which accompanies a valid arrest. In a traditional search incident to arrest situation, a search of objects found on the defendant's person or in the area under his immediate control represents only a minor intrusion beyond that involved in the arrest itself. Thus, **Robinson** strikes an "appropriate balance in the context of physical objects" found on an arrestee's person.

By contrast, because modern cell phones are minicomputers which contain a great amount of private information, the intrusion resulting from a search of a cell phone bears little resemblance to the brief physical search at issue in **Robinson**. "A cell phone search would typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form. . . ."

5. To complicate matters even more, much of the data which can be viewed on a cell phone is stored not on the device itself, but on remote servers. In fact, a user may not know whether the information he is viewing is stored on the device or in the cloud. Thus, a warrantless search of the contents of a cell phone involves not only the privacy interests of the arrestee, but the interests of entities which are not physically at the scene of the arrest and have no knowledge that their information is being accessed.

6. The court acknowledged that requiring warrants for searches of cell phones found

on the persons of arrestees will impact law enforcement, but stated that "[p]rivacy comes at a cost." The court also rejected several rules proposed by the government to permit cell phone searches under certain circumstances, stating that law enforcement officers need clear guidance through the use of categorical rules. Finally, the court stressed that it was not holding that the information on a cell phone is immune from search, but only that unless some exception to the warrant requirement other than the search incident to arrest doctrine applies, police must first obtain a warrant.

7. In a concurring opinion, Justice Alito disputed whether the search incident to arrest doctrine is based exclusively on the need to protect officer safety and prevent the destruction of evidence. In Justice Alito's opinion, the need to obtain probative evidence is an equally important justification for the doctrine.

In any event, Justice Alito agreed that the search incident to arrest doctrine cannot be mechanically applied to the search of a cell phone. However, he stated that his view might change should Congress or state legislatures "enact legislation that draws reasonable distinctions based on categories of information or perhaps other variables."

City of Ontario v. Quon, 560 U.S. 746, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010) The 4th Amendment was not violated by a police department's examination of transcripts of text messages sent by an officer on a department-owned pager, for the purpose of determining why the officer regularly exceeded the number of messages allowed by the wireless contract. Although the officer paid the overage fee from his personal funds for several months, the employer wanted to determine whether the contractual limit was too low.

In **O'Connor v. Ortega**, 480 U.S. 709 (1987), the Supreme Court was unable to agree on the appropriate analysis when evaluating the constitutionality of searches of the workplaces of government employees. The **O'Connor** plurality concluded that such searches should be evaluated under a two-step process: (1) whether there was a reasonable expectation of privacy in view of the "operational realities of the workplace," and (2) whether a search conducted for non-investigatory, work-related purposes was "reasonable" under the circumstances. Under the plurality's approach, a search conducted for work-related purposes, or to investigate work-related misconduct, satisfies the 4th Amendment if it was justified at its inception and reasonable in its scope.

In his concurring opinion in **O'Connor**, Justice Scalia would have assumed that the 4th Amendment applies to searches of governmental offices. However, Justice Scalia held that a search to retrieve work-related materials or to investigate work-place misconduct by a public employee satisfies the 4th Amendment if the same search would be considered "reasonable" and normal if conducted by a private employer.

The court concluded that it need not resolve the conflict, because the search in this case was reasonable under both standards. Under the plurality approach, the search was justified at its inception because the employer had a legitimate interest in determining whether officers were being required to pay for work-related messages that should have been an employer expense or whether the employer was paying for extensive personal communications by its employees. The search was reasonable in scope because reviewing the transcripts was an efficient and expedient way to determine whether the overages were work-related.

Even if the employee had a reasonable expectation of privacy, the extent of that expectation was relevant in determining whether the search was overly intrusive. Here, the employee's expectation of privacy was limited because he was a law enforcement officer and SWAT team member who had been told that his messages would be subject to audit, and

because a police officer should know that any of his work-related actions may come under legal scrutiny.

The court rejected the Court of Appeals holding that a government employer is required to exercise the least intrusive search possible when investigating work-related matters; "[we] have repeatedly refused to declare that only the 'least intrusive' search practicable can be reasonable under the Fourth Amendment."

Illinois Supreme Court

People v. Sneed, 2023 IL 127968 Defendant was charged with two counts of forgery when his wife's employer discovered two false paychecks in his name drawn on the employer's account. The checks had been cashed using a mobile deposit application, which consisted of photographing a check and submitting it electronically to a financial institution for deposit. After arresting defendant and seizing his cell phone, the police obtained a search warrant for the contents of the phone. The State subsequently filed a motion to compel production of defendant's passcode so it could unlock the phone. The circuit court denied that motion, finding that compelling defendant to produce his passcode would violate his fifth amendment privilege against self-incrimination. The State appealed.

The appellate court held that compelled production of the passcode is non-testimonial and thus not protected by the fifth amendment. And, the foregone conclusion doctrine provided an additional basis for requiring defendant to enter his passcode. The Supreme Court affirmed the appellate court.

First, the Court concluded that it had jurisdiction under Illinois Supreme Court Rule 604(a)(1), citing **People v. Spicer**, 2019 IL App (3d) 170814, which held that "[w]hen a warrant has issued allowing a search of a defendant's phone, an order that denies a motion to compel the defendant to decrypt the phone is like an order suppressing evidence."

On the merits, the Court held that the compelled act of entering a passcode is testimonial and thus implicates fifth amendment considerations. But, the testimony implicit in the act of entering the passcode is a "foregone conclusion" and is therefore "insufficiently testimonial" to be protected by the fifth amendment.

The foregone conclusion doctrine is an exception to the fifth amendment. Where the testimony implicit in a compelled act is essentially already known by the State, it has no testimonial value. The foregone conclusion exception applies where the State establishes that it already knows with "reasonable particularity" that the evidence (1) exists, (2) is in defendant's possession or control, and (3) is authentic. The Court held that the focus for purposes of the foregone conclusion doctrine is on the passcode itself, not the evidence on the phone. Here, the State knew that the passcode existed because it could not access the phone's contents without it. And, the State knew with reasonable particularity that defendant had the passcode based upon the fact that the phone was seized from him at the time of his arrest. Finally, a cell phone passcode is self-authenticating if, when it is entered, it unlocks the phone.

The Supreme Court reversed the circuit court's order denying the State's motion to compel production of the cell phone passcode and remanded the matter for further proceedings.

The dissent would have affirmed the order denying the State's motion to compel on the basis that forcing defendant to enter his passcode would violate article I, section 10 of the Illinois constitution by compelling him "in a criminal case to give evidence against himself.". The dissent would reject application of the lockstep doctrine, noting that it strips the Illinois Supreme Court of the power to protect Illinois citizens, even as the United States Supreme

Court expands government powers. The dissent concluded that the Illinois constitution forbids compelled decryption of cell phones even if the fifth amendment allows it. And, as to the foregone conclusion doctrine, the dissent stated that "the extent of the government's knowledge can never provide grounds for compelling a citizen to produce evidence for the government to use in a criminal prosecution of the citizen."

Illinois Appellate Court

People v. Meakens, 2021 IL App (2d) 180991The trial court should have suppressed evidence found during a search of defendant's cell phone, because the 16-month delay between the seizure of the phone, and the application for a search warrant and subsequent search, was unreasonable.

Once law enforcement officers have seized an item, they must obtain a search warrant within a reasonable time. When officers fail to seek a search warrant for a seized item, at some point the delay becomes unreasonable and is actionable under the Fourth Amendment. Factors to consider in determining whether a delay is unreasonable under the Fourth Amendment include the defendant's possessory interest in the item, whether the defendant has requested the return of the item, the existence of probable cause for the seizure versus mere reasonable suspicion, and law enforcement's diligence in obtaining the warrant.

Here, the police showed no diligence, having failed to explain the excessive delay, and thus their interests could not outweigh the defendant's possessory interest in his cell phone. The court cited **Riley v. California** 573 U.S. 373, 393-94 (2014), which recognized the extraordinary difference between a cell phone, with its ability to store large amounts of information, and other potential objects of searches. The defendant's possessory interest in his phone persisted despite his incarceration, because while he could not possess the phone himself, he could have allowed an agent to access the information. The court remanded for a new trial.

People v. Reyes, 2020 IL App (2d) 170379 The trial court did not err when it denied defendant's motion to suppress the search of his cell phone. Defendant was accused of kidnaping and sexually assaulting a child. The evidence showed he grabbed the girl, put her in his car, drove away, assaulted her, and dropped her off nearby. After his arrest two days later, police found a cell phone in his car, which matched the car used in the offense. Applying for a search warrant, a police officer averred that he was an expert in child molestation cases, and that the cell phone could have photographic or video imagery of the offense, and of child pornography. The phone could also contain relevant GPS evidence. The judge issued the warrant, and a search of the phone turned up a video of the offense.

Defendant argued that the warrant issued without probable cause. He asserted that there was no evidence that the defendant possessed the phone at the time of the offense, let alone that he used it. Nor was there any evidence that defendant possessed child pornography. He maintained there was not a sufficient nexus between the crime and the type of potential evidence found on the phone.

The Appellate Court disagreed. First, even if the police hadn't alleged a nexus between the crime and the photos or videos on the phone, it is clear that the phone could be searched for GPS information. And while defendant countered that the police lacked evidence that the defendant carried the phone at the time of the offense, the fact that the phone was found in the car, albeit two days later, allowed for an inference that defendant carried his phone with him while driving. Defendant responded that probable cause to search GPS information did

not allow a search of the phone's media. But the State's forensic analyst, who searched the phone, testified that GPS information can be stored in the phone's photo or video files.

In a lengthy concurrence, Justice Birkett strongly advocated for the position that, when there is probable cause to believe defendant has committed the sexual assault of a child, the police should be able to obtain a search warrant for a defendant's phone based on probable cause that it contains child pornography, even if there is no other evidence of child pornography. Citing several cases, statutes such as Illinois' propensity-evidence laws, and some statistics, Justice Birkett concluded that the nexus between sexual abuse of children and the possession of child pornography has been sufficiently established so as to conclude that probable cause of sexual abuse of children equates to probable cause of the possession of child pornography.

People v. Minkens, 2020 IL App (1st) 172808 Where defendant alleges ineffective assistance of counsel based on failure to seek suppression of evidence, defendant must show (1) counsel's conduct was objectively unreasonable given the state of the law at the time the suppression motion would have been filed, and (2) he was prejudiced as a result of that conduct, i.e. that the suppression motion would have been granted and there is a reasonable probability the trial outcome would have been different.

Here, defendant claimed counsel was ineffective for failing to seek suppression of cell site location information obtained without a warrant, citing **Carpenter v. United States**, 138 S. Ct. 2206 (2018). **Carpenter** recognized a legitimate expectation of privacy in cell site location information records, rendering collection of that information by law enforcement a "search" for Fourth Amendment purposes. But, **Carpenter** was not decided until nearly two years after defendant's trial and sentencing. Counsel's failure to predict this development in the law was not objectively unreasonable. And, given the additional evidence presented at trial, defendant could not establish prejudice because there was no probability of a different outcome.

People v. Butler, 2015 IL App (1st) 131870 Under **Riley v. California**, 573 U.S. ___, 134 S.Ct. 2473, 189 L.Ed. 430 (2014), officers must secure a warrant before searching a cellular phone. The **Riley** court balanced the privacy interests of cell phone users against the need for such searches to promote legitimate government interests such as preventing the destruction of evidence and harm to officers, and concluded that due to the vast quantities of personal information stored on modern phones the search of a phone exposes far more private information than even an exhaustive search of a house.

The **Riley** court recognized that despite the general requirement of a warrant, a warrantless search of the contents of a cell phone may be justified by some exception to the warrant requirement other than for searches conducted incident to a lawful arrest. However, the court rejected the State's argument that the warrantless search of defendant's phone here was proper under the community caretaking exception.

Community caretaking constitutes an exception to the warrant requirement where police are performing a task that is unrelated to the investigation of crime, such as helping children find their parents, mediating noise disputes, responding to calls about missing persons or sick neighbors, or helping intoxicated persons find their way home. The community caretaking exception applies when two factors are met. First, when viewed objectively, the officer's actions must constitute the performance of some function other than investigation of a crime. Second, the search or seizure must be reasonable because it was undertaken to protect the safety of the general public. Reasonableness is measured

objectively by examining the totality of the circumstances.

Where defendant was present in a hospital emergency room for treatment of a gunshot wound, the community caretaking exception did not justify a search of his cell phone for the purpose of calling someone in defendant's family to inform them that he was at the hospital. Because defendant was alert and could have been asked whether he wanted anyone to be contacted, the search could have been accomplished by better and less intrusive means. In addition, the officer could have inquired of hospital staff whether defendant's family had been called. Choosing to "aimlessly scroll . . . through a list of unknown names" on defendant's phone was not a reasonable way to notify defendant's family that he was in the hospital.

In rejecting the State's argument that the balance between defendant's privacy interest and society's interest in the welfare of its citizens favors allowing an officer to search a cell phone to find contact information, the court noted the discussion in **Riley** that cell phones contain immense amounts of digital information and implicate privacy concerns beyond those involved in the search of objects such as purses or wallets.

The court rejected the State's argument that defendant gave implied consent for his cell phone to be searched when he asked a nurse to call his sister. The State argued that it was reasonable to believe that the officer overheard this request and decided to carry it out by using defendant's cell phone. The State contended that because defendant asked that his sister be contacted, use of the cell phone was inevitable and it did not matter who acted on the request.

The court noted that not only was evidence lacking to show that the officer heard defendant's request to the nurse, but that request was made to the nurse and not the officer. Consent is determined by whether a reasonable person would have understood an individual's words or conduct as granting consent. No reasonable person would have understood defendant's request that a nurse call his sister as granting consent for other persons to search his cell phone. Furthermore, defendant's request did not constitute a relinquishment of his privacy expectations in his cell phone where there was no evidence that defendant asked the nurse to use his cell phone to call his sister.

The court rejected the argument that independent probable cause and exigent circumstances justified seizure of the phone until a warrant could be secured. The officer did not merely hold the phone until a warrant was obtained, but immediately searched it. In addition, there was no need to make an immediate search where all of defendant's clothing and personal effects had been removed by the hospital staff, there was no reason to believe that defendant was armed, and there was no likelihood that defendant would have left the hospital before a search warrant could be obtained. Furthermore, even if it is assumed that the officer had probable cause to believe that defendant had been involved in a shooting, there was no reason to believe that the phone contained any relevant information.

5. Finally, the court rejected the State's argument that the search of the phone was justified by the inevitable discovery exception. The inevitable discovery exception applies where the prosecution can show that evidence would necessarily have been discovered in the absence of any police error or misconduct.

Although a search warrant was eventually obtained to gain access to the cell phone, that warrant was based on a text message which the officer saw during the improper search. Had the officer not searched the phone, the police would not have had such information on which to request a warrant. Because evidence obtained during an illegal search cannot justify issuance of a search warrant, the text message would not inevitably have been discovered.

Defendant's conviction for second degree murder was reversed. The cause was remanded for an attenuation hearing to determine whether defendant's statement to police was a fruit of the unlawful search of the cell phone.

§43-2(c)(4)(b)
Tracking of Cell Phones

United States Supreme Court

Carpenter v. United States, 585 U.S. ____, 138 S. Ct.2206, 201 L. Ed. 2d 507 (2018) Each time a cell phone connects to a cell tower, it generates a record known as cell site location information (CSLI). CSLI data shows the time and location of the connection. Cell phone companies store this data, often for several years. In the instant case, the FBI obtained a court order under the Stored Communications Act for several months of CSLI relating to defendant's cell phone. This data was used to link defendant to a number of commercial robberies, including the robberies of several cell phone stores.

The Supreme Court determined that an individual has a legitimate expectation of privacy in his CSLI. CSLI is similar to GPS tracking, which was at issue in **United States v. Jones**, 565 U.S. 400, in that it gives detailed location information and is easily compiled. Cell phone users also are continuously revealing location information to cell phone companies, making CSLI similar to third-party information like the pen register at issue in **Smith v. Maryland**, 442 U.S. 735, and banking information at issue in **United States v. Miller**, 425 U.S. 435.

Cell phone users retain a legitimate expectation of privacy in the records of their physical movements. The majority concluded that CSLI is even more revealing than GPS data because cell phones are almost a "feature of human anatomy" where individuals "compulsively" carry them. Also, while GPS data can only be gathered from a specific time forward, CSLI is "retrospective" because cell phone companies store the data for years. Given the unique nature of CSLI, the Court declined to extend the third-party doctrine here.

The government's acquisition of CSLI is a search for Fourth Amendment purposes, even though the data is stored by a third party. In the absence of an exception, a search warrant supported by probable cause is required for the government to obtain CSLI. The court order under the Stored Communications Act was inadequate because the Act requires only "reasonable grounds" to support obtaining information.

Justice Kennedy authored a dissent joined by Justices Alito and Thomas which concluded that the third-party doctrine applied to defeat defendant's privacy interest in the CSLI records. Accordingly, the government did not search anything belonging to defendant when it obtained his CSLI records from his cellular provider.

In a separate dissent, Justice Thomas explained that the issue was not whether a search occurred but rather whose property was searched. Because the CSLI records were created, maintained, and controlled by the cellular providers, they were not the defendant's property. Justice Thomas maintained his longstanding criticism of the reasonable-expectation-of-privacy test.

Justice Alito also separately dissented and would have concluded that there was no Fourth Amendment search where the records were obtained by a court order for the production of documents. Because there was no search, a showing of probable cause was not required. Justice Alito also noted that the CSLI records belong to the cell service provider, not defendant, and therefore the defendant should have no right to object to their production.

Justice Gorsuch also dissented and criticized the third-party doctrine, suggesting it should be abandoned. He also suggested that the reasonable-expectation-of-privacy analysis was problematic in that it calls upon courts to determine what privacy interests should be recognized as legitimate with little or no guidance from the Supreme Court. Justice Gorsuch

would employ a "more traditional Fourth Amendment approach" but because no property-based argument was made here, it was forfeited.

Smith v. Maryland, 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979) The use of a telephone pen register (which is installed on telephone company property to record phone numbers dialed) does not constitute a search. Thus, a warrant is not required.

A pen register differs significantly from a listening device, because the latter acquires the contents of conversations. An individual has no legitimate expectation of privacy in the phone numbers he dials.

U.S. v. New York Telephone, 434 U.S. 159, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977) A federal court may properly order a telephone company to provide law enforcement officials with facilities and technical assistance necessary to operate pen registers (which record the numbers dialed from a telephone), in order to implement the court's order authorizing the use of pen registers to investigate offenses which there was probable cause to believe were being committed by telephone.

Illinois Appellate Court

People v. Potts, 2021 IL App (1st) 161219 In 2007, more than 10 years prior to issuance of the decision in **Carpenter v. United States**, 138 S. Ct. 2206 (2018), the police obtained defendant's cell site location information (CSLI) without a warrant. On appeal, defendant argued that the CSLI should be suppressed based on **Carpenter**'s holding that individuals have a legitimate expectation of privacy in records of their physical movements as captured by CSLI, thus requiring a search warrant for its collection.

The Appellate Court rejected defendant's argument. Prior to **Carpenter**, courts had consistently held that warrantless collection of CSLI was permitted by the "third party doctrine" which provides that information an individual voluntarily turns over to a third party is not protected by the fourth amendment. But, none of those cases had been decided at the time defendant's CSLI was obtained by the police here.

Regardless, the Appellate Court held that the good-faith exception applied here. While the CSLI cases had not been decided and thus could not have been relied upon, the third-party doctrine was well established and officers could reasonably rely on that doctrine as the basis for obtaining CSLI without a warrant. Thus, while **Carpenter** would require a warrant to obtain defendant's CSLI were it sought today, the good faith doctrine excused the officer's conduct in obtaining defendant's CSLI in 2007 and suppression was not required.

People v. Strickland, 2019 IL App (1st) 161098 Warrantless acquisition of defendant's cell site location information (CSLI) violated the Fourth Amendment as established in **Carpenter v. United States**, 138 S. Ct. 2206 (2018). The State argued that the good-faith exception to the exclusionary rule should apply because **Carpenter** was decided nearly five years after the CSLI was obtained here. The Appellate Court found it unnecessary to reach the good-faith issue, however, because the error was harmless beyond a reasonable doubt where the evidence against defendant was overwhelming and the CSLI evidence was largely insignificant to the case.

§43-2(c)(5)
Computer and Internet

Illinois Supreme Court

People v. McCavitt, 2021 IL 125550 A woman reported that defendant, a police officer, had sexually assaulted her in his home, and she described hearing the sound of a camera shutter during the assault. Police obtained a warrant to search the home for evidence of the assault, including any equipment that could be used to take and store photos and video. During the search, the police recovered defendant's computer, as well as recording equipment. A preliminary review of the computer's files revealed surreptitious recordings of two other women in defendant's bathroom. Police then obtained a second warrant to search the computer hard drive for evidence of the criminal sexual assault, as well as unlawful video recording.

While executing the warrant to search the computer, the police found evidence related to the sexual assault. They made an EnCase digital copy of defendant's hard drive, but did not search further at that time. Defendant was prosecuted for criminal sexual assault and was acquitted. After the acquittal, the police conducted a search of the EnCase digital copy and found two images of child pornography. They then sought and obtained a new warrant to search the EnCase file for child pornography, and additional images were discovered.

Defendant filed a motion to suppress the child pornography files, which was denied. The Supreme Court affirmed. The Court first held that defendant's privacy interest in the digital copy was equal to his interest in the hard drive itself. An individual's Fourth Amendment interests cannot be extinguished simply by making a copy of evidence in which he has a reasonable expectation of privacy.

Further, defendant's criminal sexual assault acquittal restored his reasonable expectation of privacy in any data that was evidence of the criminal sexual assault because double jeopardy principles would bar re-prosecution on that offense. But, the acquittal did not completely restore his privacy interest in all of the data on the copy of his hard drive where the warrant also authorized a search for evidence of the offense of unauthorized video recording. Thus, the warrant authorized the additional search for digital files which were evidence of the video recording offense, and the child pornography was discovered during that authorized search.

The Supreme Court noted:

> This case presents the most common use of the plain view doctrine in the context of digital data, which occurs when law enforcement examines a computer pursuant to a search warrant and discovers evidence of a separate crime that falls outside the scope of the search warrant. The inquiry focuses on whether an officer is exploring hard drive locations and opening files responsive to the warrant, considering both the types of files accessed and the crimes specified in the warrant.

Because the child pornography was discovered in "plain view" during a proper search, it was admissible. Finally, the eight-month delay between the issuance of the warrant and the second search was not unreasonable given the intervening criminal sexual assault prosecution.

Illinois Appellate Court

People v. Alexander, 2021 IL App (2d) 180193 The court affirmed child pornography convictions over defendant's contention of an improper search.

A police officer, designated as an investigator for a grand jury, learned that a particular IP address had been linked to child pornography. He served Comcast with a

subpoena, returnable to him and not the grand jury, requesting the name and address associated with that IP address. Once he obtained the information, he sought and received a search warrant for defendant's residence, and recovered a hard drive containing child pornography.

While the Appellate Court disapproved of the officer's "unauthorized and freewheeling abuse of the grand jury's subpoena power," it found no constitutional violation. Subpoenaing an ISP for user information connected with a given IP address is not a search within the fourth amendment, because the third-party doctrine defeats a claim that the owner of the IP address has a constitutionally protected expectation of privacy in that information. Defendant's claim that the subpoena constituted a search under **Carpenter v. United States**, 138 S. Ct. 2206 (2018), lacked merit. While **Carpenter** created an exception to the third-party doctrine, the exception was narrowly tailored to the type of intrusive, persistent location tracking involved in that case. An IP address user's information does not create the same privacy concerns. Furthermore, the officer's decision to go around the grand jury and serve the subpoena himself was not grounds for reversal, because defendant could not show prejudice in light of the inevitable discovery doctrine.

People v. McCavitt, 2019 IL App (3d) 170830 After defendant, a Peoria police officer, was found not guilty of criminal sexual assault, he sought return of his personal computer which the police had seized and searched pursuant to a warrant. The judge said he was denying the request until things "cooled down." The next day, a police department investigator conducted a forensic examination of a copy of defendant's hard drive and identified images of suspected child pornography. Another warrant was obtained, additional child pornography was found, and defendant was prosecuted for and convicted of possession of child pornography.

Defendant's motion to suppress the post-acquittal search of his computer files should have been granted. While an individual has a diminished expectation of privacy in items seized and searched by the police, his reasonable expectation of privacy is restored once he has been acquitted. All property seized must be returned to its rightful owner once criminal proceedings have terminated. No charges were pending at the time of the search, and defendant's computer should have been immediately returned upon his acquittal of the sexual assault charges.

Likewise, while it was not error for the police to create a mirror image of defendant's hard drive for use during the sexual assault investigation and trial, the police were not entitled to retain anything beyond the scope of the original warrant. Because the original warrant authorized a search of defendant's computer files for evidence of criminal sexual assault, unlawful restraint, and unlawful video recording, it was error to retain a copy of defendant's entire hard drive and conduct a broader search after defendant's acquittal.

Finally, the investigator could not rely on the original warrant as providing a good faith basis for the subsequent search where he knew that the warrant had already been executed and that defendant had been acquitted.

People v. Lyons, 2013 IL App (2d) 120392 Defendant's wife gave computer disks to police and told the officers that she suspected that the disks contained child pornography. Defendant's wife gave consent to the police to search the disks when she brought the disks to the station and said that she did not want them in her house. Consent for a warrantless search may be based on permission obtained from a third party who possesses common authority over or a sufficient relationship to the property sought to be searched. A third party is not authorized to consent merely because he or she has an interest in the property. Instead,

authority to consent to a search depends on mutual use of property by persons who have joint access or control, so that it is reasonable to expect that any of the persons has the right to permit the inspection and that all have assumed the risk that another might permit a search.

Under Illinois law, proof that spouses have common authority over space gives rise to a rebuttable presumption that each spouse also has authority over containers which are within the common area but which are the property of the nonconsenting spouse. This presumption is rebutted by evidence that the consenting spouse was denied access to the containers, but not by evidence that the consenting spouse merely refrained from accessing the containers. "We are concerned with the right of access, not regularity of use. . . ."

The court concluded that defendant's wife had actual authority to consent to a search of computer disks which belonged to the defendant where she had a key to a locked cabinet where they were stored, despite the fact that she did not go into the cabinet. In addition, in a telephone conversation which was overheard by police, defendant implied that his wife had access and control over the cabinet by agreeing that she could prepare the contents of the cabinet for him to pick up. Although defendant's wife indicated to police that the disks belonged to defendant, mere lack of ownership by the consenting spouse does not overcome the presumption arising from a married or cohabiting relationship.

The fact that the defendant placed passwords on the family's computers did not indicate that he was attempting to prevent his wife from gaining access to the contents of the computer disks, because the disks could easily have been taken to other computers to be viewed. A password on a computer is not a meaningful restriction on access to the contents of removable computer disks, and is more likely intended to protect information on the hardware itself.

Because defendant's wife had access to the cabinet containing the disks and defendant did not restrict her access to the content of the disks, defendant assumed the risk that the spouse would view the disks herself or allow others to do so. Therefore, the spouse had authority to consent to a search of the disks by the police.

People v. Bell, 403 Ill.App.3d 398, 932 N.E.2d 625 (4th Dist. 2010) Generally, warrantless searches are prohibited by the 4th Amendment. A warrantless search is permissible, however, when voluntary consent is obtained from either the property owner or a third party who possesses common authority over the premises. Whether a third party has actual common authority to consent to a search depends not on property laws, but on whether the third party has joint access or control of the property for most purposes.

Thus, common authority exists in situations involving family, martial, or cohabitation relationships. Mere possession of a key, or the lack thereof, does not necessarily determine whether a third party has authority to consent to a search.

Where defendant and his girlfriend had lived together in defendant's home for 10 months before the search in question, but defendant said earlier that day that he wanted the girlfriend to move out, the girlfriend had actual authority over the residence and could consent to the seizure of defendant's computer. Although defendant had moved several boxes of the girlfriend's belongings to an area near the front door, the girlfriend had not vacated the residence, or even left the house, between the time defendant told her to move and the time officers arrived.

Furthermore, the girlfriend had not packed her personal belongings or made arrangements to move or to remove her belongings from the home. Under these circumstances, the girlfriend possessed a right to joint access and control of the residence which continued through the transitional stage of moving from the home. Thus, she could

consent to removal of defendant's computer.

The court rejected the argument that the girlfriend lacked authority over the computer because earlier in the week defendant told her not to use it and removed the keyboard. The court concluded that even if the girlfriend knew defendant no longer wanted her to use the computer, her unrestricted access to the entire residence allowed her to consent to the computer's removal.

People v. Thornburg, 384 Ill.App.3d 625, 895 N.E.2d 13 (2d Dist. 2008) Although officers had no reason to believe a probationer was involved in any sort of criminal activity, a Computer Use Agreement which defendant entered as a condition of probation permitted a suspiciousless search of his computer; agreement provided that defendant was not to use the Internet for sexual purposes and was subject to unannounced examinations of his computer, software and other electronic devices.

People v. Gariano, 366 Ill.App.3d 379, 852 N.E.2d 344 (1st Dist. 2006) Officers did not violate either the Fourth Amendment or the eavesdropping statute by transcribing instant messages sent by defendant over the Internet to a police officer whom defendant believed was a minor.

People v. Blair, 321 Ill.App.3d 373, 748 N.E.2d 318 (3d Dist. 2001) A third party may consent to a search of premises over which he has common authority or to which he has some other sufficient relationship, because an inhabitant has a diminished expectation of privacy concerning property which he shares with a co-inhabitant. Allowing a third party access to property "does not similarly diminish the owner's expectation that he will retain possession of his property," however. Thus, even if defendant's father could consent to an examination of the defendant's computer, which was located in the home they shared, he could not consent to its *seizure*. "[T]he consent of a third party is ineffective to permit the government to seize property in which the third party has no actual or apparent ownership interest."

§43-2(c)(6)
Other

United States Supreme Court

Kyllo v. U.S., 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001) The Fourth Amendment was violated by use of a "thermal image" to measure the relative heat emanating from defendant's apartment and those of his neighbors. Where law enforcement uses advanced technology that is not in general public use to explore details of a home which would not otherwise be subject to scrutiny without a physical intrusion, a "search" has occurred within the meaning of the Fourth Amendment. The court found that any other conclusion would "permit police technology to erode the privacy guaranteed by the Fourth Amendment."

U.S. v. Karo, 468 U.S. 705, 104 S.Ct. 3296, 82 L.Ed.2d 530 (1984) Police did not conduct a "search" or "seizure" by installing a beeper in a can of ether expected to be used for cocaine extraction; the beeper conveyed no information defendants wished to keep private, and was installed with the consent of the owner of the car in which the can was located.

However, it was improper to monitor the beeper while it was in a private residence that was not open to visual surveillance, because such surveillance violated the rights of those who had a justifiable interest in the privacy of the residence. Evidence seized from the house

need not be suppressed, however, because the affidavit for search warrant established probable cause without consideration of the information stemming from the unlawful monitoring. See also, **U.S. v. Knotts**, 460 U.S. 276, 103 S.Ct. 1081, 75 L.Ed.2d 55 (1983) (monitoring a beeper placed in a can of chloroform was proper where the movements of the automobile containing the cans and its arrival at a particular cabin could have been observed by the naked eye).

§43-2(d)
Exceptions to Warrant Requirement

§43-2(d)(1)
Search Incident to Arrest

United States Supreme Court

Birchfield v. North Dakota, 579 U.S. ___, 136 S.Ct. 2160, 195 L.Ed. 560 (2016) Breath tests do not implicate significant privacy concerns. First, the physical intrusion is almost negligible, "no more demanding than blowing up a party balloon." And people have no possessory interest in or emotional attachment to the air in their lungs. All the air used in a breath test would sooner or later be exhaled even without the test.

Second, breath tests only reveal one bit of information, the amount of alcohol in the subject's breath. No sample of anything is left with the police. Finally, a breath test is not likely to cause any embarrassment beyond that inherent in an arrest. The act of blowing into a machine is not inherently embarrassing and the tests are normally conducted in private settings.

The Court found blood tests to be a different matter. They entail piercing the skin to extract a part of the subject's body, an act significantly more intrusive than blowing in a tube. Humans continuously exhale air but do not regularly shed blood. And a blood test provides authorities with a sample that can be preserved and used to extract information beyond a simple blood alcohol reading.

Finally, the Court held that the State has a paramount interest in preserving the safety of its highways. Alcohol consumption is a leading cause of traffic fatalities, and the Court's cases have long recognized the "carnage" caused by drunk drivers. The State thus has a compelling interest in deterring drunk driving.

Balancing these interests, the Court concluded that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving, but does not permit warrantless blood tests.

Maryland v. King, 569 U.S. 435, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013) Maryland law allows collection of a DNA sample by buccal swab from anyone arrested for a crime of violence or an attempt to commit a crime of violence, or burglary or an attempt to commit burglary. The DNA sample may not be processed or placed in a database until there has been a judicial determination of probable cause to detain the arrestee for a qualifying offense, and it must be destroyed if the defendant is not convicted. The database may be used for identification purposes only.

The Supreme Court concluded that DNA identification of persons arrested upon probable cause to hold for a serious offense can be considered part of a routine booking procedure that is reasonable under the Fourth Amendment.

The taking of the buccal swab is a search within the meaning of the Fourth

Amendment even though it involves a minimal intrusion. It falls within the category of cases that the Court analyzes for reasonableness, not individualized suspicion. There are virtually no facts for a neutral magistrate to evaluate given the standardized nature of the tests and the minimal discretion vested in those charged with administering the program.

DNA collection serves the legitimate government interest of providing law enforcement a safe and accurate way to process the persons they take into custody. It serves the same function as a name or a fingerprint by providing a method of identification of unparalleled accuracy. This allows the authorities to ascertain the arrestee's criminal history, make assessments of the risk he poses to custodians and other detainees, as well as the public should he be released, helps ensure that the arrestee is available for trial, and allows for the release of persons wrongfully imprisoned for the same offense.

Law enforcement agencies have routinely adopted scientific advancements such as the use of photography or fingerprinting to improve their procedures for identification of arrestees. DNA collection involves no greater intrusion on privacy than fingerprinting and is markedly more accurate. While DNA analysis is a longer process, "how long it takes to process identifying information obtained from a valid search goes only to the efficacy of the search for its purpose of prompt identification, not the constitutionality of the search." New technology continues to improves its speed and therefore its effectiveness. In any event, the actual release of a serious offender routinely takes weeks or months.

Balanced against the legitimate interest of the government in knowing for an absolute certainty the identity of the person arrested and the unique effectiveness of DNA identification, the intrusion of a cheek swab is minimal. The governmental interest outweighs any expectation of privacy given the context of a search conducted following an arrest for a serious offense upon probable cause. A person taken into police custody has a diminished expectation of privacy. A buccal swab is a minimal intrusion involving no physical danger and does not increase the indignity already attendant to normal incidents of arrest. Testing is also limited to analyzing DNA solely for identification purposes.

Riley v. California; U.S. v. Wurie (consolidated) 573 U.S. ___, 134 S.Ct. 2473, 189 L.E.2d 430 (2014) The search incident to arrest doctrine does not permit the warrantless search of a cell phone that is found on the person of an arrestee. Generally, whether a given type of search is exempt from the warrant requirement is determined by balancing the degree to which the search intrudes upon an individual's privacy and the extent to which the search is needed to promote legitimate governmental interests. Here, that balance favors requiring a warrant before police may search an arrestee's cell phone.

The basic interests underlying the search incident to arrest doctrine - officer safety and destruction of evidence - are typically not at issue in searches of digital data. Although the arresting officer may examine the physical aspects of a cell phone to ensure that the phone itself cannot be used as a weapon, in most cases digital data on a phone poses no threat to officer safety.

The search incident to arrest doctrine is also based in part on the lowered expectation of privacy which accompanies a valid arrest. In a traditional search incident to arrest situation, a search of objects found on the defendant's person or in the area under his immediate control represents only a minor intrusion beyond that involved in the arrest itself. Thus, **Robinson** strikes an "appropriate balance in the context of physical objects" found on an arrestee's person.

By contrast, because modern cell phones are minicomputers which contain a great amount of private information, the intrusion resulting from a search of a cell phone bears

little resemblance to the brief physical search at issue in **Robinson**. "A cell phone search would typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form. . . ."

Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) **New York v. Belton**, 453 U.S. 454 (1981) extended the "search incident to an arrest" doctrine to allow the search of the passenger compartment, and containers therein, when the occupant of the automobile is lawfully arrested and the search is conducted contemporaneously with the arrest. However, **Belton** does not authorize a search of the passenger compartment where, as part of the arrest, the occupant has been removed from the vehicle and secured in a location from which there is no possibility that he will gain access to the vehicle. In such cases, the justifications for the "search incident" doctrine - to protect officer safety and preserve evidence - are absent.

The "search incident to arrest" doctrine allows a search of the passenger compartment of a vehicle if: (1) there is reason to believe the arrestee might return to the car and obtain weapons or destroy evidence, or (2) there is reason to believe that evidence of the crime for which the arrest was made might be found in the vehicle.

The court rejected the State's argument that a more expansive reading of **Belton** was required to create a bright line rule that would guide lower courts and law enforcement officers. The court found that the argument "seriously undervalues" the privacy interest of motorists in their vehicles, exaggerates the clarity that an expanded reading would provide, and fails to either protect officer safety or ensure that evidence is preserved. In addition, other established exceptions to the warrant requirement permit a search of a vehicle's passenger compartment where there is a reasonable suspicion that an individual who is "dangerous" might obtain access to the vehicle and gain control of weapons (**Michigan v. Long**, 463 U.S. 1032 (1983)), and where there is probable cause to believe that the vehicle contains evidence of criminal activity (**U.S. v. Ross**, 456 U.S. 798 (1982)). There may also be other circumstances in which the search of the vehicle of an arrestee might be permitted by safety or evidentiary interests, such as where there is a reasonable belief that a dangerous person is concealed in the car.

Where five officers had removed, handcuffed, and secured three arrestees in separate patrol cars, there was no possibility that the defendant might return to his car and either obtain a weapon or destroy evidence. Furthermore, police could not reasonably expect to find evidence of the offense of arrest - driving with a suspended license - in the passenger compartment of the car. Therefore, the warrantless search which led to discovery of contraband was improper.

Virginia v. Moore, 553 U.S. 164, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008) Officers are allowed to conduct searches incident to constitutionally valid arrests in order to protect themselves and safeguard evidence. Searches incident to citations are not permitted, because officers do not face the same danger of extended exposure while transporting the arrestee.

Where the officers made an arrest, they were authorized to conduct a search. The fact that state law required issuance of a citation rather than an arrest was irrelevant to whether a search incident was permissible.

Thornton v. U.S., 541 U.S. 615, 124 S.Ct. 2127, 158 L.Ed.2d 905 (2004) **Belton** applies

where the arrestee is a "recent occupant" of a vehicle at the time of arrest, without regard to whether the arrestee was in the car during the initial contact with police. An arrest next to a vehicle presents the same safety and evidentiary concerns that motivated **Belton**, and limiting **Belton** to situations in which the arrestee is an occupant of the vehicle at the time of the initial contact would threaten officer safety and effectiveness by forcing officers to reveal their presence while suspects are in a vehicle.

Although an arrestee's status as a "recent occupant" may turn on his "temporal or spatial relationship to the car at the time of the arrest and search," the court declined to determine whether **Belton** should be limited to cases in which the arrestee is within reaching distance of the car. The argument was outside the scope of the question on which *certiorari* had been granted, and the record would likely show that defendant was within reaching distance of the car at the time of the arrest.

Smith v. Ohio, 110 S.Ct. 1288, 108 L.Ed.2d 464 (1990) A search which provides the probable cause for an arrest cannot be justified as a search incident to the arrest. An incident search may not precede an arrest and then serve as part of its justification. Compare, **Rawlings v. Kentucky**, 488 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980) (where police had probable cause to make an arrest before conducting the search of defendant's person, the search could be justified as incident to arrest even if it slightly preceded that arrest; "[w]here the formal arrest followed quickly on the heels of the challenged search of petitioner's person, we do not believe it particularly important that the search preceded the arrest rather than vice versa").

Maryland v. Buie, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990) When police make an arrest in a residence, they may make a limited protective sweep of the residence if they have reasonable belief, based on specific and articulable facts, that it contains a person posing a danger to them. The sweep or inspection is limited to places where such a person might be found. See also, **People v. Rushing**, 272 Ill.App.3d 387, 649 N.E.2d 609 (1st Dist. 1995) (the "protective sweep" exception permits police to make a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of police or others"; a protective sweep must be "narrowly confined to a cursory visual inspection to those places in which a person may be hiding"; because the purpose is to protect the arresting officers from other persons on the premises, a sweep is justified where there are "articulable facts" warranting a reasonably prudent belief "that the area swept harbors an individual posing a danger to those on the arrest scene"); **People v. Pierini**, 278 Ill.App.3d 974, 664 N.E.2d 140 (1st Dist. 1996) ("protective sweep" exception did not authorize the seizure of a pouch and duffle bag; neither was an object "from which a person could launch an unexpected attack"); **People v. Hassan**, 253 Ill.App.3d 558, 624 N.E.2d 1330 (1st Dist. 1993) ("protective sweep" exception did not apply where officers knew they had arrested the only person in the house).

New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." The officer "may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach."

A "container" is "any object capable of holding another object," including a closed glove compartment, luggage, boxes, bags, clothing and the like. However, only containers in the passenger compartment may be searched. See also, **People v. Blakely**, 278 Ill.App.3d 704,

663 N.E.2d 760 (2d Dist. 1996) (area behind car stereo was a "container" that could be searched under **Belton** where the stereo unit was not secured and could be "simply pulled out to access the space behind it"; search would not have been allowed had the unit been held in place by fasteners).

U.S. v. Edwards, 415 U.S. 800, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974) Seizure of defendant's clothing after he had been in custody at city jail for ten hours was upheld. Searches and seizures that could be made at the time of arrest may legally be conducted later, when the accused arrives at the police of detention. Here, defendant was arrested late at night when no substitute clothing was available; it would have been unreasonable for the police to strip defendant of his clothes and leave him exposed in the cell.

Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) When the arrest was made inside a house, the search of a car located outside was not incident to the arrest.

Vale v. Louisiana, 399 U.S. 30, 90 S.Ct. 1969, 26 L.Ed.2d 409 (1970) A search may be incident to arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. A search of a house cannot be incident to an arrest which took place outside.

Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969) A search incident to arrest is limited to a search of the person arrested and the area within his immediate control; that is, the area from which he might gain possession of a weapon or destroy evidence. A search of an entire house after defendant's arrest therein was unreasonable.

Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964) When the arrest is unlawful, the search incident thereto is likewise unlawful.

Illinois Supreme Court

People v. Cregan, 2014 IL 113600 Subject to limited exceptions, warrantless searches are *per se* unreasonable under the Fourth Amendment. Among the exceptions is the search incident to arrest doctrine, which permits searches of either the person of an arrestee or the area under the arrestee's control. Such searches serve different purposes and are justified by different concerns. A search of an arrestee's person incident to arrest is based on the need to disarm the individual and discover evidence. Such a search requires no justification other than the fact of a lawful custodial arrest.

A search of the area of the arrestee, by contrast, is justified by the possibility that the arrestee might gain possession of a weapon or destroy evidence. The scope of an area search is therefore limited to the area within the arrestee's immediate control.

In **Arizona v. Gant**, 556 U.S. 332 (2009), the Supreme Court applied the search incident to arrest doctrine to the search of an automobile which had been recently occupied by the arrestee, and held that the doctrine applies only to the area from which the arrestee might gain possession of a weapon or destroy evidence of the offense for which the arrest was made. Thus, a warrantless search of the arrestee's car after he had been removed from the vehicle, handcuffed, and secured in a squad car could not be justified as a search incident to arrest.

The U.S. Supreme Court has not addressed whether **Gant** is limited to vehicle

searches. Here, the court concluded that **Gant** involved only a search of the area of the arrestee, and therefore has no application to searches of the arrestee's person.

The search incident to arrest doctrine permits the search of items that are "immediately associated" with the arrestee's person. Thus, an arrestee's clothing, wallet and other small items of personal property may be searched incident to an arrest.

The court concluded that whether an item is "immediately associated" with the arrestee's person depends not on the nature of the object, but on the arrestee's connection to the object at the time of the arrest. In other words, any item that is in the arrestee's possession at the moment of the arrest is deemed to be "immediately associated" with his person for purposes of the search incident to the arrest doctrine.

Where defendant was stopped by officers as he left a train, and put down a laundry bag and suitcase as police approached to make an arrest on an outstanding warrant for failure to pay child support, the laundry bag and suitcase were in defendant's possession at the time of the arrest. Because items in defendant's possession are deemed to be "immediately associated" with his person, the search incident to arrest doctrine permitted a search of the bags, although defendant was handcuffed and the bags were moved out of his reach. Furthermore, a search of the bags was justified even though a companion of defendant was present and defendant asked if she could take the bags.

In a footnote, the court stated that even had defendant dropped the bags as he saw police approaching, the items would have been in his possession for purposes of a search incident to arrest. "Defendant could not avoid a finding of possession by dropping the bags quickly" before the officers reached him.

Furthermore, the police acted properly by opening a container of hair gel that was discovered inside the suitcase. The court analogized searching the hair gel container to searching a cigarette pack or envelope in an arrestee's pocket or purse, both of which could be properly searched incident to an arrest. Because the search of the container was incident to the arrest, a package of cocaine discovered in the hair gel container need not be suppressed.

People v. Bridgewater, 235 Ill.2d 85, 918 N.E.2d 553 (2009) Under **Arizona v. Gant**, ___ U.S. ___, 129 S.Ct. 710, 173 L.Ed.2d 485 (2009), a vehicle search incident to an occupant's arrest is authorized only if: (1) the arrestee is unsecured and within reaching distance of the vehicle's passenger compartment at the time of the search, or (2) the officers reasonably believe that evidence relevant to the crime of arrest may be found in the vehicle. Where the defendant was handcuffed and placed inside a squad car at the time the vehicle search took place, and had been arrested for obstructing a peace officer while in a convenience store, there was no reasonable basis to search defendant's car even though the incident began when the officer attempted to conduct a stop for speeding. (See also **APPEAL**, §2-2(b).

People v. Love, 199 Ill.2d 269, 769 N.E.2d 10 (2002) Where officers observed what appeared to be a drug sale in which defendant removed an item from her mouth and handed it to the suspected purchaser, and upon questioning defendant's responses could not be understood, there was probable cause to believe that the garbled response was due to defendant's concealment of drugs in her mouth. Because the officers had probable cause to make an arrest for drug possession, their order for defendant to spit out the items in her mouth was a valid search incident to arrest.

People v. Bailey & Wiest, 159 Ill.2d 498, 639 N.E.2d 1278 (1994) Two searches were proper under the "search incident to arrest" doctrine. In the first case, a police officer stopped

Bailey's automobile because it did not have a front license plate. After finding that Bailey's driver's license had been suspended, the officer arrested him for that offense. After handcuffing and searching Bailey and placing him in back of the officer's squad car, the officer asked the remaining passengers to step out of the vehicle. He then searched the interior of the vehicle and found a container of drug paraphernalia.

In the second case, two officers stopped a car solely because it had a burned-out license plate light. As they approached the car they saw one of the occupants rummaging through the glove compartment. In the glove compartment, one officer saw a 35-millimeter film container. After learning that the driver was a minor and that there was beer in the car, an officer opened the glove compartment, opened the film container, and found a white powder that field tested as cocaine.

Under **Belton**, the interior of a vehicle in which an occupant has been arrested is deemed to be within his reach. **Belton** applies to *all* offenses, including traffic offenses. In addition, a search is valid although the arrestee is handcuffed and in the back of the officer's squad car, because the defendant's removal from the area and lack of "effective access" to the vehicle does not eliminate the officer's authority to conduct the search.

In the second case, once the driver had been arrested for illegal possession of alcohol, the officers were authorized to search the interior of the automobile for weapons or for evidence of *any* offense. Thus, they were permitted to open the film container even though it could not possibly have contained evidence relating to unlawful possession of alcohol by a minor - the only offense for which the arrest had been made. But see, **Arizona v. Gant**, ___ U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) (*supra*).

People v. Montgomery, 112 Ill.2d 517, 494 N.E.2d 475 (1986) A defendant's fingerprints may be properly taken as part of a search incident to arrest.

People v. Hoskins, 101 Ill.2d 209, 461 N.E.2d 941 (1984) A search of defendant's purse was incident to arrest where the defendant fled and abandoned the purse during the arrest. In addition, even if the street search and seizure of the purse were unreasonable, the inevitable discovery exception would have applied because police would have routinely inventoried the purse at the police station. But see, **Arizona v. Gant**, ___ U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) (*supra*).

Illinois Appellate Court

In re M.G., 2022 IL App (4th) 210679 Counsel was not ineffective for failing to seek suppression of evidence seized incident to the minor's arrest. The police had probable cause to arrest the minor where, around 4 a.m., an officer observed a truck in the parking lot of a closed restaurant, with its hazard lights on and front-end damage. Cannabis was seen on the dashboard in plain view. A bystander gave the officer a description of the truck's driver and the direction he fled, and the officer located the minor nearby in some timber. The minor had a key to the truck around his neck. The officer took the minor into custody and searched his backpack, locating a half-full bottle of alcohol and 22 sealed packages of cannabis. On these facts, the officer had probable cause to arrest the minor for illegal possession of the cannabis in plain sight on the truck's dashboard. The subsequent search of the minor's backpack was a permissible search incident to arrest. Thus, a motion to suppress would have been meritless, and counsel was not ineffective for failing to file such a motion.

People v. Franklin, 2016 IL App (1st) 140059 A warrantless search is unconstitutional unless it falls within one of the three exceptions to the warrant requirement that are recognized in

Illinois: (1) search incident to arrest; (2) probable cause accompanied by exigent circumstances; and (3) consensual searches.

Investigating a theft, the police went to a motel room looking for the offender, DB. When they arrived, defendant was just leaving the room. Defendant told the police the room was rented in his name and DB was inside. When defendant let the police into the room, the officers saw DB sleeping in a bed and a bag of marijuana on the night-stand between the two beds. The officers recovered the marijuana and did a quick search of the room. An officer checked the ceiling tiles since that is a frequent place to stash contraband, but none of them had been disturbed.

When the officers radioed for a drug-sniffing dog, DB ran out of the room. The officers ran after him, leaving defendant alone. When the officers returned, they saw that the ceiling tiles in the bathroom had been moved. The officers handcuffed defendant, sat him on the bed, and then searched the area behind the tiles, where they found two guns.

The court held that the search of the area behind the tiles was illegal. First, the search was not a permissible search incident to arrest. A search incident to arrest only extends to the person arrested and the area within his reach. Here, the bathroom area was separate from the room where defendant had been arrested and handcuffed and thus was not within his immediate reach. The police may have had probable cause to search that area, but probable cause standing alone is insufficient to justify the warrantless search.

There were also no exigent circumstances justifying the search. Exigent circumstances exist where there is compelling need for prompt action and there is no time to obtain a warrant. Here, by the time the police searched the area behind the tiles, defendant was already in custody and handcuffed so there were no exigent circumstances.

Since the weapons recovered during the illegal search were the only evidence supporting defendant's unlawful use of weapons by a felon conviction, the court reversed outright defendant's conviction.

People v. Allen, 409 Ill.App.3d 1058, 950 N.E.2d 1164 (4th Dist. 2011) The court rejected the argument that the search of defendant's mouth exceeded the scope of a permissible **Terry** stop. The court concluded that based on the information known to the officers before the search of defendant's mouth, a reasonable person would have been justified in concluding that the defendant was involved in a criminal offense. Because the officers had probable cause to make an arrest, the search of the defendant's mouth was a valid search incident to arrest without regard to whether it would have been justified under **Terry**.

Defendant's conviction for unlawful possession of a controlled substance with intent to deliver was affirmed.

People v. Carter, 2011 IL App (3d) 090238 By statute, Illinois prohibits the use of strip searches in arrests for traffic, regulatory, or misdemeanor offenses, except for cases involving weapons or a controlled substance. 725 ILCS 5/103(c). The statute defines "strip search" as "having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such person." 725 ILCS 5/103-1(d). A strip search cannot be conducted unless there is a reasonable belief that the arrestee is concealing a weapon or a controlled substance. 725 ILCS 5/103(c). The search must be conducted by a person of the same gender as the arrestee, and on premises where the search cannot be observed by persons not physically conducting the search. 725 ILCS 5/103(e).

Defendant was arrested for driving on a suspended license. The arresting officer

squeezed defendant's crotch because it was a known spot for hiding illegal drugs, and then unzipped defendant's pants because the material did not "mesh" together. The officer removed a plastic bag containing drugs that he saw sticking out of a hole in defendant's clothing. Because defendant wore his pants low, his underwear was exposed prior to the search.

Based on this evidence, the court concluded that the officer did not conduct a strip search, as the officer did not arrange defendant's clothing so as to permit a visual inspection of his underwear. The court cautioned that a more intrusive search involving removal of defendant's clothing and full exposure of his underwear might not be permissible. Even if a strip search had been conducted, it would be authorized by statute as the officer had a reasonable belief that defendant was concealing a controlled substance.

Even assuming that the strip-search statute had been violated, its violation would not automatically result in application of the exclusionary rule. The dispositive question is whether the search, as whole, was reasonable under the Fourth Amendment, considering: (1) the scope of the intrusion; (2) the manner in which the search was conducted; (3) the justification for initiating the search; and (4) the place where it was conducted.

Although the search was conducted on a public street in daylight, the officer had a reasonable suspicion that defendant possessed contraband. Unzipping the defendant's pants and extracting readily accessible contraband did not exceed the scope of a search incident to a lawful arrest. Because defendant chose to dress in a manner that exposed his underwear, he cannot complain that the officer violated his privacy rights by exposing a portion of his underwear. There was also no indication that anyone other than the officer could see the portion of defendant's underwear exposed by the search. Therefore, the officer did not conduct an unreasonable search.

Generally, a court will not construe the state exclusionary remedy to be broader than the federal rule, unless the proponent of the expansion can show either that: (1) the framers of the 1970 constitution intended the expansion; or (2) denying the expansion would be antithetical to state tradition and value as reflected by longstanding case precedent. No argument was made that either exception applies to the statutory limitation of strip searches.

People v. Harris, 364 Ill.App.3d 1037, 848 N.E.2d 1048 (4th Dist. 2006) **Belton** has been extended beyond situations where the person arrested has committed a crime, and includes "arrests" that do not involve criminal activity, such as those for civil warrants.

People v. Gilbert, 347 Ill.App.3d 1034, 808 N.E.2d 1173 (4th Dist. 2004) The court rejected the argument that whenever police have a statutory right to arrest for a minor offense, they may do so and conduct a search incident to arrest. Although the U.S. Supreme Court has held that the Fourth Amendment does not prohibit arrests for traffic offenses, the Illinois Supreme Court has rejected the argument that in the absence of extenuating circumstances, a minor traffic violation justifies a custodial arrest.

There were no extenuating circumstances justifying a custodial arrest where the officer testified that he did not fear for his safety and that neither defendant nor his passengers acted suspiciously. The officer acknowledged that he observed no offense other than a broken taillight, for which he planned to write a warning. The court found that a "reasonable officer who did not fear for his safety and/or observe anything more suspicious than a taillight violation would not have made a full custodial arrest."

In addition, because defendant was not arrested for the taillight violation, the search could not be justified as incident to an arrest. Compare, **People v. Taylor**, 388 Ill.App.3d

169, 902 N.E.2d 751 (2d Dist. 2009) (neither the Fourth Amendment nor the Illinois Constitution were violated by a search incident to arrest for two petty offenses, although the officer made the arrest only because defendant could not post bond and did not issue citations for the petty offenses after discovering controlled substances during the search).

People v. Wither, 321 Ill.App.3d 382, 748 N.E.2d 336 (3d Dist. 2001) Where the officer did not make an contemporaneous search of the vehicle upon the arrest, but instead placed defendant in a squad car, waited until a canine unit arrived, and searched the automobile only after the canine search, the search "cannot be viewed as incidental to the arrest or justified by any exigent circumstance."

People v. Allibalogun, 312 Ill.App.3d 515, 727 N.E.2d 633 (4th Dist. 2000) The "search incident to arrest" doctrine applies where an individual is arrested under a civil warrant arising from the failure to appear in a civil case, as well as where the arrest is for a violation of the Criminal Code.

People v. Trejo, 311 Ill.App.3d 816, 725 N.E.2d 1289 (2d Dist. 2000) An officer violated **Belton** where he believed that a weapon was between the rear seat cushion and the trunk liner, but seized the weapon by opening the trunk and removing the liner. The officer testified that he retrieved the weapon through the trunk because he was afraid the weapon might be booby-trapped.

The purpose of **Belton** was to create a "bright-line" rule authorizing a search of a passenger compartment incident to an arrest. Permitting entry of the trunk to reach the passenger compartment would both expand the **Belton** rule and also "blur the bright line" it sought to create.

People v. Alexander, 272 Ill.App.3d 698, 650 N.E.2d 1038 (1st Dist. 1995) Where defendant was arrested on warrant, examination of the VIN numbers on nearby auto parts could not be justified as a search incident to arrest. The "search incident to arrest" doctrine permits a search to be performed contemporaneously with an arrest, but is limited to the area under the arrestee's control and with the purpose of preventing the seizure of a weapon or destruction of evidence. It clearly was unnecessary for police to examine VIN plates on automobile parts to prevent defendant from seizing a weapon or destroying evidence.

Furthermore, until the officers examined the VIN numbers, they had no reason to suspect that the parts might be evidence of a crime.

People v. Hassan, 253 Ill.App.3d 558, 624 N.E.2d 1330 (1st Dist. 1993) Where a criminal defendant is arrested in his home, the "search incident to arrest" doctrine permits a search of the immediate area from which he could obtain a weapon or destroy evidence. However, where defendant ran outside while a police officer was trying to pull the door open, and the officer was never in the home before the arrest, the interior of the home was not an area from which defendant could obtain a weapon or destroy evidence. Thus, the "search incident to arrest" doctrine did not apply to items seized after the officer took the defendant back inside the house.

People v. Olson, 198 Ill.App.3d 675, 556 N.E.2d 273 (2d Dist. 1990) Where the defendant was arrested in a motel room, the "search incident to arrest" doctrine applied to a search under a pile of clothes about five feet from defendant, the search of a desk drawer between

two beds, and the search of a table.

People v. Scudder, 175 Ill.App.3d 798, 530 N.E.2d 533 (2d Dist. 1988) Search of defendant's car (incident to his arrest) and seizure of drug syringes was unlawful because police "deliberately passed up a convenient opportunity to arrest defendant in order to enable them to later make the arrest in a place they desired to search."

§43-2(d)(2)
Inventory Searches

United States Supreme Court

Colorado v. Bertine, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987) Pursuant to standardized procedures, police may inventory closed containers in impounded vehicles. See also, **Florida v. Wells**, 110 S.Ct. 1632, 109 L.Ed.2d 1 (1990) (police acted unlawfully by opening a locked suitcase in the trunk of an impounded vehicle where the police department did not have any policy regarding this situation); **People v. Lear,** 217 Ill.App.3d 712, 577 N.E.2d 826 (5th Dist. 1991) (search of the trunk of a car was an appropriate inventory search after the driver was arrested for a traffic offense, where an officer testified that the search "was done pursuant to standard procedure [and such] testimony validates opening the trunk"; however, it was improper to open a drawstring bag found in the trunk where there was no evidence that it was standard procedure to open closed containers in all impounded vehicles).

Illinois v. Lafayette, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983) It is reasonable for police to search the personal effects of an arrestee as part of the routine administrative procedure incident to booking and jailing. Such an inventory search is not made unlawful by the fact that less intrusive means are available to protect the property.

South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976) Police may inventory the contents of motor vehicles that are lawfully taken into police custody. Not only is the expectation of privacy with respect to automobiles "significantly less" than that relating to one's home or office, but a routine police practice of securing and inventorying impounded vehicles is in response to three distinct needs: (1) protection of the owner's property, (2) protection of police against claims or disputes over lost or stolen property, and (3) protection of the police from potential danger.

Illinois Supreme Court

People v. Gipson, 203 Ill.2d 298, 786 N.E.2d 540 (2003) The "inventory search" exception, which permits a lawfully impounded vehicle to be inventoried, serves three objectives: (1) protection of the owner's property, (2) protection of the police against claims of lost or stolen property, and (3) protection of the police from potentially dangerous items. The exception applies only where police conduct the inventory pursuant to standard police procedures.

There is no requirement that the standard procedures be in writing, however; an officer's testimony that he was following standard procedures by conducting an inventory may constitute an adequate basis for a trial court to find that the department's normal procedures permitted inventory searches.

Even where police have a written policy on inventory searches, that policy need not necessarily be admitted at the suppression hearing in order for a trial court to find that an inventory search was valid. Where the officer gave clear and unrebutted testimony of the

standard procedures for inventory searches, and defendant offered no evidence that the inventory search was improper, the officer's oral testimony about the written policy was sufficient to sustain the search.

In **Florida v. Wells**, 495 U.S. 1 (1990), the Supreme Court held that a standard police policy for inventory searches might mandate that closed containers be left closed, or grant discretion to police to decide which containers should be opened. Here, the officer who conducted the inventory testified that the State Police policy on inventory searches required that the passenger compartment and truck be checked for valuables and that any valuables be listed on the tow inventory sheet. Because such a policy "[o]bviously . . . requires the police to open any containers that might contain valuables," items found in a closed plastic bag in the trunk of the defendant's car need not be suppressed.

People v. Hundley, 156 Ill.2d 135, 619 N.E.2d 744 (1993) There are three requirements for a valid inventory search of an impounded vehicle: (1) the impoundment of the vehicle must be lawful, (2) the purposes of the inventory must be to protect the owner's property, protect the police from claims of lost or stolen property, and protect the police from danger, and (3) the search must be conducted in good faith pursuant to reasonable, standardized procedures. Although a standard policy governing inventory searches must be in place, a police officer may be given "sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself."

Section 13-4(a)(2) of the General Order of the Illinois State Police qualifies as a standardized inventory procedure. In addition, under the "unique circumstances of the towing of an unattended vehicle following a wreck," it was reasonable to open a case which, in the officer's experience, was of a type sometimes used to carry driver's licenses and cash.

People v. Hamilton, 74 Ill.2d 457, 386 N.E.2d 53 (1979) While inventorying the defendant's property after a traffic accident, hospital personnel opened a locked briefcase and found a bag containing what appeared to be heroin. The substance was returned to the briefcase.

A police officer who arrived at the hospital was told by a nurse that "you better check the briefcase." The police officer opened the briefcase and found the heroin.

The Supreme Court concluded that the officer's search of the briefcase was not justified under the "inventory" exception - the briefcase was not opened by the officer for the purpose of inventorying its contents, and was not opened to protect police officers from danger, protect defendant's property, or protect officers from claims that property had been lost or stolen. The briefcase posed no threat to police and could have been protected by placing it in a locked locker or storage room. In addition, the officer could have been protected against a claim of theft by locking the briefcase and leaving the key at the hospital with the defendant's other personal belongings, by sealing the briefcase with tape and initialing it, or by sealing it in some other manner while in the presence of hospital personnel.

People v. Smith, 44 Ill.2d 82, 254 N.E.2d 492 (1969) Where the accused was found semiconscious and bleeding from gunshot wounds, police acted reasonably by securing and inventorying his wallet. Thus, evidence found in the wallet was admissible.

Illinois Appellate Court

People v. Nash, 2024 IL App (4th) 221078 Defendant was charged with various offenses arising out of his possession of heroin, cocaine, and a loaded handgun, discovered following a

traffic stop. On appeal, defendant argued that his trial attorney was ineffective for failing to seek suppression of the gun and drugs on the ground that the inventory search which led to their discovery was the product of an arrest based on an invalid warrant. Specifically, during the traffic stop, police learned of a warrant for defendant's arrest through a LEADS search, but it was later determined that the warrant had been withdrawn several months before the traffic stop. The warrant was the only basis for defendant's arrest and the subsequent inventory search. Defendant argued that because the warrant was inactive, his arrest violated the fourth amendment and thus the evidence found during the inventory search should have been suppressed.

The purpose of the exclusionary rule is to prevent and deter police misconduct. Here, the police acted properly in relying on the validity of the warrant in LEADS. Indeed, the arresting officer testified that he went a step further and requested that dispatch inquire about the validity of the warrant with the issuing county before initiating the arrest. The police had no way of knowing that there had been a clerical error which led to the warrant's mistakenly remaining active in LEADS after it had been withdrawn. Accordingly, because there was no misconduct by the police, the purpose of the exclusionary rule would not be served by ordering the suppression of evidence here. A motion to suppress on this basis would have failed, and thus defense counsel was not ineffective for not pursuing this ground in the trial court.

People v. Smith, 2023 IL App (3d) 230060 A vehicle in which defendant was a passenger fled from an attempted traffic stop, disregarding a traffic light and stop sign along the way. The police did not pursue the vehicle, but instead went to the residence of one of the other passengers (Coffie) and waited for the vehicle to arrive there. When it did, the officers told the vehicle's owner that they were going to tow the vehicle for an "Article 36 seizure" because it had been used to commit the offense of aggravated fleeing and eluding. An officer then searched the vehicle before a tow truck arrived, finding a loaded handgun on the rear driver's side seat, under a large bag. Defendant was subsequently charged with aggravated unlawful use of a weapon.

Defendant filed a motion to suppress, arguing that the warrantless search violated the fourth amendment because the police lacked consent or probable cause, and the search was not justified as a search incident to arrest or an inventory search. The circuit court granted defendant's motion, finding that the seizure was a pretext where the initial decision to stop the vehicle for an equipment violation (no front license plate) was actually based on the officer's observation that defendant and Coffie were in the vehicle and were suspected of having been involved in a shooting a month prior. The court also noted that the officer's tow report did not indicate that the vehicle was being towed for aggravated fleeing and eluding, but rather that it was towed due to the weapons arrest.

On appeal, defendant conceded that the seizure of the vehicle at Coffie's residence was lawful because the police had probable cause to believe it had been used to commit aggravated fleeing and eluding based upon their personal observations. But, defendant argued that the subsequent search of the vehicle was not a valid inventory search, and the appellate court agreed. The officer's invocation of an "Article 36 seizure" was pretext for an investigatory search where the record demonstrated that the police never intended to seize the vehicle for asset forfeiture under that policy and instead used the procedure "as a ruse to conduct a search for contraband." There was no evidence that the officer followed departmental inventory procedure where no inventory log or seizure forms were introduced and where the tow report referenced only the weapons offense.

Additionally, the appellate court found that the State had forfeited any argument that the search should be sustained under the automobile exception to the warrant requirement. While the court concluded that the State had preserved that argument in the trial court, it found the argument forfeited on appeal under Supreme Court Rule 341(h)(7). The State's argument on this point consisted of a single paragraph in its brief and was not supported by pertinent legal authority.

People v. Partin, 2022 IL App. (2d) 210445 After a State interlocutory appeal, the Appellate Court held that the trial court erred in suppressing contraband found during an inventory search of defendant's truck. Police lawfully pulled over the truck after witnessing the failure to use a turn signal. The police learned that the driver had an outstanding warrant, so he was placed under arrest. Defendant, who was in the passenger seat, owned the truck, but his license was suspended. A backseat passenger also lacked a license. The officers therefore decided to impound and tow the car. As they did so, defendant's wife, a co-owner of the vehicle who claimed to have a valid license, arrived at the scene and asked to take custody of the truck. The police denied her request and in the ensuing inventory search, found methamphetamine.

The trial court suppressed the evidence, finding the police lacked grounds to impound the truck and conduct an inventory search, because the ordinance allowing for the impounding of a vehicle was discretionary and defendant's wife was available to remove the truck from the road.

A warrantless search is *per se* unreasonable only if it does not fall within one of the few exceptions to the warrant requirement, one of which is an inventory search of a lawfully impounded vehicle. The threshold issue in considering whether the police have conducted a valid inventory search incident to a tow is whether the impoundment of the vehicle was proper.

Police may generally impound an abandoned vehicle that is parked illegally or otherwise causing an obstruction. That was not the case here. But courts have sanctioned other grounds for towing, as long as the officers' rationale is reasonable. Here, a city ordinance specifically provided the police with authority to impound a car driven by the subject of an outstanding arrest warrant. Although the defendant's wife arrived at the scene, this did not negate the officers' discretion, as she arrived after the decision had been made, and regardless, defendant never provided proof that she had a valid driver's license.

People v. Davis, 2019 IL App (1st) 181492 The Appellate Court affirmed the suppression of a gun found in a car following impoundment. The defendant had been arrested for driving on a revoked license, and police impounded the car before discovering a gun under the driver's seat. Defendant moved to suppress, arguing that the Vehicle Code allows for automatic impoundment only if the defendant violates the Code and also violates the mandatory insurance requirement. Here, officers testified that defendant did not produce an insurance card. But the burden was on the State to prove that police *asked* defendant for proof of insurance. No witnesses at the suppression hearing testified that defendant had been asked, and therefore the State failed to prove that defendant actually lacked insurance such that impounding of the vehicle was legal.

People v. Ferris, 2014 IL App (4th) 130657 The Appellate Court upheld the suppression of drugs found in defendant's book bag located in the trunk of a friend's car. Police stopped the car for speeding and the driver did not completely pull the car onto the shoulder, even though there was ample room, so it remained partially in the roadway. The officer arrested the driver

for driving on a suspended license, and determined from a field sobriety test that defendant was unfit to drive. Defendant refused to allow the officer to search the car. Against the wishes of defendant, the officer had the car towed, and transported the driver to the police station in a nearby town.

The police searched the driver's purse at the station and found drugs. The police placed a hold on the car and arranged for a dog to conduct a drug sniff of the car. After the dog alerted during the drug sniff, the police obtained a search warrant, searched the car and its contents, and discovered drugs in defendant's book bag.

The court first held that defendant had a legitimate expectation of privacy in her friend's car. Although defendant had no ownership interest, he was legitimately present in the car during the road trip. He had a possessory interest in his book bag, clothing and other personal items stored in the trunk. Under these facts, defendant had an expectation of privacy in the car that society would regard as reasonable.

The court also held that the officer unreasonably prolonged the seizure of the car by towing it and later placing a hold on it. The reason for the traffic stop was speeding. Once the officer arrested the driver, however, the seizure of the car should have ended unless towing the car was a reasonable exercise of the community-caretaking function.

Under the caretaking function, there must be a standard police procedure that authorizes towing. Otherwise, the police may use unbridled discretion to create an opportunity for an inventory search. In the present case, the court found it unclear whether any statute or other standard procedure authorized towing a mechanically sound vehicle attended by its owner.

The police do have authority to remove cars that impede traffic or threaten public safety, and here the car was partially parked in the roadway. But that just happened to be where Biddle stopped the car, and the officer could give no reason why he did not have her pull completely onto the shoulder, where it would have been legal to leave the car for up to 24 hours. If the justification for the tow was the location of the car in the roadway, then it was the officer's responsibility to have Biddle pull the car completely onto the shoulder. Alternatively, the officer and the occupants could have pushed the car onto the shoulder. Because the officer did neither of these things, the State cannot rely on illegal parking as a justification for community-caretaking.

The court also found that the police further prolonged the seizure by placing a hold on the car while waiting for the drug-sniffing dog. The discovery of contraband in the driver's purse did not provide grounds for refusing to relinquish the car to its owner.

If the police had not towed the car and placed a hold on it, they never would have been able to conduct the drug sniff, and they would have never acquired probable cause for the search warrant, which in turn led to the search of the car and the book bag in the trunk. The discovery of drugs inside defendant's book bag was thus the fruit of the illegal seizure of the car. The court affirmed the suppression of the evidence.

People v. Spencer, 408 Ill.App.3d 1, 948 N.E.2d 196 (1st Dist. 2011) An inventory search is a judicially-created exception to the warrant requirement of the Fourth Amendment. A valid inventory search requires that: (1) the vehicle is lawfully impounded; (2) the purpose of the search is to protect the owner's property, protect the police from claims of lost, stolen, and vandalized property, or guard the police from danger; and (3) the search is conducted in good faith pursuant to reasonable standardized police procedures, not as a pretext for an investigatory search.

Defendant's vehicle was parked in a public high school parking lot when it was impounded. Impoundment was consistent with police regulations, which mandated

impoundment except where the vehicle is parked in the private driveway or parking lot of the arrestee, or in a parking lot open to the public with the permission of the shift supervisor and the vehicle owner. The impoundment was not lawful solely because it was consistent with police procedures, however. To so hold would allow the police to evade the requirements of the Fourth Amendment by promulgating regulations authorizing inventory searches after every arrest.

The police have the authority to impound vehicles that impede traffic or threaten public safety and convenience. They may not impound a vehicle merely because it would be left unattended, unless it is illegally parked.

The court took judicial notice of the fact that the school parking lot was public property, but refused to take judicial notice that the lot was not open to the public and was reserved for registered parking by students and faculty, because those facts were not capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy. Therefore, the State had no evidence that defendant's car was illegally parked in the school parking lot. The police admitted the car was not impeding traffic. The court refused to assume that the car's presence in the school lot endangered any students. Therefore, the car was not legally impounded as to support an inventory search.

Since the State would be unable to prove that defendant unlawfully possessed a controlled substance without the cocaine recovered during the inventory search of the car, the court reversed defendant's conviction.

People v. Nash, 409 Ill.App.3d 342, 947 N.E.2d 350 (2d Dist. 2011) The threshold issue in considering whether the police have conducted a valid inventory search incident to a tow is whether impoundment of the vehicle was proper. Impoundments may be in furtherance of public safety or community-caretaking functions, such as the removal of damaged or disabled vehicles.

Zion Police Department guidelines require an officer to impound a vehicle and perform an inventory search when the driver lacks a valid license, there is no proof of insurance, and no other driver is available to take the vehicle. The court found these guidelines to be consistent with the Illinois Vehicle Code. The Code prohibits any person from operating a motor vehicle designed to be used on a public highway unless the vehicle is covered by a liability insurance policy. 625 ILCS 5/7-601(a); 625 ILCS 5/3-707(a). Every operator of a motor vehicle is required to carry evidence of insurance within the vehicle and to display it upon request of the police. 625 ILCS 5/7-602. Any person who fails to comply with such a request "shall be deemed to be operating an uninsured motor vehicle." 625 ILCS 5/3-707(b). The Code directs that a law enforcement officer immediately impound the vehicle of any person driving with a suspended or revoked license "who is also in violation of Section 7-601 of this Code relating to mandatory insurance requirements." 625 ILCS 5/6-303(e).

The police stopped defendant for driving without a seat belt. Although she told the officer she had a license and insurance, she was unable to produce either, and the officer discovered her license was suspended, although the parties stipulated at the suppression hearing that she did in fact have insurance. The court rejected the defense argument that impoundment was not statutorily authorized by §6-303(e) because she violated the insurance *card* mandate of §7-602, not the insurance *policy* mandate of §7-601 referenced by §6-303(a). The Appellate Court rejected this argument, reasoning that because she did not show evidence of insurance, she was deemed by §3-707(b) to be operating an uninsured vehicle, and operating a vehicle without liability insurance is a violation of §7-601.

Without proof of liability insurance, defendant's car was tantamount to a disabled

vehicle because it could not be operated until proof of insurance was shown in accord with §6-303(e). The impoundment thus furthered police community-caretaking functions and was reasonable under the Fourth Amendment.

There was a teenaged passenger in the car, who appeared to be of legal driving age, but there was no evidence that she was licensed or had a valid insurance card, or could have obtained proof of insurance from defendant's home, which was four blocks away from the location of the stop. Neither the Vehicle Code nor Zion Police Department policy require the police to investigate the presence of a licensed driver and facilitate the showing of proof of insurance. Even if the police were required to ask if a passenger possesses a valid driver's license, the reason for the tow (failure to show proof of insurance) could not be cured. Neither the teenager nor anyone else coming to defendant's aid could operate the vehicle without liability insurance, and absence of insurance was established by defendant's inability to produce an insurance card.

Because the impoundment was lawful, the Appellate Court reversed the Appellate Court's order suppressing evidence recovered from the vehicle during an inventory search.

People v. Wells, 403 Ill.App.3d 849, 934 N.E.2d 1015 (1st Dist. 2010) The police received a call of a domestic disturbance at 2 a.m. The caller reported that her former boyfriend was ringing her bell and "threatening to kill her over the phone," but that she did not want him arrested. The police saw defendant walking down the street when they responded, and decided to stop defendant and conduct a field interview.

Before asking any questions, the police handcuffed the defendant, then patted him down and found a gun in his sock. The court concluded that the defendant was arrested without probable cause, because there were no circumstances that would justify handcuffing defendant in order to conduct a **Terry** stop. The police asked the defendant at the police station following his arrest if he had a car. They found defendant's car illegally parked and had it towed. The police searched the car before it was towed and found ammunition. The court concluded that the bullets were the fruit of the illegal arrest. There was no break in the chain of events sufficient to attenuate the recovery of the bullets from the illegal arrest. Each event followed and flowed from the initial illegality.

The inevitable discovery doctrine permits the admission of evidence where the State can show that the evidence would invariably have been discovered without reference to the police error or misconduct. The doctrine had no application to the bullets where their discovery was inextricably linked to the illegal arrest.

The search of the car was not justified as an inventory search. The towing of an illegally parked car provides no reason to conduct an inventory search or provide independent probable cause to search the car.

People v. Schultz, 93 Ill.App.3d 1071, 418 N.E.2d 6 (1st Dist. 1981) Where defendant's car was lawfully parked in a parking lot, the police lacked authority to take it into custody after arresting defendant inside a tavern. Thus, the subsequent inventory of the car was unlawful.

People v. Mason, 403 Ill.App.3d 1048, 935 N.E.2d 130 (3d Dist. 2010) A vehicle may be searched incident to arrest only if: (1) there is reason to believe that the defendant might return and obtain weapons or destroy evidence, or (2) it is reasonable to believe that the vehicle contains evidence of the crime for which the arrest was made. **U.S. v. Gant**, 556 U.S. ___, 129 S.Ct. 1710, ___ L.Ed.2d ___ (2009).

A car could not be searched incident to an arrest for DUI where: (1) the driver was secured in a squad car and did not have access to the car, and (2) the trial court found that

the officers lacked a reasonable belief that the car contained evidence of DUI, and that finding is entitled to deference.

However, the court rejected the trial court's holding that **Gant** precludes an inventory search of a car that is to be impounded after the driver is arrested.

An inventory search is proper where: (1) impoundment of the vehicle is reasonable under the circumstances, and (2) the purposes of the search are to protect the defendant's property, prevent false claims of lost or stolen property, and protect police from dangerous items. An inventory search must be conducted in good faith and not as a pretext.

The fact that a legally parked vehicle will be left unattended upon the driver's arrest does not, in and of itself, justify impoundment. However, as part of its community caretaking function, law enforcement has authority to impound vehicles which impede traffic or threaten public safety. Although the decision to impound a vehicle must be based on reasonable procedures, such procedures need not be written.

The arresting officer acted reasonably by deciding to impound and inventory defendant's car. The officer testified that police are required to tow an uninsured vehicle upon the arrest of the driver for DUI, although he was uncertain whether that policy was based on state law or local regulation. In addition, because state law prohibits operation of an uninsured vehicle on a public highway, impounding the car was a reasonable exercise of the officer's community caretaking function. Finally, the officer gave detailed testimony about the procedure used to conduct an inventory search.

The trial court's order, which suppressed cocaine found during the inventory search of defendant's car, was reversed. The cause was remanded for further proceedings.

People v. Clark, 394 Ill.App.3d 344, 914 N.E.2d 734 (1st Dist. 2009) Where defendant had been placed in the backseat of a police car by the time his car was searched, and there was no reason to believe that evidence of failing to come to a complete stop would be found by searching the vehicle, a search of the rear seat and ashtray was not valid incident to the arrest.

The court rejected the State's argument that the search was valid as an inventory search. A valid warrantless inventory search must satisfy three criteria: (1) the original impoundment of the vehicle must have been lawful; (2) the purpose of the inventory search must be either to protect the owner's property, protect the police against false claims of lost, stolen or vandalized property, or protect the police from dangerous items in the car; and (3) the inventory search must be conducted in good faith pursuant to reasonable, standarized police procedures and not as a pretext. Standarized police procedures need not be in writing; however, there must be evidence that the police in fact acted according to standarized department procedures.

An inventory search is not justified merely because a car will be left unattended after the arrest of the sole occupant for a traffic offense. An inventory stop was not justified where the record showed only that the vehicle was stopped on a residential street, but no evidence of its exact location, that it was illegally parked, or that it would be a threat to public safety or convenience if left alone. The court also noted that the arresting officer testified only that he searched the car because there was no passenger available to drive and the car was going to be towed. Although police department regulations required an inventory search of a vehicle which was to be towed, the officer did not testify that standard police procedure required him to tow a vehicle that would be left unattended when the driver was arrested. Thus, there was insufficient evidence to show that the search was in accordance with standardized police procedures or that the decision to impound was lawful.

The trial court's order denying defendant's motion to quash arrest and suppress evidence was reversed. Because the State would be unable to prove beyond a reasonable doubt that defendant unlawfully possessed a controlled substance where the substance in question had been suppressed, the conviction and sentence were reversed outright.

People v. Brink, 174 Ill.App.3d 804, 529 N.E.2d 1 (4th Dist. 1988) Police did not conduct a valid inventory search where they looked through defendant's U-Haul after his arrest, but left the vehicle unlocked on the premises overnight and without inventorying the contents of the cab. In addition, no evidence was presented concerning whether standard police procedures were employed.

People v. Reincke, 84 Ill.App.3d 222, 405 N.E.2d 430 (5th Dist. 1980) After defendant was involved in an auto accident and taken to a hospital, it was reasonable for a police officer to infer that firearms were present when he looked through the window of defendant's car and saw several open boxes of ammunition. Because the auto would be towed to an unguarded location and would be vulnerable to intrusion, the officer reasonably conducted a limited search for firearms.

However, evidence obtained in a second search two hours later - after officers learned that the weapons found in the first search were the proceeds of a theft - was not discovered through a proper inventory search. Because the second search had an investigatory motive, the evidence from that search must be suppressed.

§43-2(d)(3)
Administrative Searches

United States Supreme Court

City of Los Angeles v. Patel, 576 U. S. ___, 135 S.Ct. 2443, 192 L.Ed.2d 435 (2015) A Los Angeles city ordinance required that hotel operators record certain guest information including, among other things, name and address, vehicle information, and payment information. A group of hotel operators brought a Fourth Amendment facial challenge to the requirement that the records be made available for inspection on demand. The court concluded that the ordinance violated the Fourth Amendment.

Generally, warrantless searches are improper unless an exception to the warrant and probable cause requirements applies. The court concluded that the search of hotel records qualifies for one such exception - for administrative searches. For the administrative search exception to apply where neither consent nor exigent circumstances are present, the subject of the search must be given the opportunity to obtain precompliance review before a neutral decision maker. Because the statute here did not provide for any avenue of obtaining precompliance review, it was unconstitutional on its face.

The court emphasized that a hotel owner need only be given an opportunity to have precompliance review before a judicial decision maker. Such review need occur only if the hotel operator objects to allowing an inspection of the records.

The court rejected the argument that allowing for precompliance review would be unnecessarily burdensome for police, noting that officers may issue an administrative subpoena on the spot without a showing of probable cause. The subject of the search could then move to quash the subpoena before the search occurs. The court also emphasized that the hotel operators did not challenge the requirement that they keep the records in the first place and that if there was a reasonable suspicion that tampering might occur, officers could

safeguard the record during the review.

The court rejected the argument that hotels are part of a "closely-regulated industry" and therefore subject to relaxed Fourth Amendment standards. The court noted that only four industries have been recognized as closely-regulated and held that nothing inherent in the operation of a hotel poses a clear and significant risk to public welfare.

Michigan v. Clifford, 464 U.S. 287, 104 S.Ct. 641, 78 L.Ed.2d 477 (1984) A fire in defendant's house was extinguished about 7:00 a.m., and the firefighters left. Fire investigators arrived several hours later, seized a fuel can which a firefighter had placed on the driveway, and made a warrantless, non-consensual search of the basement. After finding more fuel cans, wires and a timer in the basement, the investigators made an extensive search of the rest of the house.

The Supreme Court held that the evidence other than the fuel can on the driveway must be suppressed. The search of the basement was unlawful because there were neither exigent circumstances nor consent. Because the investigators' primary purpose was to ascertain the cause of the fire, they were required to obtain an administrative warrant.

The search of the rest of the house was for the purpose of gathering evidence of a crime, not to ascertain the cause of the fire. Thus, the investigators were required to obtain a criminal warrant. The seizure of the fuel can from the driveway was proper; the can was in plain view and had been discovered by a firefighter while fighting the fire.

Marshall v. Barlows, 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978) Inspection of business premises under the Occupational Safety and Health Act comes within the Fourth Amendment, and requires a warrant (unless the employer consents).

Probable cause, in the criminal law sense, is not required for the issuance of a warrant for an administrative search. Instead, probable cause justifying an administrative warrant may be based on specific evidence of an existing violation or a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to a particular establishment. For example, a "warrant showing that a specific business has been chosen for an OSHA search on the basis of a general administrative plan for the enforcement of the Act derived from neutral sources such as . . . dispersion of employees in various types of industries across a given area, and the desired frequency of searches in any of the lesser divisions of the area, would protect an employer's Fourth Amendment rights."

The Court rejected the contention that the protections afforded by a warrant are so marginal that the administrative burdens of the warrant process are unjustified. A warrant advises the owner of the scope and object of the search, and serves important interests by providing assurances from a neutral officer that the inspection is reasonable under the constitution, authorized by statute, and pursuant to an administrative plan containing specific neutral criteria. See also, **U.S. v. Biswell**, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972) (Fourth Amendment was not violated by the warrantless search of a licensed gun dealer's locked storeroom, during business hours, as part of an inspection procedure authorized by a federal gun control act).

Michigan v. Tyler, 436 U.S. 499, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978) Entry onto premises to fight a fire may be made without a warrant, and once on the premises officials may remain for a reasonable time to investigate the cause of the fire. Thereafter, additional entries to investigate the cause of the fire must be pursuant to the warrant procedures governing administrative searches.

Evidence of arson discovered in the course of such investigations is admissible at trial, but if the investigating officers find probable cause to believe that arson has occurred and require further access to gather evidence for a possible prosecution, they may obtain a warrant only upon a traditional showing of probable cause applicable to searches for evidence of crime.

Where firemen departed from the scene at 4:00 a.m. because of poor visibility due to darkness, steam and smoke, and returned shortly after daylight to continue their investigation, a warrant was not required for a re-entry that was "no more than an actual continuation of the first" entry. However, subsequent entries after that day were "clearly detached from the initial exigency" and required warrants.

Wyman v. James, 400 U.S. 309, 91 S.Ct. 381, 27 L.Ed.2d 408 (1971) Home visits by case workers, as a condition for state AFDC programs, were not "searches."

Camera v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967) Inspection of private premises to enforce fire, health or housing regulations is subject to the Fourth Amendment.

Illinois Supreme Court

People v. Holloway, 86 Ill.2d 78, 426 N.E.2d 871 (1981) Where a fire at the defendant's home was extinguished by 7:00 a.m., warrantless entries later in the day by a Fire Marshall investigator were improper. Fire officials do not need a warrant to "remain on the premises to continue, or enter to begin, a prompt investigation into the cause of a fire." In addition, a warrantless entry made after a fire has been extinguished may be reasonable where it is in furtherance of an investigation that started promptly "in response to exigent circumstances created by or discovered during the fire itself." However, a warrantless entry is improper once the fire is out and the exigency has abated.

Because the firemen left the scene "apparently satisfied that no danger to the public lurked in the smoldering remains" and that no exigent circumstance required an immediate investigation, there was no emergency situation or exigent circumstance to justify warrantless entries by a fire investigator later in the day.

Illinois Appellate Court

People v. Mueller, 2021 IL App (2d) 190868 A blood draw taken by medical personnel following defendant's car accident did not violate the Fourth Amendment. The medical personnel were not State actors, and took the blood for medical reasons, not at the behest of the police. Section 11-501.4-1(a) of the Illinois Vehicle Code, which compels the release of the blood test results to law enforcement, does not create Fourth Amendment implications, because it does not require the draw or otherwise transform the medical personnel into State actors.

People v. Bujari, 2020 IL App (3d) 190028 A state trooper performed a "Level 3" commercial vehicle inspection on a semi-truck driven by defendant. These inspections authorize an officer to request documentation from a truck driver to ensure compliance with regulations. During the inspection, the officer noticed irregularities in the closing and locking of the truck's rear doors, and in the driver's log book. Nevertheless, he handed the defendant his report and told him he was free to go. But he then asked consent to conduct a dog sniff. Defendant both protested and consented, but ultimately got in the truck to leave. As defendant prepared the

truck to leave, the officer escorted his canine around the vehicle and the canine alerted. The officer arrested defendant. Before trial, a motion to suppress was denied and defendant was convicted of possession with intent to deliver more than 5000 grams of cannabis.

The Appellate Court held that this encounter did not violate the Fourth Amendment. First, the initial encounter was a valid inspection under the administrative code, and administrative searches implicate lesser privacy concerns. Moreover, the court found that the officer had reasonable suspicion to prolong the stop due to the irregularities he discovered during the inspection. Nevertheless, the officer did not prolong the stop, instead telling defendant he was free to go. Thus, at the time of the dog sniff, defendant was not detained. Dog sniffs occurring without a seizure do not implicate the Fourth Amendment.

People v. Woods, 2019 IL App (5th) 180336 Police responded to a call of an unattended child in a residence. The officers knocked and rang the doorbell to the home, but nobody answered and they did not hear anything suspicious. The citizen who made the report then directed the officers to a side window, accessible only from inside the home's fenced backyard, and the officers looked through that window and observed a baby in a crib inside the home. When the adult residents arrived home a short time later, the police followed them into the house and into the room where the baby was located. The trial court granted defendant's motion to suppress finding no justification for the officers' warrantless entry to the backyard and the home.

The State conceded that the police entered both the curtilage and the home itself without a warrant, but argued that the actions were part of the officers' community caretaking function. The Appellate Court agreed and reversed. Community caretaking is an exception to the warrant requirement where there is an objective showing that the police are performing some function other than investigating a crime and the search or seizure is undertaken to protect the safety of the general public.

Here, the police were acting out of concern for an unattended infant. While there might also be criminal conduct associated with such a situation, the underlying concern need not be completely divorced from any potential criminal investigation to qualify as community caretaking. And, protection of the public includes the need to seek information about an individual's well-being, such as the unattended infant in this case. The concern for the child's well-being did not end when the residents arrived home, so the further intrusion into the home to check on the child was also justified as community caretaking.

People v. Lee, 2014 IL App (1st) 130507 Administrative searches as well as searches for evidence of crime are included within the scope of the Fourth Amendment's protection against unreasonable searches and seizures. Warrantless searches of commercial premises are generally unreasonable whether they are traditional searches seeking evidence of crimes or administrative inspections designed to enforce regulatory statutes. However, a statutory warrantless administrative inspection scheme may satisfy the Fourth Amendment where: (1) a substantial government interest informs the regulatory scheme pursuant to which the inspection is made; (2) the warrantless inspection is necessary to further the regulatory scheme; and (3) the statute's inspection program provides a constitutionally adequate substitute for a warrant in that it limits the discretion of the inspecting officers and provides that the search is being performed under the law and is properly defined in scope. (**New York v. Burger**, 482 U.S. 691 (1987)).

An administrative inspection scheme may not be used as a subterfuge to search for evidence of criminal violations. If the primary object of the search is to gather evidence of criminal activity, a criminal search warrant must be obtained based on a showing of probable

cause. By contrast, evidence of criminal activity which is discovered during the course of a valid administrative search may be seized under the plain view doctrine. Whether a purported administrative search is merely a pretext for a criminal investigation is a factual question.

Here, the court affirmed the trial court's finding that an administrative search of defendant's pain clinic, purportedly for the purpose of investigating Medicare billing, was a pretext to search for evidence of crimes. Although defendant was told that the audit concerned Medicare billing, the company that contracted to do the audit knew that the procedure was requested by law enforcement and was for the purposes of "investigation and development." The audit company also knew that a criminal investigation of defendant was being conducted by the FBI and Office of the Inspector General of the Department of Health and Human Services, and the chief investigator for the audit company discussed the case several times with FBI agents. Furthermore, the company complied with the FBI's request to delay the on-site audit because the FBI believed that its investigation would be "more fruitful if [defendant] is unaware of any type of investigation. . . ."

In addition, the audit company agreed with the FBI's request to have undercover agents present during the audit, although that request was subsequently denied by the U.S. Attorney's office. The auditors briefed law enforcement agents every day concerning the progress of the audit, and agreed to the agents' requests for documents which the auditors had obtained.

The court found that the record supported the trial court's finding that there was a "tightly interwoven relationship" between the FBI, the Office of the Inspector General, and the company which performed the on-site audit. The court also found that the audit was controlled and influenced by law enforcement agents, that the person in charge of the on-site audit admitted that the objective was to substantiate allegations against defendant, and that the intent of the auditors was to refer their findings to law enforcement agencies.

In addition, the audit went far beyond the medical and billing records that would have been involved in the stated purpose of the search, and included copies of personnel files, payroll records, and appointment books. Under these circumstances, the purpose of the audit was to aid law enforcement and not merely to gather evidence of improper billing practices.

The court rejected the State's argument that an administrative search is proper so long as the primary purpose is to enforce the regulatory scheme and assistance to law enforcement is at most a secondary purpose.

The court also rejected the State's argument that the defendant consented to the audit. The State failed to satisfy its burden to show that defendant consented to the search where the only evidence of consent was the auditor's testimony that defendant "gave authorization" for the audit and responded "ok" when told what the audit would entail. The court found that defendant's response was ambiguous and did not demonstrate consent, especially since the auditor did not testify that he explicitly asked for consent. In addition, when asked if he told defendant's employees that they could refuse to cooperate, the auditor responded that the question was not asked and he did not volunteer information.

People v. Nash, 278 Ill.App.3d 157, 662 N.E.2d 552 (5th Dist. 1996) A statute which authorized routine administrative searches to determine whether licensed timber buyers were keeping accurate records did not authorize a warrantless search of defendant's files to determine whether she had committed a criminal act - cutting a stand of timber without the owner's consent.

People v. Parker, 284 Ill.App.3d 860, 672 N.E.2d 813 (1st Dist. 1996) Under the administrative search exception, an individual is free to decline to go through a checkpoint or participate in the activity for which the search is intended. The administrative search exception did not apply when a police officer stopped a student who attempted to leave an area where students were lined up to go through a metal detector before entering a school.

People v. Potter & Vinegar, 140 Ill.App.3d 693, 489 N.E.2d 334 (3d Dist. 1986) A search which lasted five days and focused on whether a car dealer had engaged in odometer "rollbacks" exceeded the scope of a statute which authorized administrative inspections of the records of auto dealers. The statute explicitly limited searches to a period of 24 hours, and authorized such searches to "combat the trade in stolen vehicles and parts."

§43-2(d)(4)
Open Fields – Abandoned Property

United States Supreme Court

California v. Greenwood, 486 U.S. 35, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988) Defendant lost any expectation of privacy in garbage which he placed at curbside to be collected. See also, **People v. Huddleston**, 38 Ill.App.3d 277, 347 N.E.2d 76 (3d Dist. 1976) (defendant lacked standing to challenge search of garbage which he placed at curbside for collection).

U.S. v. Dunn, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987) The defendant's barn, and the area around it, was not within the "curtilage" of his ranch house. Thus, police observations into the barn and the surrounding area did not constitute searches.

The extent of the curtilage is resolved by four factors: (1) the proximity of the area to the home, (2) whether the area is included within an enclosure surrounding the home, (3) the nature of the uses to which the area is put, and (4) the steps taken to protect the area from observation by others. See also, **People v. McNeal**, 175 Ill.2d 335, 677 N.E.2d 841 (1997) (curtilage - "the land immediately surrounding and associated with the home" - is considered to be part of the home for purposes of the Fourth Amendment).

Oliver v. U.S., 466 U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984) The Supreme Court reaffirmed the "open fields" doctrine, and upheld warrantless entries to land and the seizure of marijuana in a field about a mile from one defendant's house and in a woods behind a second defendant's home.

Air Pollution Variance Board v. Western Alfalfa Corp., 416 U.S. 861, 94 S.Ct. 2114, 40 L.Ed.2d 607 (1974) No Fourth Amendment violation occurred where a pollution inspector entered respondent's property to conduct a pollution test. The inspector was within the "open fields" doctrine when he saw plumes of smoke in the sky which could have been seen by anyone near the plant. Any invasion of privacy by the inspector entering on the plant property was abstract and theoretical.

Abel v. U.S., 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960) It is not unlawful for officials to appropriate abandoned property.

Rios v. U.S., 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960) A taxi passenger who drops an item on cab floor has not abandoned the item.

Hester v. U.S., 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898 (1924) Fourth Amendment protection does not apply to open fields.

Illinois Supreme Court

People v. Pitman, 211 Ill.2d 502, 813 N.E.2d 93 (2004) A barn located some 40 to 60 yards from a farmhouse and trailer was not part of the curtilage. The barn was not within an enclosure surrounding either of the two residences, was not used for intimate activities or agricultural purposes, and could be observed by persons standing in the surrounding fields. In addition, the land between the residences and the barn was open.

People v. Nielson, 187 Ill.2d 271, 718 N.E.2d 131 (1999) The Fourth Amendment's protection against unreasonable searches and seizures extends both to a citizen's home and to the "curtilage" immediately surrounding the home, but does not apply to "open fields." Several factors are considered in determining whether property is part of the "curtilage," including: (1) the proximity of the area to the home, (2) whether the area is included in an enclosure which surrounds the home, (3) the way in which the area is used, and (4) any steps taken to protect the area from observation.

A "burn pile" that was at least 120 feet from defendant's mobile home, and which may have been as far as 175 feet away, was not part of the "curtilage." The pile was not within any enclosure surrounding the residence, and was used merely to burn waste rather than for "intimate activities of the home." In addition, defendant's parents meticulously maintained their yard but did not maintain the area around the burn pile, which was surrounded by high weeds. The parents took no steps to screen the burn pile from observation - both the lessees of the farmland and local hunters were welcome to cross the property without obtaining consent, the pile was visible both from the fence line and the dirt lane used by hunters and the lessees, and the weeds around the pile were the result of neglect rather than an attempt at concealment.

People v. James, 163 Ill.2d 302, 645 N.E.2d 195 (1994) A passenger in a car did not abandon her purse by leaving it on the seat when she exited the car at the direction of a police officer, especially where she did not know that the driver had consented to a search.

People v. Janis, 139 Ill.2d 300, 565 N.E.2d 633 (1990) The protection afforded to the curtilage of a home does not apply to the open areas immediately adjacent to or surrounding a commercial establishment.

2However, defendant's testimony showed that a gravel area was part of his commercial establishment from which the public was excluded, although others might have used the area to some extent. Thus, the trial judge erred by concluding that the area was a "common area" in which defendant had no reasonable expectation of privacy.

People v. Hoskins, 101 Ill.2d 209, 461 N.E.2d 941 (1984) Where defendant ran from officers and either threw or dropped her purse to the ground after being told that she was under arrest, the purse was abandoned. The "protections against unreasonable searches and seizures do not extend to abandoned property, as the right of privacy in the property has been terminated." See also, **People v. Sylvester**, 43 Ill.2d 325, 253 N.E.2d 429 (1969) (by dropping a bag containing marijuana to the sidewalk, defendant abandoned it; thus, seizure by the police was proper).

People v. Jones, 38 Ill.2d 427, 231 N.E.2d 580 (1967) A driver who jumped from an automobile and ran to avoid capture abandoned both the car and its contents.

People v. Roebuck, 25 Ill.2d 108, 183 N.E.2d 166 (1962) Where defendant dropped heroin after an unlawful arrest, the substance should have been suppressed.

Illinois Appellate Court

People v. Campbell, 2019 IL App (1st) 161640 Defendant, the backseat passenger in a vehicle subject to a traffic stop was convicted of aggravated unlawful use of a weapon based on a firearm that was found under the backseat. At defendant's trial, a police officer testified that he saw defendant toss a gun onto the vehicle floor while the vehicle's back door was open. On appeal, defendant argued that it was incredible that he would drop the gun in plain view of the police officers.

The Appellate Court acknowledged the inherent credibility problems created by "dropsy" testimony, but affirmed the conviction citing to the light-most-favorable standard of review. The court suggested, however, that dropsy testimony generally should be scrutinized by looking to whether the officer had motive to lie to cover up a fourth amendment violation:

> Critical whenever an officer testifies that the defendant dropped contraband in plain view is this question: would the officer's detention or search of the defendant have violated the fourth amendment if he or she had not seen the defendant drop the contraband in plain view? If the answer is "no," there is far less reason to doubt the credibility of the officer's testimony because the officer has nothing to gain by lying about the drop. If, however, the answer is "yes." both trial courts and courts of review should take care to analyze the credibility of the officer because the incentive to lie to avoid suppression of the evidence is at its highest.

People v. Estrada, 394 Ill.App.3d 611, 914 N.E.2d 679 (1st Dist. 2009) Even had there been a reasonable, articulable suspicion of criminal activity, the officers would not have been justified in searching defendant's car after he fled the scene during police questioning. Under **Arizona v. Gant**, 556 U.S. ____, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), a vehicle may be searched incident to the arrest or attempted arrest of a recent occupant only if: (1) the arrestee is within reaching distance of the passenger compartment at the time of the search, or (2) it is reasonable to believe that the search will disclose evidence of the offense for which the arrest was made. Because there was no reason to believe that evidence of a licensing violation was likely to be found in the car, and defendant not within reaching distance of the vehicle at the time of the search, neither condition was satisfied.

The court rejected the argument that the exclusionary rule was inapplicable because the defendant "abandoned" the vehicle by fleeing in response police questioning. First, the State waived the argument by failing to present it in the trial court. Second, even if the claim had been properly preserved, a defendant who exits a car, and closes and locks the doors, has not exhibited an intent to abandon the vehicle.

People v. Lashmett, 71 Ill.App.3d 429, 389 N.E.2d 888 (4th Dist. 1979) Police entry onto defendant's farm, to examine the serial numbers of farm equipment located about 100 to 125 yards from the house, was upheld under the "open fields" exception to the warrant requirement. The Court discussed the leading "open fields" cases.

People v. Dorney, 17 Ill.App.3d 785, 308 N.E.2d 646 (4th Dist. 1974) Defendant and his wife did not abandon their mobile home where it was ravaged by fire, forcing them to live elsewhere.

§43-2(d)(5)
Plain View Doctrine

§43-2(d)(5)(a)
Generally

United States Supreme Court

Horton v. California, 110 S. Ct. 2301, 110 L.Ed.2d 112 (1990) The requirements of the plain view doctrine are: (1) the officer must observe the evidence from a place where he or she has a right to be, (2) the item must be in plain view, and (3) the incriminating character of the item must be immediately apparent.

The valid seizure of property under the plain view doctrine does not require that its discovery be inadvertent. (**Coolidge v. New Hampshire**, 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.3d 564 (1974), included "inadvertent" discovery as one of the requirements.)

Coolidge v. New Hampshire, 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.2d 564 (1971) Even where the requirements for plain view are satisfied, in the absence of exigent circumstances the police may not make a warrantless entry to seize the item in question.

Illinois Supreme Court

People v. Hagestedt, 2025 IL 130286 Police officers entered defendant's home in response to a gas leak. The fire department had already determined that the source of the gas was the stove and had begun ventilating the residence. The odor of gas was still strong, though, and one of the officers (Liebich) went to the kitchen to check for damage to the stove. Finding none, Liebich turned to exit the kitchen, at which point he observed an upper cabinet secured with a chain and padlock through its handles. This "admittedly suspicious" cabinet was ajar about an inch, and Liebich leaned in and used his flashlight to peer into the gap, observing a green leafy substance and syringes inside. Liebich called over the other officer, Stanish, who could not immediately see inside the cabinet. Stanish pulled on the cabinet doors, opening them another inch or two, and observed suspected cannabis inside. He also noted the presence of a camera on top of the refrigerator, pointed directly at the padlocked cabinet. A search warrant was obtained based upon the officers' observations of the contents of the cabinet, and the items inside were seized. Defendant was charged with various drug offenses.

Defendant filed a motion to suppress, which was denied based on the trial court's conclusion that the officers were operating within the scope of their community care taking function and observed the contents of the cabinet in the course of providing aid during an emergency. The trial judge concluded that Liebich's use of a flashlight to see inside the cabinet fell within the plain view doctrine. And, while Stanish violated the fourth amendment when he pulled on the cabinet door, that violation was harmless because Liebich had already made his observations. Following a stipulated bench trial, defendant appealed. The appellate court affirmed.

The Supreme Court reversed. At the outset, the Court rejected as forfeited the State's argument that defendant had not established a cognizable privacy interest because he

presented no evidence at the suppression hearing that he owned, rented, or was a guest in the home, and no evidence that he used, secured, or had a key to the cabinet. The State had not raised this challenge below, but rather had taken the position at the suppression hearing that it was defendant's home. And, regardless, the Court concluded that "[b]y chaining and locking a cabinet in his kitchen, defendant took actions to protect his privacy..." thus establishing a fourth amendment interest.

As to the substantive fourth-amendment challenge, the Court went on to find that Liebich exceeded the scope of his role as a community caretaker and conducted a warrantless search by peering into the cabinet. While Liebich did not reach out and touch the cabinet doors like Stanish did, his act of looking through a small gap in a closed and locked cabinet with a flashlight invaded defendant's privacy in a way that was unrelated to the reported gas leak. Although the cabinet was in plain view, its contents were not. Those contents were secured behind closed doors, locked with a chain and a padlock.

While there are cases holding that the use of a flashlight to illuminate an area is not, itself, a search, the nature of the opening through which a flashlight was used was an important consideration. For instance, looking through a vehicle's window, an open bedroom door, an open closet, and a barn opening covered with see-through netting with the aid of a flashlight were all held not to be a search. Here, on the other hand, Liebich had to position himself at an angle and shine his flashlight into a small gap in a cabinet with solid wood doors, rendering his view "embellished and not plain." This was an unconstitutional warrantless search.

The Court also noted that the second officer, Stanish, had testified that he had reentered the home after defendant had been removed and had detected the odor of cannabis at that time. This was rejected as a separate, independent basis to uphold the issuance of the warrant. The officer's reentry after the gas leak was resolved was beyond the scope of his community care taking function. Accordingly, his detection of the odor of the cannabis at that time was pursuant to a warrantless search. Additionally, the events in question here occurred in 2017, at a time when the legislature was in the process of decriminalizing and legalizing the use and possession of cannabis, such that the odor of cannabis in a home, without more, no longer inherently indicated the commission of a crime.

The evidence obtained from the unlawful search of defendant's kitchen cabinet should have been suppressed. Without that evidence, the State could not prove the charges, and defendant's conviction was reversed outright.

People v. Jones, 215 Ill.2d 261, 830 N.E.2d 541 (2005) Under the plain view doctrine, police may make a warrantless seizure of an object if they are lawfully in the position from which they view the object and have a lawful right of access to the object, and if the incriminating character of the object is immediately apparent. If a further search is required to determine whether an object is contraband, the plain view doctrine does not apply.

In determining whether there is probable cause to believe that an object is contraband, a law enforcement officer may rely on his training and experience to draw inferences and make deductions which might elude an untrained person. Although a civilian might fail to recognize a "one-hitter" box as drug paraphernalia, the court found that the officer, in light of his testimony about his training in recognizing drug paraphernalia and experience that "one-hitter" boxes had contained cannabis on every other occasion he encountered them, had a reasonable basis to conclude that the box likely contained cannabis.

Although the plain view doctrine allows the warrantless seizure of a container believed to contain contraband, the container may be opened and searched only if there is

either a search warrant or an exception to the warrant requirement. However, "where the contents of a seized container are a foregone conclusion," the prohibition against warrantless searches of containers under the plain view doctrine does not apply. Because in the officer's experience "one-hitter" boxes had always contained cannabis, and because the law enforcement community "has had experience with 'one-hitter' boxes" for at least 20 years," the mere observation of a "one-hitter" box provided a sufficient basis to open the box and view its contents.

People v. Edwards, 144 Ill.2d 108, 579 N.E.2d 336 (1991) Where a warrant authorized the seizure, *inter alia*, of a kidnapping victim's clothing and personal belongings, along with maps, diagrams and notes, the plain view doctrine applied to a telephone book and a pair of boots that were not listed in the search warrant. Because some of the items listed in the search warrant "were relatively small and capable of being hidden or contained in another object," it was reasonable for the officers to flip through the telephone book and look behind a washer. Once the officer saw that the victim's name had been circled in the phone book, the book became an object of an "apparently incriminating nature" because the officer knew that the victim's wife had received ransom calls.

In addition, one of the ransom calls had provided information that the victim had been placed in a box buried in the sand. Because the boots behind the washer showed evidence of mud and sand, they were properly seized for testing.

Illinois Appellate Court

People v. McCall, 2021 IL App (1st) 172105 After his murder conviction, the trial court held a preliminary **Krankel** inquiry on defendant's allegations of ineffective assistance of counsel. The motion was denied without a **Krankel** hearing. A majority of the Appellate Court affirmed.

The majority first held that defendant failed to show possible neglect for failing to file a motion to suppress evidence found in defendant's home, where a triple murder took place. The police did not violate the fourth amendment because the items were found in plain view after a warrantless entry that was justified by the emergency aid exception. As in **People v. Ramsey**, 2017 IL App (1st) 160977, the Appellate Court held that officers who are legally inside a home may recover items in plain view, and it does not matter whether the recovering officers, including evidence technicians, arrive after the emergency has ended. As long as the initial responding officers could have recovered the evidence because it was in plain view, the search complies with the fourth amendment.

Nor did defendant show possible neglect for failing to file a motion to suppress defendant's custodial statements. When detectives brought defendant into an interview room, they told defendant that they'd been looking for him because people in the neighborhood said that defendant had killed his family. Defendant told the detectives that he killed them in self-defense, explaining how it happened. The detectives offered defendant medical attention, left the interview room "for a short time" and then returned and advised defendant of his **Miranda** rights. Defendant provided further statements admitting to the crimes but asserting self-defense.

The failure to file a motion was sound strategy where the defense theory at trial was self-defense, and the custodial statements supported that defense. Thus, there was no reason to suppress the initial statement. Furthermore, the post-warning statement was not elicited via the deliberate "question first, warn later" technique that violates the fifth amendment. The unwarned "interrogation" in this case was a single statement by a detective that the

police had been looking for defendant and then a follow-up question later referencing defendant's response. It resembled the permissible interrogation in **Oregon v. Elstad**, 470 U.S. 298 (1985), and was a far cry from the systematic, exhaustive, psychologically skillful interrogation in **Missouri v. Seibert**, 542 U.S. 600 (2004). In any event, suppression of the statements would not have affected the outcome of the case. Defendant contended that absent his statements, he could have pursued a reasonable doubt strategy at trial, but the Appellate Court found the evidence overwhelming.

The dissent would have remanded for a full **Krankel** hearing because trial counsel's explanation for failing to file a **Seibert** motion did not adequately address the issues with the statements. In fact, counsel's explanation betrayed a fundamental misunderstanding of what occurred. The video of the interrogation, which was not played at the preliminary **Krankel** inquiry, plainly showed that there was a pre-warning statement that would have been suppressed, and a post-warning statement that at least arguably could have been suppressed, but counsel's explanation showed she was unaware of these circumstances. The dissent disagreed with the majority's decision to "fill in the blanks" on behalf of trial counsel, noting that the entire purpose of **Krankel** is to provide the Appellate Court with a record on which to evaluate an ineffectiveness claim.

People v. Cherry, 2020 IL App (3d) 170622 Where an officer attempts to effectuate a stop or seizure, but defendant immediately flees, there has been no submission to authority and therefore no seizure. If defendant first submitted to authority, however, and then fled, the fourth amendment is implicated at the time of the initial submission, and there must have been reasonable articulable suspicion for the seizure at that point in time, otherwise any evidence found after the initial encounter is subject to exclusion.

Here, the police ordered defendant and his friends to "stop," defendant took steps backward and away from the police as they exited their vehicle, and defendant ran off as an officer approached him. The Appellate Court concluded that defendant had not submitted to the officer's authority "in any meaningful way." Accordingly, the officer's lack of reasonable articulable suspicion at the time of this initial encounter did not render the encounter unconstitutional.

Defendant was ultimately seized when the police caught up with him approximately ten feet away, tackled him, and recovered a gun from defendant's waistband. At that point, defendant's flight, the officer's previous observation of defendant's holding his waistband, and the original tip that a group of men had been seen pointing a gun from defendant's now-parked vehicle, provided the police with reasonable, articulable suspicion to support his seizure. Finally, the gun was recovered under the plain-touch doctrine, where the officer felt it upon tackling defendant, thus there was no **Terry** frisk at issue.

People v. Augusta, 2019 IL App (3d) 170309 The trial court erred when it denied defendant's motion to suppress drugs forcibly removed from his mouth. Under 720 ILCS 5/7-5.5(b), the police cannot use a chokehold or any lesser contact with the throat or neck area in order to prevent the destruction of evidence by ingestion. Here, the police admitted that, during a traffic stop, officers grabbed defendant by the throat, pulled his head back, forced open his mouth, and reached inside to remove suspected contraband. This violation of the statute rendered the seizure unreasonable. Plain view did not validate the seizure because the character of the object was not immediately apparent, and regardless, whether the object is in plain view does not give officers license to violate subsection 7-5.5(b).

A concurring justice agreed with this analysis, and would further hold that the entire traffic stop was unconstitutional because the officer admitted it was pretextual. The officer

explained that he followed defendant's car in the hopes of witnessing a traffic violation so that he could investigate defendant for drugs. The justice described the stop as "subterfuge to obtain evidence."

People v. Martin, 2017 IL App (1st) 143255 Defendant's mother owned a two-flat building. She lived in the first floor apartment and the second floor apartment was vacant. Defendant often stayed overnight in the first floor apartment. The two-flat had a locked outer door that led to a private vestibule that had doors leading to each of the apartments.

The police saw defendant standing in a vacant lot next to the two-flat. A man approached defendant and raised his index finger. Defendant went up on the two-flat's porch, reached inside the doorway to the vestibule, which was slightly ajar, and retrieved a blue plastic bag. He took a smaller bag out of the blue bag, put the blue bag on top of the doorway, and walked back to the man in the vacant lot. The man gave defendant money and defendant gave him the smaller bag. Defendant then gave the money to an unknown man in the vacant lot.

The police broke surveillance and detained defendant and the buyer. The buyer said he got "one blow" from defendant. The item he purchased was a small bag filled with white powder, suspected to be heroin. One officer went up on the porch, reached inside the doorway to the vestibule and recovered the blue bag. The blue bag contained smaller bags similar to the one recovered from the buyer. The smaller bags contained heroin.

The Appellate Court held that the officer's recovery of the blue bag constituted an illegal physical search inside a home without a warrant. The court rejected the State's argument that the recovery of the bag did not constitute a search under the plain view doctrine. The plain view doctrine only applies if: (1) the officer is lawfully in a position to view the object; (2) the incriminating character of the object is immediately apparent; and (3) the officer has a lawful right of access to the object.

Here the incriminating nature of the object was not immediately apparent. The police only observed defendant take a small item from the blue bag and then tender that item to the buyer. It was only after the police recovered the blue bag that they could see that the items inside matched the item containing suspected heroin that defendant had sold to the buyer. Since the nature of the object was not immediately apparent the plain view doctrine did not apply.

People v. Jones, 2015 IL App (1st) 142997 After defendant was stopped for making a right turn without stopping at the red light, a license check disclosed that there was an "active investigative alert" involving a homicide. The officer had no further information concerning the alert, but with defendant's permission conducted a quick protective pat down which did not reveal any contraband.

The officer informed defendant that he would be detained while more information was sought concerning the alert. Defendant was placed in the backseat of the squad car with the car doors closed, but was not handcuffed. The officer testified that he had experience with narcotics arrests and had seen narcotics packaging, but that he did not see anything suspicious in defendant's car.

While the officer was awaiting information to determine whether the alert "was for probable cause to arrest," backup officers arrived and "secured" defendant's car. According to the State, "securing a car means looking for guns by walking around the car." The backup officer testified that as he was walking around the car, he looked through the rear passenger-side window and saw a square black object wrapped in cellophane and black tape.

The officer entered the car and retrieved the object, which he believed to be cocaine.

The object was recovered before any additional information was received concerning the investigative alert, about five to ten minutes after defendant had been placed in the squad car.

Defendant was arrested for possession of cocaine. A search of his person revealed a large bundle of currency in his right front pocket.

The court rejected the State's argument that even if the detention was improper, the seizure of the brick of cocaine was proper under the plain view doctrine. The plain view doctrine authorizes the police to seize an item without a search warrant when: (1) an officer views an object from a place where he or she is legally entitled to be; (2) the incriminating character of the object is immediately apparent; and (3) the officer has a lawful right of access to the object. The State maintained that the plain view discovery of the brick of cocaine constituted "intervening probable cause" and that the arrest was therefore not a fruit of the improper detention.

The court acknowledged that the plain view doctrine might have applied had the cocaine been discovered at the time of the stop by the officer who conducted the stop. Because police lacked any justification for placing defendant in custody, however, there was no reason for the backup officer to "secure" defendant's car. Thus, the seizure of the cocaine stemmed directly from the improper detention.

People v. Woodrome, 2013 IL App (4th) 130142 An officer may lawfully approach the front door of a residence to conduct an investigation (a "knock and talk") so long as the officer enters an area impliedly open to the public. The officer need not be armed with a warrant because that is no more than any private citizen might do. When no one answers the front door or where a legitimate reason is shown for approaching the back door, the officer may go beyond the front door and approach the back door of a residence. So long as the police restrict their movements to places that visitors could be expected to go, observations made from such vantage points are not covered by the Fourth Amendment.

The police received an anonymous call that plastic-encased copper wire was being burned at defendant's residence and had knowledge that copper-wire thefts occurred in the same area in the previous three days. When the police went to the residence, they observed smoke from a fire 100 feet away from their position on the roadway. Defendant was in his yard, but quickly entered his residence after the police called his name. The police knocked on the front door of the residence, and then knocked on the back door when they received no answer. They also went to the back of the house to make sure that defendant was not climbing out the back window.

During this check, the police observed telephone cable next to the residence. They also checked the burn pile that was 25 to 30 yards from the house, where they saw copper wire. Telephone cables that matched the description of the plastic-encased wire could also be seen through an open door in the garage. Based on their observations corroborating the anonymous tip, they obtained a warrant to search defendant's residence. The trial court ordered evidence seized pursuant to the warrant suppressed because corroboration for the tip was obtained when the officers entered the defendant's property.

The Appellate Court reversed, concluding that the police investigation was lawful and that no warrantless search took place. The police were not prohibited from conducting an investigation based on the tip and their knowledge of thefts in the area. They had legitimate reasons to approach both the front and rear doors. Because they were in an area they had a lawful right to be, they conducted no search when they observed telephone cables in plain view that matched the description of the stolen copper wire. Looking in the burn pile was not

an unlawful intrusion where they were lawfully on the property and had already observed suspected stolen copper wire.

People v. Garcia, 2012 IL App (1st) 102940 The plain-view exception to the Fourth Amendment's warrant requirement allows a police officer to seize an object without a warrant if the officer is lawfully located in the place where he observed the object, the object is in plain view, and the object's incriminating nature is immediately apparent. The requirement that an item's criminal nature be immediately apparent is the equivalent of probable cause.

A police officer saw two or three inches of a plastic baggie protruding from defendant's front pants pocket and discovered that it contained white powder only after removing it from the pocket. There were no other circumstances known to the officer that would support a finding of probable cause. Because the incriminating nature of the baggie was not immediately apparent, the seizure of the baggie and the discovery of its contents violated the Fourth Amendment. Even if the officer had observed that the plastic bag was knotted, the mere observation of a knotted plastic bag would not rise to the level of probable cause, only reasonable suspicion.

Innocuous objects such as plastic baggies, spoons, mirrors, and straws are often used in the drug trade, but allowing officers to conduct warrantless searches whenever they observe one of these objects would permit random searches condemned by the Fourth Amendment.

People v. Sinegal, 408 Ill.App.3d 504, 946 N.E.2d 474 (5th Dist. 2011)Under the plain view doctrine, an officer may seize an object without a warrant if: (1) the officer is lawfully in the place where he sees the object in plain view, (2) the officer has a lawful right of access to the object, and (3) the incriminating nature of the object is immediately apparent. The incriminating nature of an object is immediately apparent if the officer has probable cause to believe that the object is evidence of a crime without searching further. Probable cause to believe that a package contains contraband does not require absolute certainty.

Because the defendant gave the police consent to enter his car to look at the gas gauge in the course of a traffic stop, there was no question that the officer was lawfully in the car when he saw an opaque green shrink-wrapped package in plain view on the driver's seat, or that he had lawful access to it.

Considering all of the circumstances, the officer had probable cause to believe that the package contained drugs and therefore its incriminating nature was immediately apparent. The officer had some training in drug interdiction and testified that he had seen similar packages on at least five prior occasions and that each one contained narcotics. He was aware from a warrant check of the driver (defendant) and his passenger that both had prior drug charges. Suspicious behavior by defendant and the passenger also contributed to probable cause. Although most motorists are nervous during traffic stops, defendant and his passenger were more nervous than most. Defendant seemed to attempt to evade the police by turning left after appearing to turn right at the top of the exit ramp when followed by the police off of the interstate, although the officer acknowledged that it was also apparent defendant did not know where he was going. The passenger also told the officer that he did not know where they were going, what was in the package, or how it got in the car.

Even when the plain view doctrine supports the warrantless seizure of a package or container, the contents of the package or container may not always be searched without a warrant. The contents may be searched without a warrant if the contents are a foregone conclusion, as where the package is transparent or open or when its distinctive configuration proclaims its contents. **People v. Jones**, 215 Ill.2d 261, 830 N.E.2d 541 (2005).

The police were justified in piercing the package to discover its contents without a warrant. The training and experience of both officers, particularly the officer who opened the package, led them to believe with near certainty that the package contained drugs. The officer who pierced the package had encountered similar packages on 10 occasions, had fairly extensive training in drug detection, and had never seen anything other than drugs packaged in this distinctive manner. He explained that drug traffickers use opaque plastic to avoid detection of drugs, and that he was almost certain that the package contained cannabis based on its configuration and size. The package did in fact contain cannabis.

The court affirmed the circuit court's denial of defendant's motion to suppress.

People v. Hampton, 307 Ill.App.3d 464, 718 N.E.2d 591 (1st Dist. 1999) Cocaine observed on the front seat of defendant's car was properly seized under the plain view doctrine. Because shining a flashlight into the interior of the car does not constitute a "search," the initial intrusion is lawful. In addition, the officer was authorized to look in the car to recover a weapon that defendant said was on the seat, and the contents of the bag were visible from the outside.

People v. Kofron, 2014 IL App (5th) 130335 Police went to a home where defendant was an overnight guest and conducted a "knock and talk," a consensual encounter where the police knock on the door of a home and ask to speak with the occupants. Two officers knocked on the front door, while several other officers entered the back yard and waited outside the back door. The officers in the back yard saw contraband on top of a garbage can. When defendant exited the back door, the officers arrested him and seized the contraband.

The trial court suppressed the contraband, holding that a "knock and talk" does not give police permission to enter the back yard of a house, and thus the contraband was only in plain view because the police had illegally entered a "private area of the home."

The State appealed, arguing that the contraband was properly seized because it was discovered in plain view during a consensual "knock and talk." The Appellate Court rejected this argument, holding that it was impermissible for the police to enter the back yard of a home during a "knock and talk."

In seeking a consensual encounter during a "knock and talk," police may, like private citizens, approach the front entrance of a home, knock promptly, wait briefly for someone to answer, and absent an invitation to stay longer, leave. There is, however, no legitimate rationale in any "knock and talk" for deploying officers to cover multiple entrances of a home to prevent occupants from escaping a consensual encounter. This is especially true in the present case where police entered the back yard before even waiting to see if anyone was at home or would answer the door.

Since the police had no authority to enter the back yard, the contraband (which could not be seen from the front door) was not discovered in plain view. The trial court's suppression order was affirmed.

§43-2(d)(5)(b)
Items Lawfully Viewed

United States Supreme Court

Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987) While police were lawfully in defendant's apartment to investigate a shooting, they noticed some expensive stereo equipment that seemed "out of place." Suspecting that the equipment was stolen, an

officer decided to record the serial numbers. To do so, he moved the equipment.

Based on the serial numbers the equipment was determined to have been stolen. A search warrant was obtained, and the equipment was seized.

The Supreme Court upheld the suppression of the stereo equipment. Although the mere recording of serial numbers does not constitute a "seizure," the police engaged in an unlawful search by moving equipment where there was no probable cause to believe it was stolen. The plain view doctrine requires probable cause - not merely reasonable suspicion - to believe that the item is evidence of a crime.

The Court rejected the State's contention that moving the equipment was only a "cursory inspection" which could be justified by reasonable suspicion. A truly cursory inspection is not a search, but is merely looking at what is already exposed to view. See also, **People v. Alexander**, 272 Ill.App.3d 698, 650 N.E.2d 1038 (1st Dist. 1995) (plain view doctrine did not authorize seizure of auto parts where police went to house to serve four-year-old arrest warrant on case in which the evidence had already been recovered; it was not "immediately apparent" that parts were evidence of a crime where police had no reason to suspect the parts were stolen until *after* they examined the VIN numbers).

New York v. Class, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986) After the defendant was stopped for a traffic violation and had exited his car, a police officer lawfully reached into the car to move some papers which were obscuring the VIN number on the dashboard. Defendant had no reasonable expectation of privacy in the VIN number, and allowing defendant to return to the car to move the papers might have given him access to a concealed weapon.

Thus, a gun the officer saw under the seat was lawfully seized.

Maryland v. Macon, 472 U.S. 463, 106 S.Ct. 2778, 86 L.Ed.2d 370 (1985) Undercover officers' entry into an adult bookstore, examination of the items therein, and purchase of magazines was not an unreasonable search and seizure.

Washington v. Chrisman, 455 U.S. 1, 102 S.Ct. 812, 70 L.Ed.2d 778 (1982) A police officer may accompany an arrested person into his residence and seize contraband discovered in plain view.

Illinois Supreme Court

People v. Hamilton, 74 Ill.2d 457, 386 N.E.2d 53 (1979) The plain view doctrine dispenses with the need for a warrant, because the process of finding an item in plain view involves no search or prying into hidden places for that which is concealed. Items that were inside a closed briefcase were not in plain view, since the officer discovered them only after opening the briefcase.

Illinois Appellate Court

People v. Brandt, 2019 IL App (4th) 180219 The circuit court erred when it quashed the search warrant for being based on fruit of an illegal search. After receiving an anonymous tip describing drug dealing, police drove to defendant's rural home to conduct a "knock and talk." They parked in a gravel area near defendant's open kitchen window. A fan in the window was blowing outwards, and officers immediately smelled "fresh cannabis." Based on this information, one officer left to obtain a warrant, and the subsequent execution of the warrant turned up nine grams of cannabis.

Although the circuit court believed that the officer's positioning under defendant's

open window was an unlawful search of the home's curtilage, similar to a drug-sniffing dog, the Appellate Court disagreed. The police have the same right as every other citizen to approach one's door and knock. Here, it just so happened that on their way to speak with defendant, they were put in a position to detect the cannabis in "plain smell." The court rejected the circuit court's finding that the police did anything unreasonable in approaching the door, as the officers parked in a driveway area that was covered in the same gravel as the road, so as to avoid parking in the grass. This appeared to be the expected place to park, and their approach was therefore reasonable. Thus, the circuit court erred in refusing to consider the odor of cannabis when assessing the reasonableness of the search warrant.

People v. Jones, 2015 IL App (1st) 142997 After defendant was stopped for making a right turn without stopping at the red light, a license check disclosed that there was an "active investigative alert" involving a homicide. The officer had no further information concerning the alert, but with defendant's permission conducted a quick protective pat down which did not reveal any contraband.

The officer informed defendant that he would be detained while more information was sought concerning the alert. Defendant was placed in the backseat of the squad car with the car doors closed, but was not handcuffed. The officer testified that he had experience with narcotics arrests and had seen narcotics packaging, but that he did not see anything suspicious in defendant's car.

While the officer was awaiting information to determine whether the alert "was for probable cause to arrest," backup officers arrived and "secured" defendant's car. According to the State, "securing a car means looking for guns by walking around the car." The backup officer testified that as he was walking around the car, he looked through the rear passenger-side window and saw a square black object wrapped in cellophane and black tape.

The officer entered the car and retrieved the object, which he believed to be cocaine. The object was recovered before any additional information was received concerning the investigative alert, about five to ten minutes after defendant had been placed in the squad car.

Defendant was arrested for possession of cocaine. A search of his person revealed a large bundle of currency in his right front pocket.

The trial court granted defendant's motion to suppress, finding that defendant was arrested without probable cause because he was taken into custody based on the alert. The Appellate Court affirmed the suppression order. The court rejected the State's argument that even if the detention was improper, the seizure of the brick of cocaine was proper under the plain view doctrine. The plain view doctrine authorizes the police to seize an item without a search warrant when: (1) an officer views an object from a place where he or she is legally entitled to be; (2) the incriminating character of the object is immediately apparent; and (3) the officer has a lawful right of access to the object. The State maintained that the plain view discovery of the brick of cocaine constituted "intervening probable cause" and that the arrest was therefore not a fruit of the improper detention.

The court acknowledged that the plain view doctrine might have applied had the cocaine been discovered at the time of the stop by the officer who conducted the stop. Because police lacked any justification for placing defendant in custody, however, there was no reason for the backup officer to "secure" defendant's car. Thus, the seizure of the cocaine stemmed directly from the improper detention.

People v. Woodrome, 2013 IL App (4th) 130142 An officer may lawfully approach the front

door of a residence to conduct an investigation (a "knock and talk") so long as the officer enters an area impliedly open to the public. The officer need not be armed with a warrant because that is no more than any private citizen might do. When no one answers the front door or where a legitimate reason is shown for approaching the back door, the officer may go beyond the front door and approach the back door of a residence. So long as the police restrict their movements to places that visitors could be expected to go, observations made from such vantage points are not covered by the Fourth Amendment.

The police received an anonymous call that plastic-encased copper wire was being burned at defendant's residence and had knowledge that copper-wire thefts occurred in the same area in the previous three days. When the police went to the residence, they observed smoke from a fire 100 feet away from their position on the roadway. Defendant was in his yard, but quickly entered his residence after the police called his name. The police knocked on the front door of the residence, and then knocked on the back door when they received no answer. They also went to the back of the house to make sure that defendant was not climbing out the back window.

During this check, the police observed telephone cable next to the residence. They also checked the burn pile that was 25 to 30 yards from the house, where they saw copper wire. Telephone cables that matched the description of the plastic-encased wire could also be seen through an open door in the garage. Based on their observations corroborating the anonymous tip, they obtained a warrant to search defendant's residence. The trial court ordered evidence seized pursuant to the warrant suppressed because corroboration for the tip was obtained when the officers entered the defendant's property.

The Appellate Court reversed, concluding that the police investigation was lawful and that no warrantless search took place. The police were not prohibited from conducting an investigation based on the tip and their knowledge of thefts in the area. They had legitimate reasons to approach both the front and rear doors. Because they were in an area they had a lawful right to be, they conducted no search when they observed telephone cables in plain view that matched the description of the stolen copper wire. Looking in the burn pile was not an unlawful intrusion where they were lawfully on the property and had already observed suspected stolen copper wire.

People v. Davis, 398 Ill.App.3d 940, 924 N.E.2d 67 (2d Dist. 2010) Under the plain view doctrine, an officer may legally seize items where: (1) the officer was legally in the location from which he observed the items; (2) the items were in plain view, (3) the incriminating nature of the items was immediately apparent, and (4) the officer had a lawful right of access to the objects. Because the officer's entry to the apartment to arrest defendant was unlawful, he was not entitled to be in the location from which he viewed the item. Therefore, the plain view doctrine did not apply.

People v. Dale, 301 Ill.App.3d 593, 703 N.E.2d 927 (4th Dist. 1998) Where defendant consented to officers entering his motel room and initially consented to a search of his room, but withdrew the consent shortly after the officers began looking around, the officers were not authorized to remain in the room while defendant packed in order to be evicted. Therefore, contraband which fell from defendant's clothing as he packed could not be seized under the plain view doctrine. See also, **People v. Duncan**, 173 Ill.App.3d 544, 527 N.E.2d 1060 (3d Dist. 1988) (although defendant invited his brother, a Peoria police officer, to accompany him to his apartment to check on defendant's girlfriend, "it would be a manipulation of the facts to find that he consented" to the police department's second entry,

which occurred after defendant and his brother drove to the police station; evidence which the second group of officers seized was not properly admitted under the plain view doctrine).

People v. Fulton, 289 Ill.App.3d 970, 683 N.E.2d 154 (1st Dist. 1997) The Appellate Court rejected the State's argument that a police officer properly entered defendant's car to move it from the area in which defendant had parked when he was pulled over for a traffic violation (which led to defendant's arrest). The record did not show that defendant had stopped his car in a dangerous or illegal location; more importantly, if the car was stopped in a dangerous location, it was the responsibility of the officer to insure that defendant moved it.

In other words, it was the officer's failure to require defendant to stop the car in a legal spot which created the "alleged exigent circumstance upon which [the State] now relies to justify [the] subsequent entry into the vehicle." The Court concluded that the officer could not "take advantage" of his own improper actions to enter defendant's car "on the pretext of an exigent circumstance."

People v. Patrick, 83 Ill.App.3d 830, 417 N.E.2d 1056 (4th Dist. 1981) Drugs were improperly seized from an apartment, under the plain view doctrine, where the police saw the drugs only after making an unlawful entry into the apartment.

People v. Philyaw, 34 Ill.App.3d 616, 339 N.E.2d 461 (2d Dist. 1975) Police who inadvertently discovered stolen property while executing a search warrant for other items could properly seize such property. Compare, **People v. Harmon**, 90 Ill.App.3d 753, 413 N.E.2d 467 (4th Dist. 1980) (where police found item in a place they were not authorized to search under the warrant, the item was not in plain view); **People v. Montgomery**, 84 Ill.App.3d 695, 405 N.E.2d 1275 (1st Dist. 1980) (where police arrested defendant in hallway inside the front door, police could not walk down the hallway into the living room and seize items under the plain view doctrine).

People v. St. Ives, 110 Ill.App.2d 37, 249 N.E.2d 97 (1st Dist. 1969) Police officer's use of fictitious name to gain entry to suspected prostitute's apartment did not violate defendant's constitutional rights. Thus, officer was lawfully on premises and could testify concerning his observations.

§43-2(d)(5)(c)
Immediately Apparent Item is Evidence

United States Supreme Court

Horton v. California, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990) During the execution of a search warrant for jewelry taken in an armed robbery, the police seized certain weapons that were in plain view. Based upon the victim's detailed description of the weapons used in the crime, it was "immediately apparent" to the police that the weapons were incriminating evidence.

Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987) It was not "immediately apparent" to the police that certain stereo equipment in defendant's apartment was stolen. The police moved the equipment to record the serial numbers, and based on the serial numbers determined that the equipment had been stolen. The Court held that the police conducted an unlawful search by moving the equipment; probable cause is required to

invoke the plain view doctrine, and in this case the probable cause was obtained only *after* the equipment was moved.

Texas v. Brown, 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983) An officer's experience and knowledge that narcotics are frequently packaged in balloons constituted probable cause to believe that a knotted balloon contained illegal drugs - thus satisfying the "immediately apparent" requirement of the plain view doctrine. See also, **People v. Jones**, 215 Ill.2d 261, 830 N.E.2d 541 (2005) (officer may rely on training and experience to draw inferences and make deductions which might elude an untrained person; although a civilian might fail to recognize a "one-hitter" box as drug paraphernalia, the officer, in light of his testimony about his training in recognizing drug paraphernalia and experience that "one-hitter" boxes had contained cannabis on every other occasion he encountered them, had a reasonable basis to conclude that the box likely contained cannabis).

Illinois Appellate Court

People v. Mallett, 2023 IL App (1st) 220920 Under the plain view exception to the warrant requirement, a warrantless search is permissible where: (1) the officer was lawfully in a position from which to view the object in plain view; (2) the object's incriminating character was immediately apparent; and, (3) the officer had a lawful right of access to the object itself. Here, defendant argued that the plain view exception did not apply based upon an officer's observation of a plastic bag with pills in her vehicle because it was not immediately apparent that the pills were evidence of a crime. The appellate court disagreed.

Defendant was stopped for failing to properly signal her intent to turn. While defendant was retrieving her driver's license from a compartment in the vehicle, an officer observed a blue-tinted bag containing white pills. Defendant told him the pills were hydrocodone prescribed after a C-section and said she kept them in the bag instead of the pill bottle because she did not like the sound of them rattling around in the bottle. The officer testified that in his experience, which included involvement in over 100 narcotics arrests, the packaging of the pills in a bag instead of its original container was evidence of criminal activity. Further, the officer knew that hydrocodone was a controlled substance. He was also aware of a law making it illegal to store prescription drugs in a non-labeled container, and defendant did not offer a prescription for the pills despite her claim that she had one.

The incriminating nature of an object is immediately apparent if the officer has probable cause to believe it is evidence of a crime without searching further. Probable cause is shown where the totality of the facts and circumstances known to the officer at the time of the search would warrant a reasonable person in believing that the vehicle contains contraband or evidence of criminal activity. Here, based upon the officer's training and experience, he had probable cause to believe that the pills in the baggie were illegal narcotics. The officer was not required to rule out any innocent explanation before placing defendant under arrest and conducting a further search of her vehicle. Accordingly, the trial court did not err in denying defendant's motion to quash arrest and suppress evidence of a gun that was found in defendant's glove compartment during the search, resulting in the aggravated unlawful use of a weapon charge of which defendant was convicted.

People v. Serrato, 2023 IL App (2d) 220100 The trial court erred in granting defendant's request to suppress a gun recovered from his residence. The gun was seized during the execution of a search warrant which authorized the police to search for evidence of unlawful possession of controlled substances with the intent to deliver. The warrant did not authorize

seizing any weapons. An officer testified that the gun was in plain view on the top shelf of a kitchen cabinet, but there was no evidence connecting it to drug dealing. The police who searched the house knew that defendant was a convicted felon.

The State argued that the plain view exception to the warrant requirement applied, and that the police legally seized the gun as evidence of unlawful possession of a firearm by a felon. The trial court disagreed, concluding that the gun's incriminating character was not immediately apparent where it may have been lawfully owned by defendant's girlfriend who was also present in the home at the time of the search.

The appellate court reversed. Even if the police had evidence that defendant's girlfriend owned the gun, that did not resolve the question of whether defendant unlawfully possessed the gun. Multiple people may possess an object simultaneously, and ownership is not a prerequisite to possession. Thus, when police seized the gun, they had probable cause to believe it was evidence of unlawful possession of a weapon by a felon.

People v. Villareal, 2022 IL App (2d) 200077 After her motion to suppress was denied, defendant proceeded to a stipulated bench trial in order to preserve the suppression issue for review. On appeal, the court first found that defendant's stipulated bench trial was tantamount to a guilty plea where the trial judge repeatedly confirmed that defendant was stipulating to the evidence's sufficiency to support a finding of guilt.

The court then noted that there is a split of authority regarding whether a defense is effectively preserved by a stipulated bench trial that is tantamount to a guilty plea, citing **People v. Bond**, 257 Ill. App. 3d 746 (2d Dist. 1994) (defense not waived by stipulated bench trial tantamount to a guilty plea), and **People v. Gonzalez**, 313 Ill. App. 3d 607 (2d Dist. 2000) (consideration of issue foreclosed by stipulated bench trial that was tantamount to a plea). The appellate court went on to find that **Gonzalez** was based on a misreading of **People v. Horton**, 143 Ill. 2d 11 (1991), which did not suggest that a defendant fails to preserve issues by stipulating to the sufficiency of the evidence. Accordingly, the court stated it was following its earlier decision in **Bond** and would reach the merits of defendant's preserved suppression issue.

Ultimately, the court found the suppression issue without merit. There was no dispute that the traffic stop which led to the search was valid. During the stop, the officer smelled cannabis, and a passenger handed him two small bags of cannabis. This supported a warrantless search of the vehicle and any containers therein that might reasonably contain contraband, which included defendant's purse. Inside the purse, the officer observed an identification card. The officer testified that he immediately knew the card was fraudulent, entitling him to remove it and investigate further. Defendant asserted that the identification was in a tight, opaque sleeve in her wallet, however, and that it's incriminating nature was not immediately observable. The appellate court concluded that, under either version, the search was proper. Either the plain view exception applied if the officer's version was correct, or the search of the wallet sleeve was justified by the possibility that contraband such as cannabis or other drugs could be easily concealed in that location. Accordingly, the appellate court affirmed.

People v. Molnar, 2021 IL App (2d) 190289 During a traffic stop, an officer approached to speak with defendant, who was the front seat passenger. Defendant exited the vehicle without being asked to do so, at which time the officer observed an unlabeled pill bottle on her seat. The officer could see that the bottle contained pills and a "plastic baggie or something," and he asked defendant about it. She admitted that the pills were Xanax, a controlled substance, and the officer seized the pill bottle.

The trial court denied defendant's motion to suppress based on the warrantless seizure, and the Appellate Court affirmed. The law provides that a person who is prescribed a controlled substance may lawfully possess it "only in the container in which it was delivered to him or her by the person dispensing such substance." 720 ILCS 570/312(g). The officer had probable cause to believe defendant lacked a prescription for the Xanax pills and thus was committing a crime where the pills were in an unlabeled bottle which also contained a plastic baggie in plain view of the officer.

People v. Lee, 2018 IL App (3d) 160100 Counsel was not ineffective for failing to argue that the police improperly seized contraband discovered during a search warrant. The officer testified that the plastic bag found in the defendant's bed sheets contained an unknown substance similar to oatmeal, and did not resemble drugs. But it was packaged like drugs and ultimately tested positive for cocaine. Under these circumstances, the appearance of the bag satisfied the "immediately apparent" standard for seizure of items in plain view – it created a reasonable probability that defendant possessed contraband in the view of an objectively reasonable officer. Two members of the court outright rejected the holding of **People v. Humphrey**, 361 Ill. App. 3d 947 (2005), which found an improper seizure where an officer did not know what types of pills were in a tupperware container in defendant's car; a third concurring justice found **Humphrey** good law but distinguishable.

People v. Sinegal, 408 Ill.App.3d 504, 946 N.E.2d 474 (5th Dist. 2011) Under the plain view doctrine, an officer may seize an object without a warrant if: (1) the officer is lawfully in the place where he sees the object in plain view, (2) the officer has a lawful right of access to the object, and (3) the incriminating nature of the object is immediately apparent. The incriminating nature of an object is immediately apparent if the officer has probable cause to believe that the object is evidence of a crime without searching further. Probable cause to believe that a package contains contraband does not require absolute certainty.

Because the defendant gave the police consent to enter his car to look at the gas gauge in the course of a traffic stop, there was no question that the officer was lawfully in the car when he saw an opaque green shrink-wrapped package in plain view on the driver's seat, or that he had lawful access to it.

Considering all of the circumstances, the officer had probable cause to believe that the package contained drugs and therefore its incriminating nature was immediately apparent. The officer had some training in drug interdiction and testified that he had seen similar packages on at least five prior occasions and that each one contained narcotics. He was aware from a warrant check of the driver (defendant) and his passenger that both had prior drug charges. Suspicious behavior by defendant and the passenger also contributed to probable cause. Although most motorists are nervous during traffic stops, defendant and his passenger were more nervous than most. Defendant seemed to attempt to evade the police by turning left after appearing to turn right at the top of the exit ramp when followed by the police off of the interstate, although the officer acknowledged that it was also apparent defendant did not know where he was going. The passenger also told the officer that he did not know where they were going, what was in the package, or how it got in the car.

Even when the plain view doctrine supports the warrantless seizure of a package or container, the contents of the package or container may not always be searched without a warrant. The contents may be searched without a warrant if the contents are a foregone conclusion, as where the package is transparent or open or when its distinctive configuration proclaims its contents. **People v. Jones**, 215 Ill.2d 261, 830 N.E.2d 541 (2005).

The police were justified in piercing the package to discover its contents without a warrant. The training and experience of both officers, particularly the officer who opened the package, led them to believe with near certainty that the package contained drugs. The officer who pierced the package had encountered similar packages on 10 occasions, had fairly extensive training in drug detection, and had never seen anything other than drugs packaged in this distinctive manner. He explained that drug traffickers use opaque plastic to avoid detection of drugs, and that he was almost certain that the package contained cannabis based on its configuration and size. The package did in fact contain cannabis.

The court affirmed the circuit court's denial of defendant's motion to suppress.

People v. Colyar, 407 Ill.App.3d 294, 941 N.E.2d 479 (1st Dist. 2010) The plain-view doctrine cannot be relied on to justify an arrest, search, or seizure if the incriminating character of the object in plain view is not immediately apparent.

Ammunition is not contraband *per se*. Possession of ammunition is unlawful only if the possessor does not have a valid FOID card or is a convicted felon who cannot obtain a valid FOID card. Therefore the observation of ammunition in plain view does not furnish probable cause to seize the ammunition, to arrest, or to conduct a search, absent reason to believe that the person in possession of the ammunition does not possess a FOID card or is a convicted felon.

The mere observation of ammunition in a vehicle does not provide probable cause to believe a gun is in the vehicle.

The police observed a bullet on the console of the car defendant was driving, and discovered live ammunition in his pocket after they removed him and his passengers from the car, handcuffed them at the front of the car, and conducted a pat-down search of their persons. Because the police did not ask defendant to produce a FOID card or whether he was a convicted felon, they did not have probable cause to arrest him, search his car, or seize the ammunition found on the console or defendant's person.

People v. Moore, 307 Ill.App.3d 107, 716 N.E.2d 851 (5th Dist. 1999) Where the officer merely saw a green zippered case and had to enter the car to ascertain the contents, the plain view doctrine did not apply.

People v. Alexander, 272 Ill.App.3d 698, 650 N.E.2d 1038 (1st Dist. 1995) Where police were at the scene solely to arrest defendant on a four-year-old warrant on which the evidence had already been recovered, and only *after* the officers examined VIN numbers was there any reason to suspect that auto parts might have been stolen, it was not "immediately apparent" that the parts were evidence. The plain view exception allows police to seize what is clearly evidence of a crime, but does not permit examination of items of uncertain origin to determine whether they might be related to a crime. See also, **People v. Humphrey**, 361 Ill.App.3d 947, 836 N.E.2d 210 (2d Dist. 2005) (the incriminating nature of a plastic container holding hundreds of white pills the object was not immediately apparent where the officer testified he could not identify the pills, even after being told they were pseudoephedrine, and that he was not certain defendant had committed "an arrestable offense").

People v. Salter, 91 Ill.App.3d 831, 414 N.E.2d 1252 (1st Dist. 1980) Search of a bag on the rear seat of defendant's automobile was not justified under the plain view doctrine. The bag was not discernible as contraband, and its contents were not visible until the bag was opened. See also, **People v. Penny**, 188 Ill.App.3d 499, 544 N.E.2d 1015 (1st Dist. 1989) (opaque

black plastic container on front floor of car); **People v. Collins**, 53 Ill.App.3d 253, 368 N.E.2d 1007 (5th Dist. 1977) (contents of a brown paper bag were not in plain view).

People v. Mullens, 66 Ill.App.3d 748, 383 N.E.2d 1369 (1st Dist. 1978) The mere fact that an item is in "plain view" does not justify its seizure; the facts and circumstances known to the police at the time must give rise to the reasonable belief that the item constitutes evidence of criminal activity. The seizure of a television from defendant's room was unlawful where there was no showing that the police were aware of the incriminating nature of the television set when they saw it in the room.

§43-2(d)(6)
Consent Searches

§43-2(d)(6)(a)
Generally

United States Supreme Court

Ohio v. Robinette, 519 U.S. 33, 117 S. Ct. 417, 136 L.Ed.2d 347 (1996) A lawfully-stopped motorist need not be advised that he is "free to go" in order for a subsequent consent to search to be deemed voluntary. Whether a search violates the Fourth Amendment is a question of "reasonableness," and the voluntariness of consent is determined from all the circumstances.

Thus, whether the defendant was told he was free to go is but one factor in determining whether consent is voluntary; it is possible to have a valid consent even where the officer did not insure that the defendant was aware that he could decline to consent.

In separate opinions, Justices Ginsberg and Stevens noted that the Ohio Supreme Court was free to adopt its holding as a matter of state law. See also, **U.S. v. Watson**, 423 U.S. 411, 96 S. Ct. 820, 46 L.Ed.2d 598 (1976) (fact that defendant was in custody and not told of his right to refuse did not make his consent involuntary).

Florida v. Jimeno, 500 U.S. 248, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991) The scope of a consensual search depends on whether a reasonable person would believe that the search was authorized by the consent. Where the defendant consented to a general search of his car after being informed that he was suspected of carrying narcotics, a reasonable person would believe that the officer was authorized to search any unlocked container which might contain drugs. Therefore, the officer could open a paper bag found on the floorboard.

Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041, 36 L.Ed.2d 854 (1973) The prosecution has the burden of proving that consent to search was freely and voluntarily given and was not the result of duress or coercion.

When a person is not in custody, a warning of rights is not required before a consent to search. The test is whether, based upon the totality of circumstances, the consent was voluntary.

Illinois Supreme Court

People v. Absher, 242 Ill.2d 77, 950 N.E.2d 659 (2011) Pursuant to a fully negotiated guilty plea to retail theft, defendant was placed on probation for two years with the first year to be "intensive probation supervision." As part of the intensive probation, defendant agreed to abide by a number of conditions, including that he would "submit to searches of [his] person,

residence, papers, automobile and/or effects at any time such requests are made by the Probation Officer, and consent to the use of anything seized as evidence in Court proceedings."

At a meeting between defendant and his probation officer, the latter believed that defendant was under the influence of drugs. The probation officer contacted the State's Attorney's office and obtained authorization to search defendant's home.

When the probation officer and city officers arrived at the residence, defendant attempted to deny them entry. The officers forced entry, searched the premises, and found crack cocaine, marijuana, and several lighters and pipes.

The Supreme Court concluded that by entering a fully negotiated guilty plea and accepting a probation sentence which included the search condition, defendant waived his Fourth Amendment rights concerning searches which had a legitimate law enforcement objective.

Law enforcement officers generally may not enter or search a person's home without a warrant, unless there are exigent circumstances. Several exceptions to the warrant requirement have been recognized, however, including searches under voluntary consent and searches based on special law enforcement needs where there are diminished expectations of privacy and only minimal intrusions to those expectations.

Generally, contract law principles apply to negotiated guilty pleas. Therefore, neither party can unilaterally abrogate obligations which it holds under the plea agreement.

A probationer who enters a fully negotiated plea and freely accepts a broad probation condition permitting searches has a significantly reduced expectation of privacy. Furthermore, the probationer may waive his Fourth Amendment rights concerning such searches so long as the waiver is knowing and intelligent.

The court acknowledged, however, that the waiver of Fourth Amendment rights would not extend to searches that had no possible law enforcement objective or which so far exceeded any legitimate objective as to justify an inference that the officers' purpose was mere harassment.

By entering a fully negotiated guilty plea by which he avoided imprisonment by agreeing to intensive probation including submission to searches, defendant accepted a diminished expectation of privacy in his home. In addition, by agreeing that evidence discovered in such searches would be admissible at court proceedings, defendant knowingly and voluntarily waived any Fourth Amendment protections concerning such evidence.

The court distinguished **People v. Lampitok**, 207 Ill.2d 231, 798 N.E.2d 91 (2003), which held that a search of a probationer's residence must be supported by reasonable suspicion. In **Lampitok**, the defendant merely shared premises with a probationer to whom a search condition applied. More important, the search condition in that case was much less expansive because it authorized only searches to verify compliance with the probation conditions. The court concluded that the condition in **Lampitok** required the probationer to either consent to a search when directed or run the risk that her probation would be revoked.

Here, by contrast, the language of the probation order required the defendant to submit to any search requested by the probation department and to consent to the admission of any evidence that was seized. By agreeing to such an extensive order, defendant gave his prospective consent to any search and to the use of any evidence recovered.

The court stressed that its opinion was limited to the facts of this case. The court expressed no opinion concerning the validity of such a search condition where the defendant enters an open plea or is involuntarily placed on probation.

People v. Lampitok, 207 Ill.2d 231, 798 N.E.2d 91 (2003) Although the probation order provided that the probationer "shall submit to a search of her person, residence, or automobile at any time as directed by her Probation Officer to verify compliance with the conditions" of probation, the probationer had not given prospective consent for a search of any residence. The order did not "directly empower" a probation officer to conduct a search to verify compliance with probation conditions; instead, it provided that defendant "shall" submit to searches as directed. Thus, "the plain language" of the condition "affirmatively required [the] probation officer to ask [the probationer] to consent - or submit - to a particular search prior to conducting it; agreeing to the probation order did not constitute a prospective consent to all probation searches." See also, **People v. Moss**, 217 Ill.2d 511, 842 N.E.2d 699 (2005) (signing statutory MSR condition to "consent to a search of your person, property, or residence under your control" was not prospective consent to any search conducted while defendant was on MSR; plain language of the document should be interpreted as requiring defendant to either consent to a request to search or face possible revocation of his MSR); **People v. Wilson**, 228 Ill.2d 35, 885 N.E.2d 1033 (2008) (same).

People v. Anthony, 198 Ill.2d 194, 761 N.E.2d 1188 (2001) Whether consent is voluntary depends upon all of the circumstances of the case; consent may not be "obtained" by "explicit or implicit" force. In determining whether the subject of a search voluntarily consented, a court must consider the effect of "subtly coercive police questions" and "the possibly vulnerable subjective state of the person who consents." Although the subject of a search may give non-verbal consent, mere acquiescence to an officer's apparent authority does not constitute consent.

Where officers approached defendant and asked a series of "subtly and increasingly accusatory questions," defendant's act of "assum[ing] the position" did not necessarily indicate that he consented to the officers' request to conduct a search. "An equally valid inference from the defendant's ambiguous gesture is that he submitted . . . to what he viewed as the intimidating presence of an armed and uniformed police officer." See also, **People v. Terry**, 379 Ill.App.3d 288, 883 N.E.2d 716 (4th Dist. 2008) (defendant voluntarily consented to a request for a search where he not only "assumed the position" but stated, "You got to go ahead and do what you got to do"; when asked for clarification, defendant stated, "You have a job to do" and "let me help you out" before removing items from his coat pocket and placing them on the vehicle).

People v. Brownlee, 186 Ill.2d 501, 713 N.E.2d 556 (1999) 1. To satisfy the Fourth Amendment, "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." The State bears the burden to show that an investigative stop was reasonable in its scope and duration. Where the confinement of a person goes beyond the limits of a proper investigatory stop, a subsequent consent to search may be tainted.

2. Where officers who were conducting a traffic stop returned the driver's license and insurance information, and then stood on both sides of the car without saying anything for two minutes, the trial court did not err by finding that the officer's actions constituted a show of authority such that a reasonable person would conclude that he or she was not free to leave. Because there was no basis to justify the detention, a subsequent consent was void as a fruit of the illegal detention.

People v. Casazza, 144 Ill.2d 414, 581 N.E.2d 651 (1991) In requesting consent to search a yacht, officers told the owners that the police "could" or "would" get a search warrant if necessary, and that the people aboard the yacht would have to leave while the warrant was being obtained. The trial judge found that the consent was given under duress, and the Supreme Court upheld that finding on the ground that it was not clearly unreasonable. The Court held that several decisions cited by the State did not authorize the police to remove the occupants from the yacht while awaiting a warrant.

People v. Magby, 37 Ill.2d 197, 226 N.E.2d 33 (1967) Consent to search by defendant was upheld when given after police told defendant "if you don't care to let us search, we'll get a search warrant" and "you do whatever you want." Compare, **People v. Sinclair**, 281 Ill.App.3d 131, 666 N.E.2d 1221 (3d Dist. 1996) (once driver refused to consent to search of car, officer erred by continuing the detention and attempting to persuade defendant to change his mind; in the absence of probable cause or a reasonable, articulable suspicion, "once a driver states that he will not consent to a search, the police are obliged to release the driver, car and passengers"); **People v. Manke**, 181 Ill.App.3d 374, 537 N.E.2d 13 (3d Dist. 1989) (defendant's "consent" to search the trunk was the product of duress or coercion where, after defendant refused to consent, the officer threatened to have the car impounded and to obtain a search warrant); **People v. Sweborg**, 293 Ill.App.3d 298, 688 N.E.2d 144 (3d Dist. 1997) (trial court erred by finding that defendant consented to search of vehicle trunk; though defendant explained how to remove keys from ignition when officer had trouble, when officer opened trunk defendant repeatedly objected and said he did not want "personal items" to be searched).

Illinois Appellate Court

People v. Davis, 2019 IL App (1st) 160408 During an ongoing narcotics investigation, police observed a white object being passed into a vehicle in which defendant was a passenger. After stopping the vehicle and obtaining the driver's consent to search, the police exceeded the scope of that consent by disassembling portions of the vehicle to access hidden compartments. While the driver indicated the location of the contraband by nodding toward the back of the vehicle during the police encounter, a reasonable person in the driver's position would not have understood his consent to include removal of interior panels to access hidden compartments.

Under the "automobile exception" to the warrant requirement, however, the search of the hidden compartments was justified. The police had observed the transfer of the item into the vehicle during surveillance as part of a narcotics investigation, had not seen the item thrown or dropped from the vehicle between the transfer and the traffic stop, and did not see the item in the vehicle during the search of the passenger compartment. Considering the totality of the circumstances, the police had probable cause to search.

People v. Musgrave, 2019 IL App (4th) 170106 Defendant's consent to search was not tainted by the duration of the traffic stop. While the officer who initiated the stop was completing paperwork related to the stop, another officer arrived and defendant consented to be searched by the second officer. The first officer continued "diligently working on matters related to the traffic stop." The stop was not prolonged where tasks tied to the traffic infraction were not complete at the time of the consent to search, and the search was conducted within the time reasonably required to complete the mission of the initial traffic stop.

People v. Hayes, 2018 IL App (5th) 140223 A young boy on a bicycle rode out from between two parked cars directly in front of defendant's moving vehicle. Defendant struck the boy, resulting in his death. Defendant said he had been momentarily distracted by his own child's request for assistance opening a piece of candy. An eyewitness reported there was nothing defendant could have done to avoid the accident. After the police arrived, defendant was transported to the hospital where blood and urine samples were taken without a warrant. Initial results showed the presence of THC and amphetamines, and defendant was then arrested for DUI. Defendant sought to exclude the test results.

The natural dissipation of alcohol or drugs in a person's body does not give rise to a *per se* exigency. Further, for the exigent circumstances exception to apply, there must be probable cause for the search. Here, there was no showing of probable cause where the officer did not say that he disbelieved defendant's version of the incident and there was no evidence that defendant appeared to be under the influence of any substance.

While defendant did not object to the testing, his mere acquiescence did not constitute consent. Even assuming defendant had consented to blood and urine testing, his consent was not voluntary where a police officer drove defendant to the hospital from the accident scene, remained with defendant at all times including while he was providing a urine sample, and had defendant's car towed and stored as part of the police investigation of the accident. Likewise, the implied consent statute could not validate the testing where no traffic citation was issued until two days after the testing, and defendant was not otherwise under arrest for a violation of the Illinois Vehicle Code at the time of the testing. Implied consent, by its express terms, requires that defendant has been arrested for a vehicle code violation prior to being asked to submit to testing.

The blood and urine testing was an unreasonable search, and the results should have been excluded. Defendant's conviction of aggravated DUI was reversed outright because without the test results, there was insufficient evidence to convict.

People v. Pulido, 2017 IL App (3d) 150215 The Fourth Amendment requires that a search continue no longer than is necessary to effectuate the purposes of a stop. An investigative stop must cease once reasonable suspicion or probable cause dissipates. However, probable cause does not dissipate merely because it takes a long time to complete a reasonable and thorough search of a vehicle.

Where police stopped defendant's van for speeding, searched the entire vehicle on the shoulder of I-80 after a drug detection canine alerted to the vehicle, and had no reason to believe that the vehicle might have contained a hidden compartment, the probable cause created by the dog's alert expired when the officers were unable to locate any contraband within the vehicle. Once the search of the vehicle was fruitless, the officers lacked authority to transport the vehicle to police headquarters to search a second time. The court rejected the argument that the weather conditions and interests of officer safety justified moving the vehicle, noting that the decision to move the vehicle was made only after the first search failed to disclose any contraband.

The court also noted that even if defendant consented to the search at the scene of the traffic stop, that consent was not sufficiently broad to authorize moving the vehicle to police headquarters for an additional search. "[W]e do not believe an Illinois citizen who is pulled over on a highway and subsequently consents to a search of his vehicle intends to voluntarily and knowingly consent to have his vehicle removed from the highway and relocated to the local police station for a further search once the initial search on the highway is completed."

Because the trial judge erred by denying defendant's motion to suppress, and because the conviction for possession of methamphetamine cannot stand in the absence of the contraband discovered in the second search, the cause was remanded with directions to vacate the conviction and sentence.

People v. Wall, 2016 IL App (5th) 140596 Voluntary consent to search is an exception to the warrant requirement, but to be effective the consent must be given without any coercion, express or implied. A defendant's initial refusal to consent is an important factor in determining whether later consent is voluntary. The fact that defendant signed a written consent form is not dispositive in deciding whether consent was voluntary where circumstances show the consent was obtained through coercion. A police officer's false or misleading information may make defendant's consent involuntary.

The police, acting on a tip from a confidential informant that defendant was growing marijuana in his house, went to defendant's house without a warrant. Defendant wasn't home so an officer called him and falsely told him there had been a break-in at his house. When defendant arrived, the officer revealed that there was no break-in and instead asked defendant for permission to enter and search his house.

Defendant asked the officer if he had a warrant. The officer told defendant that if he did not sign a consent to search form he would go to jail. Conversely, if defendant did sign the form he would not go to jail that day. Defendant signed the consent form and the police searched his house and recovered contraband.

The court held that the police "tricked, intimidated, and threatened defendant into signing a voluntary consent form." Under these circumstances, defendant's consent was involuntary. The court reversed defendant's conviction, suppressed all evidence obtained from the illegal search, and remanded for a new trial.

People v. Butler, 2015 IL App (1st) 131870 Where defendant was present in a hospital emergency room for treatment of a gunshot wound, the community caretaking exception did not justify a search of his cell phone for the purpose of calling someone in defendant's family to inform them that he was at the hospital. The court rejected the State's argument that defendant gave implied consent for his cell phone to be searched when he asked a nurse to call his sister. The State argued that it was reasonable to believe that the officer overheard this request and decided to carry it out by using defendant's cell phone. The State contended that because defendant asked that his sister be contacted, use of the cell phone was inevitable and it did not matter who acted on the request.

The court noted that not only was evidence lacking to show that the officer heard defendant's request to the nurse, but that request was made to the nurse and not the officer. Consent is determined by whether a reasonable person would have understood an individual's words or conduct as granting consent. No reasonable person would have understood defendant's request that a nurse call his sister as granting consent for other persons to search his cell phone. Furthermore, defendant's request did not constitute a relinquishment of his privacy expectations in his cell phone where there was no evidence that defendant asked the nurse to use his cell phone to call his sister.

People v. Kofron, 2014 IL App (5th) 130335 Police went to a home where defendant was an overnight guest and conducted a "knock and talk," a consensual encounter where the police knock on the door of a home and ask to speak with the occupants. Two officers knocked on the front door, while several other officers entered the back yard and waited outside the back

door. The officers in the back yard saw contraband on top of a garbage can. When defendant exited the back door, the officers arrested him and seized the contraband.

The trial court suppressed the contraband, holding that a "knock and talk" does not give police permission to enter the back yard of a house, and thus the contraband was only in plain view because the police had illegally entered a "private area of the home."

The State appealed, arguing that the contraband was properly seized because it was discovered in plain view during a consensual "knock and talk." The Appellate Court rejected this argument, holding that it was impermissible for the police to enter the back yard of a home during a "knock and talk."

In seeking a consensual encounter during a "knock and talk," police may, like private citizens, approach the front entrance of a home, knock promptly, wait briefly for someone to answer, and absent an invitation to stay longer, leave. There is, however, no legitimate rationale in any "knock and talk" for deploying officers to cover multiple entrances of a home to prevent occupants from escaping a consensual encounter. This is especially true in the present case where police entered the back yard before even waiting to see if anyone was at home or would answer the door.

Since the police had no authority to enter the back yard, the contraband (which could not be seen from the front door) was not discovered in plain view. The trial court's suppression order was affirmed.

People v. Dawn, 2013 IL App (2d) 120025 It is the State's burden to prove that an entry into a home fits within the consent exception to the warrant requirement. The police must act within the scope of the consent given, measured objectively. To establish the scope of the consent, it is important to consider any express or implied limitations or qualifications with respect to matters such as duration, area and intensity.

The trial court's finding that the police did not exceed the scope of defendant's sister's consent to the police to enter the home was against the manifest weight of the evidence. Defendant's sister invited the police into the first floor of the home in response to an officer's request to speak to her about suspected recent drug activity at the home. Her consent for the police to enter was limited to that express purpose and to that area. The police exceeded the scope of that purpose and area when they followed the defendant into the basement in the hope of obtaining incriminating evidence or an incriminating admission.

Because the State could not have proved defendant's guilt of possessing cocaine with intent to deliver without evidence obtained through the illegal entry, the Appellate Court reversed defendant's conviction.

People v. Marcella, 2013 IL App (2d) 120585 The Appellate Court affirmed the trial court's order granting defendant's motion to suppress evidence, finding that the officers lacked probable cause for an arrest or valid consent for a search. The court also held that even if there was adequate suspicion to justify a **Terry** stop, the officers' actions exceeded the scope of a valid stop.

The parties did not contest that defendant was "seized" where, after landing his plane at DuPage Airport after a flight from Marana, Arizona, he was confronted by several armed agents of the Department of Homeland Security who landed at defendant's hangar in a military helicopter. Defendant and a friend who had helped push defendant's plane into the hangar were handcuffed and frisked by the agents, who had their weapons drawn. Defendant was then questioned about his identity, his flight, and the contents of the plane.

The court rejected the State's argument that the trial court erred by finding that an

agent acted without consent when he entered the plane to retrieve the airworthiness certificate, which the agents demanded from defendant in addition to his pilot's license and medical certificate. The trial judge did not resolve whether defendant consented to the entry, but found that any consent was the fruit of an illegal arrest.

A consent to search that is tainted by an illegal arrest may be valid if the State establishes that the taint of the officers' illegal action was attenuated from the consent. Factors in determining whether the taint is attenuated include: (1) the temporal proximity between the seizure and the consent, and (2) the presence of any intervening circumstances.

The court concluded that where defendant was arrested without probable cause and subjected to a document check, and any consent to allowing an agent to enter the plane occurred relatively quickly after the illegal arrest, the seizure and consent were "inextricably connected" in time. Furthermore, there were no intervening circumstances which would have broken the link between the illegal arrest and the consent. Under these circumstances, the trial court did not err by finding that items seized from the plane were fruits of the illegal arrest.

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The parties did not contest that defendant was "seized" where, after landing his plane at DuPage Airport after a flight from Marana, Arizona, he was confronted by several armed agents of the Department of Homeland Security The seizure was not justified by probable cause although defendant had followed an indirect flight path from Arizona to Illinois and had filed a flight plan while he was in-flight, which allowed him to conceal his point of origin. In addition, approximately 25 years earlier defendant had been charged but not convicted of three drug-related offenses.

The court rejected the State's argument that the trial court erred by finding that an agent acted without consent when he entered the plane to retrieve the airworthiness certificate, which the agents demanded from defendant in addition to his pilot's license and medical certificate. The trial judge did not resolve whether defendant consented to the entry, but found that any consent was the fruit of an illegal arrest.

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People v. Kats, 2012 IL App (3d) 100683 When the police rely on consent as the basis for a warrantless search, they have no more authority than they have apparently been given by the voluntary consent of the suspect. The standard for measuring the scope of a suspect's

consent to search is that of objective reasonableness, which requires consideration of what a typical reasonable person would have understood by the exchange between the officer and the suspect. The scope of the search is defined by its expressed object or purpose.

Whether a suspect's consent to search a vehicle and its contents for contraband allows an officer to search spaces behind interior door panels that are not visible to the naked eye from inside the vehicle's passenger cabin is an issue that Illinois courts have not addressed. The majority of courts that have addressed the issue hold that a suspect's consent to search includes any place in the vehicle that might reasonably contain the expressed objects of the search, including spaces behind door panels. A minority of courts hold that a general consent to search a vehicle for contraband does not include a consent to search behind interior door panels or other areas that are not customarily opened or easily accessed.

The Appellate Court concluded that an officer's use of a tool to search behind a door panel of the vehicle did not exceed the scope of the defendant's consent to search the vehicle for contraband because it would be reasonable to find contraband hidden behind a removable door panel. A reasonable person in defendant's position would have understood that he had authorized the officer to search behind the door panels, particularly because the panels could be easily removed and replaced and the search could be accomplished without causing any structural damage to the car.

People v. Krinitsky, 2012 IL App (1st) 120016 Over at least an 11-hour period of time, the police planned with an informant to deliver 15 pounds of marijuana to the defendant for $30,000. The informant entered the defendant's apartment with the marijuana and sent the police a text message, "He's fingering it." The police responded with a text message telling the informant to come out. The informant responded that in three minutes, he was coming out, no matter what. When the informant exited, the police entered and during a search of the apartment, recovered both the cannabis and $30,000 in a suitcase.

The trial court granted the defense motion to suppress, finding that no exigent circumstances excused the entry and search without a warrant.

Consent is an exception to the requirement that the police need a warrant to enter a residence. The consent-once-removed doctrine is applicable where an undercover agent or government informant: (1) enters at the express invitation of someone with authority to consent; (2) at that point establishes the existence of probable cause to effectuate an arrest or search; and (3) immediately summons help from other officers.

While expressing no opinion whether the consent-once-removed doctrine should be adopted, the Appellate Court held that the State had failed to prove the second and third elements.

The informant, not the defendant, brought the cannabis into the defendant's apartment. The only testimony regarding probable cause was that the informant sent the police a text message stating, "He's fingering it." The police sent the informant a text message to "come on out." When the police entered, they found both the cannabis and a suitcase filled with $30,000. There was no evidence that a transaction occurred or any explanation why the informant left behind both the cannabis and the $30,000 that defendant presumably gave him in the apartment. These facts failed to demonstrate probable cause to arrest defendant.

Moreover, the informant did not immediately summon help from the officers. The police told the informant to come out, and he responded that he would leave in three minutes. Once the informant exited, the police forcibly entered the apartment.

People v. Leach, 2011 IL App (4th) 100542 Defendant was approached because officers

suspected that he was under the age of 17 and violating curfew by being out after 11:00 p.m. However, defendant's identification showed that he was 19 years old, and a warrant check showed that no warrants were outstanding.

The officers returned defendant's identification and then asked whether defendant had ever been arrested. Defendant responded that he had been arrested once with a drug raid at his mother's house. One of the officers then asked defendant "if he would mind" being searched. Defendant responded, "[N]o, go ahead." The search resulted in the discovery of cannabis.

The trial court granted defendant's motion to suppress evidence after a hearing at which the only evidence was the testimony of one of the officers. The Appellate Court reversed.

Voluntary consent to a search is a recognized substitute for a warrant based on probable cause. However, the State has the burden of showing that consent was obtained and was voluntarily given. A consent to search may be tainted where the defendant was unlawfully seized when the consent was obtained. The court concluded that the stop of the defendant was lawful based upon the reasonable suspicion that he was violating curfew, and that the stop was concluded when the identification was returned to the defendant after the warrant check was performed. The court concluded that at that point, a reasonable person in defendant's circumstances would have believed that he was free to go.

The court found that the officers did not make a subsequent seizure after the identification was returned, although they asked defendant whether he had ever been arrested. The court noted that the first three **Mendenhall** factors (the threatening presence of several officers, the display of a weapon, and physical contact with the person of the defendant) were absent. Furthermore, although the trial court found that the officer used a coercive tone or body language to convey to the defendant that he was not free to leave, the Appellate Court found that the finding was against the manifest weight of the evidence where the trial court made no finding that the only witness was incredible or that his characterization of the encounter was unbelievable or inaccurate. "Absent actual evidence that [the officer] used coercive language or a compelling tone, the court was not permitted to infer the presence of this factor."

In the absence of any of the **Mendenhall** factors, the court concluded that the defendant's consent to be searched was voluntary.

People v. Davis, 398 Ill.App.3d 940, 924 N.E.2d 67 (2d Dist. 2010) The court held that police improperly seized a suspected controlled substance and a digital scale which an officer observed while in the defendant's apartment to make a warrantless arrest. Therefore, the defense motion to suppress evidence should have been granted.

The court concluded that after the arrest was complete, defendant's girlfriend did not voluntarily consent to allowing police to reenter the apartment for the purpose of seizing the scale and suspected controlled substance. The officer told the girlfriend that he would get a search warrant if the girlfriend refused to consent, that the girlfriend would be charged "with anything he found pursuant to a search warrant," and that if she consented to a search police would not jail her or file any charges that night. A recording of the conversation also showed that an unidentified male told the girlfriend that if she was taken to jail immediately, DCFS would have to be called to care for her children, who were in the apartment.

An officer does not vitiate consent to search by communicating his intent to engage in a certain course of conduct, so long as there are legitimate grounds to carry out the conduct in question. However, consent may be involuntary if the officer lacks legal grounds to carry out the conduct or where false or misleading information is given. Furthermore, consent is involuntary where it is given solely as the result of acquiescence or submission to an assertion of police authority, or where the consent is "inextricably bound up with illegal conduct and cannot be segregated therefrom."

The court concluded that the officer's illegal entry to the apartment, and illegal discovery of a scale and white powder, were "inextricably bound up" with the subsequent request for consent. Furthermore, despite his statements to the girlfriend, the officer could not have obtained a warrant based either on the evidence discovered during the illegal entry to the apartment or on the battery complainant's claim that drugs were being sold from the apartment.

On the latter point, the court noted that complainant's statement about drugs was totally uncorroborated. Furthermore, the complainant had a motive to lie because she was a drug abuser who admitted that she owed money to defendant for drugs and who claimed that she had been the victim of a battery. Furthermore, there was no showing that the complainant had provided the police with reliable information in the past. Under these circumstances, the officer lacked any basis on which a warrant could have been obtained.

People v. Burei, 404 Ill.App.3d 558, 937 N.E.2d 297 (1st Dist. 2010) The police were justified in stopping the van after they observed it commit a traffic violation. Defendant, the owner of the van, was a passenger. The police obtained the license of the driver and asked him to step out of the van because he appeared nervous. The driver told the police that he was nervous because he had never been stopped by the police before. The Appellate Court concluded that, upon receiving this plausible answer, the police should have ended the encounter by issuing a citation and returning the license. Instead, the police obtained a consent to search from defendant and did not issue a ticket to the driver until after the discovery of the unstamped cigarettes, and after their return to the police station. There was no evidence if or when the police returned the driver's license.

The court found that the police prolonged the traffic stop beyond its lawful purpose by questioning the defendant and obtaining his consent to search the van. Continuing to detain and question the van and its occupants rendered the initial lawful stop unlawful and that unlawful detention tainted the consent to search. Because the initial detention of the defendant did not end before the police obtained defendant's consent to search, **Crosby** and **Oliver** were distinguishable. Those cases involved circumstances where the police obtained defendant's consent to search after the traffic stop had concluded, by the police issuing a citation or informing defendant he was free to leave. The issue in those cases was whether a new seizure had occurred before the police obtained the consent to search.

2. The court also considered whether the actions of the police fundamentally changed the nature of the lawful stop by infringing on defendant's constitutionally protected interest in privacy. It derived this test from **Illinois v. Caballes**, 543 U.S. 405 (2005), and assumed *arguendo* that it survived **Muehler v. Mena**, 544 U.S. 93 (2005), which found no Fourth Amendment violation when defendant was questioned about her immigration status while being lawfully detained during execution of a search warrant. The court concluded that the request to search the van changed the fundamental nature of the detention because it infringed on defendant's legitimate interest in privacy. Unlike **Caballes**, involving a dog sniff for drugs, the search was not limited to contraband, but extended to the interior of the

van where defendant had a legitimate privacy interest in non-contraband items.

People v. Burei, 404 Ill.App.3d 558, 937 N.E.2d 297 (1st Dist. 2010) This case was before the Appellate Court pursuant to a supervisory order entered by the Illinois Supreme Court remanding for reconsideration in light of **People v. Oliver**, 236 Ill.2d 448, 925 N.E.2d 1107 (2010). The Supreme Court had previously remanded for reconsideration in light of **People v. Cosby**, 231 Ill.2d 262, 898 N.E.2d 603 (2008). The court addressed for the third time whether the trial court properly suppressed unstamped cigarettes discovered during a search of defendant's van.

The police were justified in stopping the van after they observed it commit a traffic violation. But the police prolonged the traffic stop beyond its lawful purpose by questioning the defendant and obtaining his consent to search the van. Continuing to detain and question the van and its occupants rendered the initial lawful stop unlawful and that unlawful detention tainted the consent to search. Because the initial detention of the defendant did not end before the police obtained defendant's consent to search, **Crosby** and **Oliver** were distinguishable. Those cases involved circumstances where the police obtained defendant's consent to search after the traffic stop had concluded, by the police issuing a citation or informing defendant he was free to leave. The issue in those cases was whether a new seizure had occurred before the police obtained the consent to search.

People v. Plante, 371 Ill.App.3d 264, 862 N.E.2d 1059 (3d Dist. 2007) The fact that a citizen consents to one entry to his home by police officers does not mean that all subsequent entries are consensual; the legality of each entry must be determined individually. Although the defendant consented to two entries to his home, the court concluded that he did not consent to a third entry, during which he was arrested and a warrantless search of the residence conducted.

People v. Holliday, 318 Ill.App.3d 106, 743 N.E.2d 587 (3d Dist. 2001) An officer who relies on consent to conduct a warrantless search has only such authority as was apparently granted by the suspect's consent. The scope of consent to search is determined by considering what a reasonable person would have understood from the exchange in which consent was granted.

Because individuals possess a heightened privacy interest in their bodies, consent to a general request to conduct a search for "drugs or weapons" does not include authority to search the suspect's genital area. Before a genital search can be justified on the basis of consent, the officer "must be more particular in explaining the scope of a proposed genital search." Thus, where defendant consented to a patdown for drugs or weapons, "a reasonable person would have expected no more than a general frisk or pat-down of the outer clothing, . . . [and] would be surprised to find an officer's hand grabbing his crotch and probing his genital area."

People v. Hess, 314 Ill.App.3d 306, 732 N.E.2d 674 (4th Dist. 2000) Defendant's consent to search was the fruit of an illegal detention where defendant consented after he was handcuffed and forced to lie face down in the dirt for 15 to 20 minutes while an armed officer stood over him. See also, **People v. Anderson**, 304 Ill.App.3d 454, 711 N.E.2d 24 (2d Dist. 1999) (consent to search was tainted where defendant was detained in an illegal stop).

People v. Baltazar, 295 Ill.App.3d 146, 691 N.E.2d 1186 (3d Dist. 1998) Where during a

traffic stop the officer asked if he could "take a look" inside the back of the truck, and defendant responded, "[S]ure," the officer exceeded the scope of the consent by moving items inside the truck, opening boxes and cutting open an object wrapped in duct tape. The scope of a consent for a warrantless search is determined by what a "typical reasonable person [would] have understood by the exchange between the officer and the suspect."

Where the officer did not express any specific purpose or suspicion of criminal activity and asked only to "take a look" in the back of the truck, a reasonable person would have believed that defendant consented only to allowing the officer to look into the truck and not to move items or open containers. If the officer wished to conduct a further search after discovering the truthfulness of defendant's representations concerning the contents of the truck, additional consent was required. See also, **People v. Sanders**, 44 Ill.App.3d 510, 358 N.E.2d 375 (5th Dist. 1976) (defendant gave consent to look into trunk, but when police reached for a paper bag defendant told them they could not look in it; by looking into the paper bag after defendant's statement, police exceeded the scope of the consent).

People v. Dale, 301 Ill.App.3d 593, 703 N.E.2d 927 (4th Dist. 1998) Where defendant consented to allowing officers to enter his motel room, and initially consented to a search but then withdrew that consent, the officers were not authorized to remain in the room. Because the officers only asked defendant whether they could "step in and speak with him," defendant consented only to having the police enter his room to talk. By remaining in the room to check defendant's clothes and watch him pack in order to be evicted, the officers exceeded the scope of the consent.

The officers could not reasonably assume that their presence was authorized by defendant's consent unless he asked them to leave; defendant expressly told the officers that he did not want them to search his room, but the officers responded by saying that they would remain in the room while defendant packed his belongings. One of the officers then "went one step further" by removing defendant's clothing from the closet, checking to determine whether it contained weapons or contraband, and handing it to defendant to be packed. The officers' actions allowed defendant only three choices: arguing with the officers, attempting to forcibly remove them from his room, or assenting to their display of authority. The fact that defendant "chose the third of these three options hardly constitutes consent."

People v. Finley, 293 Ill.App.3d 397, 687 N.E.2d 1154 (5th Dist. 1997) The "consent once removed" doctrine permits police to make a warrantless entry to assist an informant or undercover agent who entered premises at the invitation of the occupant, establishes probable cause for an arrest, and summons other officers to assist in the arrest. However, the doctrine did not apply under the circumstances of this case.

People v. Taylor & Londergon, 245 Ill.App.3d 602, 614 N.E.2d 1272 (3d Dist. 1993) The trial court's conclusion that no consent occurred was not manifestly erroneous where the officers were unable to recall the exact words with which the owner of a car supposedly consented, the officers failed to use available consent-to-search forms, and there were discrepancies concerning when the search began, who was present and whether a passenger remained in the car. In addition, a person traveling from Illinois to Colorado with her boyfriend had a reasonable expectation of privacy in the interior of the car, and therefore had standing to challenge the alleged consent even though she did not own the car.

People v. Cardenas, 237 Ill.App.3d 584, 604 N.E.2d 953 (3d Dist. 1992) The Appellate Court

found that defendant's consent to search was not voluntarily given where she responded to the officer's request to search the car by saying, "[n]o, is that legal," and the officer responded that it was legal and that police did it "all the time." An initial refusal to consent is an important factor in determining whether a subsequent consent is voluntary, and the trial court specifically found that defendant consented because of the officer's misleading statement about his authority to conduct the search. The fact that defendant was surrounded by three troopers further suggests that the consent was not voluntary.

People v. Bosse, 238 Ill.App.3d 1008, 605 N.E.2d 593 (4th Dist. 1992) Suppression order upheld. Where there is no express consent, whether an entry is valid depends on the extent to which it is reasonable for the officers to believe that consent had been given. The police could not reasonably believe that they had been given consent to enter merely because defendant took a step backward when he saw them at the door.

Furthermore, in view of the minor nature of the offenses, the officers' entry to a secure apartment building by contacting the manager, and the officers' knocking on the door without announcing themselves and while covering the peephole, the trial court could have reasonably concluded that they intended to enter the apartment upon any movement which could arguably be interpreted as consent.

People v. Flagg, 217 Ill.App.3d 655, 577 N.E.2d 815 (5th Dist. 1991) Consent must be voluntary and not mere acquiescence to a claim of lawful authority. The search could not be justified based on a consent form that was given to defendant and signed *after* the house had been searched and defendant was handcuffed; "[w]e have found no case — and we think none can be found — that permits a warrantless search to be ratified by signing a consent-to-search form after the search has, for the most part, been completed."

People v. Harris, 199 Ill.App.3d 1008, 557 N.E.2d 1277 (2d Dist. 1990) The driver of an automobile has the authority to consent to the search thereof even though the owner of the automobile is a passenger and does not consent. By allowing the driver to exercise authority over a vehicle, the owner of the vehicle assumes the risk that the driver will allow someone to look inside it.

People v. Burton, 131 Ill.App.3d 153, 475 N.E.2d 583 (1st Dist. 1985) Defendant impliedly consented to the check by metal detector where he attempted to enter a ballroom despite sign notifying patrons of the metal detector.

People v. Kelly, 76 Ill.App.3d 80, 394 N.E.2d 739 (5th Dist. 1979) Search of vehicle cannot be upheld on the basis of consent; defendant's "consent" was the result of the "illegal assertion of authority" by police and was "a passive submission to authority" rather than a "voluntary relinquishment of a right."

People v. Jackson, 57 Ill.App.3d 720, 373 N.E.2d 729 (1st Dist. 1978) When consent is limited to one search, the police may not return and conduct another search based upon that consent.

People v. Gorsuch, 19 Ill.App.3d 60, 310 N.E.2d 695 (3d Dist. 1974) Defendant's attempt to withdraw consent came too late after a gun was given to police and blood was found in muzzle.

§43-2(d)(6)(b)
Consent by Third Parties

§43-2(d)(6)(b)(1)
Generally

United States Supreme Court

Fernandez v. California, 571 U.S. ___, 134 S.Ct. 1126, 188 L.E.2d 25 (2014) Searches conducted with the consent of an owner or occupant are generally considered "reasonable," and therefore satisfy the Fourth Amendment. In most cases, the consent of a single Owner or inhabitant permits a search. However, where a co-inhabitant is physically present and expressly refuses to consent, a second co-inhabitant's consent does not permit a search. **Georgia v. Randolph**, 547 U.S. 103 (2006).

The court concluded that the **Randolph** exception applies only where the objecting co-inhabitant is physically present at the scene. Defendant came to the door of an apartment and refused to allow police to enter, but was subsequently arrested and taken to the police station. Under these circumstances, **Randolph** did not prevent the police from returning to the apartment and obtaining the co-inhabitant's consent to conduct a search.

The court rejected the argument that defendant's objection should have been effective because he was absent only because he was removed by the police. In *dictum* in **Randolph**, the court suggested that the objection of an absent co-inhabitant might preclude consent by a second co-inhabitant if the objecting party was removed by police "for the sake of avoiding a possible objection." The court stressed that the **Randolph** dictum was not intended to require courts to inquire into the subjective intent of officers who remove a potential objector. Instead, the **Randolph** court intended to hold only that a co-inhabitant who is removed by police does not lose the ability to object if the removal was objectively unreasonable.

Because the officers had probable cause to arrest and remove defendant from the scene, his absence from the scene took him outside the **Randolph** rule.

The court rejected as unworkable defendant's proposal that a co-inhabitant's objection should be deemed effective until it is withdrawn. The court noted that **Randolph** was based on "widely shared social expectations" that a visitor would be unlikely to enter premises over the active objection of one of two co-inhabitants. "It seems obvious that the calculus of this hypothetical caller would likely be quite different if the objecting tenant was not standing at the door."

The court also noted that such a rule would create practical issues such as the length of time an objection would be effective, determining whether the objecting co-inhabitant had continuing authority to object in the future, the process that would be needed to register a continuing objection, and deciding which law enforcement agencies would be bound by a previous objection.

The court also rejected the argument that an expanded **Randolph** exception would not hamper law enforcement because officers who have probable cause to arrest the objecting co-inhabitant will frequently also have probable cause to obtain a warrant. Requiring police to obtain an unnecessary warrant may interfere with legitimate law enforcement strategies and could burden the consenting co-inhabitant, who may want a speedy search to dispel any suspicion or to remove any dangerous contraband from the premises.

U.S. v. Matlock, 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974) A third party who

possesses common authority over the premises or effects in question may give consent to search. The search of a bedroom, based on the consent of the defendant's wife, was valid.

Common authority is not to be implied from mere property interests, but rests on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched. See also, **Coolidge v. New Hampshire**, 403 U.S. 443, 487-490, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

Frazier v. Cupp, 394 U.S. 371, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) Person who used duffel bag jointly with defendant could consent to its search.

Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968) Consent to search home, given by defendant's grandmother, was ineffective when given to police who claimed to have a search warrant.

Stoner v. California, 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964) A hotel clerk cannot consent to the search of a guest's room. But see, **Abel v. U.S.**, 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960) (hotel manager could validly consent to search a room that had been vacated by defendant).

Chapman v. U.S., 365 U.S. 610, 81 S.Ct. 776, 5 L.Ed.2d 828 (1961) Landlord of house cannot consent to search of tenant's residence. See also, **United States v. Brown,** 961 F.2d 1039 (2d Cir. 1992) (landlady could not consent to a search of apartment although she had been authorized to enter the apartment to restore power whenever fuses blew; police officer's belief that the landlady could consent was an error of law rather than fact, and did not qualify as "apparent authority" under **Illinois v. Rodriquez**); **People v. Sedrel**, 184 Ill.App.3d 1078, 540 N.E.2d 792 (3d Dist. 1989) (during the pendency of a lease a landlord cannot validly consent to a search of the premises; where rent was three days late but five-day grace period had not elapsed, the lease had not expired); **People v. Garza**, 276 Ill.App.3d 659, 658 N.E.2d 1355 (3d Dist. 1995) (landlord's consent to search apartment was vitiated when the officer entered the apartment and saw obvious signs that it was still occupied; although officer had reasonable grounds to believe that the apartment was abandoned and that the landlord therefore had authority to consent to a search, once the officer entered the apartment and saw a stereo, television equipment, clothing and food, he should have realized that his beliefs concerning the landlord's power to consent were incorrect and terminated the entry).

Illinois Supreme Court

People v. Bull, 185 Ill.2d 179, 705 N.E.2d 824 (1998) Whether common authority exists depends not on the third party's property interest in the premises, but on whether there is "mutual use of the property by persons generally having joint access or control for most purposes." A co-inhabitant of a residence "has the right to permit the inspection in his or her own right," because the other inhabitants have assumed the risk "that one of their number" might consent to a search of common areas of the residence. The State has the burden of establishing that the consenting party had common authority over the premises.

People v. Simpson, 172 Ill.2d 289, 665 N.E.2d 1220 (1996) Where a third party gave valid consent for a search of the apartment she shared with defendant, the officers had authority

to arrest defendant when they discovered him in the apartment. A valid consent to enter a residence authorizes police to enter the home for any lawful purpose; the Fourth Amendment does not require separate consent for each specific purpose.

People v. James, 163 Ill.2d 302, 645 N.E.2d 195 (1994) The driver of a car stopped for a traffic violation lacked authority to consent to a search of the defendant's purse.

The Court rejected that State's claim that **Florida v. Jimeno**, 500 U.S. 248 (1991), controlled this case. In **Jimeno**, a "scope-of-consent" case, the issue was whether a driver with authority to consent to a search of both his vehicle and a closed container intended his consent to apply to only the vehicle, or also to the container. Here, the issue was not the scope of the driver's consent, but whether she had "apparent authority" to consent to the search of a passenger's purse.

Defendant did not abandon her purse by leaving it on the car seat when she left the car at the command of the officer, especially since she did not know that the driver had consented to a search.

People v. Heflin, 71 Ill.2d 525, 376 N.E.2d 1367 (1978) Defendant's brother could validly consent to seizure of defendant's letters, since the brother had joint access or "common authority" over them. Some of the letters were in the brother's home and the others were obtained by the brother at defendant's request.

People v. Stacy, 58 Ill.2d 83, 317 N.E.2d 24 (1974) The test for the validity of a consent given by a third party is whether that party possessed "common authority" over the premises or effects to be searched. Defendant's wife validly consented to the seizure of defendant's blood-stained shirt from a dresser drawer, where the couple had mutual use and control of the bedroom and its furnishings. But see, **People v. Elders**, 63 Ill.App.3d 554, 380 N.E.2d 10 (5th Dist. 1978) (mere existence of a marital relationship, standing alone, does not vest in each spouse the requisite "common authority" necessary to validate one spouse's consent to a warrantless search against the other).

Illinois Appellate Court

People v. Baker, 2021 IL App (3d) 190618 The Appellate Court upheld the denial of defendant's motion to suppress the search of an SD card containing child pornography because the card was voluntarily retrieved from defendant's home by his wife. Working off a tip from defendant's friend, officers knocked on defendant's door and spoke to his wife. The wife acknowledged the existence of the SD card, but did not want to retrieve it in front of defendant because she feared he would become violent. The officers called defendant outside and asked to speak with him about a domestic disturbance. The wife then retrieved the card and handed it to the officers.

In Illinois, proof that spouses have common authority over a space creates a rebuttable presumption that each spouse has authority not only over containers within that space that are jointly owned or used by the spouses, but also over containers owned or used by one spouse alone. Proof of sole ownership alone does not rebut the presumption; defendant must also show that he restricted access to the container. Here, defendant did not rebut the presumption, and therefore his wife could consent to the removal of the SD card from the apartment.

Defendant argued that he had a right to object to the search, but the officers interfered with that right by removing him from the home. If a defendant is removed from his property

by police who have reasonable grounds to do so, consent by a co-resident is sufficient. Reasonable grounds for removing a defendant from his apartment include allowing officers to speak with a potential domestic violence victim outside of the defendant's potentially intimidating presence. Here, based on the wife's statement that she feared violence, the police could rightfully remove defendant from the property.

Finally, defendant challenged the seizure of the card. Although a third party's common authority gives her power to consent to a search, it does not give her power to consent to the government's seizure of an item in which she has no ownership interest. But, if police discover an item during a lawful search (such as pursuant to consent), they may seize it if they have probable cause to believe it is contraband or evidence of a crime. Here, the police had probable cause to believe the SD card contained child pornography because defendant's friend told them about the card and its contents.

People v. Schreiner, 2021 IL App (1st) 190191 Police officers responded to the scene of a hit-and-run car collision and followed a trail of fluids and car parts to defendant's home nearby. Defendant's wife testified that she and defendant were both asleep in the home when police arrived and began banging on the door and shining lights into their house. After the wife answered the door and spoke with the police for a few minutes, officers entered the home, retrieved defendant from the bedroom, and obtained inculpatory statements from him. The officers then entered the garage where defendant's damaged vehicle was located, and also conducted field sobriety tests on defendant. Defendant sought to suppress all of this evidence on the basis that it was the result of a warrantless search. The trial court denied defendant's motion, concluding that the officers had consent.

The Appellate Court reversed. Defendant's wife testified that she did not consent to the officers' entry to her home. There was no written consent-to-search form, and the officers involved in the encounter at the front door did not testify that the wife consented to their entry. Thus, there was no affirmative evidence of consent.

And, while consent can be nonverbal, mere acquiescence to authority is not necessarily consent. Instead, it must be unmistakably clear from an individual's conduct that he or she intended to voluntarily consent to the warrantless entry. Here, the wife testified that she spoke with the police at her front door, went to another room to retrieve her driver's license at the officers' request, and returned to find the officers had entered her home without her consent. The State offered no further details about the encounter at the doorway. Accordingly, even if the court disbelieved the wife's testimony, there was no evidence from which consent could be found. "The fact that a defense witness, who claimed consent was *not* given, is not a credible witness is no substitute for affirmative proof that consent *was* given."

Defendant had requested suppression of inculpatory statements, field sobriety tests, blood alcohol results, and his damaged vehicle. Noting that the State had not had the opportunity to argue attenuation as to any of that evidence, the Appellate Court remanded the matter for an attenuation hearing with specific directions for how to proceed depending on the outcome of that hearing.

People v. Lyons, 2013 IL App (2d) 120392 No Fourth Amendment "seizure" occurs where evidence is delivered to the police by a private individual who is not agent of the State. Here, defendant's wife was not acting as an agent of the State when she delivered two boxes of computer disks to the police. The incriminating nature of the disks was not immediately apparent, and became clear only after police employed technology to discern that the disks contained child pornography. Furthermore, defendant's wife stated that she did not know

what was on the disks and that they were the defendant's property.

The court acknowledged that had defendant's wife searched the disks before she gave them to police and told the officers that she suspected that the disks contained child pornography, the police search would not have exceeded the scope of the earlier private search. Where defendant's wife made it clear that she did not know what was on the disks, however, she implied that she had not searched them herself. Because there had been no private search, defendant's expectation of privacy in the contents of the disks had not been frustrated by the time of the police search. Thus, the police search implicated the Fourth Amendment.

However, defendant's wife gave consent to the police to search the disks when she brought the disks to the station and said that she did not want them in her house. Consent for a warrantless search may be based on permission obtained from a third party who possesses common authority over or a sufficient relationship to the property sought to be searched. A third party is not authorized to consent merely because he or she has an interest in the property. Instead, authority to consent to a search depends on mutual use of property by persons who have joint access or control, so that it is reasonable to expect that any of the persons has the right to permit the inspection and that all have assumed the risk that another might permit a search.

Under Illinois law, proof that spouses have common authority over space gives rise to a rebuttable presumption that each spouse also has authority over containers which are within the common area but which are the property of the nonconsenting spouse. This presumption is rebutted by evidence that the consenting spouse was denied access to the containers, but not by evidence that the consenting spouse merely refrained from accessing the containers. "We are concerned with the right of access, not regularity of use. . . ."

Authority to consent may be actual or apparent. Here, defendant's wife testified that she had access to the cabinet in which the disks were stored, and the trial court found that the wife had actual authority to consent. The Appellate Court therefore limited its holding to the issue of actual authority and did not reach the issue of apparent authority.

The court concluded that defendant's wife had actual authority to consent to a search of computer disks which belonged to the defendant where she had a key to a locked cabinet where they were stored, despite the fact that she did not go into the cabinet. In addition, in a telephone conversation which was overheard by police, defendant implied that his wife had access and control over the cabinet by agreeing that she could prepare the contents of the cabinet for him to pick up. Although defendant's wife indicated to police that the disks belonged to defendant, mere lack of ownership by the consenting spouse does not overcome the presumption arising from a married or cohabiting relationship.

The fact that the defendant placed passwords on the family's computers did not indicate that he was attempting to prevent his wife from gaining access to the contents of the computer disks, because the disks could easily have been taken to other computers to be viewed. A password on a computer is not a meaningful restriction on access to the contents of removable computer disks, and is more likely intended to protect information on the hardware itself.

Because defendant's wife had access to the cabinet containing the disks and defendant did not restrict her access to the content of the disks, defendant assumed the risk that the spouse would view the disks herself or allow others to do so. Therefore, the spouse had authority to consent to a search of the disks by the police.

The court distinguished this case from **People v. Elders**, 63 Ill.App.3d 554, 380 N.E.2d 10 (5th Dist. 1978), in which the court held that the mere fact of marriage did not give

a spouse authority to consent to a search of the nonconsenting spouse's car in which the consenting spouse held no ownership interest. The court stressed that the car was neither part of the marital dwelling nor property that was within the marital dwelling.

The trial court's order denying defendant's motion to suppress the contents of the computer disks was affirmed.

People v. Burton, 409 Ill.App.3d 321, 947 N.E.2d 843 (2d Dist. 2011) An exception to the warrant requirement exists where law enforcement officers obtain consent to search from either the person whose property is being searched or from a third party who possesses common authority over the premises. Common authority rests on the mutual use of the property by persons generally having joint access or control such that each assumes the risk that the other may permit the common area to be searched. Mutual use of property by persons having joint access or control makes it reasonable to recognize that each may permit the inspection. The State bears the burden of establishing common authority.

Common authority may be actual or apparent. Under the apparent-authority doctrine, a warrantless search does not violate the Fourth Amendment where the police receive consent from a third party whom the police reasonably believe possesses common authority, but who, in fact, does not. The test of reasonableness is whether the facts available to the officer viewed objectively would cause a reasonable person to believe that the consenting party had authority over the premises. The State bears the burden of proving that the officer's belief was objectively reasonable.

A third party's consent to search a premises does not extend to another's private, closed container or object to which the third party has no access. Whether the parties had joint access to an item searched is a factor to be considered in assessing common authority.

The female leaseholder of an apartment where defendant and six others resided gave the police consent to search the apartment. Defendant refused to sign the consent form, claiming he had no authority to consent to the search because he was not named on the lease, and his consent was unnecessary as the police had the consent of the leaseholder. The police recovered a gun from the pocket of a men's coat stored in a closet that contained a washer and dryer used by all of the apartment's occupants, as well as clothing owned by the defendant and the leaseholder. The closet was accessible from a bedroom that defendant and the leaseholder had shared during most of his stay in the apartment, as well as from a common area, the bathroom. The clothing of defendant and the leaseholder was stored in separate areas of the closet.

The court concluded that in these circumstances the police reasonably believed that the leaseholder possessed authority to permit a search of the closet, including defendant's coat, even if she did not have actual authority. The mere fact that the coat belonged to defendant and only he wore it did not mean that the leaseholder was denied mutual access to it in the closet that they shared. Defendant took no action with respect to the coat indicating that he held a particular expectation of privacy to it, as opposed to any other object in the closet.

The defendant's actions reinforced the reasonableness of the officers' belief. He refused to sign the consent form because he did not think that he had standing, not because he objected to the search. He made no effort to object or to stop the search as it progressed. He did not state that the leaseholder's apparent authority was qualified or limited, leading the police to reasonably believe that it extended even to the coat.

Under **Randolph v. Georgia**, 547 U.S. 103 (2006), the express refusal of consent by a physically-present resident takes precedence over another resident's consent to search.

The police did not conduct the search over the express refusal by defendant to consent to the search. The circuit court did not credit defendant's testimony that he refused consent to the search. Nor did he take any action that could be interpreted as an express refusal to consent. His action in refusing to sign the form because it was unnecessary was not an express refusal to consent to the search that could defeat the consent of the leaseholder.

People v. Chestnut, 398 Ill.App.3d 1043, 921 N.E.2d 811 (4th Dist. 2010) The Appellate Court affirmed the trial court's order granting defendant's motion to suppress evidence which the officers found during a search of defendant's person. Defendant came to a house where a search warrant was being executed, and eventually consented to the search which during which the evidence was discovered. Because the detention was invalid, defendant's consent to search his person was tainted by the illegality and was also invalid. Therefore, the trial court properly suppressed evidence which the officers found during the search. (See also **APPEAL**, §2-7(a) & **CONFESSIONS**, §§10-3(c), (d)).

People v. Davis, 398 Ill.App.3d 940, 924 N.E.2d 67 (2d Dist. 2010) The court held that police improperly seized a suspected controlled substance and a digital scale which an officer observed while in the defendant's apartment to make a warrantless arrest. Therefore, the defense motion to suppress evidence should have been granted. The court concluded that after the arrest was complete, defendant's girlfriend did not voluntarily consent to allowing police to reenter the apartment for the purpose of seizing the scale and suspected controlled substance. The officer told the girlfriend that he would get a search warrant if the girlfriend refused to consent, that the girlfriend would be charged "with anything he found pursuant to a search warrant," and that if she consented to a search police would not jail her or file any charges that night. A recording of the conversation also showed that an unidentified male told the girlfriend that if she was taken to jail immediately, DCFS would have to be called to care for her children, who were in the apartment.

An officer does not vitiate consent to search by communicating his intent to engage in a certain course of conduct, so long as there are legitimate grounds to carry out the conduct in question. However, consent may be involuntary if the officer lacks legal grounds to carry out the conduct or where false or misleading information is given. Furthermore, consent is involuntary where it is given solely as the result of acquiescence or submission to an assertion of police authority, or where the consent is "inextricably bound up with illegal conduct and cannot be segregated therefrom."

The court concluded that the officer's illegal entry to the apartment, and illegal discovery of a scale and white powder, were "inextricably bound up" with the subsequent request for consent. Furthermore, despite his statements to the girlfriend, the officer could not have obtained a warrant based either on the evidence discovered during the illegal entry to the apartment or on the battery complainant's claim that drugs were being sold from the apartment.

On the latter point, the court noted that complainant's statement about drugs was totally uncorroborated. Furthermore, the complainant had a motive to lie because she was a drug abuser who admitted that she owed money to defendant for drugs and who claimed that she had been the victim of a battery. Furthermore, there was no showing that the complainant had provided the police with reliable information in the past. Under these circumstances, the officer lacked any basis on which a warrant could have been obtained.

People v. Bell, 403 Ill.App.3d 398, 932 N.E.2d 625 (4th Dist. 2010) Generally, warrantless

searches are prohibited by the 4th Amendment. A warrantless search is permissible, however, when voluntary consent is obtained from either the property owner or a third party who possesses common authority over the premises. Whether a third party has actual common authority to consent to a search depends not on property laws, but on whether the third party has joint access or control of the property for most purposes.

Thus, common authority exists in situations involving family, martial, or cohabitation relationships. Mere possession of a key, or the lack thereof, does not necessarily determine whether a third party has authority to consent to a search.

Where defendant and his girlfriend had lived together in defendant's home for 10 months before the search in question, but defendant said earlier that day that he wanted the girlfriend to move out, the girlfriend had actual authority over the residence and could consent to the seizure of defendant's computer. Although defendant had moved several boxes of the girlfriend's belongings to an area near the front door, the girlfriend had not vacated the residence, or even left the house, between the time defendant told her to move and the time officers arrived.

Furthermore, the girlfriend had not packed her personal belongings or made arrangements to move or to remove her belongings from the home. Under these circumstances, the girlfriend possessed a right to joint access and control of the residence which continued through the transitional stage of moving from the home. Thus, she could consent to removal of defendant's computer.

The court rejected the argument that the girlfriend lacked authority over the computer because earlier in the week defendant told her not to use it and removed the keyboard. The court concluded that even if the girlfriend knew defendant no longer wanted her to use the computer, her unrestricted access to the entire residence allowed her to consent to the computer's removal.

People v. Blair, 321 Ill.App.3d 373, 748 N.E.2d 318 (3d Dist. 2001) A third party may consent to a search of premises over which he has common authority or to which he has some other sufficient relationship, because an inhabitant has a diminished expectation of privacy concerning property which he shares with a co-inhabitant. Allowing a third party access to property "does not similarly diminish the owner's expectation that he will retain possession of his property," however. Thus, even if defendant's father could consent to an examination of the defendant's computer, which was located in the home they shared, he could not consent to its *seizure*. "[T]he consent of a third party is ineffective to permit the government to seize property in which the third party has no actual or apparent ownership interest."

People v. Huffar, 313 Ill.App.3d 593, 730 N.E.2d 601 (2d Dist. 2000) 1. Defendant's grandmother, who was also his landlord, did not have authority to consent to a search of an attic which could only be accessed through defendant's apartment. A landlord cannot consent to a search of leased premises; authority to consent exists only where the landlord's use or control of the premises is equal to or greater than that of the defendant. Here, the grandmother testified that she used the attic to store some of her belongings, but also stated that she could not go into the attic without her tenant's permission.

2. The court rejected the argument that close relatives who live together are presumed to possess common authority to consent to a search. Although defendant and his grandmother were related, they did not share any living space. Furthermore, the two apartments were completely distinct.

People v. Holmes, 180 Ill.App.3d 870, 536 N.E.2d 1005 (3d Dist. 1989) A minor child living in the home is competent to give a lawful consent to search. Here, the search was based on the valid consent of defendant's 11-year-old daughter.

People v. Callaway, 167 Ill.App.3d 872, 522 N.E.2d 337 (5th Dist. 1988) In an issue of first impression in Illinois, the Appellate Court found that a person having common authority over premises may validly consent to the search thereof even after the defendant has refused to give such consent. The court also noted that defendant's brother consented to a search although he knew that defendant had told police they would need a search warrant. "This is not a case where the party consenting is unaware that a defendant has refused a search and compromises a defendant's rights unknowingly." See also, **People v. Harris**, 199 Ill.App.3d 1008, 557 N.E.2d 1277 (2d Dist. 1990) (the driver of an automobile has authority to consent to a search thereof, even though the owner is a passenger and does not consent).

People v. Howard, 121 Ill.App.3d 938, 460 N.E.2d 432 (1st Dist. 1984) Aunt and uncle, with whom defendant resided, had authority to consent to search of defendant's bedroom.

People v. Bochnaik, 93 Ill.App.3d 575, 417 N.E.2d 722 (1st Dist. 1981) The defendant's mother did not have authority to consent to the search of a garage rented by her son. The fact that the mother owned the garage and retained a key to it did not give her authority to consent, since she did not have common authority over the premises.

People v. Polito, 42 Ill.App.3d 372, 355 N.E.2d 725 (1st Dist. 1976) A doctor's receptionist does not have the right to consent to a search of the doctor's office. The receptionist, as the doctor's employee, merely has a limited right of control to allow patients into the office.

People v. Miller, 36 Ill.App.3d 542, 345 N.E.2d 1 (5th Dist. 1976) An employee, by being given authority to drive the truck of defendant-employer, could validly consent to a search thereof.

People v. Johnson, 32 Ill.App.3d 36, 335 N.E.2d 144 (3d Dist. 1975) Defendant's brother, who resided with defendant and mother, validly consented to search of house. Compare, **People v. Taylor**, 31 Ill.App.3d 576, 333 N.E.2d 41 (4th Dist. 1975) (brother who did not reside in house could not consent).

People v. Smith, 108 Ill.App.2d 172, 246 N.E.2d 689 (2d Dist. 1969) Paramour who has equal right to use and occupy premises with defendant may consent to its search. Compare, **People v. Rodriquez**, 79 Ill.App.2d 26, 223 N.E.2d 414 (1st Dist. 1976) (paramour could not give consent to search defendant's room where she was not full-time resident and did not keep clothes there; there was no proof that she had equal right to or joint control over the room).

People v. Weinstein, 105 Ill.App.2d 1, 245 N.E.2d 788 (1st Dist. 1968) Father who did not reside with son, even though he had key to son's residence, could not give consent to search. Also, administrator of estate did not have authority to consent to search of premises occupied by heir.

§43-2(d)(6)(b)(2)
Apparent Authority

United States Supreme Court

United States v. Brown, 961 F.2d 1039 (2d Cir. 1992) Defendant's landlady could not consent to a search of his apartment even though she had been authorized to enter the apartment for a limited purpose - to restore power whenever fuses blew. A police officer's belief that the landlady could consent was an error of law rather than fact, and did not qualify as "apparent authority" under **Illinois v. Rodriquez**.

Illinois v. Rodriquez, 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990) A warrantless entry based on the consent of a person who has "apparent authority" to give such consent is lawful where, at the time of entry, the police reasonably believe the person has common authority over the premises. Under such circumstances, it is irrelevant that the person giving consent had no actual authority to do so.

Illinois Supreme Court

People v. Bull, 185 Ill.2d 179, 705 N.E.2d 824 (1998) Even where there was no actual authority to consent, a search may be upheld where the officers reasonably believed that the consenting party had common authority over the place or item to be searched. Where defendant's girlfriend stated that she was familiar with and had access to a box in which incriminating evidence had been found, and there was no evidence that defendant had denied his girlfriend use or control of the box, it was reasonable for the officers to conclude that the girlfriend had authority to consent to a search.

People v. James, 163 Ill.2d 302, 645 N.E.2d 195 (1994) The driver of a car stopped for a traffic violation lacked "apparent authority" to consent to a search of the defendant's purse. "Apparent authority" exists where, although the consenting party lacked authority to consent to the search, the officer reasonably believed that actual authority existed. Because the State failed to show that a reasonable officer would have believed the driver had authority to consent to a search of the purse, the Court concluded that no apparent authority existed and that further inquiries about ownership should have been made.

Illinois Appellate Court

People v. Burton, 409 Ill.App.3d 321, 947 N.E.2d 843 (2d Dist. 2011) An exception to the warrant requirement exists where law enforcement officers obtain consent to search from either the person whose property is being searched or from a third party who possesses common authority over the premises. Common authority rests on the mutual use of the property by persons generally having joint access or control such that each assumes the risk that the other may permit the common area to be searched. Mutual use of property by persons having joint access or control makes it reasonable to recognize that each may permit the inspection. The State bears the burden of establishing common authority.

Common authority may be actual or apparent. Under the apparent-authority doctrine, a warrantless search does not violate the Fourth Amendment where the police receive consent from a third party whom the police reasonably believe possesses common authority, but who, in fact, does not. The test of reasonableness is whether the facts available to the officer viewed objectively would cause a reasonable person to believe that the consenting party had authority over the premises. The State bears the burden of proving

that the officer's belief was objectively reasonable.

A third party's consent to search a premises does not extend to another's private, closed container or object to which the third party has no access. Whether the parties had joint access to an item searched is a factor to be considered in assessing common authority.

The female leaseholder of an apartment where defendant and six others resided gave the police consent to search the apartment. Defendant refused to sign the consent form, claiming he had no authority to consent to the search because he was not named on the lease, and his consent was unnecessary as the police had the consent of the leaseholder. The police recovered a gun from the pocket of a men's coat stored in a closet that contained a washer and dryer used by all of the apartment's occupants, as well as clothing owned by the defendant and the leaseholder. The closet was accessible from a bedroom that defendant and the leaseholder had shared during most of his stay in the apartment, as well as from a common area, the bathroom. The clothing of defendant and the leaseholder was stored in separate areas of the closet.

The court concluded that in these circumstances the police reasonably believed that the leaseholder possessed authority to permit a search of the closet, including defendant's coat, even if she did not have actual authority. The mere fact that the coat belonged to defendant and only he wore it did not mean that the leaseholder was denied mutual access to it in the closet that they shared. Defendant took no action with respect to the coat indicating that he held a particular expectation of privacy to it, as opposed to any other object in the closet.

The defendant's actions reinforced the reasonableness of the officers' belief. He refused to sign the consent form because he did not think that he had standing, not because he objected to the search. He made no effort to object or to stop the search as it progressed. He did not state that the leaseholder's apparent authority was qualified or limited, leading the police to reasonably believe that it extended even to the coat.

Under **Randolph v. Georgia**, 547 U.S. 103 (2006), the express refusal of consent by a physically-present resident takes precedence over another resident's consent to search.

The police did not conduct the search over the express refusal by defendant to consent to the search. The circuit court did not credit defendant's testimony that he refused consent to the search. Nor did he take any action that could be interpreted as an express refusal to consent. His action in refusing to sign the form because it was unnecessary was not an express refusal to consent to the search that could defeat the consent of the leaseholder.

People v. Huffar, 313 Ill.App.3d 593, 730 N.E.2d 601 (2d Dist. 2000) The "apparent authority" doctrine does not allow a police officer to ignore ambiguous circumstances; once officers learned that an attic could only be accessed by passing through defendant's independent living space, they should have questioned whether the grandmother (and landlord) had authority to consent to a search.

The court rejected the argument that close relatives who live together are presumed to possess common authority to consent to a search.

People v. Garza, 276 Ill.App.3d 659, 658 N.E.2d 1355 (3d Dist. 1995) An officer had reasonable grounds to believe that the apartment was abandoned, and that the landlord therefore had authority to consent to a search, where the rent had not been paid for three months, defendant and his brother had not been seen in the area, and a neighbor said that the two had moved. Once he entered the apartment and saw obvious signs that it was still occupied, however, the officer should have realized that his beliefs concerning the landlord's

power to consent were incorrect. At that point, the entry should have been terminated. See also, **People v. Pickens**, 275 Ill.App.3d 108, 655 N.E.2d 1206 (5th Dist. 1995) (person staying at home did not have apparent authority to consent to a search; "apparent authority" applies only where the circumstances would warrant a reasonable man in believing that the consenting party had authority over the premises; it could not have reasonably appeared that the person in question had authority to consent to the search where the officers knew that the residence was occupied by two other people, there was no reason to believe the consenting party had authority to consent, and the officers made no inquiry into his authority before accepting his consent at face value).

People v. Keith M., 255 Ill.App.3d 1071, 625 N.E.2d 980 (2d Dist. 1994) "Apparent authority" exists where the circumstances known to the officers would warrant a person of reasonable caution in believing that the consenting party had actual authority over the premises. An officer may reasonably conclude that a third party has actual authority to consent only where her use of the premises is such that the defendant has assumed the risk that she might consent to a search.

The officers here could not have reasonably believed that a babysitter had actual authority over her employer's bedroom where she was not a resident or cotenant of the house, had access to the home only at the pleasure of the defendant, and was allowed to enter the bedroom only to put away laundry.

The Court refused to consider the State's alternative arguments that the evidence was admissible under the "inevitable discovery" doctrine and that defendant's subsequent arrest was proper even if the consensual search was invalid. These issues were held waived because the State had not made them in the trial court; in particular, the State's failure to advance the "inevitable discovery" doctrine in the trial court not only prevented the trial judge from considering the argument but also "deprived defendant of a chance to introduce evidence directed at the issue."

§43-2(d)(7)
Exigent Circumstances

United States Supreme Court

Lange v. California, 594 U.S. ____, 141 S. Ct. 2011 (2021) (No. 20-18) A patrol officer observed defendant drive past him while playing loud music and repeatedly honking his horn. The officer followed defendant and signaled for him to pull over, but defendant, who was almost home, continued on and pulled into his attached garage. The officer followed defendant into his garage, questioned him, and ultimately arrested him for driving under the influence of alcohol. Defendant unsuccessfully sought suppression of all evidence obtained as a result of the officer's warrantless entry to his garage. The lower courts concluded that hot pursuit of a fleeing misdemeanor suspect afforded the necessary exigency to justify the warrantless entry.

It is well-established that the home is afforded strong protection against warrantless government intrusions. The Supreme Court clarified that under the fourth amendment, pursuit of a subject on a misdemeanor charge does not always justify warrantless entry to a home. Instead, exigency must be determined on a case-by-case basis, considering the totality of the circumstances. Factors supporting a finding of exigency may include the need to prevent imminent injury, destruction of evidence, or a suspect's escape. Exigency is established where it is necessary to act before it is possible to get a warrant.

The Supreme Court rejected the argument that under **United States v. Santana**, 427 U.S. 38 (1976), a fleeing suspect categorically provides the needed exigency. **Santana** involved a pursuit on felony charges, not a misdemeanor; even if a fleeing felon creates a *per se* exigency, a fleeing misdemeanant does not. The gravity of an underlying offense is an important factor in determining exigency.

Because the lower court erred in applying a categorical approach to justify the warrantless entry, the order denying suppression was vacated and the matter remanded for further proceedings.

Caniglia v. Strom, 593 U. S. ____ (No. 20–157, 2021) After a domestic disturbance and suicide attempt at his home, the plaintiff, encouraged by his wife and the police, sought treatment at a hospital. The police stayed at the scene, entered his home without a warrant and seized his firearm. Plaintiff sued based on a Fourth Amendment violation. The lower court dismissed the claim, citing the community caretaking exception to the warrant requirement as discussed in **Cady v. Dombrowski**, 413 U. S. 433.

The Supreme Court reversed. In **Cady**, the police made a warrantless entry to an impounded vehicle to retrieve an unsecured firearm. In finding the seizure to be reasonable, the court noted that police are at times called upon to engage in "community caretaking" activities, particularly with regard to vehicles. The **Cady** court did not create a blanket exception to the Fourth Amendment for any act that may be characterized as community caretaking. Rather, the **Cady** court found the officer acted reasonably on the specific facts of that case, including the fact that the police entered a vehicle in police custody, not a home. Reiterating that the home is constitutionally different, the Supreme Court refused to extend **Cady** to a warrantless entry into a home.

Mitchell v. Wisconsin, ____ U.S. ____ (No. 18-6210, 6/27/19)

A four-justice plurality held that as a general rule, the exigent circumstances exception to the Fourth Amendment's warrant requirement will almost always allow a warrantless blood test of an unconscious motorist who cannot be given a breath test. Here, a portable breath test at the scene indicated defendant's BAC was three times the legal limit. He was transported to the police station for a more sophisticated breath test but was too lethargic to perform the test on arrival. Defendant was then transported to the hospital and was unconscious by the time he got there. An officer requested that the hospital draw blood, and testing revealed that defendant's BAC was 0.222%.

The exigent circumstances exception applies where there is a "compelling need for official action and no time to secure a warrant." With regard to drunk driving, compelling circumstances include that highway safety is an important public interest, BAC limits help to advance that interest, enforcement of BAC limits requires testing which will be admissible in court, such testing must be prompt because alcohol naturally metabolizes in the human body, and blood testing is essential where breath testing is not an available option. As to whether there is enough time to secure a warrant, it is not enough that BAC evidence naturally dissipates; there must also be some other factor creating a "pressing health, safety, or law enforcement need" that would take priority over a warrant application. Where a drunk driving suspect is unconscious, thereby necessitating urgent medical care, both of these conditions are met.

While the Supreme Court upheld the validity of warrantless blood testing where exigent circumstances are shown, it remanded defendant's case to provide him the opportunity to show that a blood draw would not have been conducted if the officer hadn't

requested it and that the police acted unreasonably in concluding that applying for a warrant would have interfered with more pressing duties.

Concurring in the judgment, Justice Thomas noted that he would adopt a *per se* rule that dissipation of alcohol in the blood stream, alone, satisfies the exigent circumstances exception where there is probable cause to believe an individual was driving under the influence.

In dissent, Justice Sotomayor, joined by Justices Ginsburg and Kagan, opined that police must get a warrant where there is time to do so. Because the State conceded below that the police had time to get a warrant and did not, there was no exigency and the results of the blood test should have been suppressed. Justice Gorsuch dissented because the Court decided the case on a ground which had not been the basis for the lower court's ruling or for the Court's granting of certiorari.

Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013) In **Schmerber v. California**, 384 U.S. 757 (1966), the Supreme Court upheld a warrantless blood test of a DUI arrestee after finding that the officer might reasonably have believed that he was confronted with an emergency in which the delay required to obtain a warrant might threaten to destroy evidence of the defendant's blood alcohol level. In **Schmerber**, the arrestee had been injured in an accident and was taken for medical treatment before he was arrested for DUI.

The court rejected the State's argument that due to the natural metabolization of alcohol in the bloodstream, there should be a *per se* rule that any person arrested for DUI may be subjected to a warrantless, nonconsensual blood test. The court stressed that a citizen clearly has a privacy interest which protects against forced physical intrusions of his or her body. In addition, warrantless searches are reasonable under the Fourth Amendment only if a recognized exception to the warrant requirement applies. One recognized exception allows a warrantless search where exigent circumstances make a warrant impractical, including where an immediate search is necessary to prevent the imminent destruction of evidence. Whether exigent circumstances justify a warrantless search depends on whether, under the totality of the circumstances, it is reasonable to proceed without a warrant. Although the alcohol level of a person's blood begins to dissipate once the alcohol is fully absorbed, and continues to decline until the alcohol is eliminated, that fact does not mean that the "totality of circumstances" test should be abandoned. Instead, "where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so."

Noting that a case-by-case approach is common in Fourth Amendment cases, a plurality of the court rejected the argument that a bright line rule is needed to provide adequate guidance to law enforcement officers. The court also found that although a motorist has a diminished expectation of privacy in the operation of a motor vehicle, that lesser expectation does not apply to a motorist's privacy interest in preventing a government agent from piercing his or her skin for the purpose of obtaining a blood sample.

Kentucky v. King, 563 U.S. 452, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011) Warrantless searches and seizures inside a home are presumed to be unreasonable and thus to violate the Fourth Amendment. This presumption may be overcome where the exigencies of the situation make a warrantless search objectively reasonable. Among the exigent circumstances which justify a warrantless search is the need to prevent the imminent destruction of evidence.

However, police may not rely on the "exigent circumstances" doctrine where they

created or manufactured the exigency in the first place. Thus, a warrantless search is permitted to prevent the destruction of evidence only if the police are responding to an unanticipated exigency and not to an exigency which they created.

Noting that lower courts have disagreed on the test to be used to determine whether police created an exigency upon which they sought to rely to justify a warrantless search, the Supreme Court concluded that a warrantless search is justified by the likelihood that evidence will be destroyed if before the exigency arose, the police acted reasonably and did not engage or threaten to engage in a violation of the Fourth Amendment.

The court rejected several alternative tests adopted by lower courts. First, the court rejected a test which considered whether law enforcement officers acted in bad faith. The court noted that objective rather than subjective tests are to be used to determine the application of the Fourth Amendment.

The court rejected two other tests adopted by lower courts: (1) whether it was reasonably foreseeable that the officers' actions would lead to the destruction of evidence, and (2) whether the officers' actions were consistent with standard investigative tactics. The court stated that neither test would provide sufficient guidance to officers and to lower courts.

The court also rejected the argument that officers who have probable cause for a search warrant should be required to seek a warrant instead of going to a home without a warrant. The court concluded that such a rule would interfere with legitimate law enforcement strategies by requiring that officers seek warrants based on the bare minimum of evidence, preventing officers from attempting to obtain more evidence and determining the extent of criminal activity, preventing the quick resolution of cases, and forcing police to prematurely disclose the existence of criminal investigations.

The court rejected the defendant's proposed test, which focused on whether officers impermissibly created an exigency by engaging in conduct which would cause a reasonable person to believe that an entry to their home was imminent and inevitable. Under this test, relevant factors would include the officers' tone of voice in announcing their presence and forcefulness of knocking on the door. The court concluded that the ability of law enforcement agencies to respond to exigencies does not depend on "such subtleties," and that police officers have good reason to announce their presence loudly so the occupants know who is present. The court added:

> If respondent's test were adopted, it would be extremely difficult for police officers to know how loudly they may announce their presence or how forcefully they may knock on the door without running afoul of the police-created exigency rule. And in most cases, it would be nearly impossible for a court to determine whether that threshold has been passed.

Here, police did not violate or threaten to violate the Fourth Amendment before the exigency arose. While pursuing a drug dealer who went into an unknown apartment in a complex, police smelled burning cannabis, knocked on the door and announced their presence. Upon hearing sounds which suggested that evidence was being destroyed, the officers made a warrantless entry and search of the apartment.

Merely knocking on the door of an apartment and asking to speak to the occupants does not represent a threat to violate the Fourth Amendment, as the occupant has no obligation to open the door and speak with the officers. "Occupants who choose not to stand on their constitutional rights but instead elect to attempt to destroy evidence have only themselves to blame for the warrantless exigent-circumstances search that may ensue."

Because the police did not attempt to exploit an exigency which they had created, the

warrantless entry to the residence was justified.

The court noted, however, that there was a factual dispute whether police had a reasonable basis to believe that evidence was being destroyed. The cause was remanded for the lower courts to resolve that issue.

Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978) The seriousness of the offense under investigation does not itself create an exception to the warrant requirement.

The police may respond to emergency situations and make warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Likewise, when police come upon a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises, and may seize any evidence in plain view. However, a warrantless search must be strictly circumscribed by the exigencies which justify its initiation.

G.M. Leasing v. U.S., 429 U.S. 338, 97 S. Ct. 619, 50 L.Ed.2d 530 (1977) Warrants were not required before IRS agents could make probable cause seizures of automobiles on public streets and other open places. However, a warrantless entry into petitioner's business premises, and the seizure of books and papers therein, was unlawful; there were no exigent circumstances where authorities waited a day after seeing items being removed before making the entry.

Warden v. Hayden, 387 U.S. 294, 87 S. Ct. 1642, 18 L.Ed.2d 782 (1967) Warrantless search was proper where police went into house in pursuit of fleeing suspect. The Fourth Amendment does not require police to delay an investigation to obtain a warrant if doing so would gravely endanger their lives or the lives of others.

Illinois Supreme Court

People v. Hagestedt, 2025 IL 130286 Police officers entered defendant's home in response to a gas leak. The fire department had already determined that the source of the gas was the stove and had begun ventilating the residence. The odor of gas was still strong, though, and one of the officers (Liebich) went to the kitchen to check for damage to the stove. Finding none, Liebich turned to exit the kitchen, at which point he observed an upper cabinet secured with a chain and padlock through its handles. This "admittedly suspicious" cabinet was ajar about an inch, and Liebich leaned in and used his flashlight to peer into the gap, observing a green leafy substance and syringes inside. Liebich called over the other officer, Stanish, who could not immediately see inside the cabinet. Stanish pulled on the cabinet doors, opening them another inch or two, and observed suspected cannabis inside. He also noted the presence of a camera on top of the refrigerator, pointed directly at the padlocked cabinet. A search warrant was obtained based upon the officers' observations of the contents of the cabinet, and the items inside were seized. Defendant was charged with various drug offenses.

Defendant filed a motion to suppress, which was denied based on the trial court's conclusion that the officers were operating within the scope of their community care taking function and observed the contents of the cabinet in the course of providing aid during an emergency. The trial judge concluded that Liebich's use of a flashlight to see inside the cabinet fell within the plain view doctrine. And, while Stanish violated the fourth amendment when he pulled on the cabinet door, that violation was harmless because Liebich had already

made his observations. Following a stipulated bench trial, defendant appealed. The appellate court affirmed.

The Supreme Court reversed. At the outset, the Court rejected as forfeited the State's argument that defendant had not established a cognizable privacy interest because he presented no evidence at the suppression hearing that he owned, rented, or was a guest in the home, and no evidence that he used, secured, or had a key to the cabinet. The State had not raised this challenge below, but rather had taken the position at the suppression hearing that it was defendant's home. And, regardless, the Court concluded that "[b]y chaining and locking a cabinet in his kitchen, defendant took actions to protect his privacy..." thus establishing a fourth amendment interest.

As to the substantive fourth-amendment challenge, the Court went on to find that Liebich exceeded the scope of his role as a community caretaker and conducted a warrantless search by peering into the cabinet. While Liebich did not reach out and touch the cabinet doors like Stanish did, his act of looking through a small gap in a closed and locked cabinet with a flashlight invaded defendant's privacy in a way that was unrelated to the reported gas leak. Although the cabinet was in plain view, its contents were not. Those contents were secured behind closed doors, locked with a chain and a padlock.

While there are cases holding that the use of a flashlight to illuminate an area is not, itself, a search, the nature of the opening through which a flashlight was used was an important consideration. For instance, looking through a vehicle's window, an open bedroom door, an open closet, and a barn opening covered with see-through netting with the aid of a flashlight were all held not to be a search. Here, on the other hand, Liebich had to position himself at an angle and shine his flashlight into a small gap in a cabinet with solid wood doors, rendering his view "embellished and not plain." This was an unconstitutional warrantless search.

The Court also noted that the second officer, Stanish, had testified that he had reentered the home after defendant had been removed and had detected the odor of cannabis at that time. This was rejected as a separate, independent basis to uphold the issuance of the warrant. The officer's reentry after the gas leak was resolved was beyond the scope of his community care taking function. Accordingly, his detection of the odor of the cannabis at that time was pursuant to a warrantless search. Additionally, the events in question here occurred in 2017, at a time when the legislature was in the process of decriminalizing and legalizing the use and possession of cannabis, such that the odor of cannabis in a home, without more, no longer inherently indicated the commission of a crime.

The evidence obtained from the unlawful search of defendant's kitchen cabinet should have been suppressed. Without that evidence, the State could not prove the charges, and defendant's conviction was reversed outright.

People v. Aljohani, 2022 IL 127037 Warrantless searches and seizures within one's home are presumptively unreasonable given that "the home is first among equals" when it comes to the Fourth Amendment. That presumption may be overcome in certain circumstances, including where there are exigent circumstances. One such exigency can be found when there is a need to provide aid to persons who are seriously injured or threatened with such injury.

Here, the Court adopted the test set forth in **People v. Lomax**, 2012 IL App (1st) 103016, to determine whether the emergency aid exception applies. Specifically, the emergency aid doctrine requires that the police have (1) reasonable grounds to believe an emergency exists and (2) a reasonable basis, approximating probable cause, connecting the emergency with the place to be entered or searched.

In the instant case, the police responded to an early-morning 911 call from an apartment tenant, reporting loud arguing and wrestling in defendant's upstairs apartment, followed by someone saying "Are you okay?" and "Get up." When the police went to defendant's apartment to investigate, defendant opened the door about a foot, said everything okay, and told the police that his brother was sleeping. The officers went back downstairs, spoke with the 911 caller who insisted that someone in the apartment had been injured, and then returned to defendant's apartment. This time, they received no answer in response to several minutes of knocking. The police then returned to their squad car, preparing to leave, but decided that "something didn't feel right."

Upon driving around to the alley behind the apartment, the police observed that a back gate was open, the garage door was open, and a side door to the building was open. The officers went back into the building, proceeded upstairs, and discovered the door to defendant's apartment wide open. They knocked and announced their presence, received no response, and entered the apartment where they found defendant's brother unresponsive in a bedroom.

On these facts, the totality of the circumstances supported application of the emergency aid exception. The passage of 15-to-20 minutes between when the officers initially arrived and when they entered defendant's apartment was not fatal. During that time, the officers were investigating the incident and developed a reasonable belief that an emergency existed inside the apartment. Thus, the circuit court did not err in denying defendant's motion to suppress evidence.

People v. Eubanks, 2019 IL 123525 Section 11-501.1 of the Vehicle Code, which allows police officers to forcibly withdraw defendant's blood or urine when there is probable cause of intoxication in a case involving an auto accident with death or injury to another, violated the Fourth Amendment in this case. Defendant made a facial challenge to the statute. While facial challenges under the Fourth Amendment are permissible, and are not foreclosed merely because the statute would not apply in cases where the officer has a warrant, exigent circumstances, or consent, this statute comports with the "general rule" that exigent circumstances exist when BAC evidence is dissipating, and some other factor, such as a death or injury, creates a pressing concern that takes priority over a warrant application.

After **Schmerber v. California**, 384 U.S. 757 (1966), **Missouri v. McNeely**, 569 U.S. 141 (2013), and **Mitchell v. Wisconsin**, 588 U.S. ___, 139 S. Ct. 2525 (2019), the courts must employ a totality-of-the-circumstances test when analyzing the constitutionality of warrantless blood or urine draws in DUI cases, but this test is guided by the "general rule" that, due to BAC dissipation, exigent circumstances will exist when there is a traffic accident causing personal injury or when the suspect is unconscious. Nevertheless, defendant can rebut application of the general rule by showing that the blood/urine draw was solely for law enforcement purposes, and that the "police could not have reasonably judged that a warrant application would interfere with other needs or duties."

Here, defendant established that no reasonable officer could have believed a warrant application would interfere with the investigation. The defendant was arrested around 9 p.m. and taken to the station where he was not interviewed until 10:30 p.m. The interviewing officer claimed defendant smelled like alcohol, and defendant refused a breath test, but he was not taken to the hospital for blood/urine samples until 3 a.m. The blood draw occurred at 4:10 a.m., and the urine sample was given at 5:20 a.m. Given that seven hours passed between the arrest and the blood draw, a warrant application would not have increased the delay. Thus, the general rule of exigent circumstances does not exist here, and the statute is unconstitutional as applied to defendant's case.

People v. McNeal, 175 Ill.2d 335, 677 N.E.2d 841 (1997) Although each case must be decided on its own facts, several factors are relevant to determining whether there are sufficient exigent circumstances to permit a warrantless search. Among these factors are: (1) whether the crime in question was recently committed, (2) whether there was any deliberate or unjustified delay during which a warrant could have been obtained, (3) whether the offense was grave (particularly a crime of violence), (4) whether there was a reasonable belief that the suspect was armed, (5) whether the police officers were acting on a clear showing of probable cause, (6) whether there was a likelihood that the suspect would escape if he was not swiftly apprehended, (7) whether there was strong reason to believe a suspect was on the premises, and (8) whether the entry was made peaceably.

People v. Free, 94 Ill.2d 378, 447 N.E.2d 218 (1983) Where police went to defendant's residence to arrest him for murder, and after seeing someone at both the front and back windows fired a tear gas canister which forced defendant to come out of the house, a warrantless entry to the house was justified to retrieve the tear gas canister, check for fire and determine if anyone else was present.

Illinois Appellate Court

People v. Hardimon, 2021 IL App (3d) 180578 The State established that probable cause and exigent circumstances existed at the time of defendant's warrantless arrest. In considering whether exigent circumstances exist, courts consider: (1) whether the offense being investigated was recently committed; (2) whether the officers deliberately or unjustifiably delayed during a time they could have obtained a warrant; (3) whether a grave offense, particularly one of violence, is involved; (4) "whether the suspect is reasonably believed to be armed"; (5) whether the police were acting upon a clear showing of probable cause; (6) whether there was a likelihood of escape if the suspect was not swiftly apprehended; (7) whether there was a strong reason to believe the suspect was at the premises to be searched; and (8) whether the police entry, although nonconsensual, was made peacefully.

Here, the witness interviews implicating defendant occurred the day of and the day after the shooting, leading to defendant's arrest within 48 hours. The Appellate Court found this to be "recent" and that the police did not delay unjustifiably in their investigation. The offense – murder – was grave, and defendant was assumed to be armed as no weapon was found at the scene. Probable cause clearly existed where the witnesses knew defendant and corroborated each other. Because a witness informed the police where he dropped off defendant after the crime, there was strong reason to believe defendant was at the premises. Finally, the entry was peaceful, as police knocked and were let inside by the homeowner. Where every factor favored exigent circumstances, the Appellate Court upheld the arrest.

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. Gill, 2018 IL App (3d) 150594 As a matter of first impression, the Appellate Court concluded that defendant had a reasonable expectation of privacy in his seventh-floor, single occupancy hospital room, relying on the factors set out in **People v. Pitman**, 211 Ill. 2d 502 (2004). Although defendant only occupied the room for a matter of hours, it was of the type often used for longer stays. Defendant had a subjective expectation of privacy, and "concepts of privacy and confidentiality are tantamount concerns in a hospital."

The Fourth Amendment was triggered by a nurse's entry to defendant's hospital room to retrieve defendant's clothing for the police. While the nurse testified at the suppression hearing that he had retrieved the clothing from a nurse's station in a common area, he corrected that testimony at trial to explain he had obtained the clothing from defendant's room and had confused defendant's case with another at the motion hearing. The nurse's trial testimony was clear and unbiased, and the trial court's factual finding that defendant's clothing had been at the nurse's station was "severely undermined" and no longer supported by the manifest weight of the evidence given the trial testimony. Because defendant renewed his motion to suppress in his post-trial motion, the trial evidence was properly considered on review.

Where there had been a suspicious residential fire, the scene smelled of gasoline, defendant had argued with a resident of the home just prior to the fire, and a nurse had informed police that defendant's clothing smelled of gasoline, the police had probable cause to search for defendant's clothing as part of there arson investigation but should have obtained a warrant. The Appellate Court reversed the denial of defendant's motion to suppress his clothing, as well as a canine-alert to that clothing after its seizure.

The Appellate Court went on to consider and reject a challenge to the warrantless seizure of defendant's truck which had been left in a Denny's parking lot when defendant was taken to the hospital. There was a gas can and rag in the bed of defendant's truck. Coupled with the suspicious residential fire and defendant's argument with the resident of the home, there was probable cause to seize the truck. The absence of a warrant was not fatal because of the inherent mobility of automobiles and the potential for weather to degrade evidence in the bed of the truck.

Finally, the Appellate Court concluded that an East Peoria police officer did not act without authority when he seized defendant's truck in North Pekin. The extra-judicial arrest statute [65 ILCS 5/7-4-8] allows an officer to conduct an investigation outside of his

jurisdiction, and the Court determined that by implication, an officer may collect evidence as part of such an investigation.

People v. Hayes, 2018 IL App (5th) 140223 A young boy on a bicycle rode out from between two parked cars directly in front of defendant's moving vehicle. Defendant struck the boy, resulting in his death. Defendant said he had been momentarily distracted by his own child's request for assistance opening a piece of candy. An eyewitness reported there was nothing defendant could have done to avoid the accident. After the police arrived, defendant was transported to the hospital where blood and urine samples were taken without a warrant. Initial results showed the presence of THC and amphetamines, and defendant was then arrested for DUI. Defendant sought to exclude the test results.

The natural dissipation of alcohol or drugs in a person's body does not give rise to a *per se* exigency. Further, for the exigent circumstances exception to apply, there must be probable cause for the search. Here, there was no showing of probable cause where the officer did not say that he disbelieved defendant's version of the incident and there was no evidence that defendant appeared to be under the influence of any substance.

While defendant did not object to the testing, his mere acquiescence did not constitute consent. Even assuming defendant had consented to blood and urine testing, his consent was not voluntary where a police officer drove defendant to the hospital from the accident scene, remained with defendant at all times including while he was providing a urine sample, and had defendant's car towed and stored as part of the police investigation of the accident. Likewise, the implied consent statute could not validate the testing where no traffic citation was issued until two days after the testing, and defendant was not otherwise under arrest for a violation of the Illinois Vehicle Code at the time of the testing. Implied consent, by its express terms, requires that defendant has been arrested for a vehicle code violation prior to being asked to submit to testing.

The blood and urine testing was an unreasonable search, and the results should have been excluded. Defendant's conviction of aggravated DUI was reversed outright because without the test results, there was insufficient evidence to convict.

People v. Eubanks, 2017 IL App (1st) 142837 Following a deadly accident, the police took defendant, the driver, into custody and forced him to provide urine and blood samples without a warrant or his consent. On appeal, defendant challenged the constitutionality of section 11-501.2(c)(2) of the Illinois Vehicle Code, which allows the police to obtain blood and urine samples without a warrant whenever they have probable cause to believe that a motorist involved in an accident resulting in death or injury to another, is under the influence. The Appellate Court held that the statute is unconstitutional. Although the fact that chemicals dissipate in the human body can create exigency, the United States Supreme Court rejected a *per se* exigency exception for warrantless blood and urine tests in **Missouri v. McNeely**, 569 U.S. 141 (2013). Whether the exigency exception to the warrant requirement exists has always been analyzed on a case-by-case basis. In some situations the police will be able to obtain a warrant in time, and therefore a *per se* rule would be a considerable over-generalization.

Here, the State did not show exigent circumstances, because the police took defendant into custody immediately after the offense, and kept him in an interview room for the next 4.5 hours without even trying to seek a warrant. Nor did the good faith exception apply where, although the Illinois Supreme Court in **People v. Jones**, 214 Ill. 2d 187 (2005) had previously upheld testing under the warrantless testing statute, that decision made clear

that officers could not use physical force to obtain a sample, as was the case here. The results of the test would be inadmissible in defendant's retrial for murder, and his aggravated DUI conviction is reversed outright.

The dissent expressed skepticism of the statute's unconstitutionality, noting that a motorist engages in a privilege, not a right, to drive a car, and thereby subjects himself to the regulation of that privilege by the legislature. Regardless, the court would find that the police clearly could have obtained a warrant in this case, rendering the test results inadmissible. The court noted that suppression of the test results would have no effect on defendant's murder conviction given that whether intoxicated or not, defendant drove a van at a high rate of speed down a residential street and killed and maimed two pedestrians.

People v. Franklin, 2016 IL App (1st) 140049 A warrantless search is unconstitutional unless it falls within one of the three exceptions to the warrant requirement that are recognized in Illinois: (1) search incident to arrest; (2) probable cause accompanied by exigent circumstances; and (3) consensual searches.

Investigating a theft, the police went to a motel room looking for the offender, DB. When they arrived, defendant was just leaving the room. Defendant told the police the room was rented in his name and DB was inside. When defendant let the police into the room, the officers saw DB sleeping in a bed and a bag of marijuana on the night-stand between the two beds. The officers recovered the marijuana and did a quick search of the room. An officer checked the ceiling tiles since that is a frequent place to stash contraband, but none of them had been disturbed.

When the officers radioed for a drug-sniffing dog, DB ran out of the room. The officers ran after him, leaving defendant alone. When the officers returned, they saw that the ceiling tiles in the bathroom had been moved. The officers handcuffed defendant, sat him on the bed, and then searched the area behind the tiles, where they found two guns.

The court held that the search of the area behind the tiles was illegal. First, the search was not a permissible search incident to arrest. A search incident to arrest only extends to the person arrested and the area within his reach. Here, the bathroom area was separate from the room where defendant had been arrested and handcuffed and thus was not within his immediate reach. The police may have had probable cause to search that area, but probable cause standing alone is insufficient to justify the warrantless search.

There were also no exigent circumstances justifying the search. Exigent circumstances exist where there is compelling need for prompt action and there is no time to obtain a warrant. Here, by the time the police searched the area behind the tiles, defendant was already in custody and handcuffed so there were no exigent circumstances.

Since the weapons recovered during the illegal search were the only evidence supporting defendant's unlawful use of weapons by a felon conviction, the court reversed outright defendant's conviction.

People v. Davis, 398 Ill.App.3d 940, 924 N.E.2d 67 (2d Dist. 2010) The court held that police improperly seized a suspected controlled substance and a digital scale which an officer observed while in the defendant's apartment to make a warrantless arrest. Therefore, the defense motion to suppress evidence should have been granted.

Absent exigent circumstances, police may not enter a private residence to make a warrantless search or arrest. The State bears the burden of demonstrating sufficient exigent circumstances to justify a warrantless entry to a residence.

Whether exigent circumstances justify a warrantless entry to a private residence

depends on the facts of each case, considering factors such as: (1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by police during which a warrant could have been obtained; (3) whether a grave offense was involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting on a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though not consensual, was made peaceably. This list of factors is not exhaustive, but illustrates the type of evidence which is relevant to the question of exigency.

There were insufficient exigent circumstances to justify a warrantless entry to an apartment to arrest the defendant for battery. The evidence presented by the State did not suggest that defendant posed an immediate or real threat of danger or likelihood of flight, and the circumstances did not suggest that the delay required to obtain an arrest warrant would have impeded the investigation or prevented defendant's apprehension. Although battery involves a form of violence and defendant allegedly punched the complainant, there was nothing to indicate that the offense was particularly "grave," no evidence of any injury or medical treatment on the part of the complainant, and no reason to believe that defendant was armed or otherwise posed a threat.

There was also no evidence that defendant was likely to flee unless swiftly apprehended, especially where defendant did not appear to know that police were looking for him.

The court acknowledged that only a short period of time passed between the battery and the officer's arrival at defendant's apartment, and that there was no unjustifiable delay. In addition, there was probable cause for an arrest, the police had reason to believe defendant was in the apartment, and the officer entered the apartment peaceably. However, "we are not persuaded that these circumstances, without more, necessitated prompt action by the police in the form of a warrantless entry and arrest."

The court rejected the argument that the warrantless entry into the apartment was justified by the "hot pursuit" doctrine. The "hot pursuit" doctrine applies where police initiate a valid arrest in public, but the arrestee attempts to thwart the arrest by escaping to a private place. The court concluded that the "hot pursuit" doctrine was inapplicable here, because the defendant was never in public. Instead, he remained in the apartment at all times, and even attempted to retreat further into the apartment when he opened the door and saw the officer. The court stressed that the arrest was not initiated in a public place, but when the officer entered the apartment and handcuffed defendant.

The court also questioned whether defendant would have been in a "public" place even if he had been in the doorway of his apartment, because the apartment door opened into a hallway that was locked at the street and accessible only to the tenants and the landlord.

Under the plain view doctrine, an officer may legally seize items where: (1) the officer was legally in the location from which he observed the items; (2) the items were in plain view, (3) the incriminating nature of the items was immediately apparent, and (4) the officer had a lawful right of access to the objects. Because the officer's entry to the apartment to arrest defendant was unlawful, he was not entitled to be in the location from which he viewed the item. Therefore, the plain view doctrine did not apply.

The court rejected the argument that the officer was lawfully in the apartment under the "protective sweep" rule. The State argued that because the officer saw an unidentified male run into a bedroom as defendant was arrested, the officer was entitled to make a

"protective sweep" to protect himself. A "protective sweep" is a quick search of premises incident to arrest, conducted to protect the safety of police officers and others. A protective sweep is limited to a cursory physical inspection of places in which a person might hide. A protective sweep may only be conducted when the officer has a reasonable belief, based on specific and articulable facts, that the area to be swept harbors an individual who poses a danger to officers and others at the scene of an arrest.

The court held that the "protective sweep" doctrine may be invoked only where police enter the premises lawfully. Because the officer's initial entry into the defendant's apartment was unlawful, the "protective sweep" doctrine did not apply.

People v. Plante, 371 Ill.App.3d 264, 862 N.E.2d 1059 (3d Dist. 2007) Exigent circumstances did not justify a warrantless entry because the officer suspected there was a methamphetamine laboratory inside the house. To support a finding of exigent circumstances, the State must show that the officer believed that the laboratory posed an immediate threat to public safety. There was no such evidence, as the officer did not arrest defendant or notify proper authorities when he discovered the methamphetamine lab during his second entry.

In re D.W., 341 Ill.App.3d 517, 793 N.E.2d 46 (1st Dist. 2003) To lawfully enter a residence, a police officer must have either: (1) a warrant, or (2) probable cause plus exigent circumstances. The State bears the burden of demonstrating exigency.

The "cornerstone" of exigency analysis is whether the officers' actions were reasonable under the circumstances. Factors to be considered include the recency of the crime, whether there was any deliberate or unjustified delay during which a warrant could have been obtained, whether a "grave offense" or crime of violence was involved, whether there was a reasonable belief that the suspect was armed, whether there was a clear showing of probable cause, whether the suspect was likely to escape if not swiftly apprehended, whether there was strong reason to believe that the suspect was on the premises, and whether the entry was made peaceably.

People v. Koester, Skutt, Davenport, Pearson & Young, 341 Ill.App.3d 870, 793 N.E.2d 1005 (2d Dist. 2003) There were no exigent circumstances sufficient to justify a warrantless entry to a residence. Although police claimed they entered to determine whether an emergency existed which required immediate action to aid someone in the home, the officers did not ask to speak to the person whom defendant said might have placed a 911 call, waited 30 minutes before entering the home, and took breath testing equipment but not first aid kits. In addition, upon entering the officers immediately began to investigate the possibility of underage drinking.

People v. Payton, 317 Ill.App.3d 909, 741 N.E.2d 302 (3d Dist. 2000) Probable cause exists where the facts known to the officer would warrant a reasonable person in believing that defendant committed an offense. However, "no amount of probable cause can justify a warrantless search or seizure absent exigent circumstances."

Even if the officers had probable cause to search a grill at defendant's residence, there were no exigent circumstances sufficient to excuse the failure to obtain a warrant. The officers had no reason to fear for their safety, could have requested consent from defendant or his mother, and if consent was refused could have secured the porch while a warrant was obtained. Instead, the officers "bypassed these options and searched the grill without a

warrant."

People v. McPhee, 256 Ill.App.3d 102, 628 N.E.2d 523 (1st Dist. 1993) A warrant to search a Federal Express envelope that was suspected of containing cocaine did not authorize a forcible entry and search of the defendant's home after the envelope was delivered.

The Court concluded that if the warrant was intended to authorize a search of the home, it failed to comply with the requirement that the subject of the search be specifically described. Furthermore, the State could not claim exigent circumstances under **Payton v. New York** where the police had obtained the warrant to search the envelope and could easily have requested authorization to search the house as well. Finally, the "good faith" exception applies only where the police rely in good faith on a defective warrant, not where police exceed the scope of a valid warrant.

People v. Vought, 174 Ill.App.3d 563, 528 N.E.2d 1095 (2d Dist. 1988) The warrantless entry into defendant's hotel room was unlawful; the fact that a private citizen had seen cocaine in the room did not justify a warrantless entry.

People v. Krinitsky, 2012 IL App (1st) 120016 Over at least an 11-hour period of time, the police planned with an informant to deliver 15 pounds of marijuana to the defendant for $30,000. The informant entered the defendant's apartment with the marijuana and sent the police a text message, "He's fingering it." The police responded with a text message telling the informant to come out. The informant responded that in three minutes, he was coming out, no matter what. When the informant exited, the police entered and during a search of the apartment, recovered both the cannabis and $30,000 in a suitcase.

The trial court granted the defense motion to suppress, finding that no exigent circumstances excused the entry and search without a warrant.

Warrantless searches and seizures inside a home are presumed to be unreasonable. The police may not enter or search a home without a warrant absent exigent circumstances.

Facts to be considering in determining whether exigent circumstances exist include whether: (1) the crime under investigation was recently committed; (2) there was any deliberate or unjustified delay by the police during which time a warrant could have been obtained; (3) a grave offense was involved, particularly a crime of violence; (4) there was a reasonable belief that the suspect was armed; (5) the police officers were acting on a clear showing of probable cause; (6) there was a likelihood that the suspect would escape if he was not swiftly apprehended; (7) there was a strong reason to believe that the suspect was on the premises; and (8) the police entry was made peaceably, albeit nonconsensually.

This list of factors is not exhaustive. The factors are mere guidelines rather than cardinal maxims to be applied rigidly in each case. The burden to prove exigent circumstances is on the State.

The State did not argue that exigent circumstances justified the warrantless entry into defendant's apartment and the Appellate Court concluded that none existed. The police planned with an informant that the informant would deliver cannabis to the defendant in the defendant's apartment. The police knew the time, place, quantity and price of the arranged transaction and had at least 11 hours to secure an anticipatory warrant before the transaction.

Consent is an exception to the requirement that the police need a warrant to enter a residence. The consent-once-removed doctrine is applicable where an undercover agent or government informant: (1) enters at the express invitation of someone with authority to

consent; (2) at that point establishes the existence of probable cause to effectuate an arrest or search; and (3) immediately summons help from other officers.

While expressing no opinion whether the consent-once-removed doctrine should be adopted, the Appellate Court held that the State had failed to prove the second and third elements.

The informant, not the defendant, brought the cannabis into the defendant's apartment. The only testimony regarding probable cause was that the informant sent the police a text message stating, "He's fingering it." The police sent the informant a text message to "come on out." When the police entered, they found both the cannabis and a suitcase filled with $30,000. There was no evidence that a transaction occurred or any explanation why the informant left behind both the cannabis and the $30,000 that defendant presumably gave him in the apartment. These facts failed to demonstrate probable cause to arrest defendant.

Moreover, the informant did not immediately summon help from the officers. The police told the informant to come out, and he responded that he would leave in three minutes. Once the informant exited, the police forcibly entered the apartment.

People v. Lomax, 2012 IL App (1st) 103016 The "emergency aid" exception to the warrant requirement of the Fourth Amendment allows police who are responding to an emergency to enter and search a home without a warrant. Emergency situations include instances when a person may be injured or threatened with injury.

A two-step process is used for determining whether the emergency aid exception applies. First, the police must have reasonable grounds to believe that there is an emergency. Second, there must be a "reasonable basis, approximating probable cause," to associate the emergency with the area to be searched or entered. The reasonableness of an officer's belief as to the existence of an emergency is determined by the totality of the circumstances known to the officer at the time of the entry.

The court concluded that the emergency aid exception applied in this case. First, police had reasonable grounds to believe that an emergency existed where they were directed to an apartment building in response to multiple 911 calls claiming that gunshots had been heard, including one call that identified a particular apartment. A 911 call is one of the most common and universally recognized means by which police learn of an emergency situation. Although there may be circumstances where merely receiving a 911 call does not create a reasonable belief of an emergency, reliance on the 911 calls was reasonable in light of the multiple calls and the identification of a particular apartment as the source of the shots. Furthermore, the police immediately entered the apartment upon their arrival; a delay in entering the premises might have undercut the claim that there was an objective basis to believe that an emergency existed.

Second, the police had a reasonable basis akin to probable cause to associate the emergency with the apartment which they entered. Probable cause exists when the totality of the facts and circumstances known to the officers would lead a reasonably prudent person to believe that a suspect is committing or has committed a crime. For purposes of the emergency aid exception, probable cause is present when officers reasonably believe that someone is in danger. That standard was satisfied where multiple 911 calls reported the sound of gunfire in an apartment building, and one of the calls specifically stated that the shots had come from the apartment which police entered.

Although the officers properly entered the defendant's apartment under the emergency aid exception, the court stated that it was "troubled by the police officers' command that the residents leave their home before [the officers] performed the warrantless

safety check." Generally, police who are acting without a warrant lack authority to order citizens out of their homes so that a search may be conducted. The court concluded, however, that in light of the exigent circumstances arising from the multiple 911 calls, the improper order did not create a Fourth Amendment violation.

The trial court's order quashing the arrest and suppressing evidence was reversed, and the cause was remanded for further proceedings on the charges of unlawful use of a weapon and being an armed habitual criminal.

People v. Martin, 2017 IL App (1st) 143255 Defendant's mother owned a two-flat building. She lived in the first floor apartment and the second floor apartment was vacant. Defendant often stayed overnight in the first floor apartment. The two-flat had a locked outer door that led to a private vestibule that had doors leading to each of the apartments.

The police saw defendant standing in a vacant lot next to the two-flat. A man approached defendant and raised his index finger. Defendant went up on the two-flat's porch, reached inside the doorway to the vestibule, which was slightly ajar, and retrieved a blue plastic bag. He took a smaller bag out of the blue bag, put the blue bag on top of the doorway, and walked back to the man in the vacant lot. The man gave defendant money and defendant gave him the smaller bag. Defendant then gave the money to an unknown man in the vacant lot.

The police broke surveillance and detained defendant and the buyer. The buyer said he got "one blow" from defendant. The item he purchased was a small bag filled with white powder, suspected to be heroin. One officer went up on the porch, reached inside the doorway to the vestibule and recovered the blue bag. The blue bag contained smaller bags similar to the one recovered from the buyer. The smaller bags contained heroin.

The Appellate Court held that the officer's recovery of the blue bag constituted an illegal physical search inside a home without a warrant. For purposes of the Fourth Amendment, the type of building here, a two-flat occupied and owned by one family, should be considered the same as a single-family home. The area inside the home's entrance is a protected area under the Fourth Amendment. An officer without a warrant may do no more than a private citizen, which generally is limited to approaching the house and knocking.

Here the officer intruded into the inside of the home to retrieve evidence. It made no difference that the door was open since a private citizen would not feel entitled to breach the open door of a home and investigate its contents. Any invasion of a home's structure "by even a fraction of an inch" is impermissible.

The court rejected the State's argument that the recovery of the bag did not constitute a search under the plain view doctrine. The plain view doctrine only applies if: (1) the officer is lawfully in a position to view the object; (2) the incriminating character of the object is immediately apparent; and (3) the officer has a lawful right of access to the object.

Here the incriminating nature of the object was not immediately apparent. The police only observed defendant take a small item from the blue bag and then tender that item to the buyer. It was only after the police recovered the blue bag that they could see that the items inside matched the item containing suspected heroin that defendant had sold to the buyer. Since the nature of the object was not immediately apparent the plain view doctrine did not apply.

The court also rejected the State's argument that the warrantless search was justified by exigent circumstances. The State argued that exigent circumstances existed because defendant gave money to an unknown man, but the police lost track of him when they detained defendant and the buyer. The officers thus could have reasonably believed the

unknown man could have gone inside the two-flat and destroyed evidence.

The court held that there were no exigent circumstances in this case since there was no risk evidence would be destroyed while the officers obtained a warrant. Both defendant and the buyer were in custody and had no access to the evidence. The court found that the State's concern about the unknown man was "entirely speculative," especially since there were several officers at the scene who could have secured the premises while they obtained a warrant.

And finally, the court held that the officers did not act in good-faith reliance on binding precedent at the time of the search holding that common areas in multi-unit apartment buildings open to other people were not constitutionally protected. Here, the building was a single-family home not a multi-unit apartment.

The court suppressed the recovered evidence and reversed defendant's conviction outright since without that evidence the State could not prove defendant's guilt.

People v. Franklin, 2016 IL App (1st) 140049 A warrantless search is unconstitutional unless it falls within one of the three exceptions to the warrant requirement that are recognized in Illinois: (1) search incident to arrest; (2) probable cause accompanied by exigent circumstances; and (3) consensual searches.

Investigating a theft, the police went to a motel room looking for the offender, DB. When they arrived, defendant was just leaving the room. Defendant told the police the room was rented in his name and DB was inside. When defendant let the police into the room, the officers saw DB sleeping in a bed and a bag of marijuana on the night-stand between the two beds. The officers recovered the marijuana and did a quick search of the room. An officer checked the ceiling tiles since that is a frequent place to stash contraband, but none of them had been disturbed.

When the officers radioed for a drug-sniffing dog, DB ran out of the room. The officers ran after him, leaving defendant alone. When the officers returned, they saw that the ceiling tiles in the bathroom had been moved. The officers handcuffed defendant, sat him on the bed, and then searched the area behind the tiles, where they found two guns.

The court held that the search of the area behind the tiles was illegal. First, the search was not a permissible search incident to arrest. A search incident to arrest only extends to the person arrested and the area within his reach. Here, the bathroom area was separate from the room where defendant had been arrested and handcuffed and thus was not within his immediate reach. The police may have had probable cause to search that area, but probable cause standing alone is insufficient to justify the warrantless search.

There were also no exigent circumstances justifying the search. Exigent circumstances exist where there is compelling need for prompt action and there is no time to obtain a warrant. Here, by the time the police searched the area behind the tiles, defendant was already in custody and handcuffed so there were no exigent circumstances.

Since the weapons recovered during the illegal search were the only evidence supporting defendant's unlawful use of weapons by a felon conviction, the court reversed outright defendant's conviction.

People v. Armer, 2014 IL App (5th) 130342 The act of drawing blood from a DUI suspect constitutes a "seizure" under the Fourth Amendment, and requires a warrant unless there are exigent circumstances which make it impractical to obtain a warrant. Exigent circumstances have been found where the time needed to obtain a warrant would result in the destruction of evidence. Whether exigent circumstances justify a warrantless search in a

particular situation is evaluated on a case-by-case basis.

The natural dissipation of alcohol over time does not create a *per se* exigency which categorically justifies an exception to the warrant requirement for nonconsensual blood testing in DUI cases. **Missouri v. McNeely**, ___ U.S. ___, 133 S. Ct. 1552, 185 L.Ed.2d 696 (2013). However, the natural dissipation of alcohol may support a finding of exigency in a specific case where other factors, such as the procedures in place for obtaining a warrant and the availability of a judge, affect whether the police can obtain a warrant within a time period that preserves the opportunity to obtain reliable evidence.

The court concluded that there were not sufficient exigent circumstances to justify a warrantless draw of defendant's blood. Defendant was involved in a single vehicle accident, and was taken to the hospital for evaluation of his injuries. One deputy followed the ambulance to the hospital, while a second officer remained at the scene of the accident. A third deputy also came to the hospital. The court found that because three officers were available, the investigation would not have been jeopardized had one of the officers attempted to contact the State's Attorney to secure a search warrant. The court noted that the officer did not testify that a fear of losing relevant evidence caused him to order the warrantless draw, and that he decided not to seek a warrant only because he thought he had probable cause and did not need the State's Attorney's assistance.

The court concluded that under these circumstances, a reasonable officer would not have believed that sufficient exigent circumstances were present to justify the warrantless blood draw. The trial court's suppression order was affirmed.

People v. Miranda, 2012 IL App (2d) 100769 The compelled extraction of a person's blood or urine for alcohol or controlled substance testing is a "search" under the Fourth Amendment, and is subject to the warrant and probable cause requirements unless a recognized exception applies. In reviewing the sufficiency of an affidavit for a search warrant, a reviewing court determines whether the magistrate had a substantial basis to conclude that probable cause existed.

An affidavit which contained no factual allegations concerning controlled substances, but which stated that defendant exhibited signs that he was under the influence of alcohol during a traffic stop, provided probable cause for a warrant to test defendant's blood sample for alcohol but did not afford probable cause to test a urine sample for controlled substances. The affidavit stated that defendant's eyes were glassy and bloodshot and that he admitted having consumed alcohol. There was a strong odor of alcohol inside the car, and defendant failed three field sobriety tests. Furthermore, at the time of the stop a front-seat passenger was holding two bottles of what appeared to be beer.

There was no mention of controlled substances in the affidavit except in the concluding paragraph, which stated the officer's opinion that defendant was under the influence of alcohol and/or drugs. Under these circumstances, there was no probable cause for a warrant to test defendant's urine sample for the presence of controlled substances.

The court rejected the argument that even absent probable cause, the good faith exception permitted the admission of the result of the analysis of defendant's urine sample. The good faith exception does not apply if a warrant is based on an affidavit that is so lacking in indicia of probable cause as to render a belief to the contrary entirely unreasonable. Here, the good-faith doctrine did not apply because it was entirely unreasonable to rely on an affidavit which contained no allegations which would have supported a finding of probable cause concerning the presence of controlled substances.

The court also rejected the argument that the statutory implied consent provision (625

ILCS 5/11-501.1) authorized testing for controlled substances in the absence of a showing of probable cause. Under §5/11-501.1(a), a driver impliedly consents to testing for prohibited substances. However, implied consent is revoked where the driver refuses to consent to such a test. When a motorist revokes implied consent to testing, the police must find some other basis, such as a warrant supported by probable cause, to justify the testing.

The trial court's order granting defendant's motion to suppress was affirmed.

People v. Sinegal, 408 Ill.App.3d 504, 946 N.E.2d 474 (5th Dist. 2011) Under the plain view doctrine, an officer may seize an object without a warrant if: (1) the officer is lawfully in the place where he sees the object in plain view, (2) the officer has a lawful right of access to the object, and (3) the incriminating nature of the object is immediately apparent. The incriminating nature of an object is immediately apparent if the officer has probable cause to believe that the object is evidence of a crime without searching further. Probable cause to believe that a package contains contraband does not require absolute certainty.

Because the defendant gave the police consent to enter his car to look at the gas gauge in the course of a traffic stop, there was no question that the officer was lawfully in the car when he saw an opaque green shrink-wrapped package in plain view on the driver's seat, or that he had lawful access to it.

Considering all of the circumstances, the officer had probable cause to believe that the package contained drugs and therefore its incriminating nature was immediately apparent. The officer had some training in drug interdiction and testified that he had seen similar packages on at least five prior occasions and that each one contained narcotics. He was aware from a warrant check of the driver (defendant) and his passenger that both had prior drug charges. Suspicious behavior by defendant and the passenger also contributed to probable cause. Although most motorists are nervous during traffic stops, defendant and his passenger were more nervous than most. Defendant seemed to attempt to evade the police by turning left after appearing to turn right at the top of the exit ramp when followed by the police off of the interstate, although the officer acknowledged that it was also apparent defendant did not know where he was going. The passenger also told the officer that he did not know where they were going, what was in the package, or how it got in the car.

Even when the plain view doctrine supports the warrantless seizure of a package or container, the contents of the package or container may not always be searched without a warrant. The contents may be searched without a warrant if the contents are a foregone conclusion, as where the package is transparent or open or when its distinctive configuration proclaims its contents. **People v. Jones**, 215 Ill.2d 261, 830 N.E.2d 541 (2005).

The police were justified in piercing the package to discover its contents without a warrant. The training and experience of both officers, particularly the officer who opened the package, led them to believe with near certainty that the package contained drugs. The officer who pierced the package had encountered similar packages on 10 occasions, had fairly extensive training in drug detection, and had never seen anything other than drugs packaged in this distinctive manner. He explained that drug traffickers use opaque plastic to avoid detection of drugs, and that he was almost certain that the package contained cannabis based on its configuration and size. The package did in fact contain cannabis.

The court affirmed the circuit court's denial of defendant's motion to suppress.

People v. Slavin, 2011 IL App (2d) 100764 Acknowledging that even a tent can constitute a dwelling for Fourth Amendment purposes, the court held that a canvas shanty, used for temporary shelter while ice fishing, was not the equivalent of a tent because it contained no

sleeping bag or other sleeping arrangements. The court also rejected the State's argument that the shanty was the equivalent of an automobile and therefore exempt from the warrant requirement. The court upheld the warrantless entry of the shanty to conduct a search because it was supported by both probable cause and exigent circumstances.

While standing outside the shanty, the officer heard the occupants comment on who was going to "pack the bowl" and the quality of the "weed." He also heard a distinctive coughing sound which, based on his training and experience, he knew is made after inhaling cannabis though a pipe. Based on these facts, he possessed probable cause to believe the shanty possessed contraband.

The guiding principle in determining if exigent circumstances justify a warrantless entry is the reasonableness of the officer's actions, based on the totality of the circumstances known to the officer at the time of the entry. The potential destruction of narcotics does not constitute exigent circumstances sufficient to justify a warrantless entry unless the officer has particular reasons to believe that the evidence will be destroyed.

Exigent circumstances existed because the officer could not have called another officer to monitor the scene while he obtained a warrant. Given the officer's reasonable belief that someone in the shanty was smoking cannabis, the suspected cannabis likely would have been removed from the scene or destroyed, either by simply smoking it or dropping it through the hole in the ice to the water below, had the officer delayed his entry. Therefore the warrantless entry was reasonable under the Fourth Amendment.

People v. Wimbley, 314 Ill.App.3d 18, 731 N.E.2d 290 (1st Dist. 2000) Whether sufficient exigent circumstances exist to justify a warrantless entry to a home depends on the totality of circumstances confronting the officers when the entry was made. Factors to be considered include whether: (1) the offense was recently committed; (2) there was any deliberate or unjustifiable delay during which a warrant could have been obtained; (3) a grave or violent offense was involved; (4) the suspect was reasonably believed to be armed; (5) the officers were acting on a clear showing of probable cause; (6) there was a likelihood that the suspect would escape if not swiftly apprehended; (7) there was strong reason to believe that the suspect was on the premises;(8) the police entry was made peaceably; and (9) the police were in "hot pursuit" of a suspect who fled from a public place into a residence. The presence of all these factors is not necessary for a finding of exigent circumstances; the factors are guidelines, and each case is to be evaluated on the totality of the circumstances known to the officers.

There were insufficient exigent circumstances to justify a warrantless entry where, although police had probable cause to arrest defendant based on his possession of what appeared to be cannabis when he answered a knock at his door, there was no reason to believe that defendant was armed or dangerous or would flee if not immediately arrested, or that weapons were in the apartment. Furthermore, this was not a case of hot pursuit or a "grave crime." Finally, the police had no specific reason to believe that evidence would be destroyed if they delayed their entry until they obtained a warrant. See also, **People v. Shanklin**, 367 Ill.App.3d 569, 855 N.E.2d 184 (1st Dist. 2006) There was no exigency sufficient to justify the warrantless entry to a home where the murder in question occurred 17 days before the arrest, officers made no attempt to obtain an arrest or search warrant after developing probable cause some two hours before the arrest, the officers did not claim there was any reason to believe that defendant posed a danger to them, and there was no evidence that defendant would have attempted to escape if not swiftly apprehended).

§43-3
Seizure

§43-3(a)
Generally

United States Supreme Court

Florida v. White, 526 U.S. 559, 119 S.Ct. 1555, 143 L.Ed.2d 748 (1999) Where police had probable cause to believe that an automobile parked in a public place was subject to a state act requiring forfeiture of vehicles used "as an instrumentality in the commission of . . . any felony," they were not required to obtain a warrant before seizing the vehicle.

Illinois Supreme Court

People v. Hopkins, 235 Ill.2d 453, 922 N.E.2d 1042 (2009) The officer received a report of an armed robbery in progress, and found the defendant sitting in a stopped vehicle in the area of the offense. There were no other vehicles in sight, and the defendant matched the description of the offenders (black males in their 20's). The incident occurred in a predominately white neighborhood, the officer observed defendant's car within two minutes after receiving the report, and the defendant acted in a "nervous, evasive" manner by leaning forward to "peek" at the officer and then leaning back into his seat. Based on all these factors, the officer clearly had reasonable cause to conduct a **Terry** stop to investigate whether defendant had been involved in criminal activity.

Before making the arrest, the officer learned additional facts which constituted probable cause. When defendant exited his vehicle at the officer's order, the officer noticed that defendant had snow reaching to the mid-calf area of his pants. In addition, defendant was breathing heavily. While performing a patdown, the officer felt defendant's heart beating rapidly. The court deemed all these factors to be consistent with the dispatch that the offenders had fled on foot.

Finally, before the arrest was made the officer received information that one of the offenders was driving a car of the same color as the defendant's vehicle. In view of the recentness of the report of a crime in progress and the factors outlined above, the officer clearly had probable cause to arrest the defendant for armed robbery.

People v. Hunt, 234 Ill. 2d 49, 914 N.E.2d 477 (2009) 730 ILCS 125/19.5, which states that a county sheriff may adopt a written policy governing the release of county jail prisoners to other law enforcement agents to aid in investigating either the crime for which the arrest occurred or unrelated criminal matters, contemplates the release of prisoners upon the completion of certain documentation. The court rejected the Appellate Court's holding that law enforcement agents must obtain a court order before removing a county jail prisoner from the jail to assist an investigation of unrelated activities. (See also **APPEAL**, §2-6(a)).

Because the original issue raised by the parties was not reached by the Appellate Court, the cause was remanded for further consideration.

Illinois Appellate Court

People v. McClendon, 2022 IL App (1st) 163406 Following his conviction of armed habitual criminal, defendant appealed. Defendant argued that trial counsel provided ineffective assistance on his motion to suppress evidence. Specifically, defendant argued that counsel

should have argued that he was illegally seized, and that the gun and defendant's statement were the fruits of that illegal seizure. The Appellate Court agreed.

Police responded to a call of shots fired. They did not have a description of the shooter or any information about whether a vehicle was involved in the incident. About four blocks away from the area, responding officers observed defendant and another man sitting in a parked vehicle. An officer testified that the men slumped down in their seats when the police passed by and then drove away when the officers parked and started to approach. Eventually, other officers were directed to a parking lot where the vehicle had gone after driving away. Defendant and the other man were located on the porch of an adjacent residence, knocking on the door. Officers approached with their guns drawn, and one of the officers said defendant took out a gun and dropped it behind a couch on the porch. It was alleged that defendant later made a statement admitting he had possessed the gun.

The trial court found that defendant had abandoned the gun prior to being seized, and therefore denied the motion to suppress. At the suppression hearing, trial counsel failed to argue that defendant had been seized before abandoning the gun and that it was the illegal seizure that caused the abandonment. The Appellate Court concluded that the motion to suppress would have had merit had counsel made those arguments. Defendant was seized when officers approached the porch with their guns drawn, causing defendant to submit to that show of authority. Further, the police lacked probable cause or reasonable suspicion to seize defendant. No evidence connected him to the call of shots fired, and no officers saw defendant engage in any crime prior to the seizure. Defendant only dropped the gun in response to being seized, thus the gun was the fruit of the illegal seizure.

The Appellate Court reversed defendant's conviction outright. Without the gun, or defendant's later statement, the State had no evidence to support the charge.

People v. Cherry, 2020 IL App (3d) 170622 Where an officer attempts to effectuate a stop or seizure, but defendant immediately flees, there has been no submission to authority and therefore no seizure. If defendant first submitted to authority, however, and then fled, the fourth amendment is implicated at the time of the initial submission, and there must have been reasonable articulable suspicion for the seizure at that point in time, otherwise any evidence found after the initial encounter is subject to exclusion.

Here, the police ordered defendant and his friends to "stop," defendant took steps backward and away from the police as they exited their vehicle, and defendant ran off as an officer approached him. The Appellate Court concluded that defendant had not submitted to the officer's authority "in any meaningful way." Accordingly, the officer's lack of reasonable articulable suspicion at the time of this initial encounter did not render the encounter unconstitutional.

Defendant was ultimately seized when the police caught up with him approximately ten feet away, tackled him, and recovered a gun from defendant's waistband. At that point, defendant's flight, the officer's previous observation of defendant's holding his waistband, and the original tip that a group of men had been seen pointing a gun from defendant's now-parked vehicle, provided the police with reasonable, articulable suspicion to support his seizure. Finally, the gun was recovered under the plain-touch doctrine, where the officer felt it upon tackling defendant, thus there was no **Terry** frisk at issue.

People v. Augusta, 2019 IL App (3d) 170309 The trial court erred when it denied defendant's motion to suppress drugs forcibly removed from his mouth. Under 720 ILCS 5/7-5.5(b), the police cannot use a chokehold or any lesser contact with the throat or neck area in

order to prevent the destruction of evidence by ingestion. Here, the police admitted that, during a traffic stop, officers grabbed defendant by the throat, pulled his head back, forced open his mouth, and reached inside to remove suspected contraband. This violation of the statute rendered the seizure unreasonable. Plain view did not validate the seizure because the character of the object was not immediately apparent, and regardless, whether the object is in plain view does not give officers license to violate subsection 7-5.5(b).

A concurring justice agreed with this analysis, and would further hold that the entire traffic stop was unconstitutional because the officer admitted it was pretextual. The officer explained that he followed defendant's car in the hopes of witnessing a traffic violation so that he could investigate defendant for drugs. The justice described the stop as "subterfuge to obtain evidence."

§43-3(b)
Terry Stop and Frisk

§43-3(b)(1)
Generally

United States Supreme Court

Prado Navarette v. California, 572 U.S. 393, 134 S.Ct.1683_, 188 L.E.2d 680 (2014)

Although an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity, an anonymous tip may justify a reasonable suspicion of criminal activity where the degree of detail included in the tip and the officers' ability to corroborate those details give rise to an inference that the tipster is sufficiently familiar with the subject's activities to justify a belief that the tip is reliable in its assertion of criminal activity. Thus, in **Alabama v. White**, 496 U.S. 325 (1990), an anonymous tip was sufficient to create a reasonable belief of criminal activity where the anonymous caller claimed that a woman in a brown station wagon with a broken right tail light would drive a specifically-described route and would be transporting cocaine. The court concluded that the tipster's ability to accurately predict the subject's behavior in detail suggested that she was sufficiently familiar with the subject's affairs to justify a reasonable belief in the truthfulness of her claim that the defendant would be committing a crime.

By contrast, in **Florida v. J.L.**, 529 U.S. 266 (2000), a "bare bones" anonymous tip was not sufficiently reliable to permit a stop where the caller claimed only that a young black man dressed in a plaid shirt and standing at a bus stop would be in possession of a firearm. In **J.L.**, the court concluded that the degree of detail did not suggest sufficient familiarity with the subject to justify an inference that the claim of criminal conduct was likely to be true.

Here, a 911 dispatcher received an anonymous call stating that approximately five minutes earlier, a silver pickup truck with the license plate number "8D94925" had run the caller off the roadway near southbound mile marker 88. Investigating officers saw a truck answering the description located 19 miles from mile marker 88 about 18 minutes after the 911 call. After following the truck for five minutes, the officers conducted a traffic stop. They detected the odor of marijuana as they approached the vehicle, and a search revealed 30 pounds of marijuana.

Although it described the case as "close," the court concluded that the anonymous tip

bore sufficient indicia of reliability to provide a reasonable suspicion that the crime of DUI was occurring. First, when the caller said that she had been run off the road, she claimed eyewitness knowledge of alleged dangerous driving. Such a claim "lends significant support to the tip's reliability" because it "necessarily implies that the informant knows the other car was driven dangerously."

The reliability of the tip was further enhanced when a truck answering the description was observed 19 miles away approximately 18 minutes after the 911 call, suggesting that the 911 caller had reported the incident immediately. A "contemporaneous report has long been treated as especially reliable," particularly when there is an absence of time to reflect or where the report involves a startling event.

The court also found that the reliability of the tip was enhanced because it was made by using the 911 system, which has "features to allow for identifying and tracing callers" and thus provides at least some safeguards against false reports. Among the features mentioned by the court are that 911 calls can be recorded, law enforcement may verify important information about the caller through Caller ID, and callers are prohibited from blocking Caller ID information. Although 911 calls are not *per se* reliable, "a reasonable officer could conclude that a false tipster would think twice before using" the 911 system to transmit a false report.

In addition to being sufficiently reliable, an anonymous tip can justify an investigative stop only if it provides reasonable suspicion that criminal activity is occurring. The court found that a report that a vehicle has run a car off the road creates a reasonable suspicion of an ongoing crime such as drunk driving, because certain driving behaviors (including weaving, crossing the centerline, and erratically controlling one's vehicle) are reliable indicators of drunk driving. The court acknowledged, however, that not all traffic infractions imply intoxication, and held that unconfirmed reports of driving without a seatbelt or slightly over the speed limit would be so tenuously connected to drunk driving that a stop would be constitutionally suspect. Furthermore, although running a car off the road could be due to causes other than DUI, "reasonable suspicion 'need not rule out the possibility of innocent conduct.'"

The court rejected the argument that any inference of drunk driving was vitiated by the fact that officers followed the pickup for five minutes before pulling it over, and observed no traffic infractions during that period. The court concluded that the appearance of a marked police car could inspire a driver to be more careful, and that five minutes is not a sufficient period of observation to dispel a reasonable suspicion of drunk driving.

Because the indicia of reliability accompanying the anonymous tipster's 911 call was sufficient to justify an inference that the defendant was committing drunk driving, the officers had a reasonable basis to stop the defendant. Defendants' convictions were affirmed.

Bond v. U.S., 529 U.S. 334, 120 S.Ct. 1462, 146 L.Ed.2d 365 (2000) A traveler's personal luggage is protected by the Fourth Amendment. In determining whether the Fourth Amendment has been violated, the court must determine whether the individual has exhibited an actual expectation of privacy in the object of the search, and whether the expectation of privacy is one which society recognizes as reasonable.

A bus passenger clearly had an expectation of privacy where he used an opaque bag to carry his belongings and placed that bag directly above his seat. An expectation of privacy in personal luggage is one which society recognizes as reasonable - although a traveler realizes that other passengers or bus employees may move or handle luggage placed in an overhead compartment, "[h]e does not expect that [they] will, as a matter of course, feel the bag in an exploratory manner." Thus, a border patrol agent violated the Fourth Amendment

when he squeezed soft-sided luggage in an effort to determine its contents.

The court distinguished this situation from **California v. Ciraolo**, 476 U.S. 207 (1986) (observation of backyard from airplane flying at 1000 feet) and **Florida v. Riley**, 488 U.S. 445 (1989) (police observation of a greenhouse from a helicopter passing at an altitude at 400 feet) because those cases involved only visual, as opposed to tactile, observation. "Physically invasive inspection is simply more intrusive than purely visible inspection."

Minnesota v. Dickerson, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993) **Terry** permits a patdown for weapons where: (1) the detainee is reasonably suspected of criminal activity, and (2) the officer reasonably believes that the person may be armed. Although items other than weapons are subject to seizure if it is *immediately* apparent they are contraband, an officer is not permitted to make a further search where the incriminatory nature of the item is not immediately apparent.

Thus, an officer who is properly performing a weapons frisk may seize other contraband if he immediately realizes that it is contraband. Where the officer recognized a lump as cocaine only after "squeezing, sliding and otherwise manipulating" it through defendant's clothing, such manipulation was an impermissible extension of the patdown for weapons. See also, **People v. Mitchell**, 165 Ill.2d 211, 650 N.E.2d 1014 (1995) (Illinois Constitution permits the "plain touch" exception of **Dickerson**; "plain touch" exception applied where there was nothing in the record to suggest that the officer manipulated the object to learn its identity and officer testified that he believed the object to be rock cocaine as soon as he touched it). Compare, **People v. Blake**, 268 Ill.App.3d 737, 645 N.E.2d 580 (2d Dist. 1995) ("plain touch" exception did not apply where officer did not explain how it was immediately apparent that "tightly rolled mass" was contraband); **People v. Spann**, 237 Ill.App.3d 705, 604 N.E.2d 1138 (2d Dist. 1992) (officer could not seize small, "powdery" object in defendant's clothing where he did not claim that it felt like a weapon or that he could distinguish by touch between cocaine and an innocent object). See also, **People v. Shapiro**, 177 Ill.2d 519, 687 N.E.2d 65 (1997) ("our Republic has enjoyed a peaceful and prosperous history . . . because we have recognized that ordered liberty requires that police powers be sublimated to the Bill of Rights").

Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979) **Terry v. Ohio** permits a patdown for weapons, for the protection of police officers, where officers reasonably suspect that weapons are in the possession of the person accosted. **Terry** does not permit a frisk on less than reasonable suspicion directed at the person to be frisked, even if that person is on premises being validly searched for narcotics.

Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979) Taking defendant to the police station and detaining him for questioning constituted a "traditional arrest" that required probable cause. The intrusion upon defendant was not a brief, on-the-street "stop and frisk" for weapons, which would require only reasonable suspicion.

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) Where a police officer observes unusual conduct that leads him reasonably to conclude that criminal activity may be afoot, he may make a temporary stop for additional investigation. If there is a reasonable basis to believe that the persons with whom he is dealing may be armed and dangerous, and making reasonable inquiries does not dispel his reasonable fear for the safety of himself or others, he is entitled to conduct a carefully limited search of the outer clothing of such persons

in an attempt to discover weapons.

Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968) A police officer may seize and frisk a person only if there are particular facts from which it can be reasonably inferred that criminal activity is afoot and the person in question is armed and dangerous. It not reasonable to infer that a person is engaged in narcotic trafficking merely because he is talking to narcotics addicts.

The search authorized in **Terry** is a limited search for weapons, not a search for other evidence.

Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) A person stopped under **Terry** is not obliged to respond to the officer's questions, and is free to go on his way unless there is probable cause for an arrest. But see, **Hiibel v. Sixth Judicial Circuit Court of Nevada Humbold County**, 542 U.S. 177, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004) (neither the Fourth nor Fifth Amendments are violated by a state statute obligating a citizen to disclose his name during a **Terry** stop; although in the absence of reasonable suspicion a citizen need not provide identification at the request of a police officer, a State legislature may elect to require the subject of a lawful **Terry** stop to disclose his identity). Compare, **People v. Ellis**, 199 Ill.2d 28, 765 N.E.2d 991 (2002) (driver stopped for a traffic violation could refuse to give his name and date of birth; although defendant had no right to give the officer a false name, he "could have legally avoided prosecution for attempted obstruction of justice by simply refusing to give his name and date of birth"). See also, **People v. Smith**, 331 Ill.App.3d 1049, 780 N.E.2d 707 (3d Dist. 2002) (although police do not violate the Fourth Amendment by approaching an individual on the street and asking questions, the person need not answer and may go on his way; a stop was not justified by defendant's refusal to listen to the officers' questions or provide answers, or by his refusal to take his hands out of his pockets where there was no reasonable basis for the officers to order him to do so; fact that a person is in a high crime area is a relevant consideration for **Terry** analysis, but is not enough to justify a stop); **People v. Mitchell**, 355 Ill.App.3d 1030, 824 N.E.2d 642 (2d Dist. 2005) (if police wish to stop an individual, demand identification, take the identification away, and run a warrant check, they must have either reasonable suspicion that criminal activity is afoot, probable cause for an arrest, or consent).

U.S. v. Place, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) Officers may detain luggage temporarily based upon reasonable suspicion. However, in the absence of probable cause a 90-minute detention was unreasonable.

U.S. v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985) The Court upheld a 20-minute **Terry** stop. There is no rigid time limitation on investigative detentions, police acted diligently, and the suspect's actions contributed to the delay.

Illinois Supreme Court

People v. Colyar, 2013 IL 111835 A brief investigatory stop is reasonable and lawful under the Fourth Amendment when a totality of the circumstances reasonably lead a police officer to conclude that criminal activity may be afoot and the subject may be armed and dangerous. The officers need not be certain that the suspect is armed to conduct a search for weapons. The issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety and the safety of others is in danger. A protective search of a

passenger compartment of a vehicle is also permitted during an investigatory stop, limited to the area where a weapon may be located or hidden, if the officers possess a reasonable belief that the suspect is dangerous and could gain control of a weapon.

Two police officers approached a vehicle that was blocking the entrance to a motel parking lot. The car contained a driver, the defendant, and a passenger. Another passenger exited the motel and entered the rear of the vehicle as the officers approached. As the officers spoke with defendant, they observed a plastic bag containing a large bullet in plain view in the center console of the car. They ordered the occupants out of the car and handcuffed them. The police discovered that the plastic bag also contained five rounds of .454-caliber ammunition, and conducted a pat-down search of defendant and his passengers. When another bullet matching the recovered ammunition was found in defendant's pocket, the officers searched the car and recovered a .454 revolver under the front-passenger floor mat.

Because the defendant did not challenge the propriety of the officers' initial encounter with defendant, his passengers, and the vehicle, the Illinois Supreme Court declined to address its legality.

The court concluded that a reasonably cautious individual in a similar situation could reasonably suspect the presence of a gun based on the observation of the bullet in the center console. "Common sense and logic dictate that a bullet is often associated with a gun." Based on the presence of the bullet and a reasonable inference that a gun may be present in the vehicle, the officers had reason to believe that their safety was in danger. Because protective searches are not dependent on the existence of probable cause to arrest for a crime, the officers did not need to eliminate any legal explanation for defendant's possession of the bullet before investigating further or suspecting danger.

It was reasonable for the police to order the defendant and the passengers out of the car and search them for weapons. The handcuffing of the defendant and his passengers did not transform the investigative stop into an illegal arrest. The handcuffing was reasonable and a necessary measure where the officers were outnumbered, and could reasonably suspect that one or more of the detainees possessed a gun and could access it if not handcuffed. The recovery of additional ammunition from the plastic bag and the defendant's person did nothing to dispel the officers' reasonable suspicion that a gun was present. Thus a protective search of the passenger compartment of the vehicle, which lead to the recovery of the gun, was also reasonable.

People v. Luedemann, 222 Ill.2d 530, 857 N.E.2d 187 (2006) 1. Police do not violate the Fourth Amendment by questioning a citizen, asking to examine his or her identification, or requesting consent to search belongings, so long as they do not convey the message that the subject is required to comply with their requests or otherwise indicate that he is not free to terminate the encounter.

2. Generally, four factors are utilized to determine whether a "seizure" has occurred: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) any physical contact between the officer and the citizen; and (4) the use of language or tone of voice indicating that compliance with the officer's requests is compelled.

Other factors relevant to whether a parked vehicle has been "seized" are whether the car is "boxed in" by squad cars or approached on all sides by multiple officers, whether officers point a gun at the suspect and order him to place his hands on the steering wheel, and whether officers use flashing lights as a show of authority.

People v. Thomas, 198 Ill.2d 103, 759 N.E.2d 899 (2001) 1. To justify a **Terry** stop, "the

situation confronting the police officer must be so far from the ordinary that any competent officer would be expected to act quickly." A "reasonable suspicion" need not be enough to constitute probable cause, but must be more than a "mere hunch." In evaluating the propriety of a **Terry** stop, the facts are to be viewed from the perspective of a reasonable police officer under the same circumstances, and not "with analytical hindsight."

2. Although there was no reasonable basis to suspect criminal activity when the officer initially attempted to stop defendant, a "seizure" occurs not when an officer attempts a stop, but when the subject is either physically detained or submits to an assertion of authority. Because defendant did not submit to the officer's attempt to conduct an illegal stop, but instead attempted to escape, no "seizure" occurred until he was physically taken into custody. By that time, the officers had a reasonable suspicion of criminal activity based on an informant's tip and the defendant's flight, criminal history and possession of a police scanner.

People v. Brownlee, 186 Ill.2d 501, 713 N.E.2d 556 (1999) An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. The State bears the burden to show that an investigative stop was reasonable in its scope and duration. Where the confinement of a person goes beyond the limits of a proper investigatory stop, a subsequent consent to search may be tainted.

The trial judge properly found that a reasonable person in the driver's position would not have felt free to leave after his license and insurance information were returned during a traffic stop, where after returning the license the officers stood silently on both sides of the car for two minutes before requesting consent to search. The officers' actions constituted a show of authority such that a reasonable person would have concluded that he or she was not free to leave. Furthermore, the detention could not justified by any reasonable suspicion that a crime was occurring.

People v. Lippert, 89 Ill.2d 171, 432 N.E.2d 605 (1982) Transporting a person a short distance (two to three miles in this case), for the purpose of an identification, is proper under **Terry**. But see, **People v. Jackson**, 348 Ill.App.3d 719, 810 N.E.2d 542 (1st Dist. 2004) (even had there been a valid **Terry** stop, police had no reason to transport to defendant two blocks to be identified in a showup where the offense occurred two weeks before the stop and the officers made no attempt to determine whether defendant matched the physical description of the offender).

Illinois Appellate Court

People v. Craine, 2020 IL App (1st) 163403 Police lacked probable cause and exigent circumstances to follow defendant into his home and effectuate an arrest and subsequent search of the home. An officer on patrol in an unmarked car heard gunshots in the vicinity, observed defendant and another man on defendant's porch a block or two from the location where he thought the shots originated, and saw defendant holding his hip as if he might have a gun when defendant entered his home. These observations were insufficient to suggest defendant had committed a crime. The officer did not see defendant with a gun, and there was nothing to indicate defendant had recently fired a gun. Even if defendant's entry to his home was construed as "flight," it would not even amount to reasonable suspicion, much less probable cause.

In re Elijah W., 2017 IL App (1st) 162648 A police officer may approach a person to ask questions without necessarily triggering the Fourth Amendment. As long as a reasonable

person would feel free to disregard the police and go about his business, the encounter is consensual and does not involve any detention. A seizure occurs only when an officer by means of physical force or show of authority restrains the person's liberty. This test requires an objective evaluation of the circumstances and does not depend on the subjective perception of the defendant.

Four plain-clothed Chicago police officers in an unmarked car drove slowly down the street where defendant, who was 13 years old, was standing outside talking to some friends. The officers were armed, wore bulletproof vests, and displayed police badges. When the police car passed defendant, he looked at the officers and began to walk away. The officers stopped the car and one of them twice told defendant to "come here" in a casual but stern tone of voice. Defendant eventually complied and after some brief questioning defendant admitted that he had contraband.

In an issue of first impression in Illinois, the court held that the defendant's age as a juvenile must be considered in deciding whether a reasonable person would believe he was free to leave. In **J.D.B. v. North Carolina**, 564 U.S. 261 (2011), the Supreme Court held that a juvenile's age was relevant to the custody analysis of **Miranda**. Although **J.D.B.** did not address the issue of consensual encounters under the Fourth Amendment, the Appellate Court believed that **J.D.B.**'s analysis should apply to these circumstances since the tests are very similar.

Considering all the factors, the court held that a 13-year-old juvenile would not have believed he could have disregarded the officer's request to "come here" and speak to the officer. He was thus subject to a seizure, triggering the protections of the Fourth Amendment. But the court also held that the police had reasonable suspicion to believe that defendant was in violation of Chicago's 11 pm curfew and thus the seizure was justified.

People v. Topor, 2017 IL App (2d) 160119 There was sufficient reasonable suspicion to conduct an investigatory stop where a citizen informant reported through 911 that he detected the smell of burning cannabis coming from defendant's vehicle. The citizen reported that he was seated in his truck in the drive-up lane at McDonald's when he noticed the odor. The caller gave the dispatcher his name and phone number and gave a detailed description of the car, including the license number. The officer located the car near McDonald's and activated his emergency lights when the car pulled into a gas station.

In finding that there was reasonable suspicion, the court noted that the informant called 911 and identified himself by his full name and telephone number. In addition, the report was corroborated when the officer saw the vehicle near McDonald's. Finally, there was no indication that the informant received any benefit for providing the information, and the informant witnessed the alleged offense because he smelled the marijuana.

The court rejected the argument that the tip was not reliable because the informant did not indicate how he was familiar with the smell of burnt cannabis. The court found that the reasonable suspicion standard does not require an officer to present a foundation for his identification of a particular odor as that of burnt marijuana. The same standard applies to a citizen informant.

Because the information provided by the citizen informant was sufficient to support a reasonable suspicion of criminal activity, the trial court erred by suppressing the evidence.

In re Tyreke H., 2017 IL App (1st) 170406 Police officers spotted the minor, who was sought as a potential witness to a homicide, riding his bicycle. They turned their car in front of the bicycle at an angle which forced the minor to ride to the car, and exited the car to face the

minor. The respondent identified himself in response to questioning and did not make any furtive movements. However, one of the officers testified that he saw a bulge in the shape of a handgun in the respondent's pants pocket.

After tapping the object to ensure that it was a firearm and asking the minor what the object was, the officer performed a protective pat down and recovered a .22 caliber handgun with six live rounds. The trial court initially granted a motion to suppress, but then reconsidered its decision and denied the motion.

Terry permits a seizure where there is a reasonable suspicion of criminal activity. However, where the minor was stopped not because he was suspected of criminal activity, but because police thought he had witnessed a homicide, police acted reasonably by conducting a seizure. The court noted that the investigation concerned a homicide, the respondent was believed to be a witness to the offense, and the officers narrowly tailored their action to stopping the minor.

The court concluded that where a suspicionless seizure was valid because the respondent was a witness to a crime, the officers acted properly by conducting a pat down and frisk for weapons once they noticed the outline of a gun in the respondent's pocket. In **Arizona v. Johnson**, 555 U.S. 323 (2009), the passenger in a car that was stopped based on a suspicion that the driver had committed an offense could be frisked for weapons once officers developed a reasonable suspicion that the passenger was armed, despite the fact that there was no reason to suspect that the passenger had committed a crime. Similarly, the risk posed to officers when making a suspicionless but valid stop of a potential witness justifies a frisk for weapons once there is reasonable suspicion to believe that the witness is armed.

People v. Qurash, 2017 IL App (1st) 143412 A person is seized when his freedom of movement is restrained by physical force or show of authority. The test is whether a reasonable person would conclude that he was not free to leave. Illinois courts utilize the four **Mendenhall** factors in deciding whether a seizure has occurred: (1) threatening presence of several officers; (2) display of a weapon; (3) physical touching by an officer; and (4) use of language or tone of voice compelling the defendant to comply.

Two Chicago police officers were driving slowly down the street in an unmarked car when they saw defendant walking towards them on the sidewalk. The officers recognized defendant and defendant recognized the officers. When the officers were about 15 feet away, one of them stopped the car, lowered his window and said "come here" to defendant. Defendant dropped a large container full of cannabis onto the ground which the officers recovered. The trial court denied defendant's motion to suppress evidence finding that the officer's statement "come here" was a request.

The Appellate Court, with one justice dissenting, affirmed the trial court's ruling. The court held that the only **Mendenhall** factor at issue was the use of language or tone of voice and since it did not consider the phrase "come here" to be *per se* compulsory, it deferred to the trial court's "finding of fact" that the statement here was a request. The court found that nothing in the record suggested that the trial court's finding was against the manifest weight of the evidence since it would be impossible to discern the officer's tone of voice from the record. Accordingly, that "determination is solely within the province of the trier of fact," and would not be disturbed on appeal.

The dissenting justice would have found that under the circumstances here the words "come here" were not meaningfully different than "stop" or "freeze" and thus constituted a command not a request.

People v. Williams, 2016 IL App (1st) 132615 Two police officers on patrol in a high-crime area saw defendant sitting in a car in front of an abandoned house. As they passed, defendant made eye contact with the officers and then got out of his car. The officers turned their car around and parked behind defendant's car. One officer got out of the car and said to defendant, "police, can I talk to you?" The officer then walked over to defendant's car and told defendant to come there.

Defendant met the officer at his car. The officer testified that defendant was not free to leave because he had been parked in front of an abandoned building in a high crime area. After further questioning and investigation, defendant gave the officer permission to search his car, where narcotics were discovered.

An officer seizes someone through physical force or a show of authority when a reasonable innocent person would not feel free to leave. An officer may approach a person and ask questions without conducting a seizure as long as his request would not make a reasonable person believe that compliance is required. Four factors indicate that a seizure has occurred: (1) the threatening presence of several officers; (2) display of weapons; (3) physical touching by an officer; and (4) language or tone indicating compliance is required.

The court held that defendant was seized where he was required to comply with the officer's request to stop, return to the vehicle, and answer questions. Although there were only two officers present and neither displayed any weapons or touched defendant, one of the officers used language or tone to compel defendant's compliance with his requests, and thus conveyed to defendant that he was not free to leave or decline those requests.

The court held that the officers lacked reasonable suspicion to stop defendant. All they knew was that defendant was parked in front of an abandoned building in a high crime area. This activity does not show that defendant was engaged in criminal activity.

The court suppressed the narcotics recovered from defendant's car and reversed defendant's conviction for possession of a controlled substance.

People v. Thomas, 2016 IL App (1st) 141040 Defendant was arrested for being in possession of a firearm after police received a tip from an unidentified citizen, and was convicted of UUW by a felon based on possession of a weapon and ammunition. During the trial, approximately four years after the arrest, the Illinois Supreme Court issued **People v. Aguilar**, 2013 IL 112116. **Aguilar** held that the portion of the Illinois aggravated unlawful use of a weapon statute which created an absolute ban on the right to possess a weapon for self-defense outside the home was facially unconstitutional under the Second Amendment.

The Appellate Court held that although at the time of the arrest a tip by an unknown citizen was sufficient to justify a **Terry** stop, in light of **Aguilar** a tip which states merely that a person is in possession of a gun does not provide reasonable suspicion for an investigatory stop.

The court also found that the gun recovered as a result of the **Terry** stop should have been suppressed despite the fact that the stop was justified when it was made. Noting that statutes declared unconstitutional on their face are void *ab initio*, the court refused to apply the good-faith exception to the exclusionary rule.

The United States Supreme Court has applied the good-faith exception where an officer acts in objectively reasonable reliance on a statute which was subsequently found to violate the Fourth Amendment. **Illinois v. Krull**, 480 U.S. 340 (1987). In **People v. Krueger**, 175 Ill. 2d 60, 675 N.E.2d 604 (1996), however, the Illinois Supreme Court found that the Illinois Constitution bars application of the good-faith exception under such circumstances. The court concluded that the same rationale applies to a **Terry** stop which is

made under a statute which is subsequently held unconstitutional on its face.

The trial court's order denying defendant's motion to suppress evidence was reversed.

People v. Timmsen, 2014 IL App (3rd) 120481 Under some circumstances, the fact that a motorist appears to be avoiding a highway checkpoint may provide a reasonable suspicion of criminal activity sufficient to justify a stop of the vehicle. However, the mere fact that a motorist avoids a checkpoint does not in and of itself justify a stop. The court cited three examples where a stop might be justified after a motorist appears to have avoided a checkpoint: (1) where a vehicle fails to stop at the checkpoint; (2) where a vehicle stops just before the checkpoint and the driver and passenger trade places; or (3) when the driver acts suspiciously while avoiding the checkpoint.

Police lacked reasonable suspicion to stop defendant's vehicle where, as he was approaching a checkpoint, he made an U-turn at a railroad crossing and drove in the opposite direction from the checkpoint. Under Illinois law, a U-turn is legal as long if it can be made safely and without interfering with other traffic. The court acknowledged that the U-turn may have raised a suspicion that defendant was attempting to avoid the checkpoint, but found that in the absence of additional factors such as evidence that the checkpoint was in a high crime area or that defendant was clearly attempting to flee, there was no reason to suspect anything except that defendant was going about his business.

Because the stop of defendant's vehicle was unjustified, the trial court erred by failing to grant the motion to suppress. Defendant's conviction for driving with a suspended license was reversed and the cause remanded for further proceedings.

In re Rafeal E., 2014 IL App (1st) 133027 In police/citizen encounters, a seizure occurs when a reasonable innocent person would not feel free to decline the officer's requests or otherwise terminate the encounter. This analysis involves an objective evaluation of the officer's conduct and does not depend on the subjective perception of the person being stopped.

The police effectuated a seizure when they pulled up next to defendant, who was walking on the sidewalk, in a marked squad car, ordered defendant to stop walking, and told him to take his hands out of his pockets. These actions demonstrated a show of authority and a reasonable person would have believed that compliance was required. When defendant complied with the officers' request by stopping and taking his hands out of his pockets, he submitted to their show of authority.

An investigatory stop pursuant to **Terry v. Ohio**, 392 U.S. 1 (1968), is permissible only when the police have specific, articulable facts which, taken together with rational inferences, create a reasonable suspicion that the defendant is involved in criminal activity.

Here, defendant was standing with a group of men at the mouth of an alley when the police pulled up in a squad car. The police stopped defendant after he looked in their direction and then began walking briskly down the sidewalk away from the group. The State argued that this case was similar to **Illinois v. Wardlow**, 528 U.S. 119 (2000), where the Supreme Court held that the defendant's presence in a high-crime area and unprovoked "headlong flight" down an alley after seeing the police created reasonable suspicion justifying a **Terry** stop.

The Appellate Court rejected the State's attempt to equate this case with **Wardlow**. **Wardlow** involved headlong flight into an alley and away from the police, while here defendant merely walked briskly away from the mouth of an alley along an open sidewalk. Defendant walked away from the group he had been standing with, but there was no testimony he walked away from the officers. "We cannot see how walking away, briskly or

not, and heading to an open sidewalk where the police had easy access to the [defendant] could possible constitute evasive behavior."

People v. Sims, 2014 IL App (1st) 121306 Even where a police officer has a reasonable suspicion to justify an investigative detention, a frisk is justified only if the officer can articulate a reasonable belief that the suspect was armed and dangerous.

An officer was investigating a suspected narcotics transaction when he observed defendant, who was not involved in the suspected transaction, sitting in front of an abandoned building. The officer did not observe defendant engage in any illegal activity, but saw him put an unidentified object in the crotch of his pants and walk away. The officer recognized defendant as having been previously arrested for UUW, although he did not know the outcome of the case. The officer stopped defendant, conducted a frisk, and discovered cocaine.

The court concluded that the stop was unjustified because the officer lacked reasonable suspicion to believe that a crime was occurring. Although the officer knew defendant had been arrested for a weapons violation, he did not know the outcome of any charges. The officer admitted that he did not see a weapon or any other contraband, and that he stopped defendant only because he placed his hand in his pants.

The court acknowledged that seeing a prior arrestee place an object in the front of his pants might create a "gut feeling" in a reasonable officer that a crime might be occurring. However, reasonable suspicion requires more than a hunch or "gut feeling." Because there were no articulable facts supporting an inference that a crime had been or was about to be committed, the **Terry** stop was improper.

The trial court's order denying defendant's motion to suppress was reversed. Because the State could not meet its burden of proving defendant's guilt without the illegally seized evidence, the conviction and sentence were reversed outright.

People v. Porter, 2014 IL App (3d) 120338-B Officers acted properly when they stopped defendant after receiving a report of a home invasion. Before conducting the stop, the officers noted that defendant matched the description of the suspect and that he was walking in a non-pedestrian area in the vicinity of the offense. In addition, defendant made what might be construed as furtive movements when he first noticed the officers.

However, the officers lacked any basis to conduct a frisk where there was no basis to reasonably suspect that defendant was armed and dangerous. Although the officer testified that he conducted a patdown for reasons of officer safety, he failed to articulate any reasons which would have caused a reasonably prudent person to believe that his safety was in danger. The court noted that the victim of the home invasion did not report that the intruder had a weapon, and that defendant did not reach inside his coat or toward his pockets. Furthermore, defendant made no effort to flee until the officer grabbed him and started the patdown. Under these circumstances, there was no objective reason to believe defendant was armed and dangerous.

The trial court's order denying the motion to suppress was reversed. Because the State would be unable to establish its case beyond reasonable doubt based on the remaining evidence, the conviction was reversed outright.

People v. Sanders, 2013 IL App (1st) 102696 Generally, a tip from a concerned citizen is considered more credible than information from a paid informant or someone who provides information for personal gain. Furthermore, there is a distinction between a tip given over

the telephone and one given in person even by an unidentified informant, because the officer has the opportunity to view the informant and form an opinion of her credibility. Even when the identity of the informant is unknown, however, there must be some corroboration or verification of the reliability of the information.

2. The court concluded that the officer had a reasonable suspicion to support a **Terry** stop where he had a 15-second conversation with an unidentified woman who flagged him down and said that she had seen a short black man putting a machine gun in the back seat of a Chrysler with a license plate number which the women provided. She described the man as 30 to 35 years old and wearing a red coat and blue pants. She also stated that the Chrysler was gold or brown and was traveling north on a particular street. The officer drove to the street and two or three minutes later saw a car matching the description. Two officers approached the car and saw a machine gun in the back seat.

The court concluded that although the woman who gave the tip was not identified, she appeared to be closer to a citizen informant than to an anonymous tipster. The court noted that the informant approached the officer and made no attempt to hide her identity, risking both her anonymity and the possibility that she might be identified in the future. Although the informant may not have been "at the top of the reliability scale," the court found that her status as a disinterested citizen informant suggested that her tip was sufficiently reliable to justify the officer's reliance.

Defendant's conviction as an armed habitual criminal was affirmed.

People v. Marcella, 2013 IL App (2d) 120585 The Appellate Court affirmed the trial court's order granting defendant's motion to suppress evidence, finding that the officers lacked probable cause for an arrest or valid consent for a search. The court also held that even if there was adequate suspicion to justify a **Terry** stop, the officers' actions exceeded the scope of a valid stop.

The parties did not contest that defendant was "seized" where, after landing his plane at DuPage Airport after a flight from Marana, Arizona, he was confronted by several armed agents of the Department of Homeland Security who landed at defendant's hangar in a military helicopter. Defendant and a friend who had helped push defendant's plane into the hangar were handcuffed and frisked by the agents, who had their weapons drawn. Defendant was then questioned about his identity, his flight, and the contents of the plane.

The court declined to decide whether the seizure was supported by a reasonable suspicion sufficient to justify a **Terry** stop, concluding that even if there was a reasonable suspicion the agents exceeded the permissible scope of a **Terry** stop. Police conduct which occurs during a lawful **Terry** stop renders the seizure unlawful only if the duration of the detention is unreasonably prolonged or the Fourth Amendment is independently triggered.

The court concluded that both alternatives occurred here. First, the Fourth Amendment was triggered because rather than determining whether criminal activity had occurred, the agents made a full custodial arrest without probable cause. The court stressed that defendant was subjected to a full arrest when he was handcuffed by several armed agents who arrived in a military helicopter at defendant's hangar, as no reasonable person in defendant's position would have believed that he was free to terminate the encounter and leave.

The court rejected the State's argument that the agents were merely protecting their safety, noting that a **Terry** frisk is not permitted merely because police believe that drug

dealers are likely to carry weapons. Instead, a weapons search is permitted during a **Terry** stop only if there are specific, articulable facts that would warrant a reasonably prudent person to believe that his safety or the safety of others was endangered. There was no reason for officers to fear for their safety here, as defendant did not attempt to flee or to reach for any weapons, and the agents lacked any knowledge that weapons were present or that defendant had a history of using weapons.

In the alternative, the court held that the agents exceeded the scope of a lawful **Terry** stop because they unreasonably prolonged the duration of the detention. Defendant's plane landed at DuPage Airport between 4:30 and 5:00 p.m., and defendant refused to consent to a search at about 5:25 p.m. The Kane County deputy who brought a canine unit to the airport to conduct a drug sniff testified that he had been informed at 3:50 p.m. that an aircraft suspected of drug activity was in route to DuPage Airport, and that he was informed at 4:30 p.m. that a canine unit might be needed. However, the officer was not asked to come to the airport until 5:23 p.m., and he did not arrive until after 6:05 p.m. The court concluded that the detention was prolonged for some 30 to 40 minutes because despite their knowledge that a drug sniff might be required, the agents did not arrange to have the canine unit available when the plane landed.

People v. Petty, 2012 IL App (2d) 110974 At the hearing on defendant's motion to suppress evidence concerning a charge of possession of cannabis with intent to deliver, two police officers testified that they noticed two cars parked together at a gas station. The officers saw the drivers exit the cars, approach each other, engage in a hand to hand exchange of an unknown object, and quickly return to their cars. The exchange took about ten seconds, and the officers did not hear any conversation between the drivers. As the drivers were leaving the station, they were stopped and searched. Defendant had two bags of cannabis in his front left pocket, and admitted that he had sold cannabis to the individual in the other car.

The trial court denied the motion to suppress, finding that the officers had reasonable suspicion to conduct a **Terry** stop based on the exchange between the men, which due to their training the officers believed to be a drug transaction.

The Appellate Court reversed the order denying the motion to suppress, finding that the officers lacked a reasonable basis to conduct a **Terry** stop. The officers lacked a reasonable basis on which to suspect criminal activity, noting that the defendant's conduct was consistent with several innocent explanations, the officers came upon the incident purely by coincidence and not because they had any reason to suspect criminal activity, there was no indication that the encounter occurred in a high crime area, and other than the brief hand-to-hand contact there was no reason to suspect criminal activity. The court rejected the argument that the defendant acted furtively because one of the officers had to yell at defendant to stop after the officer turned on his squad's lights. The court noted that defendant was past the officer when the latter turned on the emergency lights, and therefore may not have seen them. Under these circumstances, the failure to stop could not be viewed as furtive activity.

The trial court's order denying the motion to suppress was reversed. Because the State would be unable to prove possession in the absence of the cannabis alleged to have been possessed, the conviction was reversed outright.

People v. Jackson, 2012 IL App (1st) 103300 Under **Terry v. Ohio**, a police officer may lawfully stop a person for brief questioning where there is a reasonable, articulable suspicion that criminal activity is afoot. An officer does not need probable cause to make an

investigatory stop, as the purpose of the stop is to allow the officer to investigate and either confirm or dispel the circumstances that give rise to a suspicion of criminal activity.

The validity of an investigative stop depends on the totality of the circumstances known to the officers at the time of the stop. It is the State's burden to show that the search was justified.

When conducting an investigative stop that is proper because it is supported by reasonable suspicion, the officer may conduct a protective pat down if he or she has a reasonable belief that the detainee is armed and dangerous.

After two police officers twice drove past defendant and noticed that he was watching their car, they decided to conduct a "field interview." One of the officers testified that defendant, who was standing on a corner when they stopped their car, "began to act a little erratic" by speaking before the officers asked any questions, "moving his arms, flailing about, [and] moving backwards." The officer stated that he could not understand what the defendant was saying.

The officers ordered the defendant to place his hands on the hood of the car, but defendant repeatedly put his hands on the car and then removed them. When defendant refused to keep his hands on the vehicle, the officers removed defendant's backpack, handcuffed him, and patted down the backpack. The pat down revealed a large metal object which the officer believed to be the barrel of a gun. A search of the backpack disclosed a loaded handgun. Defendant was then arrested.

The officer testified that the incident occurred in a "high violence, high narcotics trafficking area," and that he had made arrests in the area for violent and drug-related crimes. The court concluded that the trial court did not err by upholding the search, finding that the officers had a reasonable basis to suspect that defendant was committing criminal activity based upon his presence in a high crime area and his "bizarre actions" upon being confronted by police.

Presence in a high crime area, by itself, does not create a reasonable, particularized suspicion that criminal activity is afoot. However, under **Illinois v. Wardlow**, 528 U.S. 119 (2000), presence in a high crime neighborhood may equal reasonable suspicion when combined with other activity, such as flight upon seeing officers. The court concluded that where the trial judge believed the officer's testimony that the incident occurred in a high crime area and that defendant was acting in a "bizarre" manner, there was a reasonable suspicion sufficient to support a **Terry** stop.

The court rejected defendant's argument that more than mere testimony by the arresting officer is required to justify a conclusion that a particular location is in a "high crime area." The court concluded that if the trial judge believes the officer's testimony that the area has a high crime rate, there is a sufficient basis to find that the incident occurred in a high crime area.

The court also stressed that no one in the courtroom, including the "experienced criminal law judge in Chicago," questioned the officer's assertion that the incident occurred in a high crime area. In any event, the court found that there was more than the officer's mere assertion here, because the officer also testified that he had made arrests for violent and drug crimes in the area.

The court also found that the trial court's factual finding that defendant's behavior was "bizarre" was not against the manifest weight of the evidence. Without explaining its reasoning, the court concluded that the officer's testimony "amply support[ed]" the trial court's factual finding that suspicion of criminal activity was raised by defendant's "erratic" behavior, including flailing his arms, pointing, moving backwards, spouting words that the

officers could not understand, and repeatedly placing his hands on and off the hood of the squad car.

The court also concluded that the officers had a sufficient reason to conduct a protective frisk. To justify a frisk, the State must demonstrate that a reasonable prudent officer, when confronted with the same circumstances, would have believed that his safety or the safety of others was endangered. The court concluded that the police had a reasonable concern about their safety in light of the defendant's bizarre behavior and the fact that the incident occurred in a high crime area.

The trial court's order denying defendant's motion to suppress evidence was affirmed.

People v. Leach 2011 IL App (4th) 100542 Defendant was approached because officers suspected that he was under the age of 17 and violating curfew by being out after 11:00 p.m. However, defendant's identification showed that he was 19 years old, and a warrant check showed that no warrants were outstanding.

The officers returned defendant's identification and then asked whether defendant had ever been arrested. Defendant responded that he had been arrested once with a drug raid at his mother's house. One of the officers then asked defendant "if he would mind" being searched. Defendant responded, "[N]o, go ahead." The search resulted in the discovery of cannabis.

The court concluded that the stop of the defendant was lawful based upon the reasonable suspicion that he was violating curfew, and that the stop was concluded when the identification was returned to the defendant after the warrant check was performed. The court concluded that at that point, a reasonable person in defendant's circumstances would have believed that he was free to go.

The court found that the officers did not make a subsequent seizure after the identification was returned, although they asked defendant whether he had ever been arrested. The court noted that the first three **Mendenhall** factors (the threatening presence of several officers, the display of a weapon, and physical contact with the person of the defendant) were absent. Furthermore, although the trial court found that the officer used a coercive tone or body language to convey to the defendant that he was not free to leave, the Appellate Court found that the finding was against the manifest weight of the evidence where the trial court made no finding that the only witness was incredible or that his characterization of the encounter was unbelievable or inaccurate. "Absent actual evidence that [the officer] used coercive language or a compelling tone, the court was not permitted to infer the presence of this factor."

In the absence of any of the **Mendenhall** factors, the court concluded that the defendant's consent to be searched was voluntary.

People v. Maxey, 2011 IL App (1st) 100011 The police had reasonable suspicion to stop the car defendant was driving and detain him. The defendant's vehicle matched the description of a robbery offender's vehicle: a red or burgundy-colored car with temporary plates. Defendant matched the description of the suspect: a skinny African-American male. The car was headed in the same direction as the offender's car and was observed within a mile of the scene of the offense, two or three minutes after the police received radio transmissions related to the robbery.

Police officers may rely on police radio transmissions to make a **Terry** stop even if they are unaware of the specific facts that establish reasonable suspicion. In addition, when officers are acting in concert, reasonable suspicion can be established from all of the

information collectively received by the officers, even if that information is not specifically known to the officer who makes the stop. Where the police rely on third-party sources of information, the State must show that information bears some indicia of reliability. The fact that the information came from a victim or an eyewitness is entitled to great weight in evaluating its reliability.

Radio transmissions based on calls received from eyewitnesses possessed the requisite degree of reliability to support the **Terry** stop of defendant. The information was conveyed through 911 emergency services, which also carries a fair degree of reliability, even if the caller does not identify himself, because police maintain records of the calls to investigate false reports, not just to respond to emergency situations. That all four callers provided substantially similar descriptions of the suspect added to their reliability.

A police officer may briefly detain a suspect to investigate the possibility of criminal behavior pursuant to **Terry**. An arrest is distinguishable from an investigatory stop based on the length of the detention and the scope of the investigation following the initial stop. A brief detention for the purpose of a quick determination as to defendant's involvement in the offense under investigation comports with the permissible scope of an investigation after a **Terry** stop.

The length of defendant's detention and the scope of the investigation did not exceed **Terry**'s limits. Defendant was detained for no more than 15 minutes after he was stopped, and was transported back to the crime scene for a showup before he was arrested. The 15-minute detention of defendant was reasonable where that length of time was required to confirm or dispel the officer's suspicions, given that there was a five-minute wait time for a police wagon to transport the defendant, and defendant had to be transported one mile back to the crime scene. The scope of the investigation was also sufficiently limited where defendant denied involvement in the robbery after he was stopped and agreed to be transported back to the crime scene for identification purposes "to clear this up."

The police possessed probable cause to arrest defendant after he was identified in the showup, considering the totality of circumstances including the information supporting the stop, the discovery of clothing in defendant's car matching that worn by the offender, and that defendant matched the height description of the offender.

The Appellate Court reversed the trial court's order granting the motion to quash arrest and suppress evidence.

People v. Kowalski, 2011 IL App (2d) 100237 An officer who was assisting defendant to an ambulance violated **Terry** when he reaching into defendant's pocket and removed a small metal pipe. The search was conducted under a fire department policy which required that persons involved in incidents related to violence were to be searched before being transported in an ambulance.

The court held that for several reasons, the search was improper under **Terry**. First, the officer had no reason to believe that defendant had committed or was about to commit a crime. The officer testified that it was "apparent" that defendant was the victim of a bar fight, and that he was not suspected "of any kind" of criminal activity.

Second, even if defendant had been suspected of a crime, there was no reasonable basis to believe that he was armed.

Third, even had a search been proper, the officer's actions went beyond the mere pat-down which **Terry** would have authorized. **Terry** searches are limited to ascertaining whether a person is armed, and allow the seizure of items discovered during the pat-down only if it is immediately apparent that they are weapons or contraband. Here, the officer did

not conduct an external pat-down before reaching into defendant's pocket to remove the pipe. Thus, he did not detect an object in a pat-down which felt like a weapon or contraband.

The court rejected the argument that the search was analogous to a search conducted by an officer before giving a citizen a courtesy ride in a squad car, and that the same rule should apply when a person is to be transported in an ambulance. If precedent concerning protective searches before courtesy rides is to be extended to ambulance rides, such searches should be limited to intrusions "reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the . . . paramedic." Here, the officer did not limit the search to a pat-down for weapons and did not claim that the pipe felt like a weapon or other contraband. Thus, the search exceeded the scope of any reasonable frisk to protect ambulance personnel.

The court also rejected the argument that the search should be sustained on the basis that defendant was receiving emergency medical treatment:

> Other than stating that defendant . . . required medical attention, the State does not explain what exigent circumstances justified the search of defendant. Nor does the State contend that the search of defendant was justified by the plain-view doctrine or probable cause. Rather, the State simply states that a person receiving emergency medical treatment has a diminished expectation of privacy. . . . [W]e decline to so hold.

The trial court's order denying defendant's motion to suppress was reversed. Furthermore, because a conviction for possession of drug paraphernalia could not be sustained without the suppressed evidence, the conviction was reversed without remand.

People v. Contreras, 2011 IL App (2d) 100930 725 ILCS 5/107-4(a-3)(2) authorizes a police officer to conduct temporary questioning and "make arrests in any jurisdiction within this State . . . (2) if the officer, while on duty as a peace officer, becomes personally aware of the immediate commission of a felony or misdemeanor violation of the laws of this State." The court concluded that "personally aware" provision was intended to permit police officers who are outside their jurisdiction to detain a suspect only if they have first-hand knowledge of a newly committed crime. Thus, knowledge imputed from other officers does not authorize a **Terry** stop by an officer who is outside his jurisdiction.

Two peace officers lacked first hand awareness that an offense had been committed where authorities had only a generalized suspicion that defendant was involved in drug trafficking until other officers stopped a person who was believed to be defendant's associate and who possessed a plastic bag which was found to contain cocaine. The officers who subsequently stopped defendant outside their jurisdiction had no first hand knowledge that cocaine had been found in the possession of the suspected associate; they gained such knowledge only through a communication from the officers who made the stop. Because detaining defendant for questioning was not authorized under §107-4(a-3)(2), the trial court properly granted defendant's motion to suppress.

People v. Linley, 388 Ill.App.3d 747, 903 N.E.2d 791 (2d Dist. 2009) Where an officer initiates a stop in reliance on a radio dispatch, the officer who ordered the dispatch must have possessed sufficient facts to establish reasonable suspicion for the stop. Where a **Terry** stop is based on a tip, there must be some *indicia* of reliability to justify the officer's reliance.

Generally, information from a concerned citizen is considered more credible than a tip from an informant who provides information in return for personal gain. In addition,

information which corroborates the tip helps to determine whether it gives rise to a reasonable suspicion of criminal activity.

The officer had an insufficient basis to make a **Terry** stop where he received a dispatch stating that shots had been fired, and saw the defendant standing outside his home while talking to an individual in a truck. The officer who made the stop had not heard shots, and the State failed to present any evidence concerning the source or nature of the information underlying the dispatch. Thus, it was unknown whether the shots were reported by another police officer or by an informant, and there was no evidence to corroborate the report or assess its reliability.

The fact that defendant was in a high crime area at a late hour did not provide a reasonable suspicion of criminal activity, especially when he was merely standing outside his own residence talking to other people.

Nor could the officer base a reasonable suspicion of criminal activity on an inference that defendant was about to flee. The only specific facts in support of the inference was that defendant stepped back from the truck and glanced in the direction opposite the officer. While defendant might have been considering fleeing, "[i]t is also possible that he was simply attempting to determine what had brought police to his home." **In re F.J.**, 315 Ill.App.3d 1053, 734 N.E.2d 1007 (1st Dist. 2000) Whether officers are justified in conducting a stop and frisk involves two separate inquiries. An officer may conduct an investigatory stop where he or she has a reasonable, articulable basis to believe that criminal activity has occurred or is about to occur. However, a frisk is authorized only where the officer reasonably suspects that he or another is in danger of attack.

The court rejected the State's argument that a frisk may be conducted even if there is no basis for a **Terry** stop. A frisk is authorized *only* if the officer is justified in making a stop *and* there is reason to believe that the suspect is armed and dangerous. See also, **People v. Green**, 358 Ill.App.3d 456, 832 N.E.2d 465 (2d Dist. 2005) (the justification for a frisk is to protect the officer, not to gather evidence; a protective search is invalid if it goes beyond what is necessary to determine whether the suspect is armed).

People v. Estrada, 394 Ill.App.3d 611, 914 N.E.2d 679 (1st Dist. 2009) Officers conducted a "seizure" where, after seeing defendant sitting in a parked car and talking to a pedestrian on the driver's side of the vehicle, the officers proceeded the wrong way down a one-way street and stopped their squad car "askew" to defendant's car.

The officers lacked reasonable suspicion on which to conduct the stop. At most, the fact that defendant was sitting in a vehicle with the engine running and engaging in a brief conversation with a pedestrian amounted to a hunch that a narcotics transaction was occurring.

Whether an articulable and reasonable suspicion exists for a traffic stop is determined based on the factors known to the officer *before* the stop is made. Two additional factors reported by the officers – that defendant's car had no City of Chicago sticker and that defendant moved a plastic bag to the rear of the car when he saw the police – were not known until after the stop, and thus could not be considered in determining the legitimacy of the stop.

The court also noted that the absence of a city sticker would not have constituted reasonable suspicion in any event, because a sticker is required only for vehicles that are registered in the City of Chicago. Furthermore, police could have merely left a ticket for the sticker violation on the windshield of the car, and did not need to detain defendant as he attempted to leave.

Similarly, defendant's admission that he did not have a valid license or proof of insurance could not be considered in determining whether the traffic stop was proper, because that information became known only after the seizure occurred.

Even had there been a reasonable, articulable suspicion of criminal activity, the officers would not have been justified in searching defendant's car after he fled the scene during police questioning. Under **Arizona v. Gant**, 556 U.S. ____, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), a vehicle may be searched incident to the arrest or attempted arrest of a recent occupant only if: (1) the arrestee is within reaching distance of the passenger compartment at the time of the search, or (2) it is reasonable to believe that the search will disclose evidence of the offense for which the arrest was made. Because there was no reason to believe that evidence of a licensing violation was likely to be found in the car, and defendant not within reaching distance of the vehicle at the time of the search, neither condition was satisfied.

The court rejected the argument that the exclusionary rule was inapplicable because the defendant "abandoned" the vehicle by fleeing in response police questioning. First, the State waived the argument by failing to present it in the trial court. Second, even if the claim had been properly preserved, a defendant who exits a car, and closes and locks the doors, has not exhibited an intent to abandon the vehicle.

People v. Arnold, 394 Ill.App.3d 63, 914 N.E.2d 1143 (2d Dist. 2009) Under **Terry v. Ohio**, a police officer may briefly detain a person on a reasonable suspicion of current or recent criminal activity, in order to verify or dispel that suspicion. There is no bright line test for distinguishing between a lawful **Terry** stop and an illegal arrest, but the use of handcuffs to restrain the detainee is an indication that an arrest, rather than a **Terry** stop, has occurred. The court acknowledged that the use of handcuffs might be appropriate during some **Terry** stops – such as where there is reason to believe that suspects who outnumber the officers are armed and dangerous. However, arrest-like measures such as handcuffing may be employed during a **Terry** stop only if such measures are reasonable in view of the circumstances which prompted the stop or which develop during its duration.

Here, the officer conducted an arrest, rather than a **Terry** stop, where he decided to handcuff defendant inside a convenience store because the officer had seen other persons attempt to flee upon learning that they have an active arrest warrant. The court concluded that the handcuffing would have been reasonable only if there was evidence that the defendant was preparing to flee; otherwise, the officer's experience with other suspects was irrelevant.

There was no evidence defendant was preparing to flee. After seeing the officer while both he and the officer were in their cars, defendant parked his vehicle at a gas station, entered the station, and remained for several minutes even after the officer entered and called defendant's name. Under these circumstances, there was no reason to believe that defendant was a flight risk.

When the officer handcuffed defendant, he lacked probable cause to make an arrest. The officer was waiting for confirmation from a dispatcher concerning whether defendant had an outstanding warrant; at the moment defendant was handcuffed, the officer knew only that he had seen the defendant's name on a warrant list at some point in the prior week. Because the list was not recent and the officer had no reason to believe that the warrant was active, and because the officer did not wait for the dispatcher's response concerning the status of the warrant, probable cause was lacking.

Citing **People v. Morgan**, 388 Ill.App.3d 252, 901 N.E.2d 1049 (4th Dist. 2009), the court acknowledged that the good faith exception to the exclusionary rule may be applied where the actions of the officer were objectively reasonable, suppression will not have an appreciable deterrent effect on police misconduct, and the benefits of suppression do not outweigh the costs of excluding the evidence.

Because the officer handcuffed defendant despite lacking any knowledge that there was an active arrest warrant, the court held that suppression was appropriate to defer official misconduct. The court also noted that the benefits of suppression would outweigh the costs – "the need to deter police from handcuffing a citizen without confirming whether there was a valid warrant for his arrest outweighs the cost of hindering the State from prosecuting this particular defendant." Thus, the good faith exception did not apply.

People v. Ruffin, 315 Ill.App.3d 744, 734 N.E.2d 507 (3d Dist. 2000) A mere traffic stop does not justify a search of the driver or vehicle; however, a traffic stop may "be broadened" into an investigative detention where there are specific, articulable facts which give rise to a reasonable suspicion of criminal activity. An investigative detention may last no longer than is reasonably necessary to effectuate its purpose, however; both the duration of a stop and whether the police acted diligently are factors to be considered in determining whether a detention is unreasonable.

The officer improperly detained defendant while writing a traffic ticket; although it took only about 10 minutes to check the driver's license and write the ticket, the car was detained nearly 22 minutes before defendant was asked to consent to a search.

In re F.J., 315 Ill.App.3d 1053, 734 N.E.2d 1007 (1st Dist. 2000) Whether officers are justified in conducting a stop and frisk involves two separate inquiries. An officer may conduct an investigatory stop where he or she has a reasonable, articulable basis to believe that criminal activity has occurred or is about to occur. However, a frisk is authorized only where the officer reasonably suspects that he or another is in danger of attack.

The mere fact that people were walking at 10 p.m. did not indicate that crime is occurring, even in a high crime area. Nor did a report of a "gang disturbance" nearby justify a stop where the State introduced no evidence about the nature of the disturbance or its proximity to the minor's location.

In addition, the minor did not flee or take evasive action when the officers approached. Finally, the mere fact "that someone put something in his or her pocket does not justify the inference that the person is involved in criminal activity," because placing something in a pocket "is subject to many plausible innocent explanations."

People v. Hampton, 307 Ill.App.3d 464, 718 N.E.2d 591 (1st Dist. 1999) As a matter of first impression, the court held that police may temporarily detain persons reasonably believed to have witnessed a crime.

People v. Lawson, 298 Ill.App.3d 997, 700 N.E.2d 125 (1st Dist. 1998) Although an officer may base a stop on a radio bulletin, to sustain the officer's actions the State must demonstrate that the officer who issued the dispatch had facts sufficient to establish probable cause (for a warrantless arrest) or a reasonable suspicion (for a **Terry** stop). In other words, an arrest or stop by an officer who relies on a radio bulletin will be upheld only if the officer who issued the bulletin could have made the stop himself. See also, **People v. Jackson**, 348 Ill.App.3d 719, 810 N.E.2d 542 (1st Dist. 2004) (in making a **Terry** stop an officer may act

on information provided by a third party, if that information is reliable and supports an reasonable inference that the person has been involved in criminal activity; what matters is whether the source's information has "a degree of reliability, of quality, and of sufficiency that will sustain a finding of a reasonable and articulable suspicion"; among factors to be considered are the informant's veracity, reliability and basis of knowledge, and whether the tip is reliable in its assertion of an illegality; here, there was insufficient indicia of reliability to justify stop).

§43-3(b)(2)
Grounds for Stop

United States Supreme Court

Kansas v. Glover, 589 U. S. ____ (2020) A police officer has reasonable suspicion to stop a vehicle based on knowledge that the vehicle's owner has a revoked license, whether or not the officer knows for sure that the owner is driving the vehicle. Here, the stipulated facts at trial showed that the officer ran a license plate, determined the registered owner had a revoked driver's license, pulled over the vehicle, and found the owner was in fact the driver.

The Supreme Court, over one dissenting justice, held that the stopping of the vehicle was a valid seizure under **Terry**. The officer's belief that the driver was the owner of the vehicle was a reasonable, commonsense inference from the known facts. The court cautioned, however, that if other facts suggested the owner was not driving – for instance, if the owner was an older person and the driver appeared young – the officer would not have had grounds to stop the vehicle. But the court also found the officer has no obligation to seek out such dispelling facts prior to the stop.

While concurring Justices Kagan and Ginsburg would in some cases count the revoked license as a fact weighing *against* reasonable suspicion, since one without a license may presumably be less likely to be driving, they concurred here because in Kansas, a driver must repeatedly break the law to earn a revocation.

Heien v. North Carolina, 574 U.S. ___, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014) No Fourth Amendment violation occurred where a police officer stopped defendant's car because one of the brake lights was malfunctioning, but State law as subsequently interpreted by the State Court of Appeals required only one working brake light. The court concluded that North Carolina law was sufficiently ambiguous that it was reasonable for the officer to believe that all original equipment brake lights were required to be operating properly. Because the stop was reasonable, cocaine which the officer found in a consensual search was properly admitted at a trial for attempted cocaine trafficking.

In a concurring opinion, Justices Kagan and Ginsberg stressed that only reasonable mistakes of law can justify a stop, and that the subjective understanding of an officer is completely irrelevant. The concurrence also stressed the majority's holding that an error in judgement concerning the scope of the Fourth Amendment cannot constitute a "reasonable" mistake. Finally, the concurring justices stressed that for an officer's legal error to be considered reasonable, a "really difficult" or "very hard question of statutory interpretation" must be presented.

Prado Navarette v. California, 572 U.S. 393, 134 S.Ct.1683_, 188 L.E.2d 680 (2014) A 911 dispatcher received an anonymous call stating that approximately five minutes earlier, a silver pickup truck with the license plate number "8D94925" had run the caller off the

roadway near southbound mile marker 88. Investigating officers saw a truck answering the description located 19 miles from mile marker 88 about 18 minutes after the 911 call. After following the truck for five minutes, the officers conducted a traffic stop. They detected the odor of marijuana as they approached the vehicle, and a search revealed 30 pounds of marijuana.

Although it described the case as "close," the court concluded that the anonymous tip bore sufficient indicia of reliability to provide a reasonable suspicion that the crime of DUI was occurring. First, when the caller said that she had been run off the road, she claimed eyewitness knowledge of alleged dangerous driving. Such a claim "lends significant support to the tip's reliability" because it "necessarily implies that the informant knows the other car was driven dangerously."

The reliability of the tip was further enhanced when a truck answering the description was observed 19 miles away approximately 18 minutes after the 911 call, suggesting that the 911 caller had reported the incident immediately. A "contemporaneous report has long been treated as especially reliable," particularly when there is an absence of time to reflect or where the report involves a startling event.

The court also found that the reliability of the tip was enhanced because it was made by using the 911 system, which has "features to allow for identifying and tracing callers" and thus provides at least some safeguards against false reports. Among the features mentioned by the court are that 911 calls can be recorded, law enforcement may verify important information about the caller through Caller ID, and callers are prohibited from blocking Caller ID information. Although 911 calls are not *per se* reliable, "a reasonable officer could conclude that a false tipster would think twice before using" the 911 system to transmit a false report.

In addition to being sufficiently reliable, an anonymous tip can justify an investigative stop only if it provides reasonable suspicion that criminal activity is occurring. The court found that a report that a vehicle has run a car off the road creates a reasonable suspicion of an ongoing crime such as drunk driving, because certain driving behaviors (including weaving, crossing the centerline, and erratically controlling one's vehicle) are reliable indicators of drunk driving. The court acknowledged, however, that not all traffic infractions imply intoxication, and held that unconfirmed reports of driving without a seatbelt or slightly over the speed limit would be so tenuously connected to drunk driving that a stop would be constitutionally suspect. Furthermore, although running a car off the road could be due to causes other than DUI, "reasonable suspicion 'need not rule out the possibility of innocent conduct.'"

The court rejected the argument that any inference of drunk driving was vitiated by the fact that officers followed the pickup for five minutes before pulling it over, and observed no traffic infractions during that period. The court concluded that the appearance of a marked police car could inspire a driver to be more careful, and that five minutes is not a sufficient period of observation to dispel a reasonable suspicion of drunk driving.

Because the indicia of reliability accompanying the anonymous tipster's 911 call was sufficient to justify an inference that the defendant was committing drunk driving, the officers had a reasonable basis to stop the defendant. Defendants' convictions were affirmed.

U.S. v. Arvizu, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) The Fourth Amendment permits a brief investigatory stop when there is reasonable suspicion to believe that criminal activity may be afoot. Whether reasonable suspicion exists is determined based on the totality of the circumstances; officers are allowed to draw on their experiences and specialized

training to make inferences and deductions based on all of the available information.

The Court of Appeals erred by individually evaluating each of 10 factors suggesting possible criminal activity, instead of considering the totality of the circumstances. The fact that individual factors were susceptible to innocent explanations did not mean that they could not constitute reasonable suspicion when considered cumulatively and in light of the officer's experience and training.

In addition, the locality of the encounter must be taken into account: factors such as abruptly slowing upon seeing a police officer, maintaining a rigid driving posture, and failing to acknowledge the officer "might well be unremarkable in one instance (such as a busy San Francisco highway) while quite unusual in another" (such as a remote portion of rural Arizona where drug smuggling is common).

There was a reasonable basis to suspect that defendant was engaged in illegal activity. The officer knew that sensors on roads commonly used to bypass a border checkpoint had alerted during a shift change at the checkpoint, and that a van carrying marijuana had been seen the last time one of the sensors activated. In addition, defendant slowed abruptly when he saw the officer, but appeared "stiff" and did not look in the officer's direction. The knees of child passengers were high, as if they were sitting on something, and the children waved at the officer in an abnormal fashion and as if they had been instructed to do so. The vehicle made an abrupt turn to an unimproved road that bypassed the checkpoint, there were no recreational areas in the vicinity, and the vehicle was registered to an area that was notorious for drug smuggling.

Under these circumstances, the agent could reasonably infer that the driver was attempting to avoid the checkpoint and intended to pass through the area during a shift change. The court rejected the argument that because the occupants *could* have been on a recreational outing, there was no reasonable suspicion of criminal activity; a reasonable suspicion may exist even where it is possible that the suspect is engaged in innocent conduct.

Illinois v. Wardlow, 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000) Although mere presence in a high crime area does not create a suspicion of criminal activity, the location in which a stop occurs is a relevant factor to consider in determining whether an officer had a reasonable suspicion of criminal activity. In addition, "unprovoked flight upon noticing the police" "is certainly suggestive of wrongdoing" and may be considered in determining whether a stop is justified.

The court rejected the Illinois Supreme Court's holding that flight might be no more than the defendant's exercise of the right to decline to answer questions and "simply go on one's way." Allowing officers who are confronted with flight "to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning." See also, **People v. Delaware**, 314 Ill.App.3d 363, 731 N.E.2d 904 (1st Dist. 2000) (in light of defendant's "sudden unprovoked flight" at the approach of two police officers, there was a reasonable, articulable basis to suspect criminal activity).

Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000) Under **Alabama v. White**, 496 U.S. 325 (1990), an anonymous tip which accurately predicts the defendant's movements may be sufficient to justify a **Terry** stop. Where an anonymous tip carried no *indicia* of reliability that could be corroborated and was a "bare report of an unknown, unaccountable informant who neither explained how he knew about" a gun allegedly in defendant's possession nor "supplied any basis for believing that he had inside information,"

there was no basis for a **Terry** stop.

The court rejected the prosecution's argument that the tip was reliable because it described defendant by his age, clothing and location. A **Terry** stop requires *indicia* of reliability concerning the assertion that criminal activity is occurring, not the mere ability to identify a particular person.

The court rejected the prosecution's argument for a "firearm" exception to **Terry**. Such an exception would "rove too far" and permit "any person seeking to harass another to set in motion an intrusive, embarrassing police search . . . simply by placing an anonymous call falsely reporting the target's unlawful carriage of a gun." Furthermore, there would be no rational reason for limiting such an exception to anonymous tips involving firearms; the same rationale would justify exceptions for narcotics and other dangerous objects.

The court was not required to determine whether an anonymous tip could allege so great a public danger as to justify a search without any showing of reliability. Thus, the court did not decide whether an anonymous tip might justify a frisk for a bomb or in places with diminished expectations of privacy (such as airports or schools).

Alabama v. White, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990) An anonymous telephone tip, plus independent corroboration of significant aspects of the tip, created a sufficient reasonable suspicion to justify a **Terry** stop. Police were able to corroborate the caller's claims concerning the time defendant would leave a certain address and the car he would occupy, and watched the car drive the most direct route to the location where the delivery of cocaine was to occur. Compare, **People v. Pantoja**, 184 Ill.App.3d 671, 540 N.E.2d 892 (2d Dist. 1989) (anonymous telephone tip not sufficiently corroborated); **People v. Yarber**, 279 Ill.App.3d 519, 663 N.E.2d 1131 (5th Dist. 1996) (same).

U.S. v. DeHernandez, 473 U.S. 531, 105 S.Ct. 3304, 87 L.Ed.2d 381 (1985) Custom officials may detain a traveler at an international border beyond the scope of a routine customs inspection (16 hours here) when they reasonably suspect, upon a particularized and objective basis, that the traveler is smuggling contraband in his alimentary canal.

U.S. v. Hensley, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985) When a "wanted" flyer or bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense, police may rely on the flyer or bulletin to make a **Terry**-type stop (i.e. to check identification, pose questions, or detain briefly while attempting to obtain further information). By contrast, the Fourth Amendment is violated by reliance on a flyer that was issued without reasonable suspicion to make a stop.

Brown v. Texas, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979) By detaining the defendant to require him to identify himself, police conducted a "seizure." All "seizures," even those less intrusive than traditional arrests, must be reasonable.

Here, the seizure was unreasonable because there was no reasonable suspicion, based on objective facts, that defendant was involved in criminal activity. The defendant was stopped in an alley because he "looked suspicious," but there was no indication that he was acting differently than any other pedestrian in the neighborhood. The mere fact that a neighborhood is frequented by drug users is not a basis for concluding that a particular person is so engaged.

U.S. v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) A roving border patrol may stop motorists in the general area of the border for brief inquiry into their residence status if the officer is aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicle contains illegal aliens. See also, **U.S. v. Cortez**, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981) (based upon the "whole picture" of objective facts and permissible deductions, border patrol agents had sufficient particularized suspicion to stop a vehicle to question the occupants about their citizenship).

Illinois Supreme Court

People v. Lozano, 2023 IL 128609 Police arrested defendant after stopping him on the street and finding a car radio and burglary tools in the pocket of his sweatshirt. He filed a motion to suppress, arguing the police lacked reasonable suspicion to stop and frisk him. His motion was denied, and he was convicted of burglary and possession of burglary tools. The appellate court affirmed, but the supreme court reversed, finding a lack of reasonable suspicion for both the stop and the frisk.

The evidence showed the police were driving down a street on a rainy day around 1:30 p.m. They saw defendant running in the opposite direction while holding the front of his sweatshirt. The officers made a u-turn, at which point defendant "turned" toward a house. Defendant ran up the stairs. The officers approached and called him down, ordering him to remove his hands from his pocket. When defendant did so, the officers noticed a bulge. They handcuffed him, patted him down, found the radio and tools, and placed him under arrest.

The supreme court held the officers lacked reasonable suspicion to conduct a **Terry** stop and frisk. At the time defendant was seized on the stairs, the officers lacked articulable facts pointing to criminal activity. They merely saw a man running in the rain in the middle of the afternoon. They did not witness criminal activity. The officers were not investigating a known offense. There was no testimony that defendant was in a high-crime neighborhood. While defendant changed direction after the officers made a u-turn, the supreme court refused to consider this to be the type of "unprovoked flight" that may form the basis for a stop, because defendant was already running even before the officers spotted him. Finally, the officers admitted they were simply curious as to what defendant was holding in his sweatshirt. Under these circumstances, It was not objectively reasonable for the officers to make an investigatory stop.

The frisk was also illegal because the officers lacked reasonable suspicion that defendant was armed. The officer who conducted the frisk testified that he felt a "rectangular square box." Defendant was handcuffed and did not resist even before he was handcuffed, so there was no concern for officer safety.

Because the radio and tools were the fruit of a poisonous stop and frisk, the supreme court ordered their suppression. As defendant could not be convicted without this evidence, the court reversed his convictions outright.

People v. Carter, 2021 IL 125954 The police had reasonable suspicion to conduct a **Terry** stop where an anonymous 911 caller described a man waving a gun and assaulting two women, then called a second time with an updated location, and the officer, upon spotting someone who matched the description at the updated location, corroborated the tip by noticing the suspect holding his waistband.

Although defendant argued that the caller described an assault of two women, and the officer did not see any women, this discrepancy did not significantly diminish the

reliability of the tip. Citing **Navarette v. California**, 572 U.S. 393 (2014), the court held that the fact that the suspect was seen shortly after the tip, and the second call, suggested the caller was witnessing the events in real-time. Also, the caller used 911, which adds credibility to the tip because 911 is not truly anonymous, as 911 calls are traceable. Both factors were cited by the **Navarette** court as grounds for reasonable suspicion.

The court found **Florida v. J.L.**, 529 U.S. 266 (2000), distinguishable. **J.L.** found unconstitutional a pat-down based on an anonymous tip describing the suspect and alleging he carried a gun. First, unlike **J.L.,** the tipster here provided real-time descriptions and used 911. More importantly, a long line of precedent has distinguished **J.L.** in cases with an "ongoing emergency," as opposed to a mere description of general criminality. In this case, the tip described an assault in progress, and therefore was more reliable.

Justice Neville, in dissent, would have found no reasonable suspicion where the two aspects of the tip describing criminal behavior – a man waving a gun and assaulting two women – were unsupported by the officer's observations.

People v. Redding, 2020 IL App (4th) 190252 The trial court erred when it suppressed the stop of defendant's vehicle and arrest for DUI. An officer received a report from dispatch about a bar fight between two brothers, and gave a description of the car in which one of the brothers recently fled the scene. When the officer spotted a matching car in the area shortly after receiving the dispatch, he had reasonable suspicion to stop the vehicle.

The trial court had incorrectly determined that the officer's stop was based on an "anonymous tip." The defense did not establish the call was anonymous, only that the officer who received the dispatch did not know the source of the information. But police are entitled to rely on dispatch when provided articulable facts that give rise to reasonable suspicion. And regardless, police may rely on anonymous tips with sufficient indicia of reliability. Here, the original caller identified the participants in the fight, details about the car, and accurately predicted where the car would be, rendering the stop reasonable.

People v. Timmsen, 2016 IL 118181 At 1:15 a.m. on a Saturday, defendant made a legal U-turn some 50 feet before reaching a State Police safety roadblock. The roadblock was placed on a four-lane highway just across the border between Illinois and Iowa. Defendant made the U-turn at a railroad crossing which was the only place to turn around before reaching the roadblock.

The court concluded that making a U-turn just before reaching a roadblock is a legitimate factor to consider in determining whether there is a reasonable suspicion of criminal activity. The court rejected the argument that making a U-turn near a roadblock is no more than the driver's decision to simply go about his business:

> Defendant's U-turn upon encountering the police roadblock was the opposite of defendant going about his business. Continuing eastbound on the highway would have been going about his business. We cannot view defendant's evasive behavior under these circumstances as simply a refusal to cooperate.

The court rejected the State's argument that the act of avoiding a roadblock is in and of itself sufficient to create a reasonable inference of criminal activity. Whether there is a reasonable suspicion of criminal activity is based on the totality of the circumstances and not on any factor in isolation.

The court also found that the totality of the circumstances justified a reasonable inference that criminal activity was afoot. The encounter occurred in the early morning

hours, the roadblock was well marked and could not have been confused with an accident, and the roadblock was not busy and would not have caused a significant delay.

People v. Henderson, 2013 IL 114040 An anonymous tip in this case was insufficient to justify a traffic stop. An individual flagged down police officers to advise them that there might be a gun in a tan, four-door Lincoln. The individual, who was not known to the officer, gave the number of persons in the car but included no other information. The officers stopped a tan, four-door Lincoln about five minutes later, although they did not observe the occupants violating any laws. During the stop, the defendant, who was a back seat passenger, dropped a handgun while fleeing the scene.

However, the weapon was not required to be suppressed as a fruit of the improper stop. The "fruit of the poisonous tree" doctrine stems from the Fourth Amendment exclusionary rule, and provides that evidence obtained by exploiting a Fourth Amendment violation is subject to suppression. Whether the doctrine requires exclusion of evidence depends on whether the chain of causation stemming from the unlawful conduct was sufficiently interrupted by intervening circumstances to attenuate the taint of the illegality. Factors relevant to the attenuation analysis include the temporal proximity of the illegal police conduct and the discovery of the evidence, the presence of any intervening circumstances, and the purpose and flagrancy of the official misconduct.

The United States Supreme Court has rejected a "but for" test for exclusion of evidence under the fruit of the poisonous tree doctrine. Thus, evidence is not inadmissible merely because it would not have been discovered "but for" the illegal actions of the police. In other words, the fact that evidence comes to light through a chain of causation that began with an illegal seizure does not necessarily require suppression.

The court presumed that the first attenuation factor – the temporal proximity between the violation and the discovery of the evidence – favored defendant, although the record did not indicate how much time passed between the illegal stop and the discovery of the handgun. However, the court concluded that defendant's flight from the scene constituted an intervening circumstance which broke the causation between the illegal stop and the discovery of the handgun. Although a passenger who submits to a show of authority has been "seized" for purposes of the Fourth Amendment, under **California v. Hodari D.**, 499 U.S. 621 (1991), a suspect who flees rather than submit is not "seized" until he submits. Here, defendant dropped the weapon during his flight, when he was not "seized."

The court acknowledged that parts of the **Hodari D.** opinion are *dicta*, but found that *dicta* to be persuasive.

Concerning the third factor, although the officers acted improperly by making a traffic stop based upon an anonymous tip which did not provide sufficient *indicia* of reliability, the court found that the misconduct was not flagrant.

Because defendant's flight interrupted the chain of causation between the officers' misconduct and the discovery of the gun, the fruit of the poisonous tree doctrine did not apply. Because there were no grounds on which a motion to suppress would have been granted, defense counsel was not ineffective for failing to file such a motion.

People v. Close, 238 Ill.2d 497, 939 N.E.2d 463 (2010) Under **Terry**, a police officer may make a brief stop of a person whom he reasonably suspects of being involved in criminal activity, in order to investigate and either dispel or confirm his suspicions. The court concluded that the officer had a reasonable basis to make a **Terry** stop where he knew that defendant's driver's license had been revoked and recognized defendant as the driver,

although he also knew that a restricted driving permit had been issued and did not know whether it authorized defendant to drive at the time of the stop.

The elements of driving with a revoked license (625 ILCS 5/6-303) include: (1) the act of driving on a highway, (2) while the driver's license is revoked. Although §6-303 excepts from the definition of the offense driving that is "specifically allowed by a judicial driving permit, family financial responsibility driving permit, probationary license to drive, or a restricted driving permit," an exception which withdraws specified acts or persons from the operation of a statute is not an element of the offense, but a matter of defense. By contrast, an exception which is part of the definition of an offense (*i.e.,* "is descriptive of the offense") must be negated by the prosecution.

Because the possible application of a restricted driving permit is not an element of driving with a revoked license, the officer's reasonable suspicion that defendant was committing a crime was not negated by the possibility that the driving was authorized by an RDP, even where the officer knew that an RDP had been issued. Although an officer would not be able to simply disregard evidence that would dispel a belief of wrongdoing, as where the officer knew that the RDP authorized defendant to drive, the mere possibility that an act of driving may be covered by an RDP does not affect the officer's reasonable belief that a crime is occurring. Where there is a reasonable suspicion of criminal activity, the officer need not rule out every possibility of innocent behavior before initiating a **Terry** stop.

People v. Hopkins, 235 Ill.2d 453, 922 N.E.2d 1042 (2009) The Supreme Court found that the officer had probable cause to arrest the defendant, based on the following facts:

The officer received a report of an armed robbery in progress, and found the defendant sitting in a stopped vehicle in the area of the offense. There were no other vehicles in sight, and the defendant matched the description of the offenders (black males in their 20's). The incident occurred in a predominately white neighborhood, the officer observed defendant's car within two minutes after receiving the report, and the defendant acted in a "nervous, evasive" manner by leaning forward to "peek" at the officer and then leaning back into his seat. Based on all these factors, the officer clearly had reasonable cause to conduct a **Terry** stop to investigate whether defendant had been involved in criminal activity.

Before making the arrest, the officer learned additional facts which constituted probable cause. When defendant exited his vehicle at the officer's order, the officer noticed that defendant had snow reaching to the mid-calf area of his pants. In addition, defendant was breathing heavily. While performing a patdown, the officer felt defendant's heart beating rapidly. The court deemed all these factors to be consistent with the dispatch that the offenders had fled on foot.

Finally, before the arrest was made the officer received information that one of the offenders was driving a car of the same color as the defendant's vehicle. In view of the recentness of the report of a crime in progress and the factors outlined above, the officer clearly had probable cause to arrest the defendant for armed robbery.

People v. White, 222 Ill.2d 1, 849 N.E.2d 406 (2006) There was a reasonable basis to suspect criminal activity where defendant approached the officers while juggling an object in his hand, stopped and turned his back when he noticed the officers, and placed the item in his pocket, especially where the encounter occurred in a high crime area.

In dissent, Justices Fitzgerald and Kilbride found that there was no reasonable basis for suspicion merely because the defendant turned his back and placed an item in his pocket when police startled him by stepping out of the shadows. The dissenting justices would have

found that the decision to stop defendant was based on a mere hunch.

People v. Lee, 214 Ill.2d 476, 828 N.E.2d 237 (2005) A telephone tip may form the basis for a lawful **Terry** stop, so long as the information has some indicia of reliability and the information known by police establishes a reasonable suspicion of criminal activity. A reasonable suspicion of criminal activity was provided by the citizen's complaint that three African-American men were selling drugs on a particular street corner, the officers' knowledge that most of the prior complaints from the same citizen had been "well founded," and the observation of defendant and two other African-American men at the corner.

Officers acted improperly, however, when instead of conducting a further investigation they made an arrest for which there was no probable cause.

People v. Gherna, 203 Ill.2d 165, 784 N.E.2d 799 (2003) Officers had a reasonable, articulable basis to suspect that underage drinking was occurring where they observed a parked vehicle, a bottle of beer, and a passenger who appeared to be underage. Thus, they had a justifiable basis to briefly detain and question the defendant about the beer and to ascertain the age of the daughter.

The purpose of the detention was fulfilled, however, once the officers determined that the bottle of beer was unopened and that no underage drinking was occurring. Thus, the officers were obliged to end the detention rather than remaining by the doors of the truck, questioning defendant about her reasons for being in the area and peering into the vehicle with a flashlight.

People v. Thomas, 198 Ill.2d 103, 759 N.E.2d 899 (2001) Although an officer had no reasonable basis to suspect criminal activity when he initially attempted to stop the defendant, no "seizure" occurred until defendant was taken into custody after attempting to flee. By that time, an informant's tip that defendant might be selling drugs, combined with defendant's flight, criminal history and possession of a police scanner, provided a reasonable basis to suspect criminal activity.

People v. Shapiro, 177 Ill.2d 519, 687 N.E.2d 65 (1997) Postal authorities had sufficient reason to remove a package from the mail stream where it matched several criteria of the "drug package profile." However, it was unreasonable to send the package 300 miles away for further investigation.

People v. Galvin, 127 Ill.2d 153, 535 N.E.2d 837 (1989) Officers had sufficient articulable facts to justify a temporary stop for investigatory purposes where, while on surveillance, they followed defendant and another person for about an hour and saw defendant park his car, walk into back yards, and look into a closed business and several parked cars.

People v. McGowan, 69 Ill.2d 73, 370 N.E.2d 537 (1977) Police officer had a reasonable suspicion that two men had committed or were about to commit a burglary, and was therefore justified in making a "stop and frisk" at 12:50 a.m. The men were wearing black clothing and walking in a commercial-industrial area which had been plagued by a high burglary rate. The only business open in the area was a tavern two blocks away, which was to close at 1:00 a.m. Furthermore, it was unusual (but not "highly unusual") for people other than hitchhikers to be in the area at that time of night.

Illinois Appellate Court

People v. Whiles, 2024 IL App (4th) 231086 The trial court rescinded defendant's statutory summary suspension. The court found that at the time of the request, the police lacked reasonable grounds to believe that he was under the influence. 625 ILCS 5/2-118.1(b)(2). The appellate court reversed.

Defendant argued on appeal that the officer lacked reasonable suspicion to stop the car, because the officer who conducted the stop did not witness any evidence of impaired driving. The appellate court disagreed, citing the principle of imputed collective knowledge. The officer had received a call that a nearby "red Jeep" was "possibly intoxicated" and when he observed a red Jeep, a Michigan police cruiser trailing the jeep flashed its lights at him. The Illinois officer took this to mean that the Michigan officer identified the red Jeep as the potentially intoxicated driver but, because he lacked jurisdiction, the Illinois officer should pull over the car. It later turned out that the Michigan officer had witnessed several acts of reckless driving that amounted to reasonable suspicion of drunk driving. Because the Michigan officer's knowledge could be imputed to the Illinois officer, the stop was made with reasonable reasonable suspicion.

Defendant argued that the knowledge of an officer with no jurisdiction could not be imputed to the officer who conducted the stop. This claim failed in light of **United States v. Hensley**, 469 U.S. 221 (1985), which held that the Kentucky police could rely on a flyer issued by the Ohio police and stop a suspect, as long as the Ohio police had reasonable suspicion. Applying this principle to the instant case, the Michigan officer's reasonable suspicion was imputable to the Illinois officer at the time of the stop.

People v. Maxfield, 2023 IL App (1st) 151965-B The police lacked reasonable suspicion to conduct a **Terry** stop. The police were flagged down by two robbery victims who directed the police to a white van containing "two black men." The police chased the van and fired shots when they saw the passenger holding a gun. The van continued to flee. The next time the officers saw the van, it was stopped and abandoned. The officers never saw the occupants. They radioed for backup and told the dispatcher they had no description of the offenders. Within five minutes, another officer who heard the dispatch encountered defendant walking on the street where the offenders were said to have fled, two blocks away. Defendant was sweating and out of breath. The officer detained defendant and brought him to the complainants for a showup. After a positive identification, the officer searched defendant and discovered $230 and jewelry. Defendant's motion to suppress was denied, and he was convicted of armed robbery and unlawful use of a weapon.

The officer who conducted the **Terry** stop did not have sufficient articulable facts to reasonably suspect defendant had committed a crime. Although he had heard a crime was committed nearby, he had no description of the offenders. And while defendant was sweating, the appellate court took judicial notice that the temperature at the time of the arrest was 71 degrees with 71% humidity, making defendant's sweat unremarkable. Nor did reasonable suspicion exist taking into consideration the collective knowledge doctrine. The knowledge of the dispatching officers added little to the knowledge of the officer who conducted the stop, as they did not see the offenders.

People v. Wallace, 2022 IL App (4th) 210475 A police officer lacked reasonable, articulable suspicion to stop defendant's vehicle based on a window tint violation. Defendant was driving a vehicle registered in Georgia, and the statute regulating vehicle window tint, 625 ILCS 5/12-503, specifically exempts out-of-state vehicles. The officer testified that he ran defendant's license plate prior to the stop. Accordingly, he was aware that the vehicle was

registered in another state, and he should have known that the window tint law did not apply to defendant's car and could not form the basis for the traffic stop.

But, the stop of defendant's vehicle was justified on a separate basis. When the officer ran defendant's license plate, he received a response through NCIC that the vehicle was not covered by liability insurance. Under 625 ILCS 5/3-707 and 625 ILCS 5/7-601, Illinois mandates that vehicles operated within the State be covered by a liability insurance policy. There is no exception for out-of-state vehicles. And, it was reasonable for the officer to rely on the information from NCIC because it is a reliable source.

People v. McClendon, 2022 IL App (1st) 163406 Following his conviction of armed habitual criminal, defendant appealed. Defendant argued that trial counsel provided ineffective assistance on his motion to suppress evidence. Specifically, defendant argued that counsel should have argued that he was illegally seized, and that the gun and defendant's statement were the fruits of that illegal seizure. The Appellate Court agreed.

Police responded to a call of shots fired. They did not have a description of the shooter or any information about whether a vehicle was involved in the incident. About four blocks away from the area, responding officers observed defendant and another man sitting in a parked vehicle. An officer testified that the men slumped down in their seats when the police passed by and then drove away when the officers parked and started to approach. Eventually, other officers were directed to a parking lot where the vehicle had gone after driving away. Defendant and the other man were located on the porch of an adjacent residence, knocking on the door. Officers approached with their guns drawn, and one of the officers said defendant took out a gun and dropped it behind a couch on the porch. It was alleged that defendant later made a statement admitting he had possessed the gun.

The trial court found that defendant had abandoned the gun prior to being seized, and therefore denied the motion to suppress. At the suppression hearing, trial counsel failed to argue that defendant had been seized before abandoning the gun and that it was the illegal seizure that caused the abandonment. The Appellate Court concluded that the motion to suppress would have had merit had counsel made those arguments. Defendant was seized when officers approached the porch with their guns drawn, causing defendant to submit to that show of authority. Further, the police lacked probable cause or reasonable suspicion to seize defendant. No evidence connected him to the call of shots fired, and no officers saw defendant engage in any crime prior to the seizure. Defendant only dropped the gun in response to being seized, thus the gun was the fruit of the illegal seizure.

The Appellate Court reversed defendant's conviction outright. Without the gun, or defendant's later statement, the State had no evidence to support the charge.

People v. Jackson, 2022 IL App (3d) 190621 Defendant Jackson was the passenger in a vehicle being driven by codefendant Joiner when a police officer initiated a traffic stop. The officer testified that Joiner failed to signal as he pulled over to the curb to park on a residential street. The traffic stop ultimately led to the discovery of a handgun and marijuana. A motion to suppress was filed and denied. Joiner was convicted of unlawful possession of a weapon by a felon, and Jackson was convicted of unlawful possession of cannabis with intent to deliver.

Section 11-804 of the Illinois Vehicle Code requires that a signal be used when a vehicle turns, changes lanes, encroaches onto the other side of the street, and leaves the roadway. The trial court concluded that Joiner had violated the statute because he changed lanes without signaling. But, the Appellate Court noted that there were no markings on the residential street differentiating the traffic lanes from areas used for parking. Further, the

word "lane" implies that the area of the roadway is used for driving, not parking, such that moving to the right to park did not constitute a change of lane regardless. The statute does not require that a driver signal before moving to the curb to park. Thus, the trial court's conclusion was erroneous under the plain language of the statute. The Appellate Court reversed the denial of the motion to suppress and went on to reverse defendants' convictions outright, finding that the officer's conclusion that a traffic violation had been committed was objectively unreasonable.

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. Webb, 2020 IL App (1st) 180110 A majority of the court held that the police did not violate the fourth amendment when they tackled and seized defendant based on reasonable suspicion of weapon possession. Defendant was in a crowd of people on a street, which the police ordered to disperse. While most of the crowd dispersed, defendant ran. Based on the way he held his waistband, in the officers' experience, he appeared to possess a firearm. In a high crime area at 11:30 p.m., these facts provided the officers with reasonable suspicion to detain. Defendant's resistance to the seizure justified the tackle. A citizen may evade interactions with the police, but once the officer has reasonable suspicion, a citizen must yield to the seizure.

The dissent would have found no reasonable suspicion given that defendant ran after the police ordered the crowd to disperse. The dissent does not believe that the fourth amendment allows officers to claim suspicion based on whether a citizen moves too quickly or too slowly when obeying police orders.

People v. White, 2020 IL App (1st) 171814 The trial court erred in denying defendant's motion to quash arrest and suppress evidence because defendant was stopped and frisked without reasonable suspicion of criminal activity. Officers on bike patrol near a CTA platform heard someone yell "f*** you, mother f***er," and looked up and saw defendant and a friend on the platform looking in the officers' direction. Defendant also spit over the side of the

platform. When defendant exited the platform, one of the officers conducted a **Terry** stop and frisk and recovered a pill bottle containing morphine pills from defendant's jacket pocket.

Based on these facts, the Appellate Court concluded that the officer lacked reasonable suspicion to conduct a **Terry** stop, as he put it, to "see what was going on." The officer admitted that he did not observe defendant commit any crime or reasonably believe he was about to commit a crime. And, while it may have been reasonable for the officer to conduct a protective pat down where defendant refused commands to remove his hands from his pockets, it was unreasonable to continue the search once the officer felt the pill bottle in defendant's pocket because it could not be mistaken for any sort of weapon.

People v. Cherry, 2020 IL App (3d) 170622 Where an officer attempts to effectuate a stop or seizure, but defendant immediately flees, there has been no submission to authority and therefore no seizure. If defendant first submitted to authority, however, and then fled, the fourth amendment is implicated at the time of the initial submission, and there must have been reasonable articulable suspicion for the seizure at that point in time, otherwise any evidence found after the initial encounter is subject to exclusion.

Here, the police ordered defendant and his friends to "stop," defendant took steps backward and away from the police as they exited their vehicle, and defendant ran off as an officer approached him. The Appellate Court concluded that defendant had not submitted to the officer's authority "in any meaningful way." Accordingly, the officer's lack of reasonable articulable suspicion at the time of this initial encounter did not render the encounter unconstitutional.

Defendant was ultimately seized when the police caught up with him approximately ten feet away, tackled him, and recovered a gun from defendant's waistband. At that point, defendant's flight, the officer's previous observation of defendant's holding his waistband, and the original tip that a group of men had been seen pointing a gun from defendant's now-parked vehicle, provided the police with reasonable, articulable suspicion to support his seizure. Finally, the gun was recovered under the plain-touch doctrine, where the officer felt it upon tackling defendant, thus there was no **Terry** frisk at issue.

People v. Thornton, 2020 IL App (1st) 170753 The police received a 911 call stating that a person wanted for two sexual assaults was sitting on the porch at a specific address; the caller also described defendant's clothing. Police patrolling in the area found defendant, walking down the street near the address provided by the caller, wearing clothing which matched that described. The officers approached and asked defendant his name. Upon checking his identity in their system, the officer discovered an investigative alert.

The initial **Terry** stop of defendant was valid based on the 911 call because defendant was quickly located in the general area and matched the description provided. While an anonymous tip requires corroboration of its assertion of illegality, not just identity, a 911 call is not viewed with the same skepticism as an anonymous tip. Further, the tip here was not of a crime in progress, but rather provided the location of a known suspect, merely allowing the officers to investigate further.

Handcuffing defendant during this initial encounter did not transform the **Terry** stop into an arrest where an officer testified that he cuffed defendant for safety reasons. The court found this reasonable in light of defendant's status as a sexual assault suspect.

The subsequent arrest of defendant based on the investigative alert was also proper. The investigative alert was supported by probable cause where one of the two victims identified defendant from a photo array, and defendant lived near the other victim's house where the assaults of both women occurred. Further, defendant had physical characteristics

described by both women, including tattoos on his upper arms and a chipped front tooth from having been shot in the mouth previously.

The Appellate Court declined to follow **People v. Bass**, 2019 IL App (1st) 160640, which concluded that investigative alerts are unconstitutional. Instead, the court followed **People v. Braswell**, 2019 IL App (1st) 172810, and concluded that investigative alerts supported by probable cause are constitutional.

The concurring justice would have found that the **Terry** stop was converted into an arrest almost immediately when he was handcuffed and placed into a police car. She would have found that arrest proper on the basis of the same facts which supported the **Terry** stop, specifically the 911 call and the fact that defendant matched the description of a man wanted for two felonies.

People v. Hood, 2019 IL App (1st) 162194 Police officers patrolling in a high-crime area encountered a parked car occupied by defendant and two other people. Standing outside of the car was a man who had money in his hand. No transaction was witnessed, but one of the officers observed defendant make movements toward the floor as if he was retrieving something. The police stopped their car facing defendant's, exited, and approached. On approach, one of the officers saw defendant place a handgun into a plastic bag and toss it into the back seat. At that point, an officer removed defendant from the car while another recovered the gun. When asked if he had a concealed carry license, defendant said he did not.

The Appellate Court concluded that the initial stop and approach by the police officers was not a seizure. The removal of defendant from the vehicle and recovery of the gun was a **Terry** stop and protective sweep justified by the totality of the circumstances, including the presence in a high crime area, defendant's movements toward the floorboard, and defendant's possession of a gun. Defendant's subsequent arrest was justified by his possession of the handgun, which he tried to conceal and for which he admitted not having a concealed carry license.

The dissent criticized the use of a "high-crime area" as a basis for upholding the **Terry** stop and protective sweep here, noting that constitutional protections are not suspended simply by virtue of being present in such an area. The dissent would have found the initial approach of the police to have been a seizure that was not justified by reasonable suspicion.

People v. Spain, 2019 IL App (1st) 163184 The police received an anonymous call about a man with a gun at a specific location. When they arrived, the officers observed a group of men, including defendant who was stuffing a black object into his pants which appeared to be the handle of a gun. The officers approached, conducted a pat down of defendant, recovered a gun, and placed defendant under arrest.

The initial Terry stop was justified by the anonymous tip along with the fact that there was a "safety alert" for the area. The safety alert was based on a tip that one gang was planning to shoot up the address of a rival gang member. That address was adjacent to the address where defendant was found. And, defendant was seen with what appeared to be a gun handle sticking out of his waistband.

Defendant also argued that police did not have probable cause to arrest him for unlawful possession of a weapon because they did not ask whether he had a valid concealed carry license prior to placing him under arrest. The Appellate Court disagreed, concluding that an individual's failure to voluntarily produce such a license is a factor to be considered in determining whether there is probable cause to arrest. Other factors here included that defendant attempted to fully conceal the weapon when the officers approached and was

acting nervously. While the better course would be to ask whether a suspect has a concealed carry license before arrest, the failure to ask that question was not fatal here.

People v. McMichaels, 2019 IL App (1st) 163053 Acting on a tip, police stopped defendant on the street and recovered a weapon. Defendant unsuccessfully challenged the stop and seizure and was convicted of armed habitual criminal. The Appellate Court held that the officers had reasonable suspicion at the time of the seizure. Defendant was not seized when officers initially approached and ordered him to show his hands because defendant did not submit, instead placing his hands in his pocket and turning away. The police did seize defendant when an officer grabbed defendant in an attempt to see his hands. At that point, however, the officers had reasonable suspicion. Defendant was found at the location described in the tip and matched the description of the man said to be in possession of a gun. This, coupled with defendant's refusal to show the officers his hands and to instead conceal them in his pocket, amounted to reasonable suspicion.

Once the officers saw the gun, they had probable cause to arrest despite **Aguilar**. Under the totality of the circumstances, the officers could reasonably conclude that defendant was not licensed to carry the gun based on his noncompliance with the officers' request and his furtive movements. Moreover, section 108-1.01 of the Code of Criminal Procedure allows officers to take a weapon during a **Terry** stop if there is a reasonable suspicion of danger. And while the Firearm Concealed Carry Act only requires disclosure of a license at the request of the officer, and here the officers did not first ask if defendant had a license, defendant could have volunteered the license rather than act suspiciously.

People v. Turman, 2019 IL App (4th) 170815 Police responded to an armed robbery call where the victim, who said her assailant had fled on foot, described him as a black male, approximately 5'6" tall, medium build, wearing blue jeans and a black hooded sweatshirt. A short time later, officers observed defendant on a bicycle approximately a block-and-a-half from the scene. Defendant was wearing jeans, a black jacket, a black hooded sweatshirt, and a black hat, and was about the same size as the suspect. Although a show-up revealed that defendant was not the armed robbery assailant, the police learned from their encounter with defendant that he was in violation of his requirement to register as a sex offender, and defendant was prosecuted for, and convicted of, that offense.

On these facts, the trial court did not err in denying defendant's motion to suppress evidence. Although defendant was on a bike rather than on foot, his build, clothing, and proximity to the scene warranted a brief investigatory detention when considering the totality of the circumstances. There was no Fourth Amendment violation, and defendant's motion to suppress was properly denied.

People v. Salgado, 2019 IL App (1st) 171377 Trial court did not err in denying defendant's motion to quash arrest and suppress evidence. A patrol officer saw defendant and another person walking together in an area that had recently been plagued by gang shootings. When the officer exited his vehicle and approached, the individuals went in two different directions. As defendant was walking away, he was also grasping at his waistband. The officer continued to approach and asked defendant if he had any weapons. When defendant said he did not, the officer asked defendant to lift his shirt so he could see, and defendant declined and put his hand on the object in his waistband. At that point, the officer put his hand on the object, recognized it as a handgun, and placed defendant under arrest.

The initial **Terry** stop was justified by the fact that the encounter occurred in a high crime area where officers had been assigned to patrol because of retaliatory gang shootings,

coupled with defendant's grabbing at his waistband upon seeing the police. And, defendant's placing his hand on the object in his waistband when the officer inquired about weapons provided the officer with justification to conduct a pat down for weapons.

People v. Eyler, 2019 IL App (4th) 170064 Police received a tip describing a person on a bicycle swearing and acting erratically. Officers approached defendant, who matched the description. Defendant fled. The officers gave chase through multiple private residences, and eventually arrested defendant, finding traces of methamphetamine on a straw in his pocket. He was convicted of meth possession and sentenced to five years in prison.

The Appellate Court rejected the argument that his arrest was improper and counsel should have moved to suppress. The majority found the tip sufficiently reliable to justify a **Terry** stop for disorderly conduct. Relying on **People v. Thomas**, 198 Ill. 2d 103 (2001), the court held that defendant's unprovoked flight in response to the **Terry** stop created probable cause to arrest for resisting a peace officer. The court rejected defendant's argument that **Navarette v. California**,134 S. Ct. 1683 (2014), which discussed the officers' suspicion of an "ongoing crime" as a factor justifying a **Terry** stop, created a bright line rule against stops based on suspicion of past crimes. The court found **People v. Lopez**,2018 IL App (1st) 153331, which adopted this rule, wrongly decided.

The concurrence disagreed that defendant did enough to warrant a stop for disorderly conduct, but would have found sufficient evidence of trespassing to justify the arrest.

People v. Johnson, 2019 IL App (1st) 161104 Officers on patrol saw defendant late at night in a high-crime area. When defendant saw the officers, he held his waistband and ran. Officers pursued him and defendant eventually jumped on the hood of a squad car, where he was detained and patted down. The officers found a gun. The trial court did not err in denying defendant's motion to quash arrest and suppress the gun. Defendant was not detained until he jumped on a squad car. Although flight and possession of a gun alone might not be grounds for a stop, the decision to jump on the car created reasonable suspicion. The frisk was also authorized, as the officers reasonably believed defendant was armed because he held his waistband.

People v. Holmes, 2019 IL App (1st) 160987 During a large picnic in a crowded public park, a police sergeant received information from a security guard, providing the physical description of a man and indicating that the man had a gun. The sergeant then relayed that information to a police officer who located defendant (matching the description). The officer and his partner stopped and frisked defendant and recovered a gun. The arresting officer testified at the suppression hearing that he did not know whether the security guard had personally observed the man in possession of a gun or had merely received the information from another person. The evidence did not even establish the identity of the security guard. The officer also testified that he did not observe any illegal activity prior to stopping defendant.

The information passed from the security guard to the sergeant to the arresting officer, in a round of "telephone tag," was essentially an anonymous tip. An uncorroborated anonymous tip is insufficient to sustain a **Terry** stop. The gun was suppressed, and defendant's conviction for aggravated unlawful use of a weapon was reversed outright.

People v. Gomez, 2018 IL App (1st) 150605 When a police car with three officers pulled up next to a parked vehicle and asked the driver what he and his two passengers were doing, the initial encounter was consensual. The police had seen the vehicle driving around the

neighborhood. After the driver lied about living down the street, defendant (the backseat passenger) was observed slouching down in his seat. He continued to slouch down after officers exited their car. The officers then ordered the occupants out of the car, and a gun fell on the ground by defendant.

The Appellate Court held that the consensual encounter turned into a seizure when the officers ordered the vehicle's occupants to exit. The Court also concluded that the aforementioned facts gave rise to reasonable suspicion of criminal activity and affirmed the denial of defendant's motion to suppress. While possession of a firearm, alone, is not a crime, reasonable suspicion can be supported by the belief that an individual is attempting to conceal a weapon.

The dissent would have found that the seizure was improper. The officers only knew that the vehicle had driven through the neighborhood a few times and that the driver initially lied to the police about his address, neither of which provides reasonable suspicion of criminal activity. Further, defendant's slouching in his seat did not provide reasonable suspicion because neither posture nor visible discomfort with police contact indicates criminal activity.

In re Elijah W., 2017 IL App (1st) 162648 A police officer may approach a person to ask questions without necessarily triggering the Fourth Amendment. As long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and does not involve any detention. A seizure occurs only when an officer by means of physical force or show of authority restrains the person's liberty. This test requires an objective evaluation of the circumstances and does not depend on the subjective perception of the defendant.

Four plain-clothed Chicago police officers in an unmarked car drove slowly down the street where defendant, who was 13 years old, was standing outside talking to some friends. The officers were armed, wore bulletproof vests, and displayed police badges. When the police car passed defendant, he looked at the officers and began to walk away. The officers stopped the car and one of them twice told defendant to "come here" in a casual but stern tone of voice. Defendant eventually complied and after some brief questioning defendant admitted that he had contraband.

In an issue of first impression in Illinois, the court held that the defendant's age as a juvenile must be considered in deciding whether a reasonable person would believe he was free to leave. In **J.D.B. v. North Carolina**, 564 U.S. 261 (2011), the Supreme Court held that a juvenile's age was relevant to the custody analysis of **Miranda**. Although **J.D.B.** did not address the issue of consensual encounters under the Fourth Amendment, the Appellate Court believed that **J.D.B.**'s analysis should apply to these circumstances since the tests are very similar.

Considering all the factors, the court held that a 13-year-old juvenile would not have believed he could have disregarded the officer's request to "come here" and speak to the officer. He was thus subject to a seizure, triggering the protections of the Fourth Amendment. But the court also held that the police had reasonable suspicion to believe that defendant was in violation of Chicago's 11 pm curfew and thus the seizure was justified.

In re Jarrell C., 2017 IL App (1st) 170932 The police lack reasonable suspicion to conduct a **Terry** stop and frisk on a person who grabs his waistband or crotch area in a high-crime area. Although the police believed the respondent's actions suggested he possessed a gun, his acts were indistinct from innocent behavior such as holding up his pants or reaching into his pocket.

The existence of a valid arrest warrant - a fact not known by the officers at the time of the search and seizure - did not trigger the attenuation exception. Attenuation is governed by the three-factor analysis of **Brown v. Illinois**, 422 U.S. 590, 602 - (1) the temporal proximity between the unconstitutional conduct and the discovery of evidence, (2) the presence of intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. Here, the first two factors favored suppression - the search occurred within minutes of the seizure, and no intervening circumstances occurred. Rejecting the State's claim that a pre-existing valid arrest warrant constitutes an intervening circumstance, the Appellate Court distinguished **Utah v. Strieff**, 136 S. Ct. 2056 (2016). There the United States Supreme Court applied the attenuation exception because the officer discovered a pre-existing arrest warrant after the unlawful seizure but prior to the search. Here, the officers did not learn of the warrant until after the search, and therefore its discovery was not an "intervening" event. Finally, although the officers' conduct was not flagrant, two of the three factors favored suppression, and therefore the trial court erred in denying respondent's motion to suppress.

In re Tyreke H., 2017 IL App (1st) 170406 Police officers spotted the minor, who was sought as a potential witness to a homicide, riding his bicycle. They turned their car in front of the bicycle at an angle which forced the minor to ride to the car, and exited the car to face the minor. The respondent identified himself in response to questioning and did not make any furtive movements. However, one of the officers testified that he saw a bulge in the shape of a handgun in the respondent's pants pocket.

After tapping the object to ensure that it was a firearm and asking the minor what the object was, the officer performed a protective pat down and recovered a .22 caliber handgun with six live rounds. The trial court initially granted a motion to suppress, but then reconsidered its decision and denied the motion.

Because a reasonable, innocent person riding a bike on a public roadway would believe he was not free to leave when a vehicle stopped in his or her path of travel and two officers wearing badges quickly emerged from the vehicle, the minor was "seized" under the Fourth Amendment. The court rejected the argument that no seizure occurred because the minor was sought only as a witness. An officer's subjective purpose for conducting a stop is irrelevant to whether a reasonable person would feel free to leave.

Where the minor was stopped not because he was suspected of criminal activity, but because police thought he had witnessed a homicide, police acted reasonably by conducting a seizure. The court noted that the investigation concerned a homicide, the respondent was believed to be a witness to the offense, and the officers narrowly tailored their action to stopping the minor.

People v. Topor, 2017 IL App (2d) 160119 There was sufficient reasonable suspicion to conduct an investigatory stop where a citizen informant reported through 911 that he detected the smell of burning cannabis coming from defendant's vehicle. The citizen reported that he was seated in his truck in the drive-up lane at McDonald's when he noticed the odor. The caller gave the dispatcher his name and phone number and gave a detailed description of the car, including the license number. The officer located the car near McDonald's and activated his emergency lights when the car pulled into a gas station.

In finding that there was reasonable suspicion, the court noted that the informant called 911 and identified himself by his full name and telephone number. In addition, the report was corroborated when the officer saw the vehicle near McDonald's. Finally, there was

no indication that the informant received any benefit for providing the information, and the informant witnessed the alleged offense because he smelled the marijuana.

The court rejected the argument that the tip was not reliable because the informant did not indicate how he was familiar with the smell of burnt cannabis. The court found that the reasonable suspicion standard does not require an officer to present a foundation for his identification of a particular odor as that of burnt marijuana. The same standard applies to a citizen informant.

Because the information provided by the citizen informant was sufficient to support a reasonable suspicion of criminal activity, the trial court erred by suppressing the evidence.

In re D.L, 2017 IL App (1st) 171764 The trial court properly granted respondent's motion to suppress a gun found on his person following an illegal stop and frisk. The officer responded to a call of shots fired and responded to the scene within one minute, at which time he saw respondent and a companion walking away. He had no information linking them to the offense, and admitted his intent was to ask if they heard the gunfire. When the officer invoked his office and called them over, respondent fled. The officer pursued him, detained him, and recovered a handgun.

The Appellate Court held that the officer lacked reasonable suspicion at the time he called to respondent, as respondent had done nothing more than walk quickly away from the sound of gunfire, which is consistent with innocent behavior. Even though respondent fled, flight alone is insufficient to establish reasonable suspicion. And because the stop was illegal, it follows that the frisk is necessarily illegal as well.

People v. Thomas, 2016 IL App (1st) 141040 Defendant was arrested for being in possession of a firearm after police received a tip from an unidentified citizen, and was convicted of UUW by a felon based on possession of a weapon and ammunition. During the trial, approximately four years after the arrest, the Illinois Supreme Court issued **People v. Aguilar**, 2013 IL 112116. **Aguilar** held that the portion of the Illinois aggravated unlawful use of a weapon statute which created an absolute ban on the right to possess a weapon for self-defense outside the home was facially unconstitutional under the Second Amendment.

The Appellate Court held that although at the time of the arrest a tip by an unknown citizen was sufficient to justify a **Terry** stop, in light of **Aguilar** a tip which states merely that a person is in possession of a gun does not provide reasonable suspicion for an investigatory stop.

The court also found that the gun recovered as a result of the **Terry** stop should have been suppressed despite the fact that the stop was justified when it was made. Noting that statutes declared unconstitutional on their face are void *ab initio*, the court refused to apply the good-faith exception to the exclusionary rule.

The United States Supreme Court has applied the good-faith exception where an officer acts in objectively reasonable reliance on a statute which was subsequently found to violate the Fourth Amendment. **Illinois v. Krull**, 480 U.S. 340 (1987). In **People v. Krueger**, 175 Ill. 2d 60, 675 N.E.2d 604 (1996), however, the Illinois Supreme Court found that the Illinois Constitution bars application of the good-faith exception under such circumstances. The court concluded that the same rationale applies to a **Terry** stop which is made under a statute which is subsequently held unconstitutional on its face.

People v. Williams, 2016 IL App (1st) 132615 Two police officers on patrol in a high-crime area saw defendant sitting in a car in front of an abandoned house. As they passed, defendant

made eye contact with the officers and then got out of his car. The officers turned their car around and parked behind defendant's car. One officer got out of the car and said to defendant, "police, can I talk to you?" The officer then walked over to defendant's car and told defendant to come there.

Defendant met the officer at his car. The officer testified that defendant was not free to leave because he had been parked in front of an abandoned building in a high crime area. After further questioning and investigation, defendant gave the officer permission to search his car, where narcotics were discovered.

An officer seizes someone through physical force or a show of authority when a reasonable innocent person would not feel free to leave. An officer may approach a person and ask questions without conducting a seizure as long as his request would not make a reasonable person believe that compliance is required. Four factors indicate that a seizure has occurred: (1) the threatening presence of several officers; (2) display of weapons; (3) physical touching by an officer; and (4) language or tone indicating compliance is required.

The court held that defendant was seized where he was required to comply with the officer's request to stop, return to the vehicle, and answer questions. Although there were only two officers present and neither displayed any weapons or touched defendant, one of the officers used language or tone to compel defendant's compliance with his requests, and thus conveyed to defendant that he was not free to leave or decline those requests.

The court held that the officers lacked reasonable suspicion to stop defendant. All they knew was that defendant was parked in front of an abandoned building in a high crime area. This activity does not show that defendant was engaged in criminal activity.

The court suppressed the narcotics recovered from defendant's car and reversed defendant's conviction for possession of a controlled substance.

People v. Abram, 2016 IL App (1st) 132785 While investigating a report of three males in possession of rifles, two police officers exited their vehicle and started walking toward the defendant's car, in which defendant was sitting alone. Defendant immediately put his car in reverse and drove out of the alley. A vehicle chase ensued for several minutes, and ended when defendant drove into the parking lot of a police station and was taken into custody.

During the chase, officers saw items being tossed out of the driver's side window of the vehicle. Packages containing cocaine were recovered from locations along the chase route and from the driver's seat in the vehicle.

The court concluded that the defendant was not "seized" when the officers exited their vehicle and approached him to conduct an investigative interview. The officers applied no physical force, made no show of authority, and did not restrain defendant's liberty in any way. In addition, the officers did not activate their emergency lights.

When defendant started to drive away, one of the officers yelled at him to stop. Although the order constituted a show of authority, no seizure occurred until defendant submitted to that authority. Because defendant did not submit until he drove into the lot of the police station, a "seizure" occurred only at that point.

The court added that even had defendant submitted to the show of authority at some point during the chase, the resulting seizure would have been justified. Even in the absence of probable cause for an arrest, a police officer may detain and question an individual upon observing unusual conduct which leads to a reasonable conclusion that criminal activity may be afoot. Unprovoked flight can be a basis for reasonable suspicion.

The court rejected the argument that defendant's flight was provoked, noting that defendant rapidly drove out of the alley in reverse and engaged in a car chase during which

he sped, drove the wrong way down one-way streets, disobeyed traffic signals, drove across an abandoned lot, and at one point drove onto a sidewalk. Although a person may refuse to cooperate with officers and go about his business, defendant's actions were not a rational response to two officers approaching on foot and instead gave rise to a reasonable suspicion that criminal activity was occurring.

Defendant's conviction was affirmed.

People v. Shipp, 2015 IL App (2d) 130587 Police received a 911 call at 5 a.m. about a fight involving weapons. Several officers went to the area where the fight had been reported. One of the officers, arriving less than a minute after the dispatch, saw defendant and a female walking on the street less than a block from the reported location of the fight. The officer got out of his car, told them to stop and said they were not free to leave. After other officers arrived, the first officer asked defendant if he could pat him down for weapons. Defendant became agitated, refused the pat-down, and put his hands in pockets. The officers attempted to grab his arms, but defendant broke free and fled a short distance before he was apprehended. The officers searched defendant and found a loaded gun and drugs.

The Appellate Court held that the officer conducted an illegal **Terry** stop without reasonable suspicion. Apart from the improper stop, the police did not have reasonable grounds to frisk defendant. In order for a frisk to be permissible, the officer must reasonably believe that defendant is armed and dangerous.

The Court rejected the State's argument that defendant's flight broke the causal connection between the illegal stop and the discovery of the gun and drugs. Courts apply a three-part test to determine whether the causal chain between illegal police conduct and the discovery of evidence is sufficiently attenuated to allow the admission of the evidence: (1) the amount of time between the illegality and the acquisition of the evidence; (2) any intervening circumstances; and (3) the purpose and flagrancy of the police misconduct.

Here there was a very short time between the stop and the search and the police conduct in stopping defendant, while not flagrant, was still based on nothing other than defendant's mere presence in the area. The "discovery of the contraband was so tainted by the illegal stop that suppression was appropriate."

In re Rafeal E., 2014 IL App (1st) 133027 In police/citizen encounters, a seizure occurs when a reasonable innocent person would not feel free to decline the officer's requests or otherwise terminate the encounter. This analysis involves an objective evaluation of the officer's conduct and does not depend on the subjective perception of the person being stopped.

The police effectuated a seizure when they pulled up next to defendant, who was walking on the sidewalk, in a marked squad car, ordered defendant to stop walking, and told him to take his hands out of his pockets. These actions demonstrated a show of authority and a reasonable person would have believed that compliance was required. When defendant complied with the officers' request by stopping and taking his hands out of his pockets, he submitted to their show of authority.

An investigatory stop pursuant to **Terry v. Ohio**, 392 U.S. 1 (1968), is permissible only when the police have specific, articulable facts which, taken together with rational inferences, create a reasonable suspicion that the defendant is involved in criminal activity.

Here, defendant was standing with a group of men at the mouth of an alley when the police pulled up in a squad car. The police stopped defendant after he looked in their direction and then began walking briskly down the sidewalk away from the group. The State argued that this case was similar to **Illinois v. Wardlow**, 528 U.S. 119 (2000), where the Supreme

Court held that the defendant's presence in a high-crime area and unprovoked "headlong flight" down an alley after seeing the police created reasonable suspicion justifying a **Terry** stop.

The Appellate Court rejected the State's attempt to equate this case with **Wardlow**. **Wardlow** involved headlong flight into an alley and away from the police, while here defendant merely walked briskly away from the mouth of an alley along an open sidewalk. Defendant walked away from the group he had been standing with, but there was no testimony he walked away from the officers. "We cannot see how walking away, briskly or not, and heading to an open sidewalk where the police had easy access to the [defendant] could possible constitute evasive behavior."

The Appellate Court suppressed the drugs found during the illegal stop and since the State could not convict without the suppressed evidence, reversed the adjudication of delinquency.

People v. Timmsen, 2014 IL App (3rd) 120481 Under some circumstances, the fact that a motorist appears to be avoiding a highway checkpoint may provide a reasonable suspicion of criminal activity sufficient to justify a stop of the vehicle. However, the mere fact that a motorist avoids a checkpoint does not in and of itself justify a stop. The court cited three examples where a stop might be justified after a motorist appears to have avoided a checkpoint: (1) where a vehicle fails to stop at the checkpoint; (2) where a vehicle stops just before the checkpoint and the driver and passenger trade places; or (3) when the driver acts suspiciously while avoiding the checkpoint.

Police lacked reasonable suspicion to stop defendant's vehicle where, as he was approaching a checkpoint, he made an U-turn at a railroad crossing and drove in the opposite direction from the checkpoint. Under Illinois law, a U-turn is legal as long if it can be made safely and without interfering with other traffic. The court acknowledged that the U-turn may have raised a suspicion that defendant was attempting to avoid the checkpoint, but found that in the absence of additional factors such as evidence that the checkpoint was in a high crime area or that defendant was clearly attempting to flee, there was no reason to suspect anything except that defendant was going about his business.

Because the stop of defendant's vehicle was unjustified, the trial court erred by failing to grant the motion to suppress. Defendant's conviction for driving with a suspended license was reversed and the cause remanded for further proceedings.

People v. Sims, 2014 IL App (1st) 121306 An officer was investigating a suspected narcotics transaction when he observed defendant, who was not involved in the suspected transaction, sitting in front of an abandoned building. The officer did not observe defendant engage in any illegal activity, but saw him put an unidentified object in the crotch of his pants and walk away. The officer recognized defendant as having been previously arrested for UUW, although he did not know the outcome of the case. The officer stopped defendant, conducted a frisk, and discovered cocaine.

The court concluded that the stop was unjustified because the officer lacked reasonable suspicion to believe that a crime was occurring. Although the officer knew defendant had been arrested for a weapons violation, he did not know the outcome of any charges. The officer admitted that he did not see a weapon or any other contraband, and that he stopped defendant only because he placed his hand in his pants.

The court acknowledged that seeing a prior arrestee place an object in the front of his pants might create a "gut feeling" in a reasonable officer that a crime might be occurring.

However, reasonable suspicion requires more than a hunch or "gut feeling." Because there were no articulable facts supporting an inference that a crime had been or was about to be committed, the **Terry** stop was improper.

The trial court's order denying defendant's motion to suppress was reversed. Because the State could not meet its burden of proving defendant's guilt without the illegally seized evidence, the conviction and sentence were reversed outright.

People v. Brown, 2013 IL App (1st) 083158 Although handcuffing a suspect tends to indicate that an arrest rather than a **Terry** stop has occurred, handcuffing is permissible during a **Terry** stop where restraint is necessary to effectuate the stop and protect the safety of the officers. A limited frisk for weapons is permitted during a **Terry** stop if the officer reasonably believes that the person detained is armed and dangerous.

Officers responding to a report of a burglary in progress had sufficient grounds to conduct a **Terry** stop when they saw defendant leaving the premises by the back door, where the officers knew that other officers were pursuing two suspects who left the building by the front door while carrying metal tools. Because defendant was leaving the scene of the crime in the middle of the night as other suspects fled by another exit, the officers could reasonably suspect that defendant was involved in criminal activity.

However, by immediately handcuffing defendant when there was no articulable basis to believe that he was armed or dangerous, the officers conducted an arrest rather than a **Terry** stop. The court acknowledged that one of the officers testified to having a general fear of his safety because the officers were in a dark alley with ample places for suspects to hide, but found that such fear did not justify a belief that the defendant posed any threat to the officers' safety as he left the building. Furthermore, defendant was not doing anything that was illegal on its face, and the arrest was made as soon as defendant passed through the doorway and despite the absence of any signs he intended to flee or resist. Because a reasonably cautious person would not have believed that the defendant had committed a crime, probable cause to make an arrest was lacking.

In addition, the officers exceeded the permissible scope of a **Terry** stop by conducting a search of defendant's person. **Terry** permits a limited, protective pat down for weapons if there is reason to believe that defendant is armed. However, the officers testified that once defendant was handcuffed, he could not have reached any items in his pocket. Thus, any need to frisk the defendant for reasons of officer safety had been eliminated.

Because in the absence of the evidence that had been suppressed it would be "essentially impossible" for the State to convict the defendant of burglary beyond a reasonable doubt, the conviction was reversed outright.

People v. Hill, 2012 IL App (1st) 102028 The police stopped a vehicle being driven by defendant because it matched the description of a subject's vehicle and plates named in a search warrant. The warrant authorized the search of the subject and an apartment on West Flournoy. A pat-down search of defendant resulted in the discovery of keys, which defendant admitted were for the apartment on Flournoy. Defendant was taken into custody.

The police used the keys to enter the apartment and conduct a search. The complaint for a warrant indicated that ecstacy would be found in the front bedroom. The police found no drugs in that bedroom but did recover a loaded shotgun inside a bag in a box under the bed in the middle bedroom. When questioned by the police, defendant admitted that the shotgun was his and that he had been living in the apartment with his girlfriend.

At trial, the defense presented evidence that defendant did not live in the apartment

although he slept there on occasion. Defendant had been given a key to allow him to let his girlfriend's daughter and brother into the apartment when she was absent. Defendant denied knowledge of the shotgun and making a statement admitting to possession of the shotgun.

Addressing whether counsel was ineffective in failing to move to suppress defendant's post-arrest statement as the fruit of his continued unlawful detention, the Appellate Court concluded that even though the initial stop and search of defendant was lawful, a motion to suppress defendant's statement would have had a reasonable probability of success. The continued detention of defendant was not supported by probable cause or reasonable suspicion. The police recovered no contraband from defendant, only keys. No contraband had yet been recovered from the apartment.

Probable cause to support the warrant to search the apartment did not allow the court to assume that there was probable cause or reasonable suspicion to justify the continued detention of the defendant. These are related, but different inquiries: in the case of the detention of the defendant, the inquiry concerns the guilt of defendant, whereas in the case of the search warrant, the inquiry relates to "the connection of the items sought with the crime and to their present location." Where the police found no drugs on defendant and had not yet found any contraband at the apartment, the mere expectation that the police would find drugs in the apartment, without more, could not justify the continued detention of defendant. The State had not argued that the facts alleged in the complaint for search warrant supported an independent finding of probable cause or reasonable suspicion to justify the detention.

The continued detention of defendant was not a valid seizure incident to execution of the warrant. **Michigan v. Summers**, 452 U.S. 692 (1981), authorized the detention of occupants of the premises while a search warrant is executed in order to: (1) prevent flight in the event that incriminating evidence is found, (2) minimize the risk of harm to officers, and (3) facilitate the orderly completion of the search. Courts disagree whether this rule can be extended to an occupant who leaves the premises immediately before execution of the warrant who is detained soon as practicable after leaving. The court found it unnecessary to decide whether Illinois should adopt the expansive interpretation of **Summers** where there was no evidence defendant had come from the Flournoy apartment just before his detention.

People v. Hyland, 2012 IL App (1st) 110966 Police officers may rely on official police communications to effect an arrest or conduct an investigative detention, but the State must demonstrate that the information on which the communication is based establishes probable cause to arrest, or reasonable suspicion that the defendant has committed or is about to commit a crime. An illegal arrest or detention cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to effect the arrest or detention. The admissibility of evidence uncovered during a search incident to an arrest or a frisk following an investigative detention based on a police communication thus depends on whether the officer who issued the communication possessed probable cause to make the arrest or reasonable suspicion to detain.

The police relied on an investigative alert to arrest the defendant and perform a custodial search. Because the State presented no evidence that the facts underlying the investigative alert established probable cause to arrest the defendant, the trial court erred in denying defendant's motion to quash arrest and suppress evidence. Because the State presented no evidence from which it might be inferred that the officer who issued the investigative alert possessed facts that would have justified the stop, any argument that the

police performed an investigative detention of defendant also fails.

Unprovoked flight together with an individual's presence in an area of expected criminal activity can be sufficient to establish reasonable suspicion to justify an investigative detention. **Illinois v. Wardlow**, 528 U.S. 119 (2000). While there was evidence that the defendant ran as soon as he saw the police, there was no evidence that the police acted in response to reports of suspected criminal activity or suspicious behavior on the part of the defendant. Therefore the stop of the defendant could not be upheld as a valid investigative detention.

People v. Smulik, 2012 IL App (2d) 110110 The police received a dispatch that a female reported that she had observed an individual drinking in a bar whom she thought was drunk. He was driving a silver Jeep and she was "concerned about him driving." The informant provided the Jeep's license number and location. The police located a vehicle matching the description parked in a parking space at a carwash.

Because the police did not know the informant's name and there was no evidence that the informant contacted the police by an emergency number through which her identity could be determined, the tip must be treated as anonymous. Its reliability hinges on the existence of corroborative details observed by the police. The officer's observations corroborated only the non-inculpatory aspects of the tip—that a vehicle of a particular description could be found at a certain location. It contained no predictive information. Therefore, the tip was insufficient to support the seizure.

Relaxation of the corroboration requirement could not be justified on the ground that the tip related to a drunk driver. Defendant's vehicle was parked. Any urgency that would have existed had defendant's vehicle been in motion was absent.

People v. Jackson, 2012 IL App (1st) 103300 After two police officers twice drove past defendant and noticed that he was watching their car, they decided to conduct a "field interview." One of the officers testified that defendant, who was standing on a corner when they stopped their car, "began to act a little erratic" by speaking before the officers asked any questions, "moving his arms, flailing about, [and] moving backwards." The officer stated that he could not understand what the defendant was saying.

The officers ordered the defendant to place his hands on the hood of the car, but defendant repeatedly put his hands on the car and then removed them. When defendant refused to keep his hands on the vehicle, the officers removed defendant's backpack, handcuffed him, and patted down the backpack. The pat down revealed a large metal object which the officer believed to be the barrel of a gun. A search of the backpack disclosed a loaded handgun. Defendant was then arrested.

The officer testified that the incident occurred in a "high violence, high narcotics trafficking area," and that he had made arrests in the area for violent and drug-related crimes. The court concluded that the trial court did not err by upholding the search, finding that the officers had a reasonable basis to suspect that defendant was committing criminal activity based upon his presence in a high crime area and his "bizarre actions" upon being confronted by police.

Presence in a high crime area, by itself, does not create a reasonable, particularized suspicion that criminal activity is afoot. However, under **Illinois v. Wardlow**, 528 U.S. 119 (2000), presence in a high crime neighborhood may equal reasonable suspicion when combined with other activity, such as flight upon seeing officers. The court concluded that where the trial judge believed the officer's testimony that the incident occurred in a high

crime area and that defendant was acting in a "bizarre" manner, there was a reasonable suspicion sufficient to support a **Terry** stop.

The court rejected defendant's argument that more than mere testimony by the arresting officer is required to justify a conclusion that a particular location is in a "high crime area." The court concluded that if the trial judge believes the officer's testimony that the area has a high crime rate, there is a sufficient basis to find that the incident occurred in a high crime area.

The court also stressed that no one in the courtroom, including the "experienced criminal law judge in Chicago," questioned the officer's assertion that the incident occurred in a high crime area. In any event, the court found that there was more than the officer's mere assertion here, because the officer also testified that he had made arrests for violent and drug crimes in the area.

The court also found that the trial court's factual finding that defendant's behavior was "bizarre" was not against the manifest weight of the evidence. Without explaining its reasoning, the court concluded that the officer's testimony "amply support[ed]" the trial court's factual finding that suspicion of criminal activity was raised by defendant's "erratic" behavior, including flailing his arms, pointing, moving backwards, spouting words that the officers could not understand, and repeatedly placing his hands on and off the hood of the squad car.

People v. Rhinehart, 2011 IL App (1st) 100683 An unidentified citizen flagged down a police officer and informed him that a black male wearing a white shirt and yellow pants had a gun and was at a specific location, which the officer testified was a high-crime area. The police proceeded to that location and saw defendant who matched the description. The officer conducted a pat down of the defendant and found a gun. A man standing next to defendant fled from the police. The police later learned that he was the defendant's brother.

Although the officer received the anonymous tip in person, rather than over the phone as in **J.L.**, allowing the officer to develop an impression of her credibility from her appearance and tone of voice, the State must still point to specific, articulable facts that gave rise to the officer's reasonable suspicion of criminal activity. The State presented no evidence explaining the reasons the officer considered the informant reliable where the officer did not know the informant's identity.

No other circumstances exist that created reasonable suspicion for the stop. The fact that defendant's brother fled does not cast suspicion on defendant, especially where the police did not know they were brothers at the time of the stop. The mere fact that informant accurately described defendant's location and clothing does not show that the informant had knowledge of concealed criminal activity. That the stop occurred in a high-crime area is insufficient to justify the stop.

The court should have granted the motion to suppress. Because the State could not prove that defendant possessed the handgun without the suppressed evidence, his convictions for aggravated unlawful use of a weapon and defacing identification marks of a firearm were reversed.

People v. Harris, 2011 IL App (1st) 103382 Citing **United States v. Montero-Comargo**, 208 F.3d 1122 (9th Cir. 2000), for the proposition that the police characterization of an area as "high crime" requires careful examination because it can easily serve as a proxy for race and ethnicity, the court identified the following factors as relevant to the evaluation of whether the State has sufficiently established that the location is a high-crime area for **Terry**

purposes: (1) whether there is a nexus between the type of crime most prevalent or common in the area and the type of crime suspected in the stop at issue; (2) whether the geographic boundaries of the area being evaluated are limited; and (3) whether there is a temporal proximity between evidence of heightened criminal activity and the date of the stop at issue.

An officer testified that he stopped the defendant in an area "known to be one of high burglaries and high robberies." The court found that this conclusory and unsubstantiated statement was insufficient to establish that the location was a high-crime area for **Terry** purposes. There was no evidence concerning the level of crime in the area where defendant was stopped, or the timing, frequency, or location of the robberies and burglaries. No evidence existed that the police suspected defendant of committing robberies or burglaries. The police were not responding to any report of a crime. The boundaries of the area at issue were not defined. Because of the dearth of contextual evidence, and the fact that the only other justification for the stop was defendant's evasive conduct, the trial court's decision that the stop of defendant was illegal was not clearly erroneous.

People v. Allen, 409 Ill.App.3d 1058, 950 N.E.2d 1164 (4th Dist. 2011) In determining whether a **Terry** stop was reasonable, the court must determine whether the officer's actions were justified at their inception and reasonably related in scope to the circumstances which justified the detention in the first place.

The court concluded that the investigatory detention of defendant and his companions was justified by information which the officers obtained from an informant. The informant told a police officer that three people were going to arrive at his apartment in the next 15 minutes to complete a drug transaction, and that he did not have the money to pay for the drugs. The officer testified that the informant sounded "pretty scared."

While the officers were going to the informant's apartment, they received a second call from the informant stating that the persons bringing the drugs had just phoned and said they were exiting the interstate at the same location where the officers had just exited. The officers could see only three vehicles that had exited the interstate at that point; two of the cars were occupied by police officers. The deputies pulled off to allow the third car to pass, and observed three occupants, two of whom matched descriptions of gender and race which had been stated by the informant. The officers were unable to determine the race or gender of the back seat passenger.

The officers followed the car, and called the informant to determine whether the vehicle they were following was the car the informant expected. The informant was unable to identify the car based on the officers' description, but said that the car he was expecting would park in the lot behind his apartment.

When the car parked behind the informant's apartment, the officers made a stop, determined the names of the occupants of the car, and obtained an explanation that the occupants were meeting a friend who had the same first name as the informant. The officers ordered the three persons out of the car and conducted a patdown, but found no weapons or drugs. A search of the vehicle also disclosed no contraband.

The officer then called the informant, who looked out his apartment window and identified the back seat passenger, a white male, as his contact. The informant also stated that the contact was an intermediary between the informant and the dealer, who was a black male. Defendant, the driver of the car, was a black male. When the officer said that the officers had not found any drugs on the suspects or in their car, the informant told the officer to check the suspects' mouths.

The officer felt outside of defendant's lip and believed that defendant was concealing

a packet in his mouth. After defendant spit out one packet, the officer reached into the defendant's mouth to recover additional packets which he believed defendant was attempting to swallow. After a struggle, the officers recovered several additional packets of what they suspected to be cocaine.

The court concluded that under these circumstances, the detention was justified at its inception by the information received from the informant and verified by the officers before the stop. Information provided by a third party informant may give rise to a reasonable suspicion of criminal activity if the information is reliable and allows a reasonable person to infer that a crime is about to occur. In determining whether an informant's statements provide a reasonable basis for a **Terry** stop, the court should consider the informant's veracity, reliability, and basis of knowledge.

Under the totality of circumstances, the police had a reasonable suspicion of criminal activity. The officers knew the informant from previous contacts, and he had given information in the past which was consistent with the information he provided on this occasion.

In addition, the informant's identity was known to both the officers and was not concealed from the defendant. The officers identified the informant at the suppression hearing, and the informant testified at defendant's trial and was subject to cross-examination. Thus, this was not a situation involving an anonymous or confidential source, where a greater showing of reliability is required.

The informant identified the basis of his information during the tip and implicated himself in the offense, lending credibility to his claims. Furthermore, the officers were able to corroborate much of the informant's information before the stop, including the race and gender of two of the car's occupants, the precise location of the car at a specified exit at a specific time, and the car's destination. Such corroboration demonstrated that the informant had inside information about the crime he was reporting.

Finally, the tip required immediate police action because the crime was expected to occur within 15 minutes of the initial report and the informant was in personal danger if the officers did not intervene.

The court rejected the argument that the search of defendant's mouth exceeded the scope of a permissible **Terry** stop. The court concluded that based on the information known to the officers before the search of defendant's mouth, a reasonable person would have been justified in concluding that the defendant was involved in a criminal offense. Because the officers had probable cause to make an arrest, the search of the defendant's mouth was a valid search incident to arrest without regard to whether it would have been justified under **Terry**.

Defendant's conviction for unlawful possession of a controlled substance with intent to deliver was affirmed.

People v. Contreras, 2011 IL App (2d) 100930 725 ILCS 5/107-4(a-3)(2) authorizes a police officer to conduct temporary questioning and "make arrests in any jurisdiction within this State . . . (2) if the officer, while on duty as a peace officer, becomes personally aware of the immediate commission of a felony or misdemeanor violation of the laws of this State." The court concluded that "personally aware" provision was intended to permit police officers who are outside their jurisdiction to detain a suspect only if they have first-hand knowledge of a newly committed crime. Thus, knowledge imputed from other officers does not authorize a **Terry** stop by an officer who is outside his jurisdiction.

Two peace officers lacked first hand awareness that an offense had been committed

where authorities had only a generalized suspicion that defendant was involved in drug trafficking until other officers stopped a person who was believed to be defendant's associate and who possessed a plastic bag which was found to contain cocaine. The officers who subsequently stopped defendant outside their jurisdiction had no first hand knowledge that cocaine had been found in the possession of the suspected associate; they gained such knowledge only through a communication from the officers who made the stop. Because detaining defendant for questioning was not authorized under §107-4(a-3)(2), the trial court properly granted defendant's motion to suppress.

People v. Chestnut, 398 Ill.App.3d 1043, 921 N.E.2d 811 (4th Dist. 2010) The Appellate Court affirmed the trial court's order granting defendant's motion to suppress evidence which the officers found during a search of defendant's person. Defendant came to a house where a search warrant was being executed, and eventually consented to the search which during which the evidence was discovered.

The court found that two of the trial judge's factual findings were contrary to the manifest weight of the evidence. Where the officer who testified for the State stated that he observed another officer shaking defendant's hand while both were "chatting," the manifest weight of the evidence did not support the trial court's finding that the officers failed to ask defendant's identity before requesting consent to search his person. "[A] reasonable inference exists when two individuals meet, shake hands, and talk, introductions may have taken place."

The court also rejected the trial court's finding that the officers asked defendant multiple times for permission to search his person, noting that the State's witness consistently testified that defendant was asked only once.

However, the trial court did not err by granting the motion to suppress. The officer's actions exceeded the scope of a **Terry** stop. **Terry** permits officers to temporarily detain a citizen for questioning if there is a reasonable suspicion that he has engaged in criminal activity. The State conceded that the police "seized" the defendant when he entered an enclosed porch to the house and was confronted by one officer to his front and one officer to his back.

At the point of the seizure, there was no reasonable suspicion that defendant was engaged in criminal activity. Although defendant was present at a residence that was being searched for illegal drugs, mere presence at the scene of a search does not amount to reasonable suspicion. Furthermore, the officers' belief that defendant entered the porch in a manner which suggested that he was familiar with his surroundings was contradicted by the record; defendant rang the doorbell and entered only after a plainclothes officer opened the door and stepped outside as if to allow defendant to enter.

The court acknowledged that defendant acted "nervously" upon learning that police were conducting a drug investigation; however, mere nervousness does not necessarily indicate criminal conduct. In addition, the record showed that the nervousness occurred when defendant was confronted by two officers in a small, enclosed space, was told that the officers were conducting a drug investigation, and was asked why he was at the house. "It is not uncommon for individuals subject to an encounter with police to act slightly nervous."

Finally, the court rejected the officer's statement that defendant engaged in "furtive" behavior by unzipping his coat, suggesting that he intended to flee. There was no testimony concerning why defendant unzipped his coat, but because the incident occurred in January "one could infer defendant removed his coat after stepping in from the cold."

Because there was no reasonable basis for the officers to suspect defendant of criminal

activity, the seizure violated **Terry**.

People v. Edward, 402 Ill.App.3d 555, 930 N.E.2d 1077 (1st Dist. 2010) To claim the protection of the Fourth Amendment, defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable. **Minnesota v. Carter & Johns**, 525 U.S. 83 (1998).

The police stopped defendant and two others they observed pulling a City of Chicago garbage can down a sidewalk at 2:30 am. The police searched the can and found clothing with retail tags attached. They then discovered that a clothing store in the neighborhood had been broken into. The court held that defendant had no standing to object to the search of the garbage can because he had no reasonable expectation of privacy in the can, which was the property of the City of Chicago.

The court held that the police had reasonable suspicion to stop defendant based on a municipal code provision that made it unlawful for anyone other than a city refuse collector or a licensed private scavenger to "remove, displace, uncover, or otherwise disturb" a city refuse container.

The court affirmed the denial of defendant's motion to suppress.

People v. Linley, 388 Ill.App.3d 747, 903 N.E.2d 791 (2d Dist. 2009) The officer had an insufficient basis to make a **Terry** stop where he received a dispatch stating that shots had been fired, and saw the defendant standing outside his home while talking to an individual in a truck. The officer who made the stop had not heard shots, and the State failed to present any evidence concerning the source or nature of the information underlying the dispatch. Thus, it was unknown whether the shots were reported by another police officer or by an informant, and there was no evidence to corroborate the report or assess its reliability.

The fact that defendant was in a high crime area at a late hour did not provide a reasonable suspicion of criminal activity, especially when he was merely standing outside his own residence talking to other people.

Nor could the officer base a reasonable suspicion of criminal activity on an inference that defendant was about to flee. The only specific facts in support of the inference was that defendant stepped back from the truck and glanced in the direction opposite the officer. While defendant might have been considering fleeing, "[i]t is also possible that he was simply attempting to determine what had brought police to his home."

People v. Payne, 393 Ill.App.3d 175, 912 N.E.2d 301 (2d Dist. 2009) Where officers knew the identity of the confidential informant and that the previous day he had provided reliable information which resulted in an arrest, and were able to corroborate several details of the tip including the color and type of the vehicle of defendant's car, the time the defendant was to arrive at a stated address, defendant's race and gender, and the defendant's name, and when defendant acted startled and made a sudden movement as officers approached, they could conclude that the informant was correct in the only uncorroborated detail – that defendant was selling narcotics. Thus, there was a reasonable suspicion of criminal activity.

The trial court's order granting defendant's motion to suppress was reversed.

People v. Leggions, 382 Ill.App.3d 1129, 890 N.E.2d 700 (4th Dist. 2008) Exiting one vehicle and entering another, even in an area known for drug crimes, does not create a reasonable suspicion of criminal activity sufficient to justify a **Terry** stop. "A very large category of innocent travelers get out of their own cars and into other people's cars."

People v. Cordero, 358 Ill.App.3d 121, 830 N.E.2d 830 (2d Dist. 2005) An officer who was on routine patrol and who observed a parked car at a closed restaurant did not have reasonable suspicion of criminal activity although the car pulled out as the officer entered the lot. The restaurant was not in a high crime area, and the officer was aware of no recent criminal acts in the vicinity. There were no tips or information about crimes occurring in the area, and the defendant did not leave at a high speed or appear to leave because he saw the officer. The mere fact that a vehicle drives off at the approach of a police car does not justify a **Terry** stop. Compare, **People v. Hopkins**, 363 Ill.App.3d 971, 845 N.E.2d 661 (1st Dist. 2005) (officer had sufficient reason to make a **Terry** stop where he received a radio dispatch describing two black males in their 20's who were fleeing on foot from the scene of a robbery, and he noticed defendant, a black man in his 20's, driving alone in a car about two blocks from the location given in the dispatch).

People v. Croft, 346 Ill.App.3d 669, 805 N.E.2d 1233 (2d Dist. 2004) An officer lacked reasonable suspicion for a **Terry** stop when he stopped defendant at 11:15 p.m. in order to investigate four thefts and two incidents of vandalism that had been reported during the previous week, because it "just seemed strange" that defendant was pushing a bicycle while wearing dark pants at night, and because the officer wanted "to make sure that . . . nothing else [was] going to happen." The officer did not have a description of a possible suspect, and defendant was not doing anything except walking his bicycle up a hill. Although the officer had not seen defendant in the area previously, reasonable suspicion is not created because a citizen "looks suspicious" or is "new to the area." See also, **People v. Kipfer**, 356 Ill.App.3d 132, 824 N.E.2d 1246 (2d Dist. 2005) (no reasonable, articulable suspicion to justify a **Terry** stop where defendant came from behind a dumpster in apartment complex parking lot at 3:30 a.m.; although the officer thought defendant's actions were "odd," the majority found such behavior to be innocuous despite recent criminal activity in the area and the lateness of the hour); **People v. Marchel**, 348 Ill.App.3d 78, 810 N.E.2d 85 (1st Dist. 2004) (police officer who saw the defendant make a "furtive" movement toward his mouth while standing in a "highly drug infested" area, but who did not see defendant place an object in his mouth, lacked a reasonable suspicion of criminal activity sufficient to justify an investigatory stop).

People v. Isaac, 335 Ill.App.3d 129, 780 N.E.2d 777 (2d Dist. 2002) An "impeding traffic" statute justifies a traffic stop if there is evidence that the defendant's slow driving is "directly responsible for slowing other traffic." Here, the officer had no reasonable basis to believe that defendant, who was driving 30 mph in an area with a posted speed limit of 40 and a "regular flow of traffic" of 45 to 50, was driving so slowly as to impede traffic. There were two lanes traveling in the same direction, cars could easily pass, no cars were behind the defendant when the officer started to follow her, and the officer's primary concern was not whether defendant was violating the statute but mere curiosity about why defendant "was driving the way she was."

Permitting a stop under these circumstances "would give police virtually unfettered discretion to stop a vehicle at any time," because a driver "traveling one mile per hour above the posted speed limit would be speeding while one traveling one mile per hour below the limit would be guilty of impeding traffic."

People v. Phillips, 328 Ill.App.3d 999, 767 N.E.2d 842 (3d Dist. 2002) The trial court did not err by concluding that a traffic stop was improper where a trooper blocked defendant

from moving from the right-hand to the left-hand lane on an interstate, forcing defendant to stay in the right lane and momentarily follow too closely to a truck that was slowing after the driver saw the trooper approaching from behind. Because the trooper not only blocked defendant but also slowed at the same time, if defendant was following too closely his actions were "strictly because of the actions of the police officer."

People v. Granados, 332 Ill.App.3d 860, 773 N.E.2d 1272 (4th Dist. 2002) Where a motorist stopped in a roadside safety check has tendered identification and proof of insurance and been informed that he is free to leave, a subsequent stop must be supported by probable cause or reasonable suspicion. Because the mere presence of three firearm cases in the bed of a pickup truck did not provide a reasonable basis to infer that illegal activity is occurring, officers erred by instructing another officer to stop defendant as he left the checkpoint.

People v. Elliot, 314 Ill.App.3d 187, 732 N.E.2d 30 (2d Dist. 2000) Police lacked basis to suspect that defendant was involved in criminal activity merely because she was present at alleged "crack house."

People v. Rivera, 304 Ill.App.3d 124, 709 N.E.2d 710 (3d Dist. 1999) An informant's tip was sufficient to provide a reasonable basis for a stop where officers were able to corroborate several aspects of the information, including the make, model and color of the car and that it would arrive at the airport at 8 p.m.. Compare, **People v. Sparks & Nunn**, 315 Ill.App.3d 786, 734 N.E.2d 216 (4th Dist. 2000) (in determining whether an informant's statements provide a reasonable basis to suspect criminal activity, reviewing courts consider the informant's veracity, reliability and basis of knowledge; anonymous tip may justify a stop where it contains some indicia of reliability or is sufficiently corroborated to justify the conclusion that a crime has or is about to occur; police lacked a reasonable, articulable basis to infer that the defendants were engaged in criminal activity where there was no showing of the informant's basis of knowledge, detective knew the informant's identity but had no basis on which to judge his credibility, and the only information that could be corroborated before the stop did not suggest unlawful conduct); **People v. Jackson**, 348 Ill.App.3d 719, 810 N.E.2d 542 (1st Dist. 2004) ("totality of the circumstances" approach is applied to determine whether there is reasonable suspicion for a **Terry** stop; officer may act on information provided by a third party if that information is reliable and supports an reasonable inference that the person has been involved in criminal activity; tip was not reliable or corroborated where officers stopped the defendant based on a phone call that the person who had burglarized a liquor store two weeks earlier was walking in front of the store); **People v. Brown**, 343 Ill.App.3d 617, 798 N.E.2d 800 (2d Dist. 2003) (generally, anonymous tip which is corroborated and which either "predict[s] the defendant's future behavior" or indicates "a special familiarity with the defendant's affairs" may justify a stop; tip was not sufficiently corroborated to justify the stop where most of the details did not predict future behavior but involved only matters such as the location of defendant's residence, the cars he owned, and his associates; "[r]eliability as to identification must not be confused with reliability as to the likelihood of criminal activity").

People v. Gray, 305 Ill.App.3d 835, 713 N.E.2d 781 (4th Dist. 1999) Although Illinois courts have held that a stop is justified where a driver and passenger switch places just before a roadblock, where there is no roadblock and the switch is not due to any "readily discernable probability of being pulled over," there is no reason to believe that the switch is being made

to conceal anything or that a crime is occurring. Although an officer's experience may give him a reason to speculate that the switch was made because the driver's license might have been suspended or revoked, "that concern was nothing but a mere hunch."

People v. Billingslea, 292 Ill.App.3d 1026, 686 N.E.2d 603 (1st Dist. 1997) An officer had a sufficient basis to justify a **Terry** stop where defendant was near an occupied car in a "high narcotics area," the officer observed a bulge at defendant's waistband, and defendant kept his hands in his pockets.

People v. Washington, 269 Ill.App.3d 862, 646 N.E.2d 1268 (1st Dist. 1995) The officers lacked sufficient reason to believe that defendant had been involved in the robbery of the restaurant. Testimony that the defendant "fit the description of the robbery suspect" did not establish a reasonable basis for the stop where there was no evidence of the specific description received by the officers or about defendant's appearance or clothing. Furthermore, a general description ("male black wearing a blue coat and black hat") does not provide a reasonable basis for a stop, especially where the suspect is engaged in innocent conduct and does not attempt to flee.

People v. Harper, 237 Ill.App.3d 202, 603 N.E.2d 115 (2d Dist. 1992) Under the circumstances of this case, two officers had insufficient information to justify stopping defendant as he approached them on the street. The officers had seen defendant enter a known "dope house" and leave in less than a minute, and they knew that narcotics and drug paraphernalia had been found during searches and arrests in the area over the past year. However, they had observed no drug transactions involving defendant, and in fact had no indication that any drug transactions had occurred that day. Furthermore, there were no reports of crimes or suspicious activity in the area, and for all the officers knew defendant might have merely knocked on an inner door of the building and left because no one was home. See also, **People v. Lockhart**, 311 Ill.App.3d 358, 724 N.E.2d 540 (3d Dist. 2000) (officers lacked specific and articulable suspicion of criminal activity to detain a person who was leaving a suspected drug house; prior arrests at the home might have occurred months or even years earlier and possibly when different residents occupied the dwelling; uncorroborated tips from area residents and a neighbor did not create a reasonable suspicion of criminal activity where there was no reason to believe that the tips were reliable; officer's observations on night in question did not suggest that drug activity was occurring where the officer watched the residence for only 15 minutes and at most observed several individuals entering and leaving).

In re D.D.H., 221 Ill.App.3d 150, 581 N.E.2d 849 (5th Dist. 1991) The arresting officer lacked sufficient justification to make a **Terry** stop where the officer testified that he was seated in a squad car across the street from a Huck's convenience store, and saw defendant walk up and down the aisles. The officer did not see defendant take anything, defendant exited the store with the type of containers given to customers (a bag and two cups), and the cashier made no attempt to stop defendant or to contact the officer.

People v. Swisher, 207 Ill.App.3d 125, 565 N.E.2d 281 (4th Dist. 1990) Merely observing a person "leaning down" in a car does not provide a reasonable basis to suspect criminal behavior.

People v. Starks, 190 Ill.App.3d 503, 546 N.E.2d 71 (2d Dist. 1989) An officer had a reasonable suspicion of criminal activity where he received a radio call about an armed robbery and a description of the robber, went to a location near the scene in the direction in which the robber had run, parked in front of a building that was the site "of much criminal activity in the past" and which was the "home of a possible suspect in several other area robberies," saw a car containing four black men leave the building's parking lot, and saw defendant slide down in his seat when he made eye contact with the officer.

People v. Hunt, 188 Ill.App.3d 359, 544 N.E.2d 118 (3d Dist. 1989) The officer lacked reasonable suspicion for an investigatory stop where he simply saw two people seated in a car, could not determine their ages, and saw no one enter or exit in two or three minutes. The officer's knowledge of past criminal activity in the area (i.e., minors purchasing and drinking alcohol), while a relevant factor, did not justify a stop.

People v. Burton, 131 Ill.App.3d 153, 475 N.E.2d 583 (1st Dist. 1985) Police officer had reasonable and articulable facts to believe defendant was carrying a concealed weapon where defendant walked through a metal detector and triggered the alarm.

§43-3(b)(3)
Grounds for Frisk; Scope of Frisk

United States Supreme Court

Minnesota v. Dickerson, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993) **Terry** permits a patdown for weapons where: (1) the detainee is reasonably suspected of criminal activity, and (2) the officer reasonably believes that the person may be armed. Although items other than weapons are subject to seizure if it is *immediately* apparent they are contraband, an officer is not permitted to make a further search where the incriminatory nature of the item is not immediately apparent.

Thus, an officer who is properly performing a weapons frisk may seize other contraband if he immediately realizes that it is contraband. Where the officer recognized a lump as cocaine only after "squeezing, sliding and otherwise manipulating" it through defendant's clothing, such manipulation was an impermissible extension of the patdown for weapons. See also, **People v. Mitchell**, 165 Ill.2d 211, 650 N.E.2d 1014 (1995) (Illinois Constitution permits the "plain touch" exception of **Dickerson**; "plain touch" exception applied where there was nothing in the record to suggest that the officer manipulated the object to learn its identity and officer testified that he believed the object to be rock cocaine as soon as he touched it). Compare, **People v. Blake**, 268 Ill.App.3d 737, 645 N.E.2d 580 (2d Dist. 1995) ("plain touch" exception did not apply where officer did not explain how it was immediately apparent that "tightly rolled mass" was contraband); **People v. Spann**, 237 Ill.App.3d 705, 604 N.E.2d 1138 (2d Dist. 1992) (officer could not seize small, "powdery" object in defendant's clothing where he did not claim that it felt like a weapon or that he could distinguish by touch between cocaine and an innocent object). See also, **People v. Shapiro**, 177 Ill.2d 519, 687 N.E.2d 65 (1997) ("our Republic has enjoyed a peaceful and prosperous history . . . because we have recognized that ordered liberty requires that police powers be sublimated to the Bill of Rights").

Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979) **Terry v. Ohio** permits a patdown for weapons where officers reasonably suspect that weapons are in the possession

of the person accosted. **Terry** does not permit a frisk on less than reasonable suspicion directed at the person to be frisked, even if that person is on premises being validly searched for narcotics.

Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977) Officers were justified in frisking defendant after observing a bulge under his jacket, because a person of reasonable caution would conclude that defendant was armed and posed a danger.

Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968) A police officer may frisk a person during a **Terry** stop only if there are particular facts from which it can be reasonably inferred that the person is armed and dangerous. It not reasonable to infer that a person is engaged in narcotic trafficking merely because he is talking to narcotics addicts.

The search authorized in **Terry** is a limited search for weapons, not a search for other evidence. See also, **In re F.J.**, 315 Ill.App.3d 1053, 734 N.E.2d 1007 (1st Dist. 2000) (rejecting the State's argument that a frisk may be appropriate even if there is no basis for a **Terry** stop; a frisk is authorized *only* if the officer is justified in making a stop *and* there is reason to believe that the suspect is armed and dangerous); **People v. Rivera**, 272 Ill.App.3d 502, 650 N.E.2d 1084 (1st Dist. 1995) (even where a stop is valid, police may conduct a frisk only if there is a reasonable belief that the suspects present a risk to the officers' safety; officers' general belief that drug dealers carry weapons and narcotics arrests "involve weapons" insufficient to permit frisk where they had not observed the alleged narcotics transaction and had no reason to believe that the men were dealers, and where the men did not attempt to flee or avoid the officers, act "nervously, scared, or jittery," attempt to hide their hands, or make any "sudden or unexplainable movements); **People v. Holliday**, 318 Ill.App.3d 106, 743 N.E.2d 587 (3d Dist. 2001) (weapons frisk was unauthorized where the officers admitted there was no reason to believe defendant had a weapon and that the purpose of the search was to find drugs).

Illinois Supreme Court

People v. Lozano, 2023 IL 128609 Police arrested defendant after stopping him on the street and finding a car radio and burglary tools in the pocket of his sweatshirt. He filed a motion to suppress, arguing the police lacked reasonable suspicion to stop and frisk him. His motion was denied, and he was convicted of burglary and possession of burglary tools. The appellate court affirmed, but the supreme court reversed, finding a lack of reasonable suspicion for both the stop and the frisk.

The evidence showed the police were driving down a street on a rainy day around 1:30 p.m. They saw defendant running in the opposite direction while holding the front of his sweatshirt. The officers made a u-turn, at which point defendant "turned" toward a house. Defendant ran up the stairs. The officers approached and called him down, ordering him to remove his hands from his pocket. When defendant did so, the officers noticed a bulge. They handcuffed him, patted him down, found the radio and tools, and placed him under arrest.

The supreme court held the officers lacked reasonable suspicion to conduct a **Terry** stop and frisk. At the time defendant was seized on the stairs, the officers lacked articulable facts pointing to criminal activity. They merely saw a man running in the rain in the middle of the afternoon. They did not witness criminal activity. The officers were not investigating a known offense. There was no testimony that defendant was in a high-crime neighborhood. While defendant changed direction after the officers made a u-turn, the supreme court refused to consider this to be the type of "unprovoked flight" that may form the basis for a

stop, because defendant was already running even before the officers spotted him. Finally, the officers admitted they were simply curious as to what defendant was holding in his sweatshirt. Under these circumstances, It was not objectively reasonable for the officers to make an investigatory stop.

The frisk was also illegal because the officers lacked reasonable suspicion that defendant was armed. The officer who conducted the frisk testified that he felt a "rectangular square box." Defendant was handcuffed and did not resist even before he was handcuffed, so there was no concern for officer safety.

Because the radio and tools were the fruit of a poisonous stop and frisk, the supreme court ordered their suppression. As defendant could not be convicted without this evidence, the court reversed his convictions outright.

People v. Colyar, 2013 IL 111835 Two police officers approached a vehicle that was blocking the entrance to a motel parking lot. The car contained a driver, the defendant, and a passenger. Another passenger exited the motel and entered the rear of the vehicle as the officers approached. As the officers spoke with defendant, they observed a plastic bag containing a large bullet in plain view in the center console of the car. They ordered the occupants out of the car and handcuffed them. The police discovered that the plastic bag also contained five rounds of .454-caliber ammunition, and conducted a pat-down search of defendant and his passengers. When another bullet matching the recovered ammunition was found in defendant's pocket, the officers searched the car and recovered a .454 revolver under the front-passenger floor mat.

The court concluded that a reasonably cautious individual in a similar situation could reasonably suspect the presence of a gun based on the observation of the bullet in the center console. "Common sense and logic dictate that a bullet is often associated with a gun." Based on the presence of the bullet and a reasonable inference that a gun may be present in the vehicle, the officers had reason to believe that their safety was in danger. Because protective searches are not dependent on the existence of probable cause to arrest for a crime, the officers did not need to eliminate any legal explanation for defendant's possession of the bullet before investigating further or suspecting danger.

It was reasonable for the police to order the defendant and the passengers out of the car and search them for weapons. The handcuffing of the defendant and his passengers did not transform the investigative stop into an illegal arrest. The handcuffing was reasonable and a necessary measure where the officers were outnumbered, and could reasonably suspect that one or more of the detainees possessed a gun and could access it if not handcuffed. The recovery of additional ammunition from the plastic bag and the defendant's person did nothing to dispel the officers' reasonable suspicion that a gun was present. Thus a protective search of the passenger compartment of the vehicle, which lead to the recovery of the gun, was also reasonable.

People v. White, 222 Ill.2d 1, 849 N.E.2d 406 (2006) The officers had sufficient reason to fear for their safety, and thus could conduct a patdown, where despite the officer's instructions defendant repeatedly placed his hands in his pockets, which were large enough to conceal a weapon.

People v. Moss, 217 Ill.2d 511, 842 N.E.2d 699 (2005) The **Terry** analysis involves two questions - whether the officer's actions were justified at their inception, and whether those actions were reasonably related in scope to the circumstances which justified the interference

in the first place.

The patdown here was proper to assure the officers' safety. Although the practice of routinely patting down every person outside a vehicle during a traffic stop would not survive scrutiny "in the abstract," the patdown was reasonable where the stop was on a rural road, the officers were outnumbered by the occupants of the stopped car, the occupants were sufficiently known that a backup officer came to the scene as soon as he heard the names over the radio, all three occupants had been associated with the possession of weapons, one of the three had recently been arrested for a weapons-related offense, and the defendant was on MSR.

People v. Moss, 217 Ill.2d 511, 842 N.E.2d 699 (2005) The **Terry** analysis involves two questions - whether the officer's actions were justified at their inception, and whether those actions were reasonably related in scope to the circumstances which justified the interference in the first place.

The patdown did not exceed the permissible scope of a frisk under **Terry**. Because the purpose of a patdown is to insure that a suspect is not armed, the officer conducting the frisk cannot manipulate items found during the patdown unless such actions are reasonably likely to discover weapons on the suspect's person. Here, the officer testified that he could not identify the object in the defendant's pocket, but said that he knew of weapons of a similar size and shape.

People v. Sorenson, 196 Ill.2d 425, 752 N.E.2d 1078 (2001) The court rejected the argument that the officer had a routine policy of frisking anyone stopped for investigatory purposes; the officer specifically testified that he feared for his safety, and the objective circumstances justified that fear.

Ordering defendant to remove his boots did not exceed the bounds of a permissible frisk for weapons. A **Terry** frisk need not always be limited to a patdown of outer clothing - a frisk is acceptable if it is "reasonably designed to discover" weapons which might pose a threat. Given the testimony that weapons may be concealed inside unlaced boots, it was reasonable for the officer to ask defendant to remove his boots.

The court rejected the argument that the officer could have determined whether weapons were in the boot by pulling up defendant's pant leg and patting the top of the boot; not only did the stop occur on a dark road, but a patdown of steel-toe boots might not have revealed a concealed weapon.

People v. Galvin, 127 Ill.2d 153, 535 N.E.2d 837 (1989). An objective standard is used for determining whether a frisk was justified. However, a police officer's testimony as to his subjective feelings is "one of the factors which may be considered in the totality of the circumstances known to the officer at the time of the frisk."

Where the only officer who testified specifically stated that he did not think the defendants were "armed, had weapons or that he was in danger," but testified that the frisk was made to protect his own safety, the trial judge did not err by finding that "a reasonable person would not be warranted in the belief that he or she was in danger by this defendant who was surrounded by five police officers, three of whom had their guns drawn." See also, **People v. Flowers**, 179 Ill.2d 257, 688 N.E.2d 626 (1997) (officer conceded he had no reason to suspect defendant was dangerous but conducted frisk as matter of routine).

People v. Helm, 89 Ill.2d 34, 43 N.E.2d 1033 (1981) Search of defendant's purse at police

station following arrest for battery could not be justified as frisk under **Terry**; "the arresting officers could not reasonably have suspected by the time they reached the station that they were in danger of attack from [the defendant]."

People v. McGowan, 69 Ill.2d 73, 370 N.E.2d 537 (1977) Police officer was justified in conducting a weapons frisk after stopping defendants based on a reasonable suspicion of burglary; "[i]t is not unlikely that a person engaged in stealing another person's property would arm himself." But see, **People v. Galvin**, 127 Ill.2d 153, 535 N.E.2d 837 (1989) (**McGowan** does not "stand for the proposition that every time a burglary suspect is lawfully stopped . . . a legal presumption exists that the suspect is armed and dangerous, thereby automatically authorizing a search"); **People v. Flowers**, 179 Ill.2d 257, 688 N.E.2d 626 (1997) (there is no presumption that a burglary suspect is armed).

Illinois Appellate Court

People v. Wallace, 2023 IL App (1st) 200917 The appellate court affirmed the denial of defendant's motion to suppress a gun found during a **Terry** frisk.

Defendant was the front-seat passenger in a car that was pulled over for a broken taillight. The officers were on patrol in the area because it was late evening and the area had seen a gang conflict with several recent shootings. As one officer approached the driver side, Officer Zeman approached the passenger side. Zeman smelled alcohol and cannabis. He testified, and his body cam footage confirmed, that he asked the passengers about the smell of alcohol and the rear passenger admitted they had been drinking. Zeman noticed a bag of suspected cannabis next to defendant's leg. He also saw a bulge in defendant's jacket pocket. Defendant took a "big swallow," his breathing was heavy, and he did not make eye contact. Zeman opened the door and asked defendant to step out, but defendant declined. Zeman reached for the bulge, determined it to be a firearm, and removed it from defendant's pocket.

The totality of the circumstances justified Officer Zeman's limited search for weapons from defendant. He already had probable cause to remove the passengers and search the vehicle for drugs and open alcohol given the odors, the admission, and the visible cannabis. The area was known for gang warfare. Zeman noticed suspicious behavior – lack of eye contact, refusal to exit the car, the large gulp, and the bulge. For these reasons, he could reasonably suspect defendant was armed and dangerous.

Finally, the court rejected defendant's argument that Zeman should have first asked whether defendant had a FOID card or CCL. Defendant's argument relied on cases since vacated and other inapposite authority. Regardless, the possession of a FOID card or CCL (which defendant did not have), would not negate the fact that the officer suspected defendant of being armed and potentially dangerous, and that a frisk was necessary to ensure his safety while he searched the car.

People v. Cox, 2023 IL App (2d) 220103 The police went to a residence to execute a search warrant and encountered defendant and two other people standing outside. Defendant did not live at the residence and was not a subject of the warrant. The police handcuffed defendant and the others and performed a pat-down search. During the pat down, an officer believed he felt an object in defendant's buttocks. Defendant was subsequently taken to the police station, and a plastic bag containing a white substance was recovered.

The trial court did not err in finding that the search of defendant exceeded the proper scope of a pat-down for weapons. Pursuant to **Terry v. Ohio**, 392 U.S. 1 (1968), a police officer may conduct a limited pat down for weapons as a safety measure. Such an intrusion

must be confined to that reasonably designed to discover guns, knives, clubs, or other physical instruments which might be used against the officer. A protective pat down that goes beyond a limited frisk for weapons is not justified by **Terry**.

Here, the officer did not merely pat down defendant's outer clothing for weapons. Instead, he conducted a more intrusive and specific search when he reached between defendant's buttocks. The officer's use of "bladed hands" to search between defendant's buttocks "had all the hallmarks of a search for contraband," not weapons, and was not justified by the fact that defendant was merely present at the scene where a search warrant was being executed.

People v. Lockett, 2022 IL App (1st) 190716 As officers drove past defendant on a public street, he looked in the direction of their unmarked vehicle. He adjusted his waistband once, while the officers were in the vehicle, causing them to suspect he was concealing a firearm. He adjusted his waistband a second time when the officers approached him on foot; and he stated that he dropped a "bag of weed" after being ordered to remove his hands from his waistband. The officers frisked him and found an illegal firearm.

The appellate court held that the officers engaged in an unconstitutional frisk. To conduct a warrantless **Terry** frisk without probable cause, officers must have reasonable suspicion that defendant is armed and dangerous. Grabbing one's waistband alone is not evidence of criminality or of being armed, and neither officer provided any articulation as to why defendant's announcement that he dropped cannabis supported a belief that he was armed and dangerous.

The court also rejected the State's request to apply the good-faith exception to the exclusionary rule. None of the good faith exceptions outlined in caselaw or in 725 ILCS 5/114-12(b)(2) apply – there was no reasonable reliance on a warrant, no belief that defendant committed a crime later found unconstitutional, and no reliance on caselaw.

People v. Jenkins, 2021 IL App (1st) 200458 Officers had reasonable suspicion to search a car and seize a gun and defendant. The officers observed defendant walking near a parked car. He noticed the officers, crouched down, surreptitiously cracked open the car door, and put a gun inside. Although it is not necessarily illegal to carry a gun, the surrounding circumstances gave the officers sufficient reasonable suspicion to conduct an investigation. They had a right to search the car, which had three other occupants, and remove the gun in order to preserve potential evidence and ensure officer safety during the investigation into whether defendant possessed the gun lawfully.

Defendant also argued that the police arrested him without probable cause, resulting in an inculpatory statement and the discovery of his criminal history, which both should be suppressed as fruit of an illegal arrest. After police discovered the gun, they immediately handcuffed defendant, without first determining that he possessed the gun illegally. But, even if the arrest was illegal, suppression of his criminal history does not follow. To show fruit of a poisonous tree, a defendant must established the evidence was uncovered "by exploitation" of the illegal seizure. Here, the police could have gleaned the same information from an investigatory stop, because **Terry** authorizes the police to obtain a suspect's name and, accordingly, his criminal history. As for the inculpatory statement, the court found it harmless regardless of whether it should have been suppressed. Defendant was seen holding the firearm, and his criminal history established probable cause of unlawful weapon possession.

People v. Baker, 2020 IL App (2d) 180300 The police did not have the right to confiscate cigarettes during a **Terry** frisk, but the trial court properly ruled they were admissible under the inevitable discovery doctrine. Though recovery of a non-weapon during a **Terry** frisk is not permitted, the police had the right to detain defendant pursuant to **Terry**, as he matched the description of the suspect of a nearby robbery. The detention could legally continue as the officers sought to confirm or refute their suspicions. Once the officers reviewed surveillance footage showing the robbery, they had probable cause to arrest, at which time the search incident to arrest would have yielded the cigarettes.

People v. White, 2020 IL App (1st) 171814 The trial court erred in denying defendant's motion to quash arrest and suppress evidence because defendant was stopped and frisked without reasonable suspicion of criminal activity. Officers on bike patrol near a CTA platform heard someone yell "f*** you, mother f***er," and looked up and saw defendant and a friend on the platform looking in the officers' direction. Defendant also spit over the side of the platform. When defendant exited the platform, one of the officers conducted a **Terry** stop and frisk and recovered a pill bottle containing morphine pills from defendant's jacket pocket.

Based on these facts, the Appellate Court concluded that the officer lacked reasonable suspicion to conduct a **Terry** stop, as he put it, to "see what was going on." The officer admitted that he did not observe defendant commit any crime or reasonably believe he was about to commit a crime. And, while it may have been reasonable for the officer to conduct a protective pat down where defendant refused commands to remove his hands from his pockets, it was unreasonable to continue the search once the officer felt the pill bottle in defendant's pocket because it could not be mistaken for any sort of weapon.

People v. Cherry, 2020 IL App (3d) 170622 Where an officer attempts to effectuate a stop or seizure, but defendant immediately flees, there has been no submission to authority and therefore no seizure. If defendant first submitted to authority, however, and then fled, the fourth amendment is implicated at the time of the initial submission, and there must have been reasonable articulable suspicion for the seizure at that point in time, otherwise any evidence found after the initial encounter is subject to exclusion.

Here, the police ordered defendant and his friends to "stop," defendant took steps backward and away from the police as they exited their vehicle, and defendant ran off as an officer approached him. The Appellate Court concluded that defendant had not submitted to the officer's authority "in any meaningful way." Accordingly, the officer's lack of reasonable articulable suspicion at the time of this initial encounter did not render the encounter unconstitutional.

Defendant was ultimately seized when the police caught up with him approximately ten feet away, tackled him, and recovered a gun from defendant's waistband. At that point, defendant's flight, the officer's previous observation of defendant's holding his waistband, and the original tip that a group of men had been seen pointing a gun from defendant's now-parked vehicle, provided the police with reasonable, articulable suspicion to support his seizure. Finally, the gun was recovered under the plain-touch doctrine, where the officer felt it upon tackling defendant, thus there was no **Terry** frisk at issue.

People v. Hood, 2019 IL App (1st) 162194 Police officers patrolling in a high-crime area encountered a parked car occupied by defendant and two other people. Standing outside of the car was a man who had money in his hand. No transaction was witnessed, but one of the officers observed defendant make movements toward the floor as if he was retrieving something. The police stopped their car facing defendant's, exited, and approached. On

approach, one of the officers saw defendant place a handgun into a plastic bag and toss it into the back seat. At that point, an officer removed defendant from the car while another recovered the gun. When asked if he had a concealed carry license, defendant said he did not.

The Appellate Court concluded that the initial stop and approach by the police officers was not a seizure. The removal of defendant from the vehicle and recovery of the gun was a **Terry** stop and protective sweep justified by the totality of the circumstances, including the presence in a high crime area, defendant's movements toward the floorboard, and defendant's possession of a gun. Defendant's subsequent arrest was justified by his possession of the handgun, which he tried to conceal and for which he admitted not having a concealed carry license.

The dissent criticized the use of a "high-crime area" as a basis for upholding the **Terry** stop and protective sweep here, noting that constitutional protections are not suspended simply by virtue of being present in such an area. The dissent would have found the initial approach of the police to have been a seizure that was not justified by reasonable suspicion.

People v. Flunder, 2019 IL App (1st) 171635 The police do not have the right to conduct a protective patdown based on safety concerns during a consensual police-citizen encounter. Here, the officer approached defendant as he stood near a car parked in a gas station. He asked defendant for his license, and as the defendant nervously probed his pocket, the officer, fearing for his safety, conducted a pat-down, during which he discovered a gun.

While the officer knew there had been shootings in the area, he had no articulable reason to suspect defendant had been involved. The lack of reasonable suspicion for a **Terry** stop precludes a **Terry** frisk. Thus, the gun was suppressed. The court went on to hold that regardless, the officer failed to articulate reasonable grounds to fear for his safety. Any reasonable person would be nervous when randomly approached and questioned by the police, and it was not unusual for defendant to reach into his pocket given that the officer requested his driver's licence.

People v. Thomas, 2019 IL App (1st) 162791 Police observed defendant commit a failure-to-signal violation and followed him in order to initiate a traffic stop. By the time the police caught up to defendant, he had parked, exited the vehicle, and was walking toward a residence with his brother, the passenger. The police shined a spotlight on defendant and his brother and directed them to return. One officer then shined a light inside defendant's vehicle and observed a portion of a handgun magazine sticking out from beneath the passenger's seat. Defendant was handcuffed, and the officer immediately seized the gun. The police did not ask defendant or his brother if they had a FOID card, but later learned defendant did not. Defendant's motion to suppress was denied, and he was convicted of AUUW.

The Appellate Court concluded that the trial court erred in denying defendant's motion to suppress on these facts. Regardless of whether the initial search of the car was justified by safety concerns under **Michigan v. Long**, any item found during such a search, even a weapon, must be returned if the police lack probable cause to believe a crime has been committed. Here, the police did not ask defendant or his brother whether they possessed a FOID card and thus could not have known that the gun possession was unlawful at the time.

Further, the Appellate Court reversed outright, finding that the evidence of defendant's guilt was inadequate. There was no evidence contradicting defendant's testimony that the gun was not visible from the driver's seat. The officer only saw part of the gun by shining his flashlight into the car. Also, defendant did not flee when the police approached, but instead complied with the request to return to the vehicle. And, while the State argued that defendant admitted the gun was his, the record did not support that conclusion.

Defendant testified and denied making such an admission. And, while one officer testified that the other officer stated that defendant made "an admission," the substance of that admission was unclear and what one officer said to the other was hearsay.

People v. Salgado, 2019 IL App (1st) 171377 Trial court did not err in denying defendant's motion to quash arrest and suppress evidence. A patrol officer saw defendant and another person walking together in an area that had recently been plagued by gang shootings. When the officer exited his vehicle and approached, the individuals went in two different directions. As defendant was walking away, he was also grasping at his waistband. The officer continued to approach and asked defendant if he had any weapons. When defendant said he did not, the officer asked defendant to lift his shirt so he could see, and defendant declined and put his hand on the object in his waistband. At that point, the officer put his hand on the object, recognized it as a handgun, and placed defendant under arrest.

The initial **Terry** stop was justified by the fact that the encounter occurred in a high crime area where officers had been assigned to patrol because of retaliatory gang shootings, coupled with defendant's grabbing at his waistband upon seeing the police. And, defendant's placing his hand on the object in his waistband when the officer inquired about weapons provided the officer with justification to conduct a pat down for weapons.

People v. Johnson, 2019 IL App (1st) 161104 Officers on patrol saw defendant late at night in a high-crime area. When defendant saw the officers, he held his waistband and ran. Officers pursued him and defendant eventually jumped on the hood of a squad car, where he was detained and patted down. The officers found a gun. The trial court did not err in denying defendant's motion to quash arrest and suppress the gun. Defendant was not detained until he jumped on a squad car. Although flight and possession of a gun alone might not be grounds for a stop, the decision to jump on the car created reasonable suspicion. The frisk was also authorized, as the officers reasonably believed defendant was armed because he held his waistband.

People v. Evans, 2017 IL App (4th) 140672 A police officer approached defendant and questioned him. During the conversation, defendant repeatedly put his hands in his pockets. Each time, the officer asked defendant to remove his hands. Defendant would initially comply, but then put his hands back in his pockets. Finally, after this cycle occurred several times, defendant asked the officer why he had to remove his hands. The officer testified that he became concerned for his safety since defendant was much larger than he was and he did not know if defendant was armed. The officer patted defendant down and discovered contraband.

The court held that the initial encounter between the officer and defendant was consensual. The court also found that the officer had reasonable suspicion to believe defendant was armed and dangerous but did not have reasonable suspicion to believe defendant was engaged in any illegal activity. The court held that police only need to have reasonable suspicion that a defendant is armed and dangerous before they may conduct a **Terry** frisk. There is no additional need for the police to have reasonable suspicion that a defendant is engaged in illegal activity. Since the officer here had reasonable suspicion that defendant was armed, the frisk was proper.

In re Tyreke H., 2017 IL App (1st) 170406 Officers spotted the minor, who was sought as a potential witness to a homicide, riding his bicycle. They turned their car in front of the bicycle at an angle which forced the minor to ride to the car, and exited the car to face the minor.

The respondent identified himself in response to questioning and did not make any furtive movements. However, one of the officers testified that he saw a bulge in the shape of a handgun in the respondent's pants pocket.

After tapping the object to ensure that it was a firearm and asking the minor what the object was, the officer performed a protective pat down and recovered a .22 caliber handgun with six live rounds. The trial court initially granted a motion to suppress, but then reconsidered its decision and denied the motion.

Generally, a frisk for weapons is valid only if it follows a stop based on reasonable suspicion that the individual is armed and dangerous. Such reasonable suspicion must be more than a mere hunch, and the officer must be able to point to a specific and articulable facts that demonstrate the reasonableness of the suspicion.

The court concluded that where a suspicionless seizure was valid because the respondent was a witness to a crime, the officers acted properly by conducting a pat down and frisk for weapons once they noticed the outline of a gun in the respondent's pocket. In **Arizona v. Johnson**, 555 U.S. 323 (2009), the passenger in a car that was stopped based on a suspicion that the driver had committed an offense could be frisked for weapons once officers developed a reasonable suspicion that the passenger was armed, despite the fact that there was no reason to suspect that the passenger had committed a crime. Similarly, the risk posed to officers when making a suspicionless but valid stop of a potential witness justifies a frisk for weapons once there is reasonable suspicion to believe that the witness is armed.

People v. Shipp, 2015 IL App (2d) 130587 Police received a 911 call at 5 a.m. about a fight involving weapons. Several officers went to the area where the fight had been reported. One of the officers, arriving less than a minute after the dispatch, saw defendant and a female walking on the street less than a block from the reported location of the fight. The officer got out of his car, told them to stop and said they were not free to leave. After other officers arrived, the first officer asked defendant if he could pat him down for weapons. Defendant became agitated, refused the pat-down, and put his hands in pockets. The officers attempted to grab his arms, but defendant broke free and fled a short distance before he was apprehended. The officers searched defendant and found a loaded gun and drugs.

The Appellate Court held that the officer conducted an illegal **Terry** stop without reasonable suspicion. The court also held that, apart from the improper stop, the police did not have reasonable grounds to frisk defendant. The officer must reasonably believe that defendant is armed and dangerous.

Here, the officer had no reason to believe defendant was armed and dangerous. Although defendant placed his hands in his pockets while he was stopped, that fact was insufficient standing alone to justify a frisk, especially since it was January and the defendant had no gloves. "Ultimately, the police had only a subjective hunch or speculation," and that was insufficient to justify the attempted frisk.

The court further found that defendant's flight from the officers did not provide a justification for the subsequent search. Under 720 ILCS 5/7-7, a defendant is not authorized to resist an arrest, even if the arrest is unlawful. And under 720 ILCS 5/31-1(a), it is an offense to resist or obstruct a police officer's authorized act. Together, these two sections make it an offense to resist an illegal arrest, and therefore a defendant who resists an illegal arrest is subject to a legal arrest and search incident to arrest.

But these two sections only apply to an arrest. They do not apply to a **Terry** stop. Here the officers were conducting an illegal **Terry** stop when the defendant resisted their efforts to perform a pat-down search. Since defendant was resisting an illegal **Terry** stop, he

was not resisting an authorized act by the officers under section 31-1(a). He therefore committed no crime by fleeing from the officers, and such flight did not provide the officers with a proper basis to arrest and search defendant.

The court rejected the State's argument that defendant's flight provided grounds for the subsequent search. Defendant did not flee unprovoked at the sight of the police. Instead, he initially complied with the officer's instructions to stop and submitted to the illegal seizure. A defendant's flight following an unjustified police action cannot be the basis of a proper seizure.

People v. Slaymaker, 2015 IL App (2d) 130528 Where defendant was stopped as part of a community caretaking event, subsequent events did not give rise to a reasonable suspicion that he was armed or engaged in criminal activity. The officer stopped defendant because he was walking in the highway median. After ascertaining that defendant did not need assistance, the officer attempted to conduct a pat-down because defendant placed his hand in his pocket. The officer eventually tasered defendant and placed him in handcuffs after he refused to cooperate with the frisk.

The court concluded that once it was determined that defendant did not need assistance, he should have been allowed to go about his business without interference. "The officer was simply not authorized to prolong the encounter in order to frisk defendant for a possible weapon."

The court rejected the argument that placing a hand in a pocket gave rise to a reasonable suspicion that defendant was armed or engaged in criminal activity. Similarly, the court rejected the claim that a reasonable suspicion was created merely because defendant's pockets were "bulging."

Because defendant did not resist an authorized act where the officer conducted an improper frisk during a community caretaking stop, the conviction for resisting a peace officer was reversed.

People v. Lake, 2015 IL App (4th) 130072 (No. 4-13-007 After observing defendant acting in a vaguely suspicious manner, a police officer approached defendant from behind and tapped on his shoulder, surprising and startling defendant, who turned around to look at the officer. The officer then moved directly in front of defendant and asked what his name was. When defendant told him his name, the officer recalled that another officer had informed him that defendant was known to carry a gun. The officer looked down and saw a four-inch bulge "at defendant's waist area." He then conducted a pat-down search of that area and recovered a gun.

Defendant argued that the gun should have been suppressed as the result of an illegal search and seizure. The Appellate Court disagreed, holding that the initial encounter (prior to the pat-down) was consensual and that after learning defendant's name and seeing the bulge in waist area, the officer had reasonable suspicion to conduct the pat-down itself.

Although the consensual encounter ended with the pat-down, the court found that the officer had by that point a reasonable basis to conduct the search. The officer knew that defendant was known to carry a gun and reasonably suspected that he was currently armed when he observed the bulge in defendant's waist area.

People v. Porter, 2014 IL App (3d) 120338 Officers acted properly when they stopped defendant after receiving a report of a home invasion. Before conducting the stop, the officers noted that defendant matched the description of the suspect and that he was walking in a

non-pedestrian area in the vicinity of the offense. In addition, defendant made what might be construed as furtive movements when he first noticed the officers.

However, the officers lacked any basis to conduct a frisk where there was no basis to reasonably suspect that defendant was armed and dangerous. Although the officer testified that he conducted a patdown for reasons of officer safety, he failed to articulate any reasons which would have caused a reasonably prudent person to believe that his safety was in danger. The court noted that the victim of the home invasion did not report that the intruder had a weapon, and that defendant did not reach inside his coat or toward his pockets. Furthermore, defendant made no effort to flee until the officer grabbed him and started the patdown. Under these circumstances, there was no objective reason to believe defendant was armed and dangerous.

The trial court's order denying the motion to suppress was reversed. Because the State would be unable to establish its case beyond reasonable doubt based on the remaining evidence, the conviction was reversed outright.

People v. Boswell, 2014 IL App (1st) 122275 Although the evidence was conflicting whether officers had reasonable justification to make a **Terry** stop, the court found that the determination ultimately rested on the trial court's assessment of the credibility of the arresting officer's testimony. Because the trial court's ruling was not manifestly erroneous, the court assumed for purposes of the opinion that the **Terry** stop was justified.

However, the court concluded that there was no reasonable basis for the subsequent frisk. The court noted that neither officer was able to articulate any specific facts supporting a belief the defendant was armed or that their safety or that of others was in danger. One of the officers agreed with two leading questions by the prosecutor, including that "drugs and gun . . . go together" and that it is reasonable to infer that persons who are "dealing drugs on street corners may also be in possession of weapons." However, a **Terry** search requires more justification than a general belief that drug dealers carry weapons. The court noted that even if the officers suspected they had observed a drug transaction, they saw no drugs at all, much less a sufficient quantity to justify a belief that defendant might be armed. Furthermore, defendant was merely standing on a public street during daylight hours, and did not engage in furtive movements or attempt to flee when he saw the officers. Under these circumstances, the officers lacked any reasonable basis to suspect that defendant was armed or that their safety was in jeopardy.

Because the pat-down was improper and the State could not prevail without the controlled substances which the officers found during the frisk, defendant's convictions for possession of a controlled substance were reversed outright.

People v. Fox, 2014 IL App (2d) 130320 Defendant conceded that the initial stop was valid where he and a companion matched the description of two persons who had burglarized a nearby smoke shop. However, the court concluded that the officer erred by conducting a frisk in the absence of an articulable reason to believe that defendant presented a danger to the officers or to others.

First, the manifest weight of the evidence contradicted the trial court's implicit finding that the officer was outnumbered when he frisked defendant. Although the officer was alone when he first approached the two suspects, three additional officers arrived within 20-30 seconds and were present before defendant was searched. Because four officers were at the scene when the search of defendant began, any implied finding that the officers were outnumbered was unwarranted.

Second, neither suspect engaged in any conduct which suggested that they presented a danger to the officers. The first officer on the scene testified that he saw one of the suspects look around, which the officer took as showing intent to flee. However, neither suspect did anything else to suggest they might flee. Instead, they promptly complied with all orders and placed their hands on the hood of the vehicle when ordered to do so. Furthermore, although flight has been held to support an initial **Terry** stop, the State cited no precedent that the risk of flight is relevant to the propriety of a search.

The court rejected the argument that the officers' safety was endangered merely because the search occurred at night. The State cited no authority to support the proposition that the time of day is relevant in determining the propriety of a search. The court concluded that the time of day is relevant to the validity of a search only in "already potentially dangerous situations," such as where the officers are outnumbered or the suspects make furtive gestures that could be consistent with carrying weapons. Here, neither suspect made any furtive gestures, and both complied with the officers' orders.

The court rejected the argument that the frisk was justified because defendant was stopped on suspicion of burglary and one officer testified that in his experience, burglars frequently carry weapons. The court described the officer's belief as "a little more than a hunch," and found that accepting the State's position would mean that a frisk is permitted whenever a citizen is stopped on suspicion of burglary.

Because the frisk was improper, the trial court should have suppressed evidence which was discovered during the search and which tied defendant to the burglary of the smoke shop. However, because there was other evidence on which a jury could have elected to convict, the cause was remanded for a new trial.

People v. Walker, 2013 IL App (4th) 120118 A **Terry** stop does not authorize the police to conduct a general exploratory search to gather evidence. The sole justification for a search allowed by **Terry** is the protection of the police and others in the vicinity. Once a reasonable belief of danger arises, the search is confined to an intrusion reasonably designed to discover weapons or objects capable of use as weapons. The officer conducting the search must be able to point to specific, articulable facts that, taken together with natural inferences, reasonably warrant the intrusion.

The police stopped the car driven by defendant because it matched the general description of a vehicle that had left the scene of an accident. Defendant initially gave the police permission to retrieve her identification from her purse, but then revoked that consent by taking her purse from the officer. The officer took the purse back from defendant, placed it two or three feet from her on the trunk of her car, and told defendant not to put her hands in the purse. Although the police had no reason to believe that the defendant was armed or dangerous, an officer handcuffed the 90-pound defendant and then searched her purse when she became anxious and jittery and made movements trying to get her purse.

While the officers may have reasonably believed that the purse contained something that the defendant did not want the officers to find, perhaps even something illegal, there was no evidence supporting the inference that defendant was attempting to get a weapon from her purse, as opposed to any other nonthreatening motivation. The police need not rule out every possible innocent explanation for a suspect's conduct before conducting a protective search, but they must articulate some facts supporting the possibility that the defendant is armed and dangerous above other reasonable, nonthreatening possibilities. Nervousness alone does not support a frisk. Any interest that the officers had in their safety was satisfied when they handcuffed defendant.

The court refused to interpret the authority of the police to demand the name and address of the person stopped (725 ILCS 5/107-14) to allow the police to search through a suspect's belongings for identification. Such an interpretation would override the constitutional restrictions on the limited search that may be conducted in conjunction with a **Terry** stop. Defendant never refused to produce her identification and the police had no reason to prevent her from producing it herself.

The court remanded for further proceedings to determine the fruits of the search subject to suppression.

People v. Brown, 2013 IL App (1st) 083158 Officers responding to a report of a burglary in progress had sufficient grounds to conduct a **Terry** stop when they saw defendant leaving the premises by the back door, where the officers knew that other officers were pursuing two suspects who left the building by the front door while carrying metal tools. Because defendant was leaving the scene of the crime in the middle of the night as other suspects fled by another exit, the officers could reasonably suspect that defendant was involved in criminal activity.

However, by immediately handcuffing defendant when there was no articulable basis to believe that he was armed or dangerous, the officers conducted an arrest rather than a **Terry** stop. The court acknowledged that one of the officers testified to having a general fear of his safety because the officers were in a dark alley with ample places for suspects to hide, but found that such fear did not justify a belief that the defendant posed any threat to the officers' safety as he left the building. Furthermore, defendant was not doing anything that was illegal on its face, and the arrest was made as soon as defendant passed through the doorway and despite the absence of any signs he intended to flee or resist. Because a reasonably cautious person would not have believed that the defendant had committed a crime, probable cause to make an arrest was lacking.

In addition, the court exceeded the permissible scope of a **Terry** stop by conducting a search of defendant's person. **Terry** permits a limited, protective pat down for weapons if there is reason to believe that defendant is armed. However, the officers testified that once defendant was handcuffed, he could not have reached any items in his pocket. Thus, any need to frisk the defendant for reasons of officer safety had been eliminated.

Because in the absence of the evidence that had been suppressed it would be "essentially impossible" for the State to convict the defendant of burglary beyond a reasonable doubt, the conviction was reversed outright.

People v. Trisby, 2013 IL App (1st) 112552 In a "high narcotic area," the police saw the rear seat passenger of a car accept currency from a woman and give the woman a small unknown object. The police followed the car, and stopped it when the driver failed to use a turn signal. The rear seat passenger was holding a $10 bill in his left hand. He also quickly pulled his right hand from his right front pants pocket and continued to make attempts to move his hand toward that pocket against an officer's instructions to keep his hands stationary. The officer reached into the passenger's right front pants pocket and discovered a rubber-banded bundle of nine plastic bags containing heroin.

The search of the passenger's pocket was not reasonable where the officer did not commit a limited pat down for weapons prior to reaching into the pocket and did not indicate that he feared for his safety or that of others.

People v. Hyland, 2012 IL App (1st) 110966 An officer conducting an investigative detention may conduct a pat-down search to determine if the detainee is carrying a weapon

if the officer reasonably believes that the detainee is armed and dangerous. The officer must be able to point to specific, articulable facts which, when taken together with natural inferences, would cause a reasonably prudent person to believe that his safety or that of others was in danger.

There is no evidence in the record that the officer who detained defendant pointed to specific, articulable facts that would cause him to think that the defendant was armed and dangerous. Defendant's flight is not an indication that he was armed and dangerous. The investigative alert that led to defendant's detention was based on violation of an order of protection, but the only evidence in the record regarding the details of the violation was defendant's testimony that he had called someone he was not supposed to call. Such information would hardly suggest that defendant could be a potential danger to the officers.

People v. Jackson, 2012 IL App (1st) 103300 The court also concluded that the officers had a sufficient reason to conduct a protective frisk. To justify a frisk, the State must demonstrate that a reasonable prudent officer, when confronted with the same circumstances, would have believed that his safety or the safety of others was endangered. The court concluded that the police had a reasonable concern about their safety in light of the defendant's bizarre behavior and the fact that the incident occurred in a high crime area.

The trial court's order denying defendant's motion to suppress evidence was affirmed.

People v. Kowalski, 2011 IL App (2d) 100237 Third, even had a search been proper, the officer's actions went beyond the mere pat-down which **Terry** would have authorized. **Terry** searches are limited to ascertaining whether a person is armed, and allow the seizure of items discovered during the pat-down only if it is immediately apparent that they are weapons or contraband. Here, the officer did not conduct an external pat-down before reaching into defendant's pocket to remove the pipe. Thus, he did not detect an object in a pat-down which felt like a weapon or contraband.

The court rejected the argument that the search was analogous to a search conducted by an officer before giving a citizen a courtesy ride in a squad car, and that the same rule should apply when a person is to be transported in an ambulance. If precedent concerning protective searches before courtesy rides is to be extended to ambulance rides, such searches should be limited to intrusions "reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the . . . paramedic." Here, the officer did not limit the search to a pat-down for weapons and did not claim that the pipe felt like a weapon or other contraband. Thus, the search exceeded the scope of any reasonable frisk to protect ambulance personnel.

The court also rejected the argument that the search should be sustained on the basis that defendant was receiving emergency medical treatment:

> Other than stating that defendant . . . required medical attention, the State does not explain what exigent circumstances justified the search of defendant. Nor does the State contend that the search of defendant was justified by the plain-view doctrine or probable cause. Rather, the State simply states that a person receiving emergency medical treatment has a diminished expectation of privacy. . . . [W]e decline to so hold.

People v. Harris, 2011 IL App (1st) 103382 A police officer making a reasonable investigatory stop may conduct a protective search for weapons if he has reason to believe

that the suspect is armed and dangerous. The right to perform a protective search presupposes the right to make the stop. Because the **Terry** stop of defendant was not justified, the protective search performed during that stop was also illegal.

People v. Surles, 2011 IL App (1st) 100068 A police officer may conduct a protective pat down where, after making a lawful stop, the officer has a reasonable articulable suspicion that he or another is in danger of attack because the defendant is armed and dangerous.

By itself, the fact that the stop occurred in a high-crime area did not provide the police with reasonable suspicion to conduct a pat down. "[A] reasonable person would not consider a person armed and dangerous merely because he was a passenger in a vehicle traveling through a high-crime area." A citizen's constitutional rights cannot be limited based on the neighborhood that he happens to be in when the intrusion occurs.

There was no evidence of any facts known to the police that tied the defendant to crime in the area. The police only knew him to an occupant of a vehicle. By their own admission, his conduct did not create any fear or threat of violence against them. Their "testimony that they 'do a protective pat down search on basically everybody' evinces the routine nature of their arresting and searching private citizens without any articulable suspicion of criminal activity."

The presence of a bulge in defendant's clothing alone was also insufficient to warrant a search. Even when considered together, the defendant's presence in a high-crime area and the bulge in his clothing did not justify the search because "'when you add nothing to nothing, you get nothing.'"

Because suppression of the gun and its taking from defendant would destroy any opportunity the State had to prevail at a new trial on the charges surrounding defendant's possession of the gun, the court reversed defendant's conviction for armed habitual criminal.

People v. Wells, 403 Ill.App.3d 849, 934 N.E.2d 1015 (1st Dist. 2010) The police had reasonable suspicion to conduct a **Terry** stop of the defendant. The police received a call of a domestic disturbance at 2 a.m. The caller reported that her former boyfriend was ringing her bell and "threatening to kill her over the phone," but that she did not want him arrested. The police saw the defendant leaving her apartment on their arrival. Ten minutes later, they received a second call that he had returned, was again ringing her bell and threatening to "call her over the phone." The police saw defendant walking down the street

The police had no reason to believe that they or others were in danger when they searched defendant. The calls that the police received were not sufficiently detailed to warrant a suspicion that there was a danger of attack, and the police did not investigate further before conducting the search. The fact that the calls related to a domestic disturbance did not by itself justify a search for weapons. The police had no reason to believe that the defendant was armed.

The police asked the defendant at the police station following his arrest if he had a car. They found defendant's car illegally parked and had it towed. The police searched the car before it was towed and found ammunition. The court concluded that the bullets were the fruit of the illegal arrest. There was no break in the chain of events sufficient to attenuate the recovery of the bullets from the illegal arrest. Each event followed and flowed from the initial illegality.

In re Mario T., 376 Ill.App.3d 468, 875 N.E.2d 1241 (1st Dist. 2007) Officers responding to a call that three males were breaking into a vacant unit on the second floor of a Chicago

Housing Authority building had no reason to suspect that the four youths they found upon arriving were involved in any criminal activity or posed any threat to the officers' safety. Although the two officers were outnumbered by defendant and his three companions, evaluating safety concerns requires more "than merely counting heads."

People v. Davis, 352 Ill.App.3d 576, 815 N.E.2d 92 (2nd Dist. 2004) Where two officers called defendant to their squad car because he was riding a bike at night without a light, and questioned him concerning his name and the possibility that he might be listed in a national crime database, there was no reasonable basis to suspect that defendant was armed. A minor offense such as riding a bicycle without a light does not, in and of itself, justify a frisk for weapons, especially where defendant was not in a high crime area and had ridden the bike to a convenience store that was open for business.

Although nervous behavior can be a relevant factor in determining whether there is a reasonable basis for suspicion, mere nervousness does not justify a belief that a suspect is armed. Here, defendant became nervous only after the officers began asking questions that had nothing to do with riding a bike without lights and referred to the possibility that defendant's name might be in a crime database.

Finally, the fact that defendant placed his hand in his pocket could not justify a frisk for weapons. Defendant could have put his hand in his pocket for any of several numerous reasons, including to keep warm, to get his parole officer's phone number for the officers, or to retrieve his identification.

People v. Anderson, 304 Ill.App.3d 454, 711 N.E.2d 24 (2d Dist. 1999) The mere fact that defendant put an unknown object in an upper pocket of his jacket did not give officers a reason to fear for their safety. In any event, only a frisk for weapons would have been proper; reaching into defendant's pocket and removing a prescription bottle would have been beyond the scope of an authorized frisk.

People v. Spann, 237 Ill.App.3d 705, 604 N.E.2d 1138 (2d Dist. 1992) Even where a stop is valid, a frisk is permitted only if necessary to protect the officer's safety. Although a known criminal history may be considered in determining whether there is a threat to the officer's safety, there must be some additional indication that the suspect is armed in order to justify a frisk.

People v. Harper, 237 Ill.App.3d 202, 603 N.E.2d 115 (2d Dist. 1992) Even had the stop been justified, the officers exceeded the scope of a permissible frisk when they shined flashlights in defendant's mouth and ordered him to spit out a packet of cocaine. The primary objective of the search was to prevent the destruction of evidence; the officers did not conduct a patdown or express any fear for their safety. Finally, defendant made no threatening gestures and there were no noticeable bulges in his clothing.

The Court rejected as "disingenuous" the State's claim that spitting out the cocaine was a voluntary act and not a search. The officers ordered defendant to open his mouth, shined flashlights inside, ordered him to spit out the package, and immediately recovered it.

People v. Kramer, 208 Ill.App.3d 818, 566 N.E.2d 756 (3d Dist. 1991) There was no reason for the officer to believe that his safety or that of others was in danger — the defendants produced identification, there was no suspicious behavior other than that defendants were nervous, and the officer conducted the patdown only *after* a back-up officer had arrived.

Although the officer testified that the encounter occurred in a "high crime area," the trial court, "in its role as the judge of credibility and weight, specifically noted that it was not particularly impressed" with the officer's testimony

The trial court's order denying defendant's motion to suppress was reversed. Furthermore, because a conviction for possession of drug paraphernalia could not be sustained without the suppressed evidence, the conviction was reversed without remand.

§43-3(c)
Arrest

§43-3(c)(1)
Generally

United States Supreme Court

Virginia v. Moore, 553 U.S. 164, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008) An arrest is "reasonable" (and therefore satisfies the Fourth Amendment) where the officer has probable cause to believe that a person has committed a crime in the officer's presence. Because of the need for a bright-line constitutional standard to guide law enforcement, the power to make an arrest based on probable cause extends even to minor misdemeanors.

The Fourth Amendment was not violated by an arrest of the defendant for the misdemeanor offense of driving on a suspended license, although Virginia law requires issuance of a summons rather than a full arrest (unless the violator refuses to discontinue the violation or the officer reasonably believes that the violator will disregard the summons or harm themselves or others). Although a state may choose to extend greater protection to its citizens than the Fourth Amendment requires, enforcement of that protection is a matter of state rather than federal law.

Atwater v. Lago Vista, 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001) A warrantless arrest for a minor offense is not "unreasonable" under the Fourth Amendment. The court rejected the argument that before an officer can make a custodial arrest for an offense that does not carry jail time, the government must show both probable cause and a compelling need for immediate detention.

(Note: Illinois law authorizes a warrantless arrest on "reasonable grounds to believe that the person is committing or has committed an offense" (725 ILCS 5/107-2). An "offense" is "a violation of any penal statute" (725 ILCS 5/102-15). A "penal statute" is an act which commands "certain acts and establishes penalties for their violations." See, **Mitee Racers v. Carnival-Amusement Safety Bd.**, 152 Ill.App.3d 812, 504 N.E.2d 1298 (2d Dist. 1987)).

Whren v. U.S., 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) A stop is "reasonable" under the Fourth Amendment if there was probable cause to believe that a crime or offense was being committed. An officer's subjective motive for conducting a stop is irrelevant to the "reasonableness" of the stop; generally, a stop supported by probable cause is deemed to be "reasonable" no matter what subjective intentions may have been in the minds of the officers.

Illinois Supreme Court

People v. Fitzpatrick, 2013 IL 113449 A custodial arrest for a minor offense does not violate the Fourth Amendment. **Atwater v. City of Lago Vista**, 532 U.S. 318 (2001). The Illinois Supreme Court held that a custodial arrest for a petty offense also does not violate the state

constitution. Therefore the police lawfully seized cocaine found in defendant's sock during a search of his person conducted at a police station after the police arrested defendant for the petty offense of walking in the middle of a street.

Illinois applies a limited-lockstep approach to analyzing related provisions of the state and federal constitutions. The framers of the state constitution intended that the state constitutional counterpart to the Fourth Amendment (Ill. Const. 1970, Art. I, §6) have the same scope as the Fourth Amendment. The limited-lockstep approach does, however, allow for consideration of "state tradition and values as reflected by longstanding state case precedent."

Illinois has no common-law or statutory tradition of prohibiting arrests for minor offenses that would justify departing from the lockstep doctrine on this issue. Since 1962, Illinois has consistently recognized that police are allowed to conduct a custodial search after an arrest for a traffic or petty offense. The Code of Criminal Procedure permits, but does not require, the police to issue a notice to appear in lieu of an arrest. 725 ILCS 5/107-12. Both that code and the Vehicle Code also authorize the police to conduct an arrest for violation of any penal statute. 720 ILCS 5/107-2(1)(c); 725 ILCS 5/102-15; 625 ILCS 5/16-102(a).

People v. Galan, 229 Ill.2d 484, 893 N.E.2d 597 (2008) The exclusionary rule should not be applied where Illinois police officers arrested the defendant just inside the Indiana border, but failed to comply with an Indiana statute requiring an Indiana probable cause hearing. The social costs of applying the exclusionary rule would be substantial, because suppressing evidence seized as a result of the arrest would make it impossible for the State to prosecute several serious offenses. In addition, defendant received a prompt probable cause hearing in Illinois, and irregularities in extradition do not affect the defendant's fundamental rights or deprive Illinois courts of jurisdiction to try a defendant who was arrested in another state for a crime committed in Illinois. Finally, the failure to provide a probable cause hearing was not a willful disregard of Indiana law, because officers did not realize that they had crossed the Indiana border while in "fresh pursuit." See also, **People v. Owen**, 323 Ill.App.3d 653, 752 N.E.2d 1269 (5th Dist. 2001) (arrest made by an officer outside his jurisdiction is not invalid merely because the officer failed to comply with 725 ILCS 5/107-4(a-7), which requires immediate notification to the law enforcement agency of the county or municipality where the arrest occurred; §107-4(a-7) does not require that an arrest be invalidated due to failure to comply with the notice provision, and defendant did not allege any prejudice).

People v. Every, 184 Ill.2d 281, 703 N.E.2d 897 (1998) 625 ILCS 5/11-501.1(a), which authorizes an Illinois law enforcement officer who is investigating a potential DUI to complete his or her investigation in an adjoining state, is not unconstitutional. Section 11-501.1 does not purport to give an Illinois law enforcement officer authority to make an arrest or otherwise exercise his official powers in an adjoining state, but merely allows an officer to obtain evidence under the Illinois "implied consent" statute, which provides that persons who drive in Illinois impliedly agree to allow chemical testing of their blood for alcohol content.

Illinois Appellate Court

People v. Lee, 2016 IL App (2d) 150359 An arrest made outside the arresting officer's jurisdiction is valid if there is probable cause to believe that the suspect committed an offense in the officer's jurisdiction. The court concluded that an officer who parked his squad car just outside the municipal limits of the city for which he worked, and who used a radar unit to monitor the speed of vehicles inside city limits, had sufficient probable cause to arrest drivers

who according to the radar were exceeding the speed limit inside the city. The validity of the arrests was not affected by the fact that the officer stopped the vehicles outside city limits.

The court distinguished the situation where an officer uses a radar gun to monitor the speed of vehicles which are driving outside the officer's jurisdiction. In such a case, the arrest cannot be based on the officer's official authority. Furthermore, such an arrest cannot be sustained as a citizen's arrest because an officer who uses a radar unit outside his or her jurisdiction asserts official police authority that would not be available to a private citizen.

People v. Reynolds, 2016 IL App (4th) 150572 At common law, municipal and county police officers lacked authority to make arrests outside the territorial limits of the political subdivision that appointed them to their office, unless they were in fresh pursuit of a suspected felon who was fleeing their jurisdiction. In Public Act 91-0319, however, police officers were given "full authority and power" to act in a "police district." 65 ILCS 5/7-4-8. A "single police district" is defined as territory embraced within the corporate limits of adjoining municipalities within the same county. 65 ILCS 5/7-4-7. Under §5/7-4-8, therefore, an officer has full authority and power in his own municipality and in any adjoining municipality in the same county.

Thus, a police officer who was in the village of Southern View and who saw a car speeding on the northbound lanes of 6th Street, which were outside the Southern View limits but in the adjoining municipality of Springfield, had full authority to stop the driver.

In the alternative, 725 ILCS 5/107-4(a-3)(1) & (2) provide that an officer may make a stop outside his or her primary jurisdiction if the initial crime occurred within that jurisdiction, or where an on-duty officer becomes personally aware of the immediate commission of a felony or misdemeanor. Because the officer personally observed the commission of a Class B misdemeanor where he saw defendant driving 26 miles over the speed limit, he was authorized to make a stop.

People v. Mandarino, 2013 IL App (1st) 111772 Defendant, former police officer, was convicted of aggravated battery after he beat a motorist with a collapsible baton during a traffic stop. The Appellate Court rejected the argument that the trial court applied an incorrect standard in evaluating defendant's conduct.

An arresting officer need not retreat or desist from efforts to make a lawful arrest merely because the arrestee resists. The officer is justified in using any force which he reasonably believes to be necessary to effect the arrest or defend himself from bodily harm. Among the circumstances which may be relevant to the reasonableness of the officer's actions are whether the attempted arrest is for a serious crime, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to flee.

The court found that in convicting defendant of aggravated battery, the trial judge properly applied a reasonableness standard. The court also held that the evidence was sufficient to support the judge's finding that defendant failed to act reasonably.

People v. Olson, 361 Ill.App.3d 62, 836 N.E.2d 110 (1st Dist. 2005) Under 610 ILCS 80/2, a railroad may appoint its own police force to the extent necessary "to aid and supplement the police forces of any municipality" in protecting the property of the railroad and its passengers. While "engaged in the conduct of their employment," railroad police officers "have and may exercise like police powers as those conferred upon the police of cities."

725 ILCS 5/107-4(a-3), which allows a "peace officer" employed by a "law enforcement

agency" to conduct temporary questioning and make an arrest if "engaged in an investigation of an offense that occurred in the officer's primary jurisdiction and the temporary questioning is conducted or the arrest is made pursuant to that investigation," did not authorize railroad police officers to arrest defendant at his residence several hours after observing him committing crimes on railroad property.

Furthermore, the arrest was not valid as a citizen's arrest. An extraterritorial, warrantless arrest is valid if the officer who makes the arrest does not use powers of his office that are unavailable to private citizens. Where the railroad officers went to the door of defendant's residence, either obtained consent to enter or entered forcibly, gave **Miranda** warnings, and obtained defendant's consent to search the residence,"we cannot conclude that [they] effectuated a valid private citizen's arrest."

People v. Shick, 318 Ill.App.3d 899, 744 N.E.2d 858 (3d Dist. 2001) At common law, an officer had no authority to make an arrest outside his jurisdiction unless he was in fresh pursuit of a suspected felon who was fleeing the officer's jurisdiction. Under 725 ILCS 5/100-1, however, an officer may make an arrest outside his jurisdiction where he has reasonable grounds to believe that an offense other than an ordinance violation is being committed.

Illinois law also permits an officer to make an extraterritorial, warrantless arrest if such an arrest could have been made by an ordinary citizen. In making such an arrest, the officer may not use powers of his office that are unavailable to the ordinary citizen.

Because Illinois law expressly authorizes citizen arrests, citizens also have implied authority to "undertake less intrusive actions," such as traffic stops, if there are reasonable grounds to believe that an offense other than an ordinance violation has been committed.

Where an officer received a radio bulletin that defendant had committed an armed robbery, he had a reasonable basis to believe that a felony had been committed. Thus, an arrest was proper although defendant attempted to flee and the arrest occurred outside the officer's jurisdiction.

The officer did not use the powers of his office to obtain evidence that would have been unavailable to a private citizen. Although a private citizen might not have been able to monitor a police radio band, the officer was in his jurisdiction when he received the bulletin concerning the offense. Furthermore, the officer's use of his radar gun did not require that the arrest be quashed, because the fact that defendant's vehicle was traveling under the posted speed limit and accelerated upon seeing the officer contributed little if anything to the description of the vehicle, which was the basis for the stop.

Finally, the arrest need not be quashed because the officer radioed his location to the dispatcher and utilized his overhead lights, spotlight and weapon. Even a police officer acting outside his jurisdiction may act "under color of his office to effect a valid citizen's arrest." Compare **People v. Carrera**, 321 Ill.App.3d 582, 748 N.E.2d 652 (1st Dist. 2001) (officers acted improperly by arresting defendant outside their jurisdiction - lead officer used the powers of his office to develop grounds to believe that an offense was being committed where he approached defendant and identified himself as a police officer although he lacked official authority to question defendant outside his jurisdiction; arrest was not saved by good faith reliance on statute which authorized arrest but which was later held unconstitutional).

People v. Kirvelaitis, 315 Ill.App.3d 667, 734 N.E.2d 524 (2d Dist. 2000) An Illinois police officer may conduct an arrest under several theories, including where: (1) the arrest occurs in the officer's own "police district," which is defined as the territory embraced within the municipalities which adjoin the officer's jurisdiction within a county; (2) the arrest occurs in

a municipality within the same county as the officer's jurisdiction; (3) the officer is investigating an offense that occurred within his jurisdiction and the arrest is made outside that jurisdiction but pursuant to the initial investigation; (4) an on-duty officer becomes aware of the commission of a felony or misdemeanor; and (5) the officer acts as a private citizen.

None of the above justifications applied where, at most, the evidence showed that defendant was "perhaps" in the officer's jurisdiction when he was seen speeding. The arrest was not for an offense that occurred in the officer's jurisdiction or pursuant to the investigation of such an offense, the determination that defendant was speeding was made in an unincorporated area outside the officer's jurisdiction, and the stop occurred in another county. In addition, speeding is merely a petty offense and not a felony or misdemeanor.

725 ILCS 5/107-3 authorizes a citizen's arrest where there are reasonable grounds to believe that an offense other than an ordinance violation has been committed. In at least two respects the record was insufficient to establish a proper arrest by a private citizen: (1) the record was unclear whether the officer observed defendant speeding before using his radar gun, and (2) a private citizen would not be authorized to exceed the speed limit to catch a speeder.

People v. Gordon, 311 Ill.App.3d 240, 723 N.E.2d 1249 (2d Dist. 2000) As a matter of first impression, the court found that no Fourth Amendment violation occurs where the police have probable cause to arrest one person, but in good faith erroneously arrest a different person. In addition, the arresting officers acted in good faith where the dispatcher informed the officers that there was an active warrant for a person whose name, sex, race and birth date either matched or "nearly matched" defendant, giving the officers a reasonable basis to believe that defendant was the person named in the warrant. Furthermore, when defendant claimed that he was not the person named in the warrant, the officers acted reasonably by taking him to police headquarters to clarify his identity.

§43-3(c)(2)
Probable Cause for Arrest

United States Supreme Court

Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979) The search and seizure of a person, except under the narrow exception of **Terry v. Ohio**, requires probable cause that is particularized with respect to the person to be arrested. Mere proximity to persons who are suspected of criminal activity does not constitute probable cause. See also, **People v. Lee**, 214 Ill.2d 476, 828 N.E.2d 237 (2005) (probable cause was not created because one of the men standing with defendant was a known member of a street gang which had illegal drug activity as its purpose; "probable cause to arrest a particular individual does not arise merely from the existence of probable cause to arrest another person in the company of an individual").

Michigan v. DeFillippo, 443 U.S. 31, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979) Defendant was properly arrested where police had probable cause to believe he had violated an ordinance. The fact that the ordinance was subsequently held unconstitutional does not affect the validity of the arrest.

Illinois Supreme Court

People v. Gocmen, 2018 IL 122388 When a defendant files a motion to quash an arrest for driving under the influence of drugs, and calls the arresting officer at the suppression hearing in order to make a *prima facie* case of an illegal arrest, the officer's opinion that defendant was under the influence does not require qualification as an expert witness unless the officer conducted specialized tests to arrive at that conclusion. Unlike **People v. McKown**, 236 Ill. 2d 278 (2010) (case remanded where State failed to lay foundation for officer's expertise with HGN test that was the basis for the arrest), the officer in this case based his opinion on factors that did not involve scientific, technical, or specialized training. Thus, the lower courts erred in quashing the arrest on those grounds.

Reviewing the totality of the circumstances of the arrest, the Supreme Court held that the officer had probable cause to arrest where he found defendant, semiconscious and disoriented, in the driver's seat of a car parked on the side of the road, with track marks on his arm, a syringe, and a can containing a substance that field-tested positive for opiates. The Supreme Court held that the trial court should have found that defendant failed to make a *prima facie* case and denied the motion to quash.

People v. Love, 199 Ill.2d 269, 769 N.E.2d 10 (2002) Where officers observed what appeared to be a drug sale in which defendant removed an item from her mouth and handed it to the suspected purchaser, and upon questioning defendant's responses could not be understood, there was probable cause to believe that the garbled response was due to defendant's concealment of drugs in her mouth. Because the officers had probable cause to make an arrest for drug possession, their order for defendant to spit out the items in her mouth was a valid search incident to arrest. See also, **People v. Bunch**, 327 Ill.App.3d 979, 764 N.E.2d 1189 (1st Dist. 2002) (where officer arrested defendant as soon as he saw an object in defendant's mouth, probable cause was required; although the officer testified that he suspected the object was heroin or cocaine, mere "suspicions, no matter how reasonable, do not add up to probable cause"). Compare, **People v. Rainey**, 302 Ill.App.3d 1011, 706 N.E.2d 1062 (3d Dist. 1999) (probable cause exists when the circumstances within the officer's knowledge would justify a belief, in a person of reasonable caution, that an offense has been committed by the suspect in question; where defendant's conduct was "ambiguous" (i.e., defendant appeared to place something in his mouth as officers approached in an area known for drug activity) and might have been completely innocent, there was no probable cause to arrest); **People v. Marchel**, 348 Ill.App.3d 78, 810 N.E.2d 85 (1st Dist. 2004) (officer who saw defendant make a "furtive" movement toward his mouth while standing in a "highly drug infested" area, but who did not see defendant place an object in his mouth, lacked probable cause to ask defendant to open his mouth; defendant was not known to be involved in any criminal activity, and his "furtive" movement was ambiguous; **Love** distinguished because there was no lawful arrest to which requiring defendant to open his mouth could be a search incident).

Illinois Appellate Court

People v. Hatcher, 2024 IL App (1st) 220455 Defendant was the backseat passenger in a vehicle when a police officer observed it travel between two different banks. The front seat passenger exited the vehicle at both banks, using the ATM at the second. The officer suspected that the front seat passenger was "card tracking," which is using another person's debit card to make deposits into a bank account and then withdrawing the funds before the bank discovers the transactions are fraudulent. The officer followed the vehicle and initiated a traffic stop when he saw it change lanes without signaling.

During the traffic stop, the front seat passenger was ordered out of the vehicle and arrested. From the front seat passenger, the police recovered an ATM receipt and a debit card belonging to another individual who was not in the vehicle. Defendant and the driver were then ordered to exit the vehicle and, according to the officer, were not free to leave. A subsequent search of the vehicle revealed an open backpack on the floor of the rear passenger area. The backpack's zipper was open, and a handgun magazine was visible. Inside the backpack were a handgun, defendant's own debit card, and cards belonging to other people who were not in the vehicle.

Defendant filed a motion to suppress, arguing that the police lacked probable cause to detain him and search his backpack. The trial court denied that motion, finding that the police were properly investigating their reasonable suspicion of bank fraud and that the handgun magazine was in plain view. On appeal, defendant challenged the denial of his motion to suppress.

The appellate court found that defendant was under arrest when he was ordered out of the vehicle, prior to the discovery of the handgun and other items in the backpack. Regardless, defendant's arrest was lawful under the totality of the circumstances. The officers had observed the front seat passenger's suspicious behavior at two banks and had recovered the ATM receipt and debit card of another individual from that passenger prior to defendant's arrest. The appellate court noted that the police could infer a common enterprise among the occupants of the vehicle, thus providing probable cause to arrest defendant.

People v. Workheiser, 2022 IL App (3d) 200450 The police had probable cause to arrest defendant for DUI based on the totality of the evidence. The arresting officer observed defendant touching the center line and making wide turns. After the officer followed him with lights and sirens on, the defendant pulled into a gas station, left his car, and tried to enter the gas station before officers ordered him back to the car. Defendant admitted to drinking three beers and exhibited confusion and difficulty following directions, had slurred speech, and had dexterity issues, fumbling with and dropping his wallet. Although it was also revealed that the officer administered a faulty HGN test, the remaining evidence was sufficient to convince a reasonably cautious person that defendant was under the influence of alcohol.

People v. McClendon, 2022 IL App (1st) 163406 Following his conviction of armed habitual criminal, defendant appealed. Defendant argued that trial counsel provided ineffective assistance on his motion to suppress evidence. Specifically, defendant argued that counsel should have argued that he was illegally seized, and that the gun and defendant's statement were the fruits of that illegal seizure. The Appellate Court agreed.

Police responded to a call of shots fired. They did not have a description of the shooter or any information about whether a vehicle was involved in the incident. About four blocks away from the area, responding officers observed defendant and another man sitting in a parked vehicle. An officer testified that the men slumped down in their seats when the police passed by and then drove away when the officers parked and started to approach. Eventually, other officers were directed to a parking lot where the vehicle had gone after driving away. Defendant and the other man were located on the porch of an adjacent residence, knocking on the door. Officers approached with their guns drawn, and one of the officers said defendant took out a gun and dropped it behind a couch on the porch. It was alleged that defendant later made a statement admitting he had possessed the gun.

The trial court found that defendant had abandoned the gun prior to being seized, and therefore denied the motion to suppress. At the suppression hearing, trial counsel failed to

argue that defendant had been seized before abandoning the gun and that it was the illegal seizure that caused the abandonment. The Appellate Court concluded that the motion to suppress would have had merit had counsel made those arguments. Defendant was seized when officers approached the porch with their guns drawn, causing defendant to submit to that show of authority. Further, the police lacked probable cause or reasonable suspicion to seize defendant. No evidence connected him to the call of shots fired, and no officers saw defendant engage in any crime prior to the seizure. Defendant only dropped the gun in response to being seized, thus the gun was the fruit of the illegal seizure.

The Appellate Court reversed defendant's conviction outright. Without the gun, or defendant's later statement, the State had no evidence to support the charge.

People v. Hardimon, 2021 IL App (3d) 180578 The State established that probable cause and exigent circumstances existed at the time of defendant's warrantless arrest. In considering whether exigent circumstances exist, courts consider: (1) whether the offense being investigated was recently committed; (2) whether the officers deliberately or unjustifiably delayed during a time they could have obtained a warrant; (3) whether a grave offense, particularly one of violence, is involved; (4) "whether the suspect is reasonably believed to be armed"; (5) whether the police were acting upon a clear showing of probable cause; (6) whether there was a likelihood of escape if the suspect was not swiftly apprehended; (7) whether there was a strong reason to believe the suspect was at the premises to be searched; and (8) whether the police entry, although nonconsensual, was made peacefully.

Here, the witness interviews implicating defendant occurred the day of and the day after the shooting, leading to defendant's arrest within 48 hours. The Appellate Court found this to be "recent" and that the police did not delay unjustifiably in their investigation. The offense – murder – was grave, and defendant was assumed to be armed as no weapon was found at the scene. Probable cause clearly existed where the witnesses knew defendant and corroborated each other. Because a witness informed the police where he dropped off defendant after the crime, there was strong reason to believe defendant was at the premises. Finally, the entry was peaceful, as police knocked and were let inside by the homeowner. Where every factor favored exigent circumstances, the Appellate Court upheld the arrest.

People v. Ellis, 2020 IL App (1st) 190774 In **People v. Holmes**, 2017 IL 120407, the Illinois Supreme Court upheld an arrest where police had probable cause to believe defendant violated the provision of aggravated unlawful use of a weapon later held unconstitutional in **Aguilar**. The defendant in this case was arrested for a violation of that same provision, but argued that **Holmes** has been implicitly overruled by **In re N.G.**, 2018 IL 121939. The Appellate Court disagreed, finding that **N.G.**'s holding that the **Aguilar** provisions were void *ab initio* applies to prior convictions, not prior arrests. Only the Supreme Court may declare one of its prior decisions overruled, and while it may do so implicitly, an Appellate Court should not so declare without firm support.

People v. Wilson, 2020 IL App (1st) 170443 Officers did not have probable cause to arrest based on the fact that defendant, upon seeing the police, immediately went to a nearby house and knocked on the door and windows in an apparent attempt to get inside. Even if the officers had noticed defendant carrying a gun, they would have still lacked probable cause because they lacked information as to whether defendant was on his own property. However, once defendant left the property and engaged in headlong flight from the officers while openly

carrying a firearm, crossing through others' property, the officers had probable cause to arrest.

The court noted that it was troubled by the officers' decision to approach defendant despite admitting that they initially had not seen him doing anything wrong. "Officers engaging in behavior to purposefully induce flight in the hopes of catching someone responding 'suspiciously' is a practice that damages community trust and places police and the public in unnecessary danger."

People v. Thornton, 2020 IL App (1st) 170753 The police received a 911 call stating that a person wanted for two sexual assaults was sitting on the porch at a specific address; the caller also described defendant's clothing. Police patrolling in the area found defendant, walking down the street near the address provided by the caller, wearing clothing which matched that described. The officers approached and asked defendant his name. Upon checking his identity in their system, the officer discovered an investigative alert.

The initial **Terry** stop of defendant was valid based on the 911 call because defendant was quickly located in the general area and matched the description provided. While an anonymous tip requires corroboration of its assertion of illegality, not just identity, a 911 call is not viewed with the same skepticism as an anonymous tip. Further, the tip here was not of a crime in progress, but rather provided the location of a known suspect, merely allowing the officers to investigate further.

Handcuffing defendant during this initial encounter did not transform the **Terry** stop into an arrest where an officer testified that he cuffed defendant for safety reasons. The court found this reasonable in light of defendant's status as a sexual assault suspect.

The subsequent arrest of defendant based on the investigative alert was also proper. The investigative alert was supported by probable cause where one of the two victims identified defendant from a photo array, and defendant lived near the other victim's house where the assaults of both women occurred. Further, defendant had physical characteristics described by both women, including tattoos on his upper arms and a chipped front tooth from having been shot in the mouth previously.

The Appellate Court declined to follow **People v. Bass**, 2019 IL App (1st) 160640, which concluded that investigative alerts are unconstitutional. Instead, the court followed **People v. Braswell**, 2019 IL App (1st) 172810, and concluded that investigative alerts supported by probable cause are constitutional.

The concurring justice would have found that the **Terry** stop was converted into an arrest almost immediately when he was handcuffed and placed into a police car. She would have found that arrest proper on the basis of the same facts which supported the **Terry** stop, specifically the 911 call and the fact that defendant matched the description of a man wanted for two felonies.

People v. Bahena, 2020 IL App (1st) 180197 Eight months after being shot in a liquor store parking lot, the victim identified defendant as the shooter from a photo lineup. Based on that identification, an officer created an investigative alert. Relying on that investigative alert, two officers went to defendant's home and placed him under arrest. Defendant challenged his arrest, arguing that an investigative alert is an improper basis for a warrantless arrest, even if the alert is supported by probable cause. The Appellate Court disagreed, declining to follow **People v. Bass**, 2019 IL App (1st) 160640, and instead following its own prior decision in **People v. Braswell**, 2019 IL App (1st) 172810. An arrest based on an investigative alert supported by probable cause does not violate the Illinois Constitution.

People v. Hood, 2019 IL App (1st) 162194 Police officers patrolling in a high-crime area encountered a parked car occupied by defendant and two other people. Standing outside of the car was a man who had money in his hand. No transaction was witnessed, but one of the officers observed defendant make movements toward the floor as if he was retrieving something. The police stopped their car facing defendant's, exited, and approached. On approach, one of the officers saw defendant place a handgun into a plastic bag and toss it into the back seat. At that point, an officer removed defendant from the car while another recovered the gun. When asked if he had a concealed carry license, defendant said he did not.

The Appellate Court concluded that the initial stop and approach by the police officers was not a seizure. The removal of defendant from the vehicle and recovery of the gun was a **Terry** stop and protective sweep justified by the totality of the circumstances, including the presence in a high crime area, defendant's movements toward the floorboard, and defendant's possession of a gun. Defendant's subsequent arrest was justified by his possession of the handgun, which he tried to conceal and for which he admitted not having a concealed carry license.

The dissent criticized the use of a "high-crime area" as a basis for upholding the **Terry** stop and protective sweep here, noting that constitutional protections are not suspended simply by virtue of being present in such an area. The dissent would have found the initial approach of the police to have been a seizure that was not justified by reasonable suspicion.

People v. Spain, 2019 IL App (1st) 163184 The police received an anonymous call about a man with a gun at a specific location. When they arrived, the officers observed a group of men, including defendant who was stuffing a black object into his pants which appeared to be the handle of a gun. The officers approached, conducted a pat down of defendant, recovered a gun, and placed defendant under arrest.

The initial Terry stop was justified by the anonymous tip along with the fact that there was a "safety alert" for the area. The safety alert was based on a tip that one gang was planning to shoot up the address of a rival gang member. That address was adjacent to the address where defendant was found. And, defendant was seen with what appeared to be a gun handle sticking out of his waistband.

Defendant also argued that police did not have probable cause to arrest him for unlawful possession of a weapon because they did not ask whether he had a valid concealed carry license prior to placing him under arrest. The Appellate Court disagreed, concluding that an individual's failure to voluntarily produce such a license is a factor to be considered in determining whether there is probable cause to arrest. Other factors here included that defendant attempted to fully conceal the weapon when the officers approached and was acting nervously. While the better course would be to ask whether a suspect has a concealed carry license before arrest, the failure to ask that question was not fatal here.

People v. Braswell, 2019 IL App (1st) 172810 Police responding to a complaint that subjects inside a grocery store were passing counterfeit bills had probable cause to believe defendant was accountable for their conduct, even though defendant was in a vehicle in the parking lot. While mere presence near a crime scene is insufficient to support an arrest, an individual's location prior to and after commission of a crime may be considered in determining probable cause. Here, defendant was not simply present in the parking lot, but rather had arrived at the location with the offenders and remained in the vehicle that presumably was meant to be used to leave the scene, as well.

After he was taken into custody, the suburban officers discovered an investigative alert for defendant and notified the Chicago detective who had entered the alert. Defendant

then was turned over to Chicago police, who conducted a lineup at which defendant was identified as the offender in the armed robbery which was the subject of the investigative alert. The Appellate Court declined to follow **People v. Bass**, 2019 IL App (1st) 160640, which held that an arrest based on an investigative alert, rather than a warrant, was unconstitutional under the Illinois Constitution. Instead, the Appellate Court here concluded that an arrest requires only probable cause, not a warrant, and that an arrest is proper where the police have reasonable grounds to believe defendant has committed an offense regardless of whether an investigative alert has been issued.

People v. Balark, 2019 IL App (1st) 171626 Defense counsel was not ineffective for withdrawing a motion to suppress on the day of trial. During a valid traffic stop, an officer observed defendant, who was the front seat passenger, holding a gun which he placed into the glove box as the officer approached. The police then had defendant and the other officers exit the vehicle, at which time a crowd of residents began to gather and shout at the police. Citing safety concerns, the police relocated the vehicle and its occupants to the police station to complete their investigation.

Defendant argued that there was no basis to believe he had committed an offense because the officer did not know whether he possessed a valid concealed carry license prior to arresting him. The appellate court concluded that whether defendant had a valid concealed carry license or not, he did not possess the firearm in accord with the statute where the officer observed it in defendant's hands. The Firearm Concealed Carry Act allows for carrying a "concealed" weapon, and a "concealed" firearm has long been understood to mean one carried in a manner so as to give no notice as to its presence. A firearm is not concealed simply by virtue of its being inside a vehicle, and the gun here was not concealed when it was in defendant's hand as the officer approached. Further, **Aguilar** does not invalidate probable cause for an arrest based on open possession of a firearm discovered during a lawful traffic stop. Because the motion to suppress would not have been granted, counsel was not ineffective for withdrawing it.

People v. Horton, 2019 IL App (1st) 142019-B As two officers were driving down the street one of the officers saw defendant in front of a house with a "metallic object" that may have been a gun in his waistband. The officers stopped the car and got out. Defendant ran inside the house and locked the door. The officers found keys on the front porch and unlocked the door. They entered the house and went upstairs where they found defendant in a bedroom crouched by the side of a bed. One officer entered the bedroom with his gun drawn. He told defendant to raise his hands and come out. When defendant complied, the officer took defendant downstairs while the other officer searched the bedroom, saw a bulge in the mattress, and found a gun underneath the mattress.

The Appellate Court held that the officers did not have probable cause to arrest defendant. First, defendant had standing to challenge the arrest despite the fact that it occurred in a home in which he had no possessory interest. Defendant challenged the reasonableness of his arrest, which does not depend on his location but rather on the existence of probable cause.

While the officer testified that he saw defendant with a gun, he conceded under questioning from defense counsel that he saw only a metallic object that may or may not have been a gun. The Appellate Court found this language suggested the officer had a "mere hunch" that defendant had a gun, and therefore did not have enough information to make an arrest based on probable cause. Although this evidence was elicited at trial and not the

suppression hearing, the Appellate Court could consider the evidence when reviewing the ruling on the motion to suppress because defendant re-raised the issue in a post-trial motion.

Moreover, defendant was near a house, and the officers would not have known whether he was on his own land, an exception under the AUUW statute. Finally, defendant's flight may have been relevant to a finding of reasonable suspicion, but no **Terry** stop occurred here because defendant fled prior to being seized. Flight plus possession of a metallic object does not equate to probable cause to arrest. Nor could the doctrine of "hot pursuit" save the arrest, as the officers must have probable cause before the pursuit begins.

People v. Brown, 2013 IL App (1st) 083158 Officers responding to a report of a burglary in progress had sufficient grounds to conduct a **Terry** stop when they saw defendant leaving the premises by the back door, where the officers knew that other officers were pursuing two suspects who left the building by the front door while carrying metal tools. Because defendant was leaving the scene of the crime in the middle of the night as other suspects fled by another exit, the officers could reasonably suspect that defendant was involved in criminal activity.

However, by immediately handcuffing defendant when there was no articulable basis to believe that he was armed or dangerous, the officers conducted an arrest rather than a **Terry** stop. The court acknowledged that one of the officers testified to having a general fear of his safety because the officers were in a dark alley with ample places for suspects to hide, but found that such fear did not justify a belief that the defendant posed any threat to the officers' safety as he left the building. Furthermore, defendant was not doing anything that was illegal on its face, and the arrest was made as soon as defendant passed through the doorway and despite the absence of any signs he intended to flee or resist. Because a reasonably cautious person would not have believed that the defendant had committed a crime, probable cause to make an arrest was lacking.

People v. Neal, 2011 IL App (1st) 092814 The police may arrest a person without a warrant only where they have probable cause, i.e., where the facts known to the police at the time of arrest would lead a reasonable cautious person to believe that the defendant was committing or had committed a crime. Probable cause is not proof beyond a reasonable doubt. In deciding whether probable cause exists, a law enforcement officer may rely on his training and experience to draw inferences and make deductions that might elude an untrained person.

The police had probable cause to arrest defendant for violation of a municipal ordinance prohibiting solicitation of an unlawful business on the public way where the police observed defendant yelling, "Blows," to passersby at an intersection in the city. An officer testified that he knew based on his 15 years of police experience that "blows" is a term used in the street sale of heroin. Although "blows" might have a meaning other than heroin, the court saw no reason not to accept the officer's testimony. "The touchstone here is probability rather than certainty beyond a reasonable doubt, common sense rather than legal pedantry." The existence of a possible innocent explanation for defendant's conduct did not negate probable cause.

Justice Steele dissented. To find probable cause exists, the majority adopted a definition of soliciting not found in the ordinance or the Criminal Code and significantly lowered the threshold for probable cause by allowing a police officer to act on a hunch or reasonable suspicion.

People v. Johnson, 408 Ill.App.3d 107, 945 N.E.2d 2 (1st Dist. 2010) An arrest must be supported by probable cause. Probable cause to arrest exists when the totality of the facts and circumstances known to a police officer would lead a person of reasonable caution to

believe that the person apprehended has committed a crime. An arrest is reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed objectively, justify the action.

Because the defendant fled from a vehicle that had been lawfully stopped by the police for a traffic violation, the police had probable cause to arrest him for obstructing a peace officer. Obstructing a peace officer is committed by a person who "knowingly restricts or obstructs the performance by one known by the person to be a peace officer . . . of any authorized act within his official capacity." 720 ILCS 5/31-1(a).

When an automobile is apprehended for a traffic stop, the police have a right to detain passengers as well as the driver, even in the absence of any individualized suspicion that the passenger is involved in criminal activity. **Arizona v. Johnson**, 555 U. S. 323, 129 S. Ct. 781 (2009). A passenger who flees from a lawfully-stopped vehicle is attempting to avoid detention by an officer who has a right to seize him. Because the seizure was lawful at its inception, defendant's attempt to evade the police by running from the vehicle gave the officers probable cause to arrest him for obstructing an authorized action by a peace officer. It is irrelevant that the officer did not subjectively believe that he had probable cause to arrest defendant for obstruction.

Because the police had probable cause to arrest defendant, the gun in his waistband was properly recovered in a search incident to his arrest. The Appellate Court reversed the circuit court's order granting the motion to suppress.

People v. Arnold, 394 Ill.App.3d 63, 914 N.E.2d 1143 (2d Dist. 2009) The officer conducted an arrest, rather than a **Terry** stop, where he decided to handcuff defendant inside a convenience store because the officer had seen other persons attempt to flee upon learning that they have an active arrest warrant. The court concluded that the handcuffing would have been reasonable only if there was evidence that the defendant was preparing to flee; otherwise, the officer's experience with other suspects was irrelevant.

There was no evidence defendant was preparing to flee. After seeing the officer while both he and the officer were in their cars, defendant parked his vehicle at a gas station, entered the station, and remained for several minutes even after the officer entered and called defendant's name. Under these circumstances, there was no reason to believe that defendant was a flight risk.

When the officer handcuffed defendant, he lacked probable cause to make an arrest. The officer was waiting for confirmation from a dispatcher concerning whether defendant had an outstanding warrant; at the moment defendant was handcuffed, the officer knew only that he had seen the defendant's name on a warrant list at some point in the prior week. Because the list was not recent and the officer had no reason to believe that the warrant was active, and because the officer did not wait for the dispatcher's response concerning the status of the warrant, probable cause was lacking.

Citing **People v. Morgan**, 388 Ill.App.3d 252, 901 N.E.2d 1049 (4th Dist. 2009), the court acknowledged that the good faith exception to the exclusionary rule may be applied where the actions of the officer were objectively reasonable, suppression will not have an appreciable deterrent effect on police misconduct, and the benefits of suppression do not outweigh the costs of excluding the evidence.

Because the officer handcuffed defendant despite lacking any knowledge that there was an active arrest warrant, the court held that suppression was appropriate to defer official misconduct. The court also noted that the benefits of suppression would outweigh the costs – "the need to deter police from handcuffing a citizen without confirming whether there was a

valid warrant for his arrest outweighs the cost of hindering the State from prosecuting this particular defendant." Thus, the good faith exception did not apply.

The court rejected the argument that apart from the warrant, the officer had probable cause to arrest the defendant because he subsequently learned from the dispatcher that defendant's license was revoked. The court noted that defendant was arrested before the officer received the dispatcher's message.

The court also found that a search of defendant's car was not a valid search incident to arrest. Under **Arizona v. Gant**, 556 U.S. ____, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), a vehicle may be searched incident to arrest only if there is a reasonable possibility that the arrestee could gain access to the vehicle, or it is reasonable to believe that the vehicle might contain evidence relevant to the offense for which the arrest occurred. Where defendant left his car several minutes before he was arrested, and at the time of the search he had been handcuffed and placed in the back of a squad car, he was not within reaching distance of the car. Furthermore, no evidence relevant to either of the reasons for the arrest – a warrant for violating a municipal ordinance to have an animal vaccinated or the traffic offense of driving with a revoked license – could reasonably be expected to be found in the car. Thus, the search went beyond the scope of a valid search incident to arrest.

People v. Mitchell, 355 Ill.App.3d 1030, 824 N.E.2d 642 (2d Dist. 2005) As an issue of first impression, the court held that if the police wish to stop an individual, demand identification, take the identification, and run a warrant check, they must have either reasonable suspicion that criminal activity is afoot, probable cause for an arrest, or consent.

People v. Delaware, 314 Ill.App.3d 363, 731 N.E.2d 904 (1st Dist. 2000) Defendant's "sudden unprovoked flight" when officers approached created a reasonable, articulable basis to suspect criminal activity, and justified a **Terry** stop. Once the initial patdown revealed no weapons or drugs, however, the police lacked probable cause to arrest defendant, return him to the parking lot from which he fled, and request consent to search his car.

§43-3(c)(3)
Need for Arrest Warrant

§43-3(c)(3)(a)
Generally

United States Supreme Court

Devenpeck et al. v. Alford, 543 U.S. 146, 125 S.Ct. 588, 160 L.Ed.2d 537 (2004) A warrantless arrest is reasonable under the Fourth Amendment if there is probable cause to believe that a criminal offense has been or is being committed. Whether probable cause exists depends on whether the facts known to the arresting officer at the time of the arrest lead to a reasonable conclusion that a crime has occurred.

The arresting officer's subjective state of mind is irrelevant to whether an arrest is proper; probable cause is based on an objective analysis of the facts and not the subjective intent of the officer.

County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991) A probable cause hearing must be held as soon as "reasonably feasible" after a warrantless arrest. Where the hearing occurs within 48 hours of the arrest, the defendant bears the

burden to show that unnecessary delay occurred. This burden may be carried by showing, for example, that the hearing was delayed so that additional evidence could be gathered to justify the arrest or because police were prejudiced against the defendant.

Where the prosecution fails to provide a hearing within 48 hours, it must show a *bona fide* emergency or some other "extraordinary circumstance" which justified the delay. Delay is not permitted to provide additional time to combine the hearing with other proceedings or because the arrest occurred on a weekend or holiday. See also, **People v. Mitchell**, 366 Ill.App.3d 1044, 853 N.E.2d 900 (1st Dist. 2006) (applying **McLaughlin**).

New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990) Where the police had probable cause for an arrest but violated **Payton v. New York** by entering a home to make the arrest, the exclusionary rule does not require suppression of a statement defendant made outside the home.

Payton v. New York, 455 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) Police officers may not make a warrantless entry into a suspect's home to make a routine arrest. In the absence of exigent circumstances, the police must first obtain an arrest warrant. See also, **Kirk v. Louisiana**, 536 U.S. 635, 122 S.Ct. 2458, 153 L.Ed.2d 599 (2002) (reiterating **Payton** rule); **Steagald v. U.S.**, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981) (in the absence of exigent circumstances or consent, police officers must obtain a search warrant before searching the premises of a third party for the subject of an arrest warrant).

U.S. v. Watson, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976) The Fourth Amendment permits arrests in public places upon probable cause, without a warrant and without any showing of exigent circumstances. See also, **U.S. v. Santana**, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976) (police could make warrantless arrest, based on probable cause, of defendant who was standing in the doorway of her residence; for Fourth Amendment purposes defendant was in a "public place" in which where she lacked any expectation of privacy; when defendant retreated into the residence, officers properly made a warrantless entry in "hot pursuit").

Gerstein v. Pugh, 420 U.S. 139, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) Although the Court has "expressed a preference for the use of arrest warrants when feasible, it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant."

Illinois Supreme Court

People v. Clark, 2024 IL 127838 Defendant was charged with multiple counts of attempt murder and aggravated battery arising out of a gang-related shooting. He was arrested three days after the incident, pursuant to a Chicago Police Department investigative alert which was based upon the statement of a man who told police that he heard defendant admit his involvement in the shooting and disposal of the guns. Defendant filed a motion to suppress in the circuit court, arguing that the police lacked probable cause or a valid arrest warrant and thus his arrest was improper. That motion was denied. Defendant ultimately was convicted of two counts of aggravated battery and sentenced to a total of 32 years of imprisonment.

CPD's investigative alert system is used to record and share information internally that there is probable cause to arrest specific individuals. CPD officers regularly rely on this information in effectuating arrests rather than obtaining judicial arrest warrants.

In the supreme court, defendant argued that absent exigent circumstances or consent, an arrest in the home requires that the police obtain an arrest warrant issued by a neutral magistrate upon a finding of probable cause, relying on **Payton v. New York**, 445 U.S. 573 (1980). An investigative alert is an inadequate substitute for a warrant in that circumstance. The court agreed but found defendant had forfeited the issue. While defendant initially argued in the circuit court that the State failed to establish the existence of valid consent to enter defendant's home to arrest him, he did not include that ground in his post-trial motion, in briefing in the appellate court, or in his petition for leave to appeal.

Defendant also argued that a warrantless arrest pursuant to an investigative alert was unconstitutional, even when effectuated in public. While acknowledging that this claim also was forfeited because defendant only raised it for the first time on appeal following the 2019 appellate court decision in **People v. Bass**, 2019 IL App (1st) 160640, *aff'd in part and vacated in part*, 2021 IL 125434, the court noted that forfeiture is a limitation on the parties, not the court, and a court may overlook forfeiture where necessary to reach a just result or maintain a sound body of precedent. Here, that meant reaching the merits of defendant's challenge to the investigative alert system.

As to defendant's assertion that the investigative alert procedure created an improper proxy warrant system within CPD, however, the court found that the failure to raise that particular argument in the circuit court deprived it of a proper record upon which to consider the issue. While defendant cited CPD directives and testimony from another case in support of his argument that the investigative alert system was an improper substitute for a judicial warrant, the supreme court declined to consider those sources because they were not part of the record here.

The court did reach the merits on the **Bass**-based argument, specifically that the investigative alert system violated article I, section 6, of the Illinois Constitution. The appellate court in **Bass** had based its decision on the conclusion that the Illinois Constitution provides greater protection than the fourth amendment because it requires that a warrant be based on probable cause supported by "affidavit" rather than by "oath or affirmation," thus going "a step beyond" the fourth amendment.

The supreme court rejected that analysis. First, the court noted that in **People v. Caballes**, 221 Ill. 2d 282 (2006), it relied upon the *similarity* between the language of the fourth amendment and the Illinois Constitution's warrant clause as reason not to depart from lockstep. Historically, the court has construed the phrases "supported by affidavit" and "oath or affirmation" alike, and there was no reason to depart from those holdings here.

Further, that language refers only to the mechanism for obtaining a warrant, not whether a warrant is required in a given circumstance. Under the fourth amendment, it is well established that the constitution does not require an arrest warrant where there exists probable cause, even if there was time to obtain an arrest warrant. **United States v. Watson**, 423 U.S. 411 (1976). Likewise, Illinois has a longstanding tradition of allowing warrantless arrests based on probable cause. And, probable cause may be established by the collective knowledge of the police. Here, the record established that the police collectively had information sufficient to support a finding of probable cause for defendant's arrest. Accordingly, his conviction was affirmed.

Justice Neville authored a lengthy dissent, concluding that the investigative alert system is a racially discriminatory policy which has a disparate impact on Black and Latinx individuals. An included appendix identified 183 criminal cases from Cook County decided in the appellate court between 2007 and 2024, where the defendants included 154 Black men

and women, 19 Latinx men, and 1 White woman, as well as 9 cases where the defendant's race could not be determined from the records available.

Additionally, Justice Neville would have found the issue of defendant's warrantless arrest in his home reviewable under the constitutional exception to the forfeiture rule, whereby a constitutional issue that was raised at trial and that defendant could later raise in a post-conviction petition is not subject to forfeiture on direct appeal. And, he would have found no exigent circumstances and no voluntary consent to enter the home to effectuate defendant's arrest.

Finally, Justice Neville also would have held that defendant's warrantless arrest violated the Illinois Constitution where there were no exigent circumstances or other exception to the warrant requirement. He would have held that the investigative alert system improperly permits extrajudicial determinations of probable cause, and that the better policy would be to require judicially approved warrant for arrests.

People v. Wear, 229 Ill.2d 545, 893 N.E.2d 631 (2008) Among the exceptions to the **Payton** rule is the "hot pursuit" doctrine, which permits an officer with probable cause to arrest a suspect outside a home to enter the home to complete the arrest if the suspect retreats inside the residence. In other words, a suspect "may not defeat an arrest that was set in motion in a public place by escaping to a private place."

Although "hot pursuit" requires "some sort of a chase," it does not require an extended pursuit through public streets.

People v. Chapman, 194 Ill.2d 186, 743 N.E.2d 48 (2000) Under **McLaughlin**, a judicial determination of probable cause which occurs within 48 hours after an arrest is generally considered to be constitutional. Where no probable cause determination occurs within 48 hours, the State has the burden to show that a *bona fide* emergency or extraordinary circumstance justified the delay.

Although three days passed between defendant's arrest and the probable cause hearing, the delay was reasonable because police were searching for a five-month-old boy who had last been seen with defendant. See also, **People v. Nicholas**, 218 Ill.2d 104, 842 N.E.2d 674 (2005) (even where probable cause hearing is held within 48 hours, the Fourth Amendment is violated if the defendant can prove "unreasonable delay," including delay intended to allow authorities to gather additional evidence to justify the warrantless arrest); **People v. Willis**, 215 Ill.2d 517, 831 N.E.2d 531 (2005) (noting the failure of the U.S. Supreme Court to establish a remedy for the failure to provide a prompt probable cause hearing after a warrantless arrest, the Illinois Supreme Court concluded that a statement obtained during an unreasonable delay before such a hearing should be suppressed only if it was involuntary).

People v. Smith, 152 Ill.2d 229, 604 N.E.2d 858 (1992) The Supreme Court declined to decide whether an officer who took "one step" into defendant's apartment while making an arrest "entered" the apartment for purposes of **Payton v. New York**; even if the officer did enter the apartment, there were sufficient exigent circumstances to justify a warrantless arrest. See also, **People v. Cox**, 121 Ill.App.3d 118, 459 N.E.2d 269 (3d Dist. 1984) (defendant was not arrested in his home where the arrest occurred at the entrance after defendant voluntarily opened the door in response to knocking by the police); **People v. Graves**, 135 Ill.App.3d 727, 482 N.E.2d 223 (4th Dist. 1985) (doorway); **People v. Jones**, 119 Ill.App.3d 615, 456 N.E.2d 926 (1st Dist. 1983) (on porch); **People v. Schreiber**, 104

Ill.App.3d 618, 432 N.E.2d 1316 (1st Dist. 1982) (doorway of hotel room); **People v. Blount**, 101 Ill.App.3d 443, 428 N.E.2d 621 (1st Dist. 1981) (hotel hallway); **People v. Arias**, 179 Ill.App.3d 890, 535 N.E.2d 89 (3d Dist. 1989) (screened-in porch).

People v. Villarreal, 158 Ill.2d 368, 604 N.E.2d 923 (1992) Evidence of crimes committed against officers who are making an illegal arrest may not be suppressed as fruits of that illegal arrest, because it is illegal to resist even an illegal arrest and because the exclusionary rule applies only to evidence of past or ongoing criminal activity and not to evidence of crimes committed in response to an illegal search. In addition, the general right to defend a dwelling does not apply to an entry by a police officer.

People v. Eichelberger, 91 Ill.2d 359, 438 N.E.2d 140 (1982) Residents of a hotel have the same protections against unreasonable searches and searches as do residents of private homes, including the prohibition of warrantless, nonconsensual entries into a suspect's home absent exigent circumstances.

Defendant did not waive his Fourth Amendment rights by allowing the door to his hotel room to remain ajar during a controlled narcotics buy. While the open door "may have facilitated the overhearing of activities carried on within the room by those outside," it was not an invitation to or a justification for a warrantless entry.

However, the warrantless entry was justified on the basis of exigent circumstances.

Illinois Appellate Court

People v. Dorsey, 2023 IL App (1st) 200304 On appeal, defendant argued that his warrantless arrest based on an investigative alert was unconstitutional as a matter of plain error. He also argued ineffective assistance of counsel for failing to include this particular ground in the suppression motion that was filed. Defendant relied on the since-vacated appellate court opinion in **People v. Bass**, 2019 IL App (1st) 160640, to argue that his warrantless arrest was a matter of clear or obvious error. But, as the appellate court noted, **Bass** was not issued until three months after defendant was found guilty at a jury trial, **Bass** was later modified on denial of rehearing, and **Bass** ultimately consisted of four separate opinions (majority, partial concurrence and partial dissent, supplemental opinion on denial of rehearing, and the dissent of a different justice on denial of rehearing). Accordingly, no clear or obvious error could be found based upon the confusing, subsequently-vacated opinion in **Bass**. Defendant's position would have required an extension of existing law, and thus could not form the basis for a finding of clear and obvious error for purposes of plain error review. For the same reasons, defense counsel did not render deficient performance, and thus defendant's ineffective assistance of counsel claim failed, as well.

People v. Erwin, 2023 IL App (1st) 200936 Defendant was denied leave to file a successive post-conviction petition alleging an improper arrest pursuant to an investigative alert, based on the now-vacated reasoning of **People v. Bass**, 2019 IL App (1st) 160640, aff'd in part & vacated in part, 2021 IL 125434, and reiterated in **People v. Smith**, 2022 IL App (1st) 190691.

The appellate court affirmed. The majority declined to decide the investigative alert issue because, even if the appellate court now agreed that the practice is unconstitutional, the officers who made the arrest would have been acting under a reasonable belief that their conduct was constitutional. Thus, the good-faith exception to the exclusionary rule would apply, and defendant would not be entitled to the suppression of his confession. For this

reason alone, defendant could not show prejudice, and therefore could not be granted leave to file his successive petition.

A special concurrence would have affirmed based on the failure to establish cause, where the claim rests on a provision of the Illinois Constitution that has existed since the 1800's. Finding a lack of prejudice based on the exclusionary rule, on the other hand, is premature given the lack of a record on the issue.

People v. Starks, 2014 IL App (1st) 121169 At a trial for first degree murder, a police officer testified that an investigative alert was issued for defendant after he was identified as the shooter in the offense. An investigative alert is an electronic notification that is entered into the police computer system so that an officer who makes a stop will know whether police are looking for the individual who has been detained.

A second officer testified that while she and other officers were investigating an unrelated case at an apartment building, they observed defendant exit the back of the building and run through an alley while wearing a t-shirt and no shoes. When the officer stopped defendant and learned his name, she realized that he was the subject of the investigative alert.

The court criticized the use of investigative alerts in place of warrants, noting that such alerts permit police to bypass the judicial process and make probable cause determinations which are not subject to judicial oversight. "We can easily envision circumstances where a court's later assessment of the existence of probable cause differs from the police, thus jeopardizing the results of a criminal investigation."

However, because probable cause existed for defendant's arrest based on the statements of three eyewitnesses, the court declined to consider possible constitutional issues arising from the use of investigative alerts.

§43-3(c)(3)(b)
Warrantless Arrest Justified

Illinois Supreme Court

People v. Clark, 2024 IL 127838 Defendant was charged with multiple counts of attempt murder and aggravated battery arising out of a gang-related shooting. He was arrested three days after the incident, pursuant to a Chicago Police Department investigative alert which was based upon the statement of a man who told police that he heard defendant admit his involvement in the shooting and disposal of the guns. Defendant filed a motion to suppress in the circuit court, arguing that the police lacked probable cause or a valid arrest warrant and thus his arrest was improper. That motion was denied. Defendant ultimately was convicted of two counts of aggravated battery and sentenced to a total of 32 years of imprisonment.

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found no exigent circumstances and no voluntary consent to enter the home to effectuate defendant's arrest.

Finally, Justice Neville also would have held that defendant's warrantless arrest violated the Illinois Constitution where there were no exigent circumstances or other exception to the warrant requirement. He would have held that the investigative alert system improperly permits extrajudicial determinations of probable cause, and that the better policy would be to require judicially approved warrant for arrests.

People v. Wear, 229 Ill.2d 545, 893 N.E.2d 631 (2008) The officer's warrantless entry to a residence to complete an arrest was permissible "hot pursuit" where the officer clearly had probable cause to arrest while the defendant was standing outside the residence, had followed defendant to the home with the lights on his squad car flashing, and unsuccessfully attempted to get defendant to return to defendant's car before defendant retreated into the home. Although "hot pursuit" requires "some sort of a chase," it does not require an extended pursuit through public streets. See also, **People v. Yates**, 98 Ill.2d 502, 456 N.E.2d 1369 (1983) (warrantless entry to a home to arrest defendant for murder was justified; police were investigating a brutal murder, there was a clear showing of probable cause, there was "strong evidence" suggesting that defendant might escape if not swiftly apprehended, and the arrest was made at a reasonable hour and in a reasonable manner). Compare, **People v. White**, 117 Ill.2d 194, 512 N.E.2d 677 (1987) (insufficient exigent circumstances to justify warrantless arrest for murder in suspect's home; nearly two weeks had lapsed since the offenses, police had probable cause for arrest shortly after offenses but failed to pursue defendant for several days, and police took defendant to station without placing him in handcuffs).

People v. Smith, 152 Ill.2d 229, 604 N.E.2d 858 (1992) There were sufficient exigent circumstances to justify a warrantless arrest in a home where officers were investigating a violent murder, it was important to capture the murderer quickly, and police had probable cause to believe that defendant was involved and was in his apartment. In addition, the officers overheard defendant admit killing someone and were almost certain that blood-stained clothing was just beyond the door and would be destroyed unless they acted promptly. Finally, the officers did not delay in coming to defendant's apartment after they learned of his possible involvement in the offense.

People v. Bean, 84 Ill.2d 64, 417 N.E.2d 608 (1981) Where police entered a residence with the consent of a resident, they were not required to wait in a vestibule while defendant was summoned. A warrant is not required to make an arrest where there is voluntary consent to enter a home and the arrest is based on probable cause. Furthermore, "[w]hen officers are given consent to enter an apartment to arrest a suspect who was involved in an armed robbery, they should not be required to wait for that person (who might be armed) to approach them or possibly attempt to escape."

People v. Abney, 81 Ill.2d 159, 407 N.E.2d 543 (1980) There were sufficient exigent circumstances to justify a warrantless arrest of defendant in his residence where police went to defendant's residence immediately after obtaining the victim's statement about 1½ hours after the offense, there was no deliberate or unjustified delay during which time a warrant could have been obtained, and officers believed the suspect was armed and exhibited signs of a violent character. See also, **People v. Eichelberger**, 91 Ill.2d 359, 438 N.E.2d 140 (1982)

(warrantless entry to open hotel room was justified where police heard what they reasonably believed to be the delivery of narcotics; the fact that a felony was being committed in the officers' presence demanded prompt action, and there was no delay after probable cause was developed).

Illinois Appellate Court

People v. Cummings, 2023 IL App (1st) 220520 The trial court did not err in denying defendant's motion to quash arrest and suppress evidence. Defendant alleged that the police arrested him inside his home without a warrant and that, accordingly, the DNA swab taken while he was still in police custody two weeks later should have been suppressed.

At the hearing on defendant's motion, defendant did not present any evidence that the police entered his home. The arresting officer testified that he had arrested defendant outside of the home on the front steps. A warrantless arrest in public does not violate the fourth amendment if it is supported by probable cause. The evidence showed that the police had probable cause to arrest defendant where a DNA profile developed from the sexual assault kit collected in the instant case yielded an association with a DNA profile in CODIS from a separate sexual assault case. In the CODIS case, defendant had been identified by the victim as the offender, though that case had not been prosecuted. The DNA association provided probable cause for defendant's warrantless arrest.

Further, even if the arrest had occurred inside defendant's home, defendant's fourth amendment claim would fail. "[A]n arrest made during a warrantless nonconsensual entry of a home does not vitiate a defendant's subsequent custody" and does not require suppression of evidence later collected outside the home, so long as the police had probable cause for the arrest.

People v. Wimberly, 2023 IL App (1st) 220809 In a successive petition, the defendant alleged for the first time that his arrest pursuant to an investigative alert, rather than a warrant, was unconstitutional. The State first argued that defendant could not establish the cause prong of the cause and prejudice test. It noted that the claim was always available to him, and that some justices of the appellate court have voiced concerns about the use of investigative alerts in decisions dating back to 2012. The appellate court disagreed. New decisions can establish cause, and here defendant's initial petition was filed in 2011, before the justices' voiced concern about investigative alerts and, more importantly, before two appellate court decisions, **People v. Bass**, 2019 IL App (1st) 160640, aff'd in part, vacated in part, 2021 IL 125434, and **People v. Smith**, 2022 IL App (1st) 190691, which held for the first time that an arrest based on an investigative alert was unconstitutional.

The appellate court would not find prejudice, however. The court agreed with **People v. Braswell**, 2019 IL App (1st) 172810, which declined to follow **Bass** and found it wrongly decided. Like **Braswell** and the dissent in **Bass**, the court here found no reason to deviate from the supreme court's holding that the Illinois constitution provides the same protections as the fourth amendment. Under the fourth amendment, an arrest made without a warrant is valid if there is probable cause, regardless of whether that probable cause is attached to an investigative alert. The appellate court found no merit to the **Bass** court's belief that the Illinois constitution's requirement of a warrant supported by "affidavit" (rather than the federal constitution's requirement of "oath or affirmation") is a meaningful difference that justifies finding warrantless arrests based on probable cause, but made pursuant to an investigative alert, unconstitutional.

People v. Harris, 2022 IL App (3d) 200234 The arresting officer had probable cause to arrest defendant based upon information in an investigative alert provided by another officer. The officer who initiated the alert – Smiles – had spoken to the victim of a reported battery and obtained a description of the perpetrator and his vehicle. Smiles also viewed a video of the attack. Six days later, Smiles observed a similar vehicle with a temporary license plate that was a near match to the temporary plate number observed on the video. After further investigation, Smiles relayed to another officer – Irving – the details of the battery investigation, defendant's description, and that there was probable cause to arrest defendant. Irving properly acted on this information in effectuating the arrest, which led to the discovery of a firearm on defendant.

The Appellate Court held that the investigative alert relayed from Smiles to Irving provided reasonable grounds to make a warrantless arrest. Accordingly, the trial court did not err in denying defendant's motion to suppress. The court also concluded that investigative alerts do not violate separation of powers because "the mere use of alerts to disseminate information among officers does not eliminate judicial evaluations of probable cause."

People v. Hardimon, 2021 IL App (3d) 180578 The State established that probable cause and exigent circumstances existed at the time of defendant's warrantless arrest. In considering whether exigent circumstances exist, courts consider: (1) whether the offense being investigated was recently committed; (2) whether the officers deliberately or unjustifiably delayed during a time they could have obtained a warrant; (3) whether a grave offense, particularly one of violence, is involved; (4) "whether the suspect is reasonably believed to be armed"; (5) whether the police were acting upon a clear showing of probable cause; (6) whether there was a likelihood of escape if the suspect was not swiftly apprehended; (7) whether there was a strong reason to believe the suspect was at the premises to be searched; and (8) whether the police entry, although nonconsensual, was made peacefully.

Here, the witness interviews implicating defendant occurred the day of and the day after the shooting, leading to defendant's arrest within 48 hours. The Appellate Court found this to be "recent" and that the police did not delay unjustifiably in their investigation. The offense – murder – was grave, and defendant was assumed to be armed as no weapon was found at the scene. Probable cause clearly existed where the witnesses knew defendant and corroborated each other. Because a witness informed the police where he dropped off defendant after the crime, there was strong reason to believe defendant was at the premises. Finally, the entry was peaceful, as police knocked and were let inside by the homeowner. Where every factor favored exigent circumstances, the Appellate Court upheld the arrest.

People v. Thornton, 2020 IL App (1st) 170753 The police received a 911 call stating that a person wanted for two sexual assaults was sitting on the porch at a specific address; the caller also described defendant's clothing. Police patrolling in the area found defendant, walking down the street near the address provided by the caller, wearing clothing which matched that described. The officers approached and asked defendant his name. Upon checking his identity in their system, the officer discovered an investigative alert.

The initial **Terry** stop of defendant was valid based on the 911 call because defendant was quickly located in the general area and matched the description provided. While an anonymous tip requires corroboration of its assertion of illegality, not just identity, a 911 call is not viewed with the same skepticism as an anonymous tip. Further, the tip here was not

of a crime in progress, but rather provided the location of a known suspect, merely allowing the officers to investigate further.

Handcuffing defendant during this initial encounter did not transform the **Terry** stop into an arrest where an officer testified that he cuffed defendant for safety reasons. The court found this reasonable in light of defendant's status as a sexual assault suspect.

The subsequent arrest of defendant based on the investigative alert was also proper. The investigative alert was supported by probable cause where one of the two victims identified defendant from a photo array, and defendant lived near the other victim's house where the assaults of both women occurred. Further, defendant had physical characteristics described by both women, including tattoos on his upper arms and a chipped front tooth from having been shot in the mouth previously.

The Appellate Court declined to follow **People v. Bass**, 2019 IL App (1st) 160640, which concluded that investigative alerts are unconstitutional. Instead, the court followed **People v. Braswell**, 2019 IL App (1st) 172810, and concluded that investigative alerts supported by probable cause are constitutional.

The concurring justice would have found that the **Terry** stop was converted into an arrest almost immediately when he was handcuffed and placed into a police car. She would have found that arrest proper on the basis of the same facts which supported the **Terry** stop, specifically the 911 call and the fact that defendant matched the description of a man wanted for two felonies.

People v. Bahena, 2020 IL App (1st) 180197 Eight months after being shot in a liquor store parking lot, the victim identified defendant as the shooter from a photo lineup. Based on that identification, an officer created an investigative alert. Relying on that investigative alert, two officers went to defendant's home and placed him under arrest. Defendant challenged his arrest, arguing that an investigative alert is an improper basis for a warrantless arrest, even if the alert is supported by probable cause. The Appellate Court disagreed, declining to follow **People v. Bass**, 2019 IL App (1st) 160640, and instead following its own prior decision in **People v. Braswell**, 2019 IL App (1st) 172810. An arrest based on an investigative alert supported by probable cause does not violate the Illinois Constitution.

People v. Braswell, 2019 IL App (1st) 172810 Police responding to a complaint that subjects inside a grocery store were passing counterfeit bills had probable cause to believe defendant was accountable for their conduct, even though defendant was in a vehicle in the parking lot. While mere presence near a crime scene is insufficient to support an arrest, an individual's location prior to and after commission of a crime may be considered in determining probable cause. Here, defendant was not simply present in the parking lot, but rather had arrived at the location with the offenders and remained in the vehicle that presumably was meant to be used to leave the scene, as well.

After he was taken into custody, the suburban officers discovered an investigative alert for defendant and notified the Chicago detective who had entered the alert. Defendant then was turned over to Chicago police, who conducted a lineup at which defendant was identified as the offender in the armed robbery which was the subject of the investigative alert. The Appellate Court declined to follow **People v. Bass**, 2019 IL App (1st) 160640, which held that an arrest based on an investigative alert, rather than a warrant, was unconstitutional under the Illinois Constitution. Instead, the Appellate Court here concluded that an arrest requires only probable cause, not a warrant, and that an arrest is proper where the police have reasonable grounds to believe defendant has committed an offense regardless of whether an investigative alert has been issued.

§43-3(c)(3)(c)
Warrantless Arrest Improper

United States Supreme Court

Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990) An overnight guest in a residence has a reasonable expectation of privacy in that residence, and may challenge his warrantless arrest therein. The warrantless entry here was not justified by exigent circumstances; although the offense was murder, the guest was suspected only of driving the getaway car. In addition, the murder weapon had been recovered and police had the residence surrounded.

Welsh v. Wisconsin, 467 U.S. 883, 104 S.Ct. 2091, 81 L.Ed.2d 732 (1984) The warrantless arrest of defendant in his home for a civil, nonjailable traffic offense (DUI) was unlawful. In determining whether there are sufficient exigent circumstances to justify a warrantless entry, an important factor is the gravity of the offense. Furthermore, the "hot pursuit" doctrine requires continuous pursuit of defendant from the scene.

Illinois Supreme Court

People v. Foskey, 136 Ill.2d 66, 554 N.E.2d 192 (1990) There were insufficient exigent circumstances to justify a warrantless entry to defendant's home to make an arrest; although the offense was serious, there was nothing to suggest that the defendant was armed or constituted an immediate and clear danger to the police, and no reason to believe that immediate action was required.

Illinois Appellate Court

People v. Smith, 2022 IL App (1st) 190691 During the initial investigation into the beating death of an individual (Morris), defendant was developed as a suspect. The investigating officer issued an investigative alert for defendant's arrest at that time. Defendant was arrested six months later by a different officer who was a member of the Chicago Police Department's Fugitive Apprehension Unit and who was not otherwise involved in the murder investigation. Prior to trial, defendant filed a motion to suppress, challenging his warrantless arrest. The court denied that motion.

On appeal, defendant argued that his arrest based on an investigative alert was unlawful under the Illinois constitution, which requires "a determination of probable cause supported by an 'affidavit' and made by a neutral magistrate." Defendant did not raise a fourth amendment challenge, and the appellate court noted that the fourth amendment allows an arrest on probable cause supported "by oath or affirmation," while the Illinois constitution contains the more stringent "affidavit" requirement.

Two justices held that the investigative alert system violates the Illinois Constitution. (The third justice would not have reached the merits of the issue.) The delegates to the 1870 Constitution specifically changed the language of Article 1 Section 6 from "oath and affirmation" and added the word "affidavit," signaling their intent to provide Illinois citizens with greater protection from warrantless arrests. The investigative alert system, which depends on unsworn evidence presented to police officers, does not meet the affidavit requirement, which envisions sworn evidence presented to a magistrate. Instead, an investigative alert is more like a "standing order" to arrest, which was found unlawful in **People v. McGurn**, 341 Ill. 632 (1930). The appellate court also noted that the police had

ample opportunity to obtain a warrant during the six months between the date of the incident and the date of defendant's arrest here. Defendant's arrest pursuant to the investigative alert was unlawful.

The court went on to conclude that a new trial was not required, however, on the basis that the error was harmless. Even without the evidence derived from defendant's unlawful arrest, there was overwhelming evidence of defendant's guilt, including multiple eyewitness identifications. Accordingly, defendant's conviction was affirmed.

People v. Shipp, 2020 IL App (2d) 190027 Defendant, who was walking in the snowy street near the reported location of a fight, ran from the police after they tried to stop him. He was arrested and searched. He filed a motion to suppress the gun found during the search, and while the State argued that defendant could have been arrested for walking in the street in violation of a city ordinance, the trial court instead found the arrest justified based on defendant's flight.

In a post-conviction petition, defendant alleged appellate counsel's ineffectiveness for failing to challenge the ruling on the motion to suppress. The circuit court summarily dismissed the petition, and the Appellate Court remanded, finding a gist of a constitutional claim. After further post-conviction proceedings, at which no further evidence was offered, the circuit court granted the petition and remanded for a new trial.

The State argued in the instant appeal that the arrest was justified by the ordinance violation. Defendant argued that the State's argument was precluded by the law-of-the-case doctrine, and that the State forfeited the argument when it failed to raise it in the first appeal. The Appellate Court disagreed, holding that in the post-conviction context, remanding a first-stage dismissal does not decide the issues for purposes of the law-of-the case doctrine, it merely finds potential merit. Moreover, the State's failure to raise the ordinance issue in the first appeal did not forfeit the argument for the instant appeal, especially since the issue depended on factual determinations not available on a first-stage record.

However, the circuit court did not err in granting the petition. The State's ordinance-violation argument required a showing that walking on the sidewalk was practicable, such that walking on the street was unnecessary. Although the police testified the sidewalks were clear, video of the arrest shows mounds of snow along the sides of the street. Thus, resolution of the issue required a factual determination. Moreover, the State never provided legal arguments as to the definition of "practicable." The State bore the burden of establishing probable cause, and offered insufficient evidence or legal argument to meet its burden.

People v. Smock, 2018 IL App (5th) 140449 Police intrusion into defendant's home to arrest him following a neighbor's noise complaint was not justified by exigent circumstances. The disorderly conduct charge was a Class C misdemeanor, there was no evidence that defendant posed any danger, and the delay to obtain a warrant would not have impeded defendant's arrest. The police simply could have handed the ticket to defendant with a notice to appear.

Likewise, while defendant opened his door to the police, he never crossed the threshold to the outside. When defendant retreated from the doorway, the police intrusion into his home was not justified by "hot pursuit" because the arrest had not been set in motion while defendant was in a public place. Defendant never left the confines of his home. The Appellate Court reversed the denial of defendant's *pro se* motion to suppress.

People v. Swanson, 2016 IL App (2d) 150340 A warrantless entry into a home is presumed

unreasonable. But a warrant is not needed when the owner consents to the entry or when the police enter for the purposes of providing emergency aid. The court held that neither exception applied in this case.

On a bitterly cold January evening, defendant was driving home from a tavern when he lost control of his car, slid into a snowy ditch, and struck a sign with enough impact to deploy the airbags. Defendant could not start his car so he started to walk home. About a mile down the road, defendant went to the door of a house, but the occupants would not let him in and instead called 911. Defendant then walked the remaining mile to his house.

Meanwhile police officers responded to the 911 call of a suspicious and disoriented person. On the way, they discovered the wrecked vehicle, learned that it belonged to defendant and sent an officer to his house. The officer arrived before defendant, spoke to defendant's wife, explained that defendant had been in an accident, left his business card for her, and told her to call when defendant arrived home.

A short while later, defendant arrived home freezing cold and covered in snow. Defendant's wife tended to him and then called the police. She told them that defendant had arrived home safely and did not need any medical attention. An officer told her that they needed to see defendant to verify that he was home, so they were coming to the house and she would have to let them in.

A few minutes later, the officers came to defendant's house. The wife opened the interior door, spoke to the officers through the closed storm door, and told them that defendant was fine. At one point, she opened the storm door slightly to hear what they were saying. When she did so, the officers opened the door further and walked in. They asked where defendant was. She said defendant was upstairs and he was fine. Defendant came to the top of the stairs and he too told the officers he was fine. The officers told defendant that if he did not come downstairs they would go up and get him.

Defendant came downstairs and the officers noted that he appeared drunk. The officers arrested defendant for leaving the scene of an accident, removed him from the house, and later charged him with driving under the influence.

The court first held that defendant's wife did not consent to the officers' entry into the house. She clearly told the officers that she and defendant did not need help and that they could leave. She spoke to them through a closed storm door, which she only opened slightly to facilitate conversation, not as a gesture to come inside. Nothing in her actions, either directly or indirectly, could be viewed as consent.

The court also found that the police did not enter the house for the purpose of providing emergency aid. The emergency-aid doctrine applies when (1) there is an emergency at hand and (2) the emergency is connected to the area entered or searched.

Although defendant had been involved in an accident which caused serious damage to his car, by the time the officers arrived defendant was safely home and under his wife's care. There was no reasonable basis to conclude that defendant needed aid, especially since his wife repeatedly told the officers that he did not need help.

Because the officers had no warrant to enter defendant's home, and because there was neither consent nor a need for emergency aid, the Appellate Court affirmed the trial court's order granting defendant's motion to suppress.

People v. Santovi, 2014 IL App (3d) 130075 A police officer arrived at defendant's home shortly after defendant had been involved in a hit-and-run accident. Defendant's husband answered the front door, stated that defendant had too much to drink, and allowed the officer to come inside and check on her. The officer entered the house, knocked on the bathroom

door, and could hear defendant inside vomiting.

The officer continued to knock for another minute, but when defendant did not open the door, the officer told defendant that she would knock the door down unless defendant opened it. Defendant then opened the door and the officer told her to come into the garage to talk. Defendant went with the officer to the garage where the officer questioned her and obtained incriminating evidence.

The Appellate Court held that the officer illegally arrested defendant inside her home without a warrant. By threatening to knock down the door unless defendant opened it, the officer's actions constituted an arrest.

In deciding whether a defendant has been arrested the court must determine whether a reasonable person would not have felt free to leave. Where the defendant's freedom of movement is restrained by some factor other than police action, the relevant inquiry is whether a reasonable person would feel free to decline the officer's requests or otherwise terminate the encounter.

Courts utilize the four **Mendenhall** factors in making this decision: (1) threatening presence of several officers; (2) display of a weapon; (3) physical touching of the defendant; and (4) use of language or tone indicating compliance might be compelled. **United State v. Mendenhall**, 446 U.S. 544 (1980). These factors are not exhaustive and an arrest can be found on the basis of other similar coercive factors.

Here, the officer's statement that she would knock down the door unless defendant opened it clearly indicted that compliance was compelled. A reasonable person would not believe she was either free to deny the officer's demand or to end the encounter. Defendant had only two options: to remain in the bathroom and wait for the officer to knock down the door or to come out. There was nothing consensual about this choice.

The absence of three of the four **Mendenhall** factors (multiple officers, display of weapons, and physical touching) does not alter the outcome since the presence of the fourth (use of language or tone to signal compelled compliance) was clearly present and by itself showed that this was an arrest.

Although defendant's husband gave the officer permission to enter the house and check on defendant, that consent was insufficient to allow the officer to enter the bathroom. Defendant's actions in locking the bathroom door demonstrated an objection to any further police intrusion into the bathroom. As a cotenant with equal rights, defendant's objection to enter the bathroom overrode her husband's general consent to enter the house.

The hot pursuit exception to the warrant requirement was inapplicable to this case. Hot pursuit constitutes an exigent circumstance that allows an arrest to be made without a warrant. Under the hot pursuit doctrine, a defendant may not avoid an otherwise proper arrest initiated a public place by escaping to a private location. Here, the arrest was not initiated in public and defendant was not fleeing from the police or an attempt to arrest her. Accordingly, the doctrine does not apply.

People v. Brown, 2013 IL App (1st) 083158 Although handcuffing a suspect tends to indicate that an arrest rather than a **Terry** stop has occurred, handcuffing is permissible during a **Terry** stop where restraint is necessary to effectuate the stop and protect the safety of the officers. A limited frisk for weapons is permitted during a **Terry** stop if the officer reasonably believes that the person detained is armed and dangerous.

Probable cause for the arrest exists if the circumstances justify a belief by a reasonably cautious person that the suspect is or has been involved in a crime. Probable cause is determined by a common sense evaluation of the probability of criminal activity, and does

not require proof beyond a reasonable doubt. Upon making an arrest, the police may search the person and area within the immediate control of the arrestee. However, because the search incident to arrest doctrine is based on interests of officer safety and evidence preservation, a search is impermissible where the arrestee cannot possibly reach into the area which the officer seeks to search.

Officers responding to a report of a burglary in progress had sufficient grounds to conduct a **Terry** stop when they saw defendant leaving the premises by the back door, where the officers knew that other officers were pursuing two suspects who left the building by the front door while carrying metal tools. Because defendant was leaving the scene of the crime in the middle of the night as other suspects fled by another exit, the officers could reasonably suspect that defendant was involved in criminal activity.

However, by immediately handcuffing defendant when there was no articulable basis to believe that he was armed or dangerous, the officers conducted an arrest rather than a **Terry** stop. The court acknowledged that one of the officers testified to having a general fear of his safety because the officers were in a dark alley with ample places for suspects to hide, but found that such fear did not justify a belief that the defendant posed any threat to the officers' safety as he left the building. Furthermore, defendant was not doing anything that was illegal on its face, and the arrest was made as soon as defendant passed through the doorway and despite the absence of any signs he intended to flee or resist. Because a reasonably cautious person would not have believed that the defendant had committed a crime, probable cause to make an arrest was lacking.

People v. Brown & Cooper, 277 Ill.App.3d 989, 661 N.E.2d 533 (1st Dist. 1996) Exigent circumstances did not exist where police made a warrantless entry to an apartment several hours after seeing a man fire shots on the balcony and then flee into the apartment. The "hot pursuit" doctrine might have applied had officers entered the apartment immediately upon seeing the man flee into it, but could not justify an entry several hours later. Furthermore, because the officers delayed three hours and unsuccessfully attempted to find a judge so a warrant could be obtained, "the State's claim of exigent circumstances is seriously undermined."

In addition, there was no showing that the suspect posed any "immediate and clear danger" at the time of the entry, discharge of a firearm into the air violates only a city ordinance and is not a "grave" offense, and the man had made no attempt to flee or confront the officers despite knowing of their presence. Finally, the exits to the apartment were secured by officers, there was no indication of danger to other individuals, and there was no real concern that delay would lead to the destruction of evidence.

People v. Day, 165 Ill.App.3d 266, 519 N.E.2d 115 (4th Dist. 1988) A warrantless entry was unjustified where there was no evidence defendant was armed or dangerous; defendant was not aware that an accomplice had been arrested, and therefore had no reason to flee or destroy evidence.

§43-3(d)
Defining a Seizure

§43-3(d)(1)
Reasonable Person Standard

United States Supreme Court

Torres v. Madrid, 592 U. S. ____ (2021) A "seizure" under the Fourth Amendment occurs when the police apply physical force to the body of a person with intent to restrain, even if the force does not succeed in subduing the person. This "physical force" seizure is distinct from the "show of authority" seizure at issue in **California v. Hodari D.**, 499 U. S. 621 (1991). When police exert a show of authority, a seizure occurs only if the purported arrestee acquiesces. When the police use physical force, however, the seizure occurs at the time of the use of force, even if the attempt to seize is unsuccessful.

Here, the plaintiff fled in a car, the police shot her, and she escaped. She sued the police, alleging that by shooting her, the police engaged in an unreasonable seizure under the Fourth Amendment. The lower courts rejected the claim on the basis that she was never "seized" because she never yielded to the show of force. The Supreme Court reversed, finding the use of force with intent to restrain sufficient.

The majority rejected the dissent's position that, pursuant to common law, a seizure occurs only when the officer exerted some control or possession over the arrestee. The majority found that the use of physical force always constituted a seizure under the common law, and, while it was true that no cases supported a theory of seizure-by-gunfire, officers did not carry guns at the time of the founding. The majority saw no rationale for providing an exception just because the force is exerted from a distance.

Kaupp v. Texas, 538 U.S. 626, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003) A "seizure" occurs where, considering all the circumstances, the police conduct would communicate to a reasonable person that he was not free to ignore the police and go about his business. A 17-year-old boy was clearly "seized" where he was awakened in his bedroom at 3 a.m. by three police officers, told that "we need to go and talk," and transported (while wearing only underwear and in handcuffs) to the scene of a murder and then to a police station.

Defendant did not consent to accompany the officers by stating "Okay" in response to the officer's statement that they needed to talk. Because the officer "offered [defendant] no choice" and defendant had just been awakened in his bedroom by multiple officers, his response was nothing more than "mere submission to a claim of lawful authority."

Furthermore, even if defendant voluntarily accompanied the officers, the encounter was transformed into a "seizure" when he was handcuffed and transported, while wearing only underwear, to the police station. See also, **People v. Kveton**, 362 Ill.App.3d 822, 840 N.E.2d 714 (2d Dist. 2005) (individual is "seized," for purposes of the Fourth Amendment, when an officer in some way restrains his liberty; no "seizure" occurs when a law enforcement officer merely approaches an individual and asks questions, so long as the individual is free to decline to listen and go about his business; a reasonable person would have believed that he was not free to leave where two police officers in an unmarked car crossed the center line despite oncoming traffic, parked their vehicle so it faced the car in which defendant planned to leave, and accused defendant of possessing cannabis).

INS v. Delgado, 466 U.S. 210, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984) An INS "factory survey," in which agents stationed at factory exits question employees about their citizenship, does not constitute a seizure of the entire factory or a "detention" under the Fourth Amendment.

U.S. v. Place, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) Exposing luggage located in a public place to sniffing by trained narcotic detection dogs does not constitute a search.

U.S. v. Euge, 444 U.S. 707, 100 S.Ct. 874, 63 L.Ed.2d 141 (1980) A compelled handwriting sample is neither a "search" nor a "seizure" subject to Fourth Amendment protections.

U.S. v. Dionisio, 410 U.S. 1, 93 S.Ct. 764, 35 L.Ed.2d 67 (1973) A subpoena to appear before a grand jury is not a "seizure," and a grand jury directive to make a voice recording does not violate the Fourth Amendment. The grand jury is not required to show reasonableness before a witness can be required to give a voice exemplar. See also, **U.S. v. Mara**, 410 U.S. 19, 93 S.Ct. 774, 35 L.Ed.2d 99 (1973) (directive requiring witness at grand jury to furnish handwriting specimen, solely for comparison purposes, does not violate the Fourth Amendment; there is no expectation of privacy and no need for the government to show reasonableness). Compare, **People v. Watson**, 214 Ill.2d 271, 825 N.E.2d 257 (2005) (under Illinois law, some showing of individualized suspicion and relevance must be made before a grand jury may issue a subpoena to obtain evidence of a non-invasive nature (*i.e.*, appearance in lineup, fingerprinting, handwriting or voice exemplaries); a grand jury subpoena to obtain evidence of a more invasive nature (*i.e.*, blood, head hair, facial hair or pubic hair) may be issued only upon probable cause).

Illinois Supreme Court

People v. Almond, 2015 IL 113817 A consensual encounter between a citizen and a police officer does not violate the Fourth Amendment. A challenged incident is a seizure, not a consensual encounter, when the police by means of physical force or show of authority restrain a person's movement, such that a reasonable person would not believe he was free to leave. In deciding whether there has been a seizure, courts generally look at four factors: (1) the threatening presence of several officers; (2) the display of weapons; (3) physical touching of the person; and (4) using language or tone of voice to compel compliance. Although these factors are not designed to be exhaustive, the absence of any of the factors is "highly instructive" on whether a seizure has occurred.

The court found that none of the above factors were present in this case. Two officers drove to a liquor store in a marked squad car (although the officers were in plain clothes) and saw defendant and four other men outside the store. As the officers got out of their car, the group of men dispersed. Defendant and two other men went inside the store and the officers followed. One of the officers spoke to the three men, who were standing next to a wall at the back of the store, and asked them what they were doing. The men said they were buying chips. The officer asked why they were at the back of the store, received no answer, and then asked whether they had any weapons or narcotics. Defendant said that he had a gun. Based on this response, the officer searched defendant and recovered a loaded firearm.

Two officers were involved in the encounter, but they were actually outnumbered by the three suspects in the store. Both officers wore plain clothes and neither displayed a weapon. The officers did not physically touch defendant before he said he had a gun, and neither officer used language or a tone of voice that would have compelled defendant to comply with the officers' requests. Although the officers arrived in a marked squad, that fact by itself did not create a threatening presence.

Under these circumstances, the interactions between the officers and defendant was a consensual encounter and no seizure occurred. Once defendant stated that he was armed, the officer properly searched him and recovered the loaded weapon.

People v. Luedemann, 222 Ill.2d 530, 857 N.E.2d 187 (2006) A "seizure" occurs when "by

means of physical force or show of authority," an officer restrains the liberty of a citizen. Where the citizen's freedom of movement is limited by some factor independent of the police conduct, the applicable test is whether a reasonable, innocent person would feel free to decline the officer's questions or otherwise terminate the encounter.

Police do not violate the Fourth Amendment by questioning a citizen, asking to examine his or her identification, or requesting consent to search belongings, so long as officers do not convey the message that the subject is required to comply with their requests or otherwise indicate that he is not free to terminate the encounter.

A reasonable person would have believed that he was free to terminate the encounter where he was sitting in his car, which was parked on a public street, when an officer left his squad car and shined a flashlight as he approached defendant's car from the rear. Because the officer did not block defendant's car in its parking place, turn on his overhead flashing lights, use coercive language or a coarse tone of voice, touch the defendant, or display his weapon, "nothing . . . would communicate to a reasonable person, innocent of any wrongdoing, that he was not free to decline [the officer's] questions or otherwise go about his business."

People v. Wipfler, 68 Ill.2d 158, 368 N.E.2d 870 (1977) The essential elements of an arrest are the intent of the officer to effect an arrest and the understanding of the defendant that he is arrested. The arrestee's understanding is not his subjective belief, but what a reasonable man, innocent of any crime, would have thought had he been in the defendant's shoes. See also, **People v. Redd**, 135 Ill.2d 252, 553 N.E.2d 316 (1990) (there was no arrest where a reasonable person in defendant's situation would have believed he was free to leave); **People v. Sneed**, 274 Ill.App.3d 274, 653 N.E.2d 1340 (1st Dist. 1995) (reasonable 15-year-old of marginal intelligence would not believe he was free to leave where he was taken to the station in a squad car, never told that he could leave, and left in an interrogation room for 6½ to eight hours; the court criticized police for holding defendant at the station for several hours in the hope that their investigation would turn up evidence for an arrest; Appellate Court has "continually rejected the proposed fiction that a person who voluntarily agrees to submit to interrogation at a police station also implicitly consents to remain in the police station while the police investigate the crime to obtain probable cause for the interviewee's arrest"); **In re J.W.**, 274 Ill.App.3d 951, 654 N.E.2d 517 (1st Dist. 1995) (reasonable 14-year-old in defendant's position would not have felt free to leave where he was called to the principal's office and told that police officers were taking him to the police station; in addition, officers escorted defendant back to his classroom to pick up his belongings, transported him to the station in the back seat of a squad car which had no inside handles, never told defendant he could leave, and responded to defendant's denial of involvement in the offense by saying they had information he had been at the scene); **People v. Wallace**, 299 Ill.App.3d 9, 701 N.E.2d 87 (1st Dist. 1998) (reasonable, innocent 15-year-old with no criminal history would not have believed he was free to leave where he was held in a closed and possibly locked interview room for eight hours; in determining whether an arrest occurred, defendant's age is given special weight although defendant told police that he was 17 and failed to disclose his true age until after the formal arrest).

Illinois Appellate Court

People v. Townsend, 2023 IL App (1st) 200911 (Modified upon grant of petition for rehearing June 30 , 2023) Defendant alleged that he was arrested without probable cause, and sought suppression of an inculpatory statement he gave to police in an interrogation room. The evidence at the suppression hearing showed that, a day after defendant gave a

stationhouse statement implicating another man in a shooting, two police officers arrived at defendant's home in plain clothes and an unmarked car and asked him to come to the police station again. Defendant agreed. He was not handcuffed or patted down before entering the back seat of the officers' car. At the station, the detectives left defendant alone in a foyer, an area with doors open to the public. Once taken to the "roll-call room," defendant was not restrained, the door was left unlocked, and he was allowed to watch a hockey game on television, though an officer remained present. Defendant waited a few hours until he was moved to an interrogation room and interviewed, whereupon he eventually provided the inculpatory statement.

The appellate court's initial opinion in this case found a "close case" but held that under the totality of the circumstances, a reasonable person would feel free to leave. The court was primarily persuaded by the fact that, one day earlier, defendant was in the same situation and was released. Thus, it would be reasonable to believe, in light of the other facts, including the lack of restraints and the open doors, that he was free to leave on the day in question as well.

On rehearing, however, the court agreed with defendant that his presence at the station was not voluntary because a reasonable person would not feel free to leave. The court accepted defendant's argument that the prior day's encounter was different, where defendant left the station only after he was questioned and granted permission. Conversely, here, he had yet to be questioned, and had not been told he had permission to leave. This fact, coupled with the factors that already rendered this case "close," (police drove defendant to the station; they made him wait several hours while being supervised by an officer; they moved him from the public foyer of the station to a private roll-call room, and then again to another private room for interrogation; police told him that they'd interrogate him "as long as it takes," and threatened to go beyond the 72 hour rule by "changing the clocks"), necessitated a finding that defendant was under arrest without probable cause at the time of his statement. The court reversed the trial court's order denying the motion to suppress, and remanded for a new trial.

People v. Mrdjenovich, 2023 IL App (1st) 191699 After a masseur was shot and killed at a Schiller Park motel, defendant implicated Dorsey, the head of what defendant described as a sex-trafficking business, first to detectives, then to a grand jury. Defendant worked for Dorsey but claimed to be in Dallas during the murder. He said Dorsey told him the details of the crime.

Defendant was arrested in Michigan for possessing a stolen car. The detectives visited him in jail and urged him to return to Chicago after his release so that he could help them "put Dorsey away" and in turn help defendant get his life in order. In the meantime, detectives interviewed another masseur who put defendant at the scene of the murder.

Defendant took a bus back to Chicago. The detectives met him at the bus station and drove him directly to the police station for questioning. Over the course of two days, defendant's story changed, and he eventually confessed to the murder. Defendant moved to suppress on various grounds, but only an insignificant portion (statements made in between an invocation of the right to silence and his re-initiation of the interview) was suppressed, and he was eventually convicted. Defendant renewed his challenges to the confession on appeal.

Defendant first argued that his confession was the product of an illegal arrest. He argued that when detectives met him at the bus station, drove him to the police station, and interviewed him for two days, he was under arrest without probable cause or a warrant,

because a reasonable person would not feel free to leave under those circumstances. The appellate court disagreed.

First, although detectives did not have probable cause at the time he was taken to the station, within 20 minutes of the interrogation defendant admitted he was in Chicago during the shooting and therefore had lied to the grand jury. Thus, the officers had probable cause to detain him at that point, so defendant would have to prove he was arrested prior to that statement. But the record showed the detectives did not use physical force, handcuffs, or otherwise coerce defendant with a display of authority. To the contrary, defendant agreed to meet the detectives at the station and even texted them when he did not initially see them. The door of the interview room was unlocked, and his belongings were not confiscated and searched until after he admitted to lying to the grand jury. And while defendant received **Miranda** warnings, the detectives told him he was free to leave and not under arrest. Finally, the court found that the entire relationship between defendant and the detectives was predicated on a cooperative, voluntary *quid pro quo*, part of which involved defendant providing information about Dorsey, his business, and the murder, which is exactly what was happening at the time of this interview.

Defendant next argued that his confession violated **Edwards v. Arizona**, because he invoked his right to counsel on the first day of his interrogation and was re-interrogated the next day prior to confessing. The appellate court disagreed. All interrogation ceased the day of defendant's invocation. Defendant re-initiated the conversation the next day. While defendant argued that keeping him overnight was a coercive tactic, the detention was lawful because the officers had probable cause to detain him after he admitted to obstruction of justice by lying to the grand jury. A lawful detention cannot be considered a coercive tactic.

The appellate court also rejected the argument that the officers coerced the re-initiation by failing to help defendant procure a lawyer by the time he confessed 15 hours later. Defendant didn't try to call a lawyer, despite having access to a phone. Finally, there was nothing improper about the detectives' deceitful tactics, including portraying defendant as a victim and suggesting he would gain sympathy from the state's attorney. While the detectives "came dangerously close" to promising defendant he would not be charged for the murder, they never did so, and in fact did explicitly stated they were not making any promises. Thus, the officers did not violate **Edwards.**

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. Cherry, 2020 IL App (3d) 170622 Where an officer attempts to effectuate a stop or seizure, but defendant immediately flees, there has been no submission to authority and therefore no seizure. If defendant first submitted to authority, however, and then fled, the fourth amendment is implicated at the time of the initial submission, and there must have been reasonable articulable suspicion for the seizure at that point in time, otherwise any evidence found after the initial encounter is subject to exclusion.

Here, the police ordered defendant and his friends to "stop," defendant took steps backward and away from the police as they exited their vehicle, and defendant ran off as an officer approached him. The Appellate Court concluded that defendant had not submitted to the officer's authority "in any meaningful way." Accordingly, the officer's lack of reasonable articulable suspicion at the time of this initial encounter did not render the encounter unconstitutional.

Defendant was ultimately seized when the police caught up with him approximately ten feet away, tackled him, and recovered a gun from defendant's waistband. At that point, defendant's flight, the officer's previous observation of defendant's holding his waistband, and the original tip that a group of men had been seen pointing a gun from defendant's now-parked vehicle, provided the police with reasonable, articulable suspicion to support his seizure. Finally, the gun was recovered under the plain-touch doctrine, where the officer felt it upon tackling defendant, thus there was no **Terry** frisk at issue.

People v. Bujari, 2020 IL App (3d) 190028 A state trooper performed a "Level 3" commercial vehicle inspection on a semi-truck driven by defendant. These inspections authorize an officer to request documentation from a truck driver to ensure compliance with regulations. During the inspection, the officer noticed irregularities in the closing and locking of the truck's rear doors, and in the driver's log book. Nevertheless, he handed the defendant his report and told him he was free to go. But he then asked consent to conduct a dog sniff. Defendant both protested and consented, but ultimately got in the truck to leave. As defendant prepared the truck to leave, the officer escorted his canine around the vehicle and the canine alerted. The officer arrested defendant. Before trial, a motion to suppress was denied and defendant was convicted of possession with intent to deliver more than 5000 grams of cannabis.

The Appellate Court held that this encounter did not violate the Fourth Amendment. First, the initial encounter was a valid inspection under the administrative code, and administrative searches implicate lesser privacy concerns. Moreover, the court found that the officer had reasonable suspicion to prolong the stop due to the irregularities he discovered during the inspection. Nevertheless, the officer did not prolong the stop, instead telling defendant he was free to go. Thus, at the time of the dog sniff, defendant was not detained. Dog sniffs occurring without a seizure do not implicate the Fourth Amendment.

People v. Hood, 2019 IL App (1st) 162194 Police officers patrolling in a high-crime area encountered a parked car occupied by defendant and two other people. Standing outside of the car was a man who had money in his hand. No transaction was witnessed, but one of the officers observed defendant make movements toward the floor as if he was retrieving something. The police stopped their car facing defendant's, exited, and approached. On

approach, one of the officers saw defendant place a handgun into a plastic bag and toss it into the back seat. At that point, an officer removed defendant from the car while another recovered the gun. When asked if he had a concealed carry license, defendant said he did not.

The Appellate Court concluded that the initial stop and approach by the police officers was not a seizure. The removal of defendant from the vehicle and recovery of the gun was a **Terry** stop and protective sweep justified by the totality of the circumstances, including the presence in a high crime area, defendant's movements toward the floorboard, and defendant's possession of a gun. Defendant's subsequent arrest was justified by his possession of the handgun, which he tried to conceal and for which he admitted not having a concealed carry license.

The dissent criticized the use of a "high-crime area" as a basis for upholding the **Terry** stop and protective sweep here, noting that constitutional protections are not suspended simply by virtue of being present in such an area. The dissent would have found the initial approach of the police to have been a seizure that was not justified by reasonable suspicion.

People v. McMichaels, 2019 IL App (1st) 163053 Acting on a tip, police stopped defendant on the street and recovered a weapon. Defendant unsuccessfully challenged the stop and seizure and was convicted of armed habitual criminal. The Appellate Court held that the officers had reasonable suspicion at the time of the seizure. Defendant was not seized when officers initially approached and ordered him to show his hands because defendant did not submit, instead placing his hands in his pocket and turning away. The police did seize defendant when an officer grabbed defendant in an attempt to see his hands. At that point, however, the officers had reasonable suspicion. Defendant was found at the location described in the tip and matched the description of the man said to be in possession of a gun. This, coupled with defendant's refusal to show the officers his hands and to instead conceal them in his pocket, amounted to reasonable suspicion.

Once the officers saw the gun, they had probable cause to arrest despite **Aguilar**. Under the totality of the circumstances, the officers could reasonably conclude that defendant was not licensed to carry the gun based on his noncompliance with the officers' request and his furtive movements. Moreover, section 108-1.01 of the Code of Criminal Procedure allows officers to take a weapon during a **Terry** stop if there is a reasonable suspicion of danger. And while the Firearm Concealed Carry Act only requires disclosure of a license at the request of the officer, and here the officers did not first ask if defendant had a license, defendant could have volunteered the license rather than act suspiciously.

People v. Johnson, 2019 IL App (1st) 161104 Officers on patrol saw defendant late at night in a high-crime area. When defendant saw the officers, he held his waistband and ran. Officers pursued him and defendant eventually jumped on the hood of a squad car, where he was detained and patted down. The officers found a gun. The trial court did not err in denying defendant's motion to quash arrest and suppress the gun. Defendant was not detained until he jumped on a squad car. Although flight and possession of a gun alone might not be grounds for a stop, the decision to jump on the car created reasonable suspicion. The frisk was also authorized, as the officers reasonably believed defendant was armed because he held his waistband.

People v. Thomas, 2019 IL App (1st) 170474 Appellate court reversed trial court's order quashing arrest and suppressing handgun. Defendant failed to make prima facie showing of a violation of the fourth amendment. Defendant's flight from police in area known for criminal activity was suggestive of criminal activity justifying further investigation. The

officer's pursuit of defendant and another man into the common area of an unlocked apartment building was justified. Further, the building's entryway was not curtilage like the apartment door threshold in **People v. Bonilla**, 2018 IL 122484, and there was no search where the officer saw defendant with a gun in his hand in that common area.

After **People v. Aguilar**, 2013 IL 112116, firearm possession, alone, is not enough to establish probable cause; but firearm possession is still subject to certain regulations including the FOID Card Act and Concealed Carry Act. Here, defendant's firearm possession coupled with his initial flight from the police, his handing off of the weapon to another man inside the apartment building, and his further flight into an apartment unit was sufficient to establish probable cause to believe defendant illegally possessed the gun.

Also, defendant abandoned the gun when he gave it to another individual, who further abandoned it by tossing it down on the second-floor landing of the building. Therefore, there was no fourth amendment protection because there is no search or seizure when police take possession of an abandoned item.

Finally, defendant's warrantless arrest in his girlfriend's apartment unit was proper, regardless of whether there was consent to the police entry. No warrant is required for an officer to enter a residence and arrest a defendant where he committed an offense in the presence of the officer. Also, defendant failed to prove he had an expectation of privacy in the apartment, so he lacked standing to challenge the entry

People v. Sykes, 2017 IL App (1st) 150023 The defendant's fourth amendment right against unreasonable searches was not violated when hospital staff forcibly catheterized her against her will, despite the involvement of police officers. The police brought defendant to the hospital after a single-car accident because she appeared disoriented. At the hospital, they placed her under formal arrest for DUI. The arresting officer sought her consent for chemical testing, which defendant refused. A doctor then examined defendant and, because she appeared to be in an altered mental state, ordered a urine test in an attempt to diagnose her. Defendant again refused, and, with the help of police, the hospital staff held her down and forcibly catheterized her. Test results showed the presence of cannabis and PCP.

The trial court did not err in denying defendant's motion to suppress the blood and urine test results before defendant's trial for DUI-drugs and DUI-cannabis. The Appellate Court agreed that forced catheterization by the police constitutes a search, but held that under these circumstances, the search was conducted by private actors. In **People v. Brooks**, 2017 IL 121413, the Illinois Supreme Court held that mere police participation is not state action. The question is whether the party actually taking the sample is acting as an agent of the State, and in this case, the hospital staff acted pursuant to the orders of a doctor, who hoped to obtain a medical diagnosis, not at the behest of police officers seeking evidence of a crime.

People v. Bianca, 2017 IL App (2d) 160608 An officer who was conducting a traffic stop received a citizen's tip that a particular car had been driven erratically before parking at a nearby liquor store. The officer relocated his traffic stop to the liquor store, where he observed defendant leave the store and enter a car matching the description given by the citizen. The officer parked his car next to defendant's car and asked her to "stay in that spot" so he could speak with her after he "cleared" his other traffic stop. Defendant remained while the officer finished the other stop.

When the officer returned to defendant's car he asked for her driver's license and proof of insurance. He then had defendant step out of the car to perform field sobriety tests. Following those tests, the officer arrested defendant. She was subsequently charged with

DUI.

The trial court granted defendant's motion to suppress, finding that defendant was seized when the officer asked her to remain while he completed the other stop. The Appellate Court reversed that finding, but held that a seizure occurred when the officer asked defendant for her driver's license and insurance information and told her to exit the car to perform the field sobriety tests. The court noted that there "is ample authority to support a holding that submission to field sobriety testing is a seizure under the Fourth Amendment" and found no evidence to support an argument that defendant consented to being detained for the testing.

The court also held that the State waived its claim that any argument a seizure during the field sobriety testing was beyond the scope of defendant's motion to suppress. The State failed to raise any objection when the defense presented evidence and argument on this issue during the hearing on the motion to suppress.

The trial court's order granting defendant's motion to suppress was affirmed.

People v. Qurash, 2017 IL App (1st) 143412 Two Chicago police officers were driving slowly down the street in an unmarked car when they saw defendant walking towards them on the sidewalk. The officers recognized defendant and defendant recognized the officers. When the officers were about 15 feet away, one of them stopped the car, lowered his window and said "come here" to defendant. Defendant dropped a large container full of cannabis onto the ground which the officers recovered. The trial court denied defendant's motion to suppress evidence finding that the officer's statement "come here" was a request.

The Appellate Court, with one justice dissenting, affirmed the trial court's ruling. The court held that the only **Mendenhall** factor at issue was the use of language or tone of voice and since it did not consider the phrase "come here" to be *per se* compulsory, it deferred to the trial court's "finding of fact" that the statement here was a request. The court found that nothing in the record suggested that the trial court's finding was against the manifest weight of the evidence since it would be impossible to discern the officer's tone of voice from the record. Accordingly, that "determination is solely within the province of the trier of fact," and would not be disturbed on appeal.

The dissenting justice would have found that under the circumstances here the words "come here" were not meaningfully different than "stop" or "freeze" and thus constituted a command not a request.

People v. Abram, 2016 IL App (1st) 132785 The United States Constitution and the Illinois Constitution protect individuals from unreasonable searches and seizures. Not every encounter between a police officer and a private citizen involves a "seizure," however. A person is "seized" only when, as a result of physical force or a show of authority, a reasonable person would believe he was not free to leave. In addition, a person must submit to a show of authority in order for a seizure to occur.

While investigating a report of three males in possession of rifles, two police officers exited their vehicle and started walking toward the defendant's car, in which defendant was sitting alone. Defendant immediately put his car in reverse and drove out of the alley. A vehicle chase ensued for several minutes, and ended when defendant drove into the parking lot of a police station and was taken into custody.

During the chase, officers saw items being tossed out of the driver's side window of the vehicle. Packages containing cocaine were recovered from locations along the chase route and from the driver's seat in the vehicle.

The court concluded that the defendant was not "seized" when the officers exited their vehicle and approached him to conduct an investigative interview. The officers applied no physical force, made no show of authority, and did not restrain defendant's liberty in any way. In addition, the officers did not activate their emergency lights.

When defendant started to drive away, one of the officers yelled at him to stop. Although the order constituted a show of authority, no seizure occurred until defendant submitted to that authority. Because defendant did not submit until he drove into the lot of the police station, a "seizure" occurred only at that point.

The court added that even had defendant submitted to the show of authority at some point during the chase, the resulting seizure would have been justified. Even in the absence of probable cause for an arrest, a police officer may detain and question an individual upon observing unusual conduct which leads to a reasonable conclusion that criminal activity may be afoot. Unprovoked flight can be a basis for reasonable suspicion.

The court rejected the argument that defendant's flight was provoked, noting that defendant rapidly drove out of the alley in reverse and engaged in a car chase during which he sped, drove the wrong way down one-way streets, disobeyed traffic signals, drove across an abandoned lot, and at one point drove onto a sidewalk. Although a person may refuse to cooperate with officers and go about his business, defendant's actions were not a rational response to two officers approaching on foot and instead gave rise to a reasonable suspicion that criminal activity was occurring.

Defendant's conviction was affirmed.

People v. Gutierrez, 2016 IL App (3d) 130619 Illinois courts have considered 10 factors in deciding whether a defendant was under arrest: (1) time, place, length, and mode of the police encounter; (2) number of officers; (3) indicia of formal restraint such as handcuffs or drawn weapons; (4) intention of police; (5) subject belief of defendant; (6) whether police told defendant he could refuse to go with them; (7) whether defendant was transported in a police car; (8) whether police told defendant he was free to leave; (9) whether police told defendant he was under arrest; and (10) language used by police.

The Plainfield police believed defendant's girlfriend may have been involved in the shooting death of a man. With the help of Kendall County Officers, the Chicago police, and the Secret Service, they traced her cell phone to defendant's house in Chicago. A total of 14 officers from all four agencies went to the house at 5:30 am. A female resident let approximately 6-10 of the officers into the house. All were in plain clothes except for three Chicago police officers. The officers were armed but none of them drew their weapons.

There were six residents in the house. An office found defendant and his girlfriend sleeping in a back bedroom. Plainfield Officer Platz introduced himself to defendant and asked if he would come to the Plainfield police station to answer questions. Defendant said, "Yeah, sure." Platz testified that defendant was free to stay.

Platz did not put defendant in handcuffs, but he needed the Chicago police to transport defendant to the Chicago police station where his car was parked. The Chicago officers handcuffed defendant when they drove him to the station, but took off the handcuffs when they arrived. Platz then drove defendant to the Plainfield police station. Defendant sat in the front passenger seat and was not handcuffed.

At the station, Platz put defendant in an interrogation room and told him to knock on the door if he needed anything. Platz then learned that defendant's girlfriend made statements that she and defendant shot the victim. At that point, defendant was no longer free to leave. Platz and another officer took defendant to another interrogation room and gave

him *Miranda* warnings. Defendant agreed to speak and eventually made incriminating statements.

The court held that defendant was arrested at his residence before he left for the Chicago police station. A large number of officers entered the house at 5:30 am and woke defendant up in his bedroom. The early hour and the location inside the privacy of his residence while he was sleeping rendered the encounter "particularly intrusive." There was no evidence the officers told defendant he was free to leave or refuse to go with the police. And defendant was handcuffed while the police took him to the Chicago police station. While not dispositive, the use of handcuffs is usually indicative of an arrest. While the ride to the station lasted only a few minutes and the handcuffs were removed at the station, the court found that a reasonable innocent person in defendant's position would not have felt free to leave.

Since the police lacked probable cause to arrest defendant, his arrest was illegal. The court remanded the case to the trial court to determine whether there was sufficient attenuation to purge the taint of the illegal arrest from defendant's subsequent statements.

People v. Bozarth, 2015 IL App (5th) 130147 Whether a person seated in a parked vehicle has been "seized" depends on whether a reasonable person in the same situation would believe that she was free to decline the officer's request and terminate the encounter. When a police officer restrains the liberty of a citizen through the use of physical force or a show of authority, a seizure has occurred.

Here, a seizure occurred where a police officer saw defendant's car drive onto private property, followed and stopped behind defendant's car, exited his squad car with his weapon drawn, and testified that had defendant driven away he probably would have followed her and activated his overhead lights. The court concluded that under these circumstances defendant was seized when the officer pulled behind her vehicle.

Under **Terry**, an officer may conduct a brief, investigatory stop where there is a reasonable belief that the subject of the stop has committed or is about to commit a crime. An investigatory stop must be justified at its inception, and the officer must be able to point to specific, articulable facts which, together with rational inferences, warrant the stop.

Where the officer's uncontroverted testimony established that he lacked any basis to suspect criminal activity when he began following defendant's vehicle and that he went on the private property just to see if anything "might happen," there was no reasonable basis to believe that a crime had or was about to occur. Therefore, the **Terry** stop was improper.

The court rejected the State's argument that the officer was acting in a community caretaking capacity when he followed defendants's vehicle onto the private drive. Community caretaking occurs where police are performing some act unrelated to the investigation of crime. The officer's testimony "belies the claim that he was acting in a community caretaking capacity where he testified that it entered his mind that [defendant] might be hiding from the police, involved in theft, making methamphetamine, or foul play."

The denial of the defense motion to quash the arrest and suppress evidence was reversed. Because the State could not prevail on remand without the suppressed evidence, the trial court's finding of guilt and order placing defendant on supervision were also reversed.

People v. Lake, 2015 IL App (4th) 130072 After observing defendant acting in a vaguely suspicious manner, a police officer approached defendant from behind and tapped on his shoulder, surprising and startling defendant, who turned around to look at the officer. The

officer then moved directly in front of defendant and asked what his name was. When defendant told him his name, the officer recalled that another officer had informed him that defendant was known to carry a gun. The officer looked down and saw a four-inch bulge "at defendant's waist area." He then conducted a pat-down search of that area and recovered a gun.

Defendant argued that the gun should have been suppressed as the result of an illegal search and seizure. The Appellate Court disagreed, holding that the initial encounter (prior to the pat-down) was consensual and that after learning defendant's name and seeing the bulge in waist area, the officer had reasonable suspicion to conduct the pat-down itself.

The court first rejected defendant's argument that he was seized when the officer approached him from behind and tapped him on the shoulder, causing him to stop and submit to the officer's show of authority. The court held that the officer's tap was a minimally intrusive, non-offensive, and socially acceptable method of gaining another person's attention. It was not a demonstration of police authority indicative of a seizure protected by the Fourth Amendment.

The court next rejected defendant's argument that he was seized when the officer stepped in front of and questioned him. A person is seized when an officer restrains his liberty by means of physical force or show of authority. A seizure does not occur simply because an officer approaches a person and questions him. So long as a reasonable person would feel free to disregard the office and go about his business, the encounter is consensual.

Courts use four factors to determine whether a reasonable person would feel free to leave: (1) the threatening presence of several officers; (2) the display of a weapon; (3) physical touching by the officer; and (4) the use of language or tone of voice indicating compelled compliance.

Here, after tapping defendant on the shoulder, the officer stood facing defendant and, using a conversational tone, asked him to identify himself. Defendant willingly answered the question. With the exception of the tap on the shoulder, none of the four factors were present here. The officer was alone during the encounter, did not use physical force to impede defendant, did not brandish a weapon, and did not convey verbally or non-verbally that defendant had to comply.

The court found that nothing in this exchange was anything more than a consensual encounter that did not implicate the Fourth Amendment. The court observed that although most citizens respond to police questioning, the fact that they do so without being told they are free to leave does not change the consensual nature of this contact.

Although the consensual encounter ended with the pat-down, the court found that the officer had by that point a reasonable basis to conduct the search. The officer knew that defendant was known to carry a gun and reasonably suspected that he was currently armed when he observed the bulge in defendant's waist area.

The court held that the search was proper.

People v. Burk, 2013 IL App (2d) 120063 A police officer does not violate the Fourth Amendment by merely approaching a person in a public place and asking him questions if he is willing to listen, even if the questions are potentially incriminating or the officer asks for identification, so long as the officer does not convey that compliance is required. A seizure occurs only when an officer, by the use of physical force or show of authority, restricts that person's liberty. The test is whether a reasonable person would feel he was not free to leave. The analysis requires an objective assessment of the police conduct and does not depend on the subjective perception of the defendant.

Four factors can indicate that a police encounter is a seizure: (1) the threatening

presence of several officers; (2) the display of a weapon by the officer; (3) some physical touching of a citizen; and (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

The undisputed facts do not remotely suggest that a seizure occurred. A single police officer pulled up to defendant in an unmarked squad car without activating the car's emergency lights. The officer did not position the car in a manner that inhibited defendant's ability to continue to walk. He did not order defendant to stop. He asked defendant and his companion how they were doing. After exiting his squad car, the officer asked what they were up to and why they had been behind trees and bushes. There was no indicia of coercion, show of authority, touching of defendant, or display of a weapon, and while the officer asked defendant potentially incriminating questions and for identification, he denied using any commanding language or raising his voice.

People v. Colquitt, 2013 IL App (1st) 121138 An individual is "seized" for purposes of the Fourth Amendment when an officer by means of physical force or show of authority in some way restrains his liberty. The appropriate inquiry is whether a reasonable innocent person would feel free to decline an officer's requests or otherwise terminate the encounter. Courts consider the totality of circumstances to determine whether a seizure occurred, including the threatening presence of several officers, some physical touching of the person, or the use of language or such tone of voice indicating that compliance with the officer's request might be compelled.

The Appellate Court concluded that no seizure occurred when an officer activated his emergency lights and siren as he executed a U-turn at 11:50 p.m. on a four-lane street, and then parked behind defendant's car that was stopped in the roadway. The officer's brief activation of his emergency lights and siren was necessitated by safety concerns, and did not by itself constitute a seizure. The officer did not stop a moving vehicle, but investigated the presence of an already-stopped vehicle in a roadway without hazard lights. He did not block defendant's vehicle. After the officer exited his squad car, he did not draw a weapon, did not touch defendant, and did not use language or tone of voice indicating defendant must comply with his requests.

People v. Lyons, 2013 IL App (2d) 120392 No Fourth Amendment "seizure" occurs where evidence is delivered to the police by a private individual who is not agent of the State. Here, defendant's wife was not acting as an agent of the State when she delivered two boxes of computer disks to the police. The incriminating nature of the disks was not immediately apparent, and became clear only after police employed technology to discern that the disks contained child pornography. Furthermore, defendant's wife stated that she did not know what was on the disks and that they were the defendant's property.

People v. Lopez, 2013 IL App (1st) 111819 A Fourth Amendment "seizure" occurs where, by means of physical force or show of authority, an officer restrains the liberty of a citizen. Not every encounter between the police and a private citizen results in a seizure. The Fourth Amendment is not violated where a police officer approaches a person in public to ask questions, if the person is willing to listen.

A person is "seized" for purposes of the Fourth Amendment if, under the circumstances, a reasonable innocent person would not feel free to terminate the encounter and leave. Factors which may indicate that a seizure has occurred include the threatening presence of several officers, the display of a weapon by an officer, any physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance

with the officer's request is required.

No Fourth Amendment seizure occurred where officers responded to an anonymous call regarding a suspicious vehicle, observed the defendant sitting in a pickup truck which was partially blocking an alley, approached the vehicle with one officer on each side, and asked for defendant's driver's license and an explanation of what he was doing. A seizure arose only when officers issued tickets and conducted field sobriety tests, at which point they had a reasonable, articulable suspicion that defendant was intoxicated while in control of a motor vehicle.

The court rejected the argument that the encounter constituted a seizure because one officer approached on each side of the vehicle. In **People v. Cosby**, 231 Ill.2d 262, 898 N.E.2d 603 (2008), the Illinois Supreme Court held that the fact that officers approach a vehicle on both sides does not create a seizure where there is no indication that the officers touched the defendant's person, displayed weapons, or used language or a tone of voice indicating that the citizen had no choice but to comply, unless the officers approached in such a way as to "box in" the vehicle and make it impossible for the driver to leave. Here, the officers did not attempt to box in defendant's vehicle or take any actions which would have led a reasonable person to believe that he could not leave.

Because the officers did not conduct a "seizure" when they approached defendant's car in the alley and asked for his driver's license and an explanation of what he was doing, the trial court erred by granting the motion to suppress evidence. The suppression order was reversed and the cause remanded for further proceedings.

People v. Woodrome, 2013 IL App (4th) 130142 An officer may lawfully approach the front door of a residence to conduct an investigation (a "knock and talk") so long as the officer enters an area impliedly open to the public. The officer need not be armed with a warrant because that is no more than any private citizen might do. When no one answers the front door or where a legitimate reason is shown for approaching the back door, the officer may go beyond the front door and approach the back door of a residence. So long as the police restrict their movements to places that visitors could be expected to go, observations made from such vantage points are not covered by the Fourth Amendment.

The police received an anonymous call that plastic-encased copper wire was being burned at defendant's residence and had knowledge that copper-wire thefts occurred in the same area in the previous three days. When the police went to the residence, they observed smoke from a fire 100 feet away from their position on the roadway. Defendant was in his yard, but quickly entered his residence after the police called his name. The police knocked on the front door of the residence, and then knocked on the back door when they received no answer. They also went to the back of the house to make sure that defendant was not climbing out the back window.

During this check, the police observed telephone cable next to the residence. They also checked the burn pile that was 25 to 30 yards from the house, where they saw copper wire. Telephone cables that matched the description of the plastic-encased wire could also be seen through an open door in the garage. Based on their observations corroborating the anonymous tip, they obtained a warrant to search defendant's residence. The trial court ordered evidence seized pursuant to the warrant suppressed because corroboration for the tip was obtained when the officers entered the defendant's property.

The Appellate Court reversed, concluding that the police investigation was lawful and that no warrantless search took place. The police were not prohibited from conducting an investigation based on the tip and their knowledge of thefts in the area. They had legitimate reasons to approach both the front and rear doors. Because they were in an area they had a

lawful right to be, they conducted no search when they observed telephone cables in plain view that matched the description of the stolen copper wire. Looking in the burn pile was not an unlawful intrusion where they were lawfully on the property and had already observed suspected stolen copper wire.

People v. Woods, 2013 IL App (4th) 120372 The guarantees of the Fourth Amendment attach when a search or seizure takes place. Not every encounter between police and private citizens results in a seizure. Encounters that involve no coercion or detention do not implicate the Fourth Amendment. An individual is seized for purposes of the Fourth Amendment when an officer by means of physical force or show of authority in some manner restrains the liberty of a citizen. The appropriate inquiry is whether a reasonable innocent person would feel free to decline the officer's request or otherwise terminate the encounter. Merely approaching and questioning a person seated in a vehicle in a public place does not constitute a seizure.

The encounter between the police and defendant was a textbook consensual encounter and therefore the Fourth Amendment was inapplicable. The officer parked next to a car parked in the lot of a public housing complex without illuminating the lights on his squad car. He approached defendant, who was in the driver's seat, only to determine if he was permitted to be on the grounds of the housing complex. The officer engaged in no physical force or show of authority that would have made a reasonable innocent person feel that he was not free to decline the officer's request for identification or terminate the encounter.

Assuming that the encounter progressed to an investigative detention or **Terry** stop when the officer told defendant that he would produce a weapon if defendant made another quick movement, the seizure was supported by the requisite reasonable suspicion of criminal activity. During the conversation between the defendant and the officer, defendant (1) provided a false name, (2) was in a high crime area, (3) appeared to the officer to be very nervous, and (4) made a quick movement toward his pocket that the officer considered potentially threatening.

People v. Lopez, 2013 IL App (1st) 111819 A Fourth Amendment "seizure" occurs where, by means of physical force or show of authority, an officer restrains the liberty of a citizen. Not every encounter between the police and a private citizen results in a seizure. The Fourth Amendment is not violated where a police officer approaches a person in public to ask questions, if the person is willing to listen.

A person is "seized" for purposes of the Fourth Amendment if, under the circumstances, a reasonable innocent person would not feel free to terminate the encounter and leave. Factors which may indicate that a seizure has occurred include the threatening presence of several officers, the display of a weapon by an officer, any physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request is required.

No Fourth Amendment seizure occurred where officers responded to an anonymous call regarding a suspicious vehicle, observed the defendant sitting in a pickup truck which was partially blocking an alley, approached the vehicle with one officer on each side, and asked for defendant's driver's license and an explanation of what he was doing. A seizure arose only when officers issued tickets and conducted field sobriety tests, at which point they had a reasonable, articulable suspicion that defendant was intoxicated while in control of a motor vehicle.

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Because the officers did not conduct a "seizure" when they approached defendant's car in the alley and asked for his driver's license and an explanation of what he was doing, the trial court erred by granting the motion to suppress evidence. The suppression order was reversed and the cause remanded for further proceedings.

People v. Brown, 2013 IL App (1st) 083158 Officers responding to a report of a burglary in progress had sufficient grounds to conduct a **Terry** stop when they saw defendant leaving the premises by the back door, where the officers knew that other officers were pursuing two suspects who left the building by the front door while carrying metal tools. Because defendant was leaving the scene of the crime in the middle of the night as other suspects fled by another exit, the officers could reasonably suspect that defendant was involved in criminal activity.

However, by immediately handcuffing defendant when there was no articulable basis to believe that he was armed or dangerous, the officers conducted an arrest rather than a **Terry** stop. The court acknowledged that one of the officers testified to having a general fear of his safety because the officers were in a dark alley with ample places for suspects to hide, but found that such fear did not justify a belief that the defendant posed any threat to the officers' safety as he left the building. Furthermore, defendant was not doing anything that was illegal on its face, and the arrest was made as soon as defendant passed through the doorway and despite the absence of any signs he intended to flee or resist. Because a reasonably cautious person would not have believed that the defendant had committed a crime, probable cause to make an arrest was lacking.

In addition, the court exceeded the permissible scope of a **Terry** stop by conducting a search of defendant's person. **Terry** permits a limited, protective pat down for weapons if there is reason to believe that defendant is armed. However, the officers testified that once defendant was handcuffed, he could not have reached any items in his pocket. Thus, any need to frisk the defendant for reasons of officer safety had been eliminated.

Because in the absence of the evidence that had been suppressed it would be "essentially impossible" for the State to convict the defendant of burglary beyond a reasonable doubt, the conviction was reversed outright.

People v. Harrell, 2012 IL App (1st) 103724 Defendant was stopped by Chicago police officers in the city of Maywood, where he lived. The officers were in Maywood to investigate a tip from a confidential informant who had reported seeing several pounds of cannabis in defendant's residence.

Defendant was stopped after he left his apartment and entered a vehicle with two other men. The three men were taken to the front of defendant's home, where defendant's stepfather gave consent for police to search the home. After the search disclosed cannabis, heroin, drug paraphernalia, and a loaded handgun, defendant was placed in custody.

Defendant was subsequently charged with possession of cannabis with intent to

deliver and unlawful use of a weapon by a felon. The trial court granted a motion to suppress statements in which defendant identified himself, gave his address, and admitted possessing the handgun and cannabis. The trial judge found that the Chicago officers lacked authority to investigate and make arrests in Maywood, and the State appealed.

The trial court properly found that defendant was placed in custody before the search of his residence provided probable cause to support an arrest. Because the vehicle was approached by three police officers with their weapons drawn, and the three occupants of the vehicle were handcuffed before they were taken back to defendant's residence, the evidence supported the trial court's finding that an arrest had occurred.

People v. Henderson, 2012 IL App (1st) 101494 Under the Fourth Amendment and Illinois law, an individual is "seized" where: (1) a reasonable person would believe that under the circumstances he was not free to leave, (2) the person who is being "seized" actually submits to the police. A "seizure" can occur only where the citizen submits to either physical force or a show of authority by an officer.

Although police lacked a reasonable basis to make a traffic stop where the anonymous tip which led to the stop was not sufficiently reliable to provide a reasonable suspicion of criminal activity, no "seizure" occurred where the defendant exited the car at the direction of the officers but ran rather than submit to the officer's authority. Under these circumstances, no "seizure" occurred until the defendant was pursued and subdued by officers.

Because no "seizure" occurred until defendant was captured, the Fourth Amendment was not implicated when police recovered a handgun which fell to the ground as defendant was running. Thus, the handgun was not the fruit of an illegal arrest and was not required to be suppressed although the police lacked a reasonable suspicion to make the traffic stop in the first place.

People v. Jackson, 348 Ill.App.3d 719, 810 N.E.2d 542 (1st Dist. 2004) Because a reasonable, innocent person would have believed he was not free to leave, defendant was under arrest where, as he was walking on the street, he was apprehended by two officers, handcuffed, and transported in a police car to a nearby hotel. There were four officers present at the hotel, and at least one officer stood next to the defendant while he was identified by persons in the hotel.

Although there was no evidence of what the officers said to defendant at the time of the stop, one of the officers testified that he "arrested" defendant and that defendant was in custody. There was no indication that either of the officers who apprehended defendant asked him to accompany them to the hotel or said that he was free to refuse.

People v. Tate, 367 Ill.App.3d 109, 853 N.E.2d 1249 (2d Dist. 2006) 1. Defendant was "seized" when, after driving into the driveway of a residence at which a search warrant was being executed, he was surrounded by police who directed flashlights into the car and ordered defendant to show his hands. Because defendant was seized before he ignored the order to show his hands, his failure to comply with the order could not be considered in determining whether police had a reasonable basis for their actions.

Police are authorized to seize a citizen who comes on the scene during execution of a search warrant, if the facts known to the officers would warrant a reasonable belief that immediate action is appropriate to protect the officers' safety. Where defendant pulled into the driveway about 8:15 p.m., the warrant was for a small amount of cannabis that was consistent with personal use, the neighborhood was not dangerous, and the police were familiar with the occupants of the residence and had no reason to believe they were armed

or violent, there was no basis to suspect that criminal activity was afoot or that defendant posed a threat although he was wearing a Halloween costume.

People v. Marshall, 399 Ill.App.3d 626, 926 N.E.2d 862 (1st Dist. 2010) Defendant was "seized" where, within seconds after he stopped his car in a "No Parking" zone, an officer pulled behind him and activated his overhead flashing lights. The officer testified that he intended to conduct a traffic stop when he pulled over, and upon reaching the car he immediately asked for a driver's license and proof of insurance. Because no reasonable person would have felt free to decline the request for documentation upon seeing flashing lights and being approached by a uniformed officer, a "seizure" occurred.

People v. Surles, 2011 IL App (1st) 100068 Defendant was a front-seat passenger in a car occupied by three men that was stopped by the police in a high-crime area for failing to stop at a stop sign. The officer approached the car with his hand on his weapon, but could not recall if the weapon was drawn. Four other officers arrived to assist the two officers who conducted the stop. The driver was placed under arrest when he was unable to produce a valid driver's license.

The police then ordered both passengers out of the car and handcuffed them preliminary to an inventory search of the car. The police had no familiarity with the three men and did not observe them doing anything that gave them concern for their safety. An officer observed a slight bulge in defendant's waistband, conducted a pat down, and recovered a gun. The officer who conducted the pat down testified, "We do protective pat downs on basically everybody."

The trial court denied the motion to suppress, finding the handcuffing of defendant inconsequential because the officers would have discovered the gun during a pat down without defendant being handcuffed.

The Appellate Court first analyzed whether the defendant's detention should be characterized as an arrest or as a **Terry** stop. While there is no bright-line test for distinguishing between an arrest and a **Terry** stop, several factors must be considered including: (1) the time, place, length, mood, and mode of the encounter; (2) the number of officers present; (3) use of handcuffs, weapons, or other formal restraint; (4) the intent of the officers; (5) whether defendant was told that he could refuse to cooperate or was free to leave; (6) whether defendant was transported by the police; and (7) whether defendant was told that he was under arrest.

Factors weighing against a finding of an arrest are that the encounter lasted less than five minutes on a public street in the evening and defendant was not told he was under arrest. The bulk of the evidence, however, weighs in favor of such a finding. The officer approached the vehicle with either his hand on his weapon or his weapon drawn. Six officers from three separate squad cars were present, outnumbering the vehicle's three occupants. Defendant was not asked any questions but was directed to step out of the vehicle and immediately handcuffed. He was not told he was free to leave or could refuse to cooperate, but was handed to another officer, who conducted the search. The Appellate Court concluded that defendant was arrested from the time that he was handcuffed, "[g]iven the show of force and authority by the officers and defendant's restraint."

3. An arrest must be supported by probable cause. The mere fact that defendant was a passenger in a vehicle whose driver failed to stop at a stop sign gave the police no reason to believe that defendant had committed or was about to commit a crime. Therefore the arrest was not supported by probable cause.

A police officer may conduct a protective pat down where, after making a lawful stop, the officer has a reasonable articulable suspicion that he or another is in danger of attack because the defendant is armed and dangerous.

By itself, the fact that the stop occurred in a high-crime area did not provide the police with reasonable suspicion to conduct a pat down. The presence of a bulge in defendant's clothing alone was also insufficient to warrant a search. Even when considered together, the defendant's presence in a high-crime area and the bulge in his clothing did not justify the search because "'when you add nothing to nothing, you get nothing.'"

Because suppression of the gun and its taking from defendant would destroy any opportunity the State had to prevail at a new trial on the charges surrounding defendant's possession of the gun, the court reversed defendant's conviction for armed habitual criminal.

People v. Johnson, 408 Ill.App.3d 107, 945 N.E.2d 2 (1st Dist. 2010) An arrest occurs when a person's freedom of movement has been restrained by means of physical force or show of authority. Although a person detained pursuant to a **Terry** stop is no more free to leave than if he were placed under a full arrest, a **Terry** stop must be limited in scope and duration because it is an investigative detention, which must be temporary and last no longer than necessary to effectuate the purpose of the stop. Even if a restriction of movement is brief, it may amount to an arrest rather than a **Terry** stop if it is accompanied by use of force usually associated with an arrest, unless such use of force is reasonable in light of the circumstances surrounding the stop.

Handcuffing is the type of action that may convert an investigatory stop into an arrest because it heightens the degree of intrusion and is not generally part of a stop. Handcuffing is proper during an investigatory stop only when it is necessary to effectuate the stop and foster the safety of the officers.

Defendant was a passenger in a car that was stopped by the police in a high-crime area after it failed to come to a complete stop at a stop sign. Defendant ran from the car when the police were about to ask the driver for his license. The police caught defendant less than a block away and handcuffed him before conducting a pat down, leading to the discovery of a gun in his possession.

Prior to the pat down, the police had no reason to suspect that defendant possessed a weapon, and defendant did not offer any resistance after his apprehension. Defendant did not match the description of any armed suspect known to the police nor was he in the vicinity of any recent violent crime. His inexplicable flight from the police in a high-crime area following a traffic stop of a car in which he was a passenger did not provide sufficient basis to believe defendant was armed and dangerous as to justify handcuffing as a safety measure. Therefore, the Appellate Court affirmed the circuit court's finding that defendant was arrested when he was handcuffed by the police.

§43-3(d)(2)
Distinguishing Stops, Arrests, Community Caretaking Functions, and Consensual Encounters

United States Supreme Court

Dunaway v. N.Y., 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979) An arrest requires probable cause. Because stops for brief questioning and frisks for weapons involve intrusions substantially less severe than a traditional arrest, only reasonable suspicion is required.

Police made an "arrest" by taking defendant from a neighbor's house to the police

station and detaining him for questioning. Because probable cause was lacking, the arrest was unlawful. See also, **Hayes v. Florida**, 470 U.S. 811, 105 S.Ct. 1643, 84 L.Ed.2d 705 (1985) (Fourth Amendment was violated where, without probable cause, a warrant or consent, police removed defendant from his home and transported him to the police station for fingerprinting; where there is reasonable suspicion, it may be permissible for police to briefly detain a person in the field for the purpose of fingerprinting); **People v. Creach**, 79 Ill.2d 96, 402 N.E.2d 228 (1980) (probable cause must be particularized with respect to the person arrested, and does not arise merely because there is probable cause to arrest another person in defendant's company).

Illinois Supreme Court

People v. McDonough, 239 Ill.2d 260, 940 N.E.2d 1100 (2010) A search or seizure is reasonable under the 4th Amendment when the police perform a community-caretaking function. The performance of a community-caretaking function is analytically distinct from a consensual encounter. The community-caretaking doctrine applies where, viewed objectively and considering the totality of circumstances: (1) the police perform some function other than the investigation of a crime; and (2) the search or seizure is reasonable because it was undertaken to protect the safety of the general public.

A police officer observed defendant's vehicle stopped on the river-side shoulder of a busy four-lane highway at night. He decided to inquire whether the car's occupants needed assistance. For his own safety, the officer turned on his overhead emergency lights and approached defendant's vehicle. The court assumed without deciding that the defendant was seized when the officer activated his emergency lights. The court found that the defendant's seizure was unrelated to the investigation of a crime, and reasonable because it was undertaken to protect public safety. The public has a substantial interest in ensuring that police offer assistance to motorists who may be stranded on the side of a highway, especially after dark and in areas where assistance may not be close at hand. It was objectively reasonable for the officer to activate his emergency lights, not only for his safety, but for the safety of defendant and passing traffic.

Since the objective facts fall within the community-caretaking exception, the officer's seizure of defendant was reasonable. The officer acquired reasonable suspicion to further detain and investigate defendant when the officer detected the odor of alcohol on the defendant's breath.

The Supreme Court affirmed the judgment of the Appellate Court reversing the trial court's order sustaining defendant's motion to suppress.

People v. Luedemann, 222 Ill.2d 530, 857 N.E.2d 187 (2006) Although the term "community caretaking" has been used to describe the third tier, "community caretaking" refers to situations in which police discover evidence while acting in a capacity that is unrelated to the investigation of crime. The "community caretaking" doctrine is an exception to the warrant requirement and may justify the admission of evidence which would otherwise be excluded, but is not relevant to determining whether police conduct amounted to a seizure in the first place. Police do not violate the Fourth Amendment by questioning a citizen, asking to examine his or her identification, or requesting consent to search belongings, so long as officers do not convey the message that the subject is required to comply with their requests or otherwise indicate that they are not free to terminate the encounter. See also, **People v. Hinton**, 249 Ill.App.3d 713, 619 N.E.2d 198 (3d Dist. 1993) ("community caretaking"or "public safety" function does not involve coercion or detention; here, officer was investigating

a possible crime and ordered defendant to exit his car); **City of Highland Park v. Lee**, 291 Ill.App.3d 48, 683 N.E.2d 962 (2d Dist. 1997) (stop initiated by activation of emergency lights on squad car cannot be deemed part of "community caretaking function"); **People v. Croft**, 346 Ill.App.3d 669, 805 N.E.2d 1233 (2d Dist. 2004) (officer was not engaged in community caretaking when he stopped defendant at 11:15 p.m., as defendant was walking his bicycle up a hill, in order to investigate four thefts and two incidents of vandalism that had been reported during the previous week; the officer's purpose in questioning defendant was not totally divorced from detection, investigation, or acquisition of evidence).

People v. Love, 199 Ill.2d 269, 769 N.E.2d 10 (2002) The Fourth Amendment is not violated where a police officer approaches a citizen in public to ask questions. However, the citizen need not respond and may simply go on her way.

Illinois Appellate Court

People v. Pellegrino, 2024 IL App (2d) 230343 A police officer was dispatched to a gas station in connection with a report that a vehicle had hit a deer and had been swerving in the road. The officer located the vehicle in the gas station parking lot, approached, and found defendant in the driver's seat. The vehicle was running, and when defendant rolled down the window, the officer detected the odor of alcohol and observed that defendant's eyes were "glassy" or "glossy." She asked defendant for his keys, and he gave them to her. The trial court found that defendant had been arrested without probable cause when the officer took his keys and granted the defense motion to suppress. The appellate court reversed.

Not every seizure rises to the level of an arrest requiring probable cause. Seizures also include **Terry** stops, which require only a showing of reasonable suspicion of criminal activity. In determining whether a seizure is an arrest, courts consider a variety of factors, including the officer's tone of voice, use of handcuffs or other physical restraint, display of a weapon, and whether multiple officers were present. Here, while defendant was seized when the officer took his keys, he was not under arrest. The officer did not activate her squad car lights or siren and did not have her gun drawn.

And, although the officer testified that she observed the odor of alcohol, that defendant appeared confused when she asked if he had hit a deer, and that defendant had "glassy" eyes, the appellate court declined to decide whether she had reasonable suspicion to support a **Terry** seizure. That determination would require making findings regarding the officer's credibility where the trial court had not made those findings below because of its erroneous conclusion that the seizure was an improper arrest. Accordingly, the court vacated the suppression order and remanded the matter for further consideration.

People v. Tolliver, 2022 IL App (2d) 210080 Defendant was convicted of armed habitual criminal after an officer searched his car and found a gun. The officer testified that he observed defendant make a u-turn, pull into a gas station for a few minutes, then pull out and park at a bar next door. Defendant went into the bar for several minutes. The officer tried to run the registration numbers from the temporary rear license plate, but it was difficult to read. Eventually he ran the numbers successfully and found the car registered to a female. When defendant left the bar, the officer approached, spoke with defendant, learned his license was revoked, and arrested him. The officer then ordered a K-9 unit, searched the car, and found a gun.

Defendant moved to suppress and the trial court denied the motion. On appeal, defendant argued that the motion to suppress should have been granted because the officer lacked probable cause. Illinois law requires all vehicles to have a legible license plate, but

defendant argued his plate must have been legible because the officer was able to successfully run the numbers. The appellate court affirmed, finding sufficient cause to believe defendant failed to comply with the statute's requirement that his car have a "clearly legible" registration. The officer testified defendant's plate was hard to read, and he tried multiple times to run the plate numbers before doing so successfully.

Regardless, no seizure occurred in this case until the officer learned of the revoked license. Defendant stopped his car of his own volition, and the officer's act of approaching him and asking him about his plate and license was a consensual encounter during which a reasonable person would have felt free to leave.

Defendant also argued that the officers prolonged the stop by searching the vehicle after he was already in custody and the car was legally parked in the bar parking lot. Defendant did not raise this issue below, however, so the issue was forfeited, and defendant did not ask for plain error review.

People v. Kulpin, 2021 IL App (2d) 180696 The police could lawfully enter defendant's apartment without a warrant because they reasonably believed they needed to offer emergency aid. A woman reported her daughter missing and directed them to defendant's apartment, stating her daughter was last with defendant and that he had abused her in the past. Defendant appeared intoxicated and told the police he dropped the daughter off at work. The officers knew, however, that the daughter had not shown up at work. Defendant refused permission to enter, stating he had drugs in the house. The officers saw the daughter's car parked outside. At this point, it was reasonable to act under the emergency-aid exception to the warrant requirement because there were sufficient facts to justify a belief that someone inside defendant's apartment may need help.

People v. Aljohani, 2021 IL App (1st) 190692 The police could enter an open doorway to an apartment without a warrant under the community caretaking exception. The trial court found the officers acted under the "emergency aid" exception, which applies when the police have reasonable grounds to believe an emergency is at hand, and that the place to be searched or entered is associated with that emergency.

The evidence showed that a neighbor heard a violent altercation in the defendant's apartment. When the neighbor went to check on defendant and his roommate, the defendant did not allow the neighbor inside, prompting the neighbor to call the police. When the police knocked a short time later, defendant told them everything was okay. At the urging of the neighbor, they knocked again, but this time nobody answered. They went around the back and finding the door open, went inside. The Appellate Court agreed that the officers could legally enter the apartment without a warrant under the community caretaking/emergency aid exception. While defendant argued that the officers would have known there was no ongoing emergency given several minutes passed since the neighbor last heard noises in the apartment, and that the police initially left the scene after being assured by defendant, the court rejected the argument because the totality of the circumstances reasonably suggested an injured person may have been inside.

People v. Kolesnikov, 2020 IL App (2d) 180787 The Appellate Court affirmed the defendant's drug conviction, holding that the police properly used their community-caretaking powers when they made a warrantless entry into defendant's home and discovered marijuana plants.

Two officers were dispatched to defendant's home because defendant's girlfriend forwarded the police an email containing defendant's threat to commit suicide. While they

were at the scene, she texted the officers a photograph of someone, whom they could not identify, in a bathroom holding a knife. When defendant answered the door, he was intoxicated and evasive. Defendant would not confirm whether he sent the email or that he was the person in the photograph. He was not wearing the clothes seen in the photo, so the officers wondered whether somebody else was inside and in danger of imminent harm. Defendant was placed in an ambulance and officers noticed cuts on his arm. The police entered the home and discovered marijuana plants.

Defendant alleged that once the police placed defendant in the ambulance, they should have known that the situation was under control. The call was about defendant's suicide attempt, not a threat to anyone else. The cuts on defendant's arm showed that defendant was the one who had the knife. The Appellate Court refused to second guess the officers' testimony that they remained concerned about the situation. It held that the officers reasonably believed there may have been others in danger, and that their belief was based on articulable facts rather than a mere hunch. Their entry into the house was therefore a proper use of their role as community caretakers.

People v. Burns, 2020 IL App (3d) 170103 Odor of cannabis in a vehicle justified search of defendant who was the vehicle's passenger. Whether odor is of raw or burnt cannabis does not matter; under **People v. Stout**, 106 Ill. 2d 77 (1985), and subsequent cases, the smell of cannabis allows the search of a vehicle and its occupants.

The investigatory stop was not converted into an arrest when the officers handcuffed defendant prior to searching him. When defendant exited the vehicle, officers observed a gun in his back pocket. The fact that officers did not first ascertain whether defendant had a concealed carry permit for the gun did not render the handcuffing improper. Handcuffing a defendant is permissible if it is reasonable and necessary for officer safety, as it was under the totality of the circumstances here.

People v. Flunder, 2019 IL App (1st) 171635 The police do not have the right to conduct a protective patdown based on safety concerns during a consensual police-citizen encounter. Here, the officer approached defendant as he stood near a car parked in a gas station. He asked defendant for his license, and as the defendant nervously probed his pocket, the officer, fearing for his safety, conducted a pat-down, during which he discovered a gun.

While the officer knew there had been shootings in the area, he had no articulable reason to suspect defendant had been involved. The lack of reasonable suspicion for a **Terry** stop precludes a **Terry** frisk. Thus, the gun was suppressed. The court went on to hold that regardless, the officer failed to articulate reasonable grounds to fear for his safety. Any reasonable person would be nervous when randomly approached and questioned by the police, and it was not unusual for defendant to reach into his pocket given that the officer requested his driver's licence.

People v. Jordan, 2019 IL App (4th) 190223 Police officers received a tip of a "suspicious vehicle" parked in a "high crime" area. Officers approached, and while one officer asked defendant questions, the other saw in plain view a small plastic baggie on the floorboard. In the officer's experience, it was the type of baggie used for drugs. The officers ordered defendant out of the car and called for a dog sniff, which five minutes later resulted in the discovery of methamphetamine. The trial court suppressed the meth, finding that while the initial encounter was not a seizure, defendant was seized when he was removed from the vehicle, and that this seizure and the subsequent search were not justified by the observation of a baggie that may have had an innocent use.

The Appellate Court reversed. It agreed, contrary to defendant's contention, that the initial encounter was not a seizure, but rather a consensual encounter under the **Mendenhall** factors. Only two officers approached the vehicle, they did not display their weapons, they did not command defendant to comply with their orders, and they did not block defendant from leaving. Next, the court held that the officers had reasonable suspicion at the time they did seize defendant by pulling him from the car and holding him until the drug dog arrived. The small baggie, which in the officers' experience tended to be associated with drug dealing, gave the officers reasonable suspicion. While the trial court found, and the Appellate Court did not dispute, that such baggies are not exclusively used for drugs, and the observation of such a baggie would not lead to probable cause, here, given the circumstances – found on a floorboard in a suspicious vehicle in a high crime area – it did justify further investigation.

People v. Gomez, 2018 IL App (1st) 150605 When a police car with three officers pulled up next to a parked vehicle and asked the driver what he and his two passengers were doing, the initial encounter was consensual. The police had seen the vehicle driving around the neighborhood. After the driver lied about living down the street, defendant (the backseat passenger) was observed slouching down in his seat. He continued to slouch down after officers exited their car. The officers then ordered the occupants out of the car, and a gun fell on the ground by defendant.

The Appellate Court held that the consensual encounter turned into a seizure when the officers ordered the vehicle's occupants to exit. The Court also concluded that the aforementioned facts gave rise to reasonable suspicion of criminal activity and affirmed the denial of defendant's motion to suppress. While possession of a firearm, alone, is not a crime, reasonable suspicion can be supported by the belief that an individual is attempting to conceal a weapon.

The dissent would have found that the seizure was improper. The officers only knew that the vehicle had driven through the neighborhood a few times and that the driver initially lied to the police about his address, neither of which provides reasonable suspicion of criminal activity. Further, defendant's slouching in his seat did not provide reasonable suspicion because neither posture nor visible discomfort with police contact indicates criminal activity.

People v. Slaymaker, 2015 IL App (2d) 130528 Police-citizen encounters are divided into three categories. First, an arrest requires probable cause. Second, a temporary investigative stop under **Terry v. Ohio** requires a reasonable, articulable suspicion of criminal activity. The third category involves consensual encounters which involve no coercion or detention and therefore do not implicate the Fourth Amendment at all.

In addition, the "community caretaking" doctrine may apply when officers are performing some function other than investigating a crime and their actions are reasonable because they are undertaken to protect the safety of the general public.

A frisk for weapons is permitted as part of a **Terry** stop where there is reason to believe that the defendant is armed. Furthermore, a community caretaking event may progress into a **Terry** stop if the officer develops a reasonable suspicion of criminal activity.

The court concluded that where defendant was stopped as part of a community caretaking event, subsequent events did not give rise to a reasonable suspicion that he was armed or engaged in criminal activity. The officer stopped defendant because he was walking in the highway median. After ascertaining that defendant did not need assistance, the officer attempted to conduct a pat-down because defendant placed his hand in his pocket. The officer eventually tasered defendant and placed him in handcuffs after he refused to cooperate with

the frisk.

The court concluded that once it was determined that defendant did not need assistance, he should have been allowed to go about his business without interference. "The officer was simply not authorized to prolong the encounter in order to frisk defendant for a possible weapon."

The court rejected the argument that placing a hand in a pocket gave rise to a reasonable suspicion that defendant was armed or engaged in criminal activity. Similarly, the court rejected the claim that a reasonable suspicion was created merely because defendant's pockets were "bulging."

Because defendant did not resist an authorized act where the officer conducted an improper frisk during a community caretaking stop, the conviction for resisting a peace officer was reversed.

People v. Butler, 2015 IL App (1st) 131870 Where defendant was present in a hospital emergency room for treatment of a gunshot wound, the community caretaking exception did not justify a search of his cell phone for the purpose of calling someone in defendant's family to inform them that he was at the hospital. Because defendant was alert and could have been asked whether he wanted anyone to be contacted, the search could have been accomplished by better and less intrusive means. In addition, the officer could have inquired of hospital staff whether defendant's family had been called. Choosing to "aimlessly scroll . . . through a list of unknown names" on defendant's phone was not a reasonable way to notify defendant's family that he was in the hospital.

In rejecting the State's argument that the balance between defendant's privacy interest and society's interest in the welfare of its citizens favors allowing an officer to search a cell phone to find contact information, the court noted the discussion in **Riley** that cell phones contain immense amounts of digital information and implicate privacy concerns beyond those involved in the search of objects such as purses or wallets.

People v. Lake, 2015 IL App (4th) 130072 (No. 4-13-007 After observing defendant acting in a vaguely suspicious manner, a police officer approached defendant from behind and tapped on his shoulder, surprising and startling defendant, who turned around to look at the officer. The officer then moved directly in front of defendant and asked what his name was. When defendant told him his name, the officer recalled that another officer had informed him that defendant was known to carry a gun. The officer looked down and saw a four-inch bulge "at defendant's waist area." He then conducted a pat-down search of that area and recovered a gun.

Defendant argued that the gun should have been suppressed as the result of an illegal search and seizure. The Appellate Court disagreed, holding that the initial encounter (prior to the pat-down) was consensual and that after learning defendant's name and seeing the bulge in waist area, the officer had reasonable suspicion to conduct the pat-down itself.

The court first rejected defendant's argument that he was seized when the officer approached him from behind and tapped him on the shoulder, causing him to stop and submit to the officer's show of authority. The court held that the officer's tap was a minimally intrusive, non-offensive, and socially acceptable method of gaining another person's attention. It was not a demonstration of police authority indicative of a seizure protected by the Fourth Amendment.

The court next rejected defendant's argument that he was seized when the officer stepped in front of and questioned him. A person is seized when an officer restrains his liberty

by means of physical force or show of authority. A seizure does not occur simply because an officer approaches a person and questions him. So long as a reasonable person would feel free to disregard the office and go about his business, the encounter is consensual.

Courts use four factors to determine whether a reasonable person would feel free to leave: (1) the threatening presence of several officers; (2) the display of a weapon; (3) physical touching by the officer; and (4) the use of language or tone of voice indicating compelled compliance.

Here, after tapping defendant on the shoulder, the officer stood facing defendant and, using a conversational tone, asked him to identify himself. Defendant willingly answered the question. With the exception of the tap on the shoulder, none of the four factors were present here. The officer was alone during the encounter, did not use physical force to impede defendant, did not brandish a weapon, and did not convey verbally or non-verbally that defendant had to comply.

The court found that nothing in this exchange was anything more than a consensual encounter that did not implicate the Fourth Amendment. The court observed that although most citizens respond to police questioning, the fact that they do so without being told they are free to leave does not change the consensual nature of this contact.

Although the consensual encounter ended with the pat-down, the court found that the officer had by that point a reasonable basis to conduct the search. The officer knew that defendant was known to carry a gun and reasonably suspected that he was currently armed when he observed the bulge in defendant's waist area.

The court held that the search was proper.

People v. Bozarth, 2015 IL App (5th) 130147 A seizure occurred where a police officer saw defendant's car drive onto private property, followed and stopped behind defendant's car, exited his squad car with his weapon drawn, and testified that had defendant driven away he probably would have followed her and activated his overhead lights. The court concluded that under these circumstances defendant was seized when the officer pulled behind her vehicle.

The court rejected the State's argument that the officer was acting in a community caretaking capacity when he followed defendants's vehicle onto the private drive. Community caretaking occurs where police are performing some act unrelated to the investigation of crime. The officer's testimony "belies the claim that he was acting in a community caretaking capacity where he testified that it entered his mind that [defendant] might be hiding from the police, involved in theft, making methamphetamine, or foul play."

People v. Woods, 2013 IL App (4th) 120372 The guarantees of the Fourth Amendment attach when a search or seizure takes place. Not every encounter between police and private citizens results in a seizure. Encounters that involve no coercion or detention do not implicate the Fourth Amendment. An individual is seized for purposes of the Fourth Amendment when an officer by means of physical force or show of authority in some manner restrains the liberty of a citizen. The appropriate inquiry is whether a reasonable innocent person would feel free to decline the officer's request or otherwise terminate the encounter. Merely approaching and questioning a person seated in a vehicle in a public place does not constitute a seizure.

The encounter between the police and defendant was a textbook consensual encounter and therefore the Fourth Amendment was inapplicable. The officer parked next to a car parked in the lot of a public housing complex without illuminating the lights on his squad car. He approached defendant, who was in the driver's seat, only to determine if he was

permitted to be on the grounds of the housing complex. The officer engaged in no physical force or show of authority that would have made a reasonable innocent person feel that he was not free to decline the officer's request for identification or terminate the encounter.

Assuming that the encounter progressed to an investigative detention or **Terry** stop when the officer told defendant that he would produce a weapon if defendant made another quick movement, the seizure was supported by the requisite reasonable suspicion of criminal activity. During the conversation between the defendant and the officer, defendant (1) provided a false name, (2) was in a high crime area, (3) appeared to the officer to be very nervous, and (4) made a quick movement toward his pocket that the officer considered potentially threatening.

People v. Mains, 2012 IL App (2d) 110262 Community caretaking is an exception to the Fourth Amendment's warrant requirement. The exception applies where: (1) the officer is performing a function other than the investigation of a crime, and (2) the search or seizure was reasonable because it was undertaken to protect the safety of the general public. Both criteria are determined objectively. The mere fact that an officer asks for identifying information does not demonstrate that the officer was conducting a criminal investigation, as an officer may request identification from an individual even during a consensual encounter.

A police officer observed defendant driving a malfunctioning vehicle with its emergency lights flashing down a multilane road with moderate traffic at a very slow rate of speed. The Appellate Court concluded that the officer was conducting a community-caretaking function rather than a criminal investigation when he approached defendant and asked him for his name and date of birth after defendant pulled the vehicle into a private driveway and began examining the vehicle's engine.

It was objectively reasonable that the officer would check on defendant and see if he required assistance because defendant's vehicle presented a danger to other motorists. Although defendant had pulled into a private driveway, the officer did not know if the driveway belonged to defendant, and the vehicle's return to the roadway would have renewed the danger to other motorists. Asking defendant for identifying information had the safety benefit of allowing the officer to know whom he was dealing with, should defendant attempt to harm one of the officers or flee.

The Appellate Court reversed the trial court's order granting the defense motion to quash the arrest.

People v. Dittmar, 2011 IL App (2d) 091112 A police-citizen encounter qualifies as community caretaking if: (1) the police are performing some function other than the investigation of crime, and (2) the search or seizure is reasonable because it is undertaken to protect the safety of the general public. The community-caretaking doctrine is analytically distinct from consensual encounters, which by their very nature require no justification, and is invoked to validate a search or seizure under the Fourth Amendment.

With his emergency lights activated, a police officer pulled in back of a car stopped by the side of the roadway in a rural area shortly before 6 a.m. The officer had observed the passenger and the driver switch positions as if the passenger intended to drive. The stipulated testimony of the officer was that he stopped to check if the vehicle had mechanical problems or if there were problems with the occupants.

The finding by the circuit court that a seizure occurred when the officer activated his overhead lights as he pulled behind the stopped car was a finding that defendant's Fourth

Amendment rights were implicated and that the State needed to justify the infringement on defendant's freedom. That finding did not preclude, and was a necessary predicate of, a finding that the officer was performing a community-caretaking function.

The officer's use of his emergency lights and his informing the dispatcher of the make, model, and license plate number of the car upon his arrival did not demonstrate that the purpose of the stop was investigatory. Use of emergency lights is not *per se* an act of crime detection. On any roadway where there is even potential traffic, it is reasonable for a police officer to activate his emergency lights while stopped to check on a parked vehicle. While police frequently convey information about detained vehicles to the dispatcher while in crime-detection mode, such communications also have the public-safety benefit of tracking the officer's location and activities in case the officer or the occupants of the vehicle go missing.

It was a reasonable public-safety endeavor for the officer to check on the stopped vehicle. His observations could cause the officer to have a genuine concern for the welfare of the travelers and believe that they might need assistance for a mechanical problem or because the driver was suffering from an impairment. Even if he could not be certain that there was an emergency, his lack of certainty had to be weighed against the likelihood that if he did not stop to inquire, the travelers would not receive assistance for some time, given the rural location. He also had to consider potential hazards to the travelers from passing traffic, given that no lights illuminated their car. Therefore the public interest served by the officer's action more than outweighed the intrusion.

Because the officer was justified in further detaining the defendant when he reached the driver's door and detected the strong odor of alcohol, the court reversed the order granting defendant's motion to quash arrest and suppress evidence.

People v. Hand, 408 Ill.App.3d 695, 946 N.E.2d 537 (1st Dist. 2011) The community-caretaking doctrine is a well-recognized exception to the prohibition against warrantless searches. It is analytically distinct from the three tiers of police-citizen encounters that courts traditionally recognize (arrests, brief investigative stops, and encounters involving no coercion or detention), and may validate a search or seizure as reasonable under the Fourth Amendment.

Two general criteria must be present for a valid community-caretaking exception to the warrant requirement. First, the police must be performing a function other than the investigation of a crime. The objective circumstances, not the subjective motives of the officer, must be scrutinized when ruling on the validity of the search. Second, the scope of the search must be reasonable because it was done to protect the safety of the public. The question of reasonableness is measured in objective terms by looking at the totality of circumstances.

The police officer performed a community-caretaking function when he entered defendant's home. Defendant's husband had reported to the officer that he was concerned that his children were not eating properly or being cared for properly by the defendant, and that she had mental and emotional issues because she stated that she talked with the dead and was involved with sorcery and witchcraft. The court concluded that the officer did not make a warrantless entry into the home to arrest a crime suspect, but sought to inquire into the welfare of the children in the home based on the concerns expressed by the father. The officer was justified in entering the apartment when defendant failed to respond to his knock on the door and announcement of his office, and resisted his attempt to open the door even after she agreed to open it for him.

The court rejected the argument that the police were required to resort to less-intrusive methods to investigate the well-being of the children. The community-caretaking

exception is necessary for the public's protection when a police officer objectively and reasonably believes there is a need to seek information about an individual's well-being. It would thwart the intent of the community-caretaking exception if a police officer who has a reasonable basis to inquire about someone's welfare was required to retreat and seek other methods of gaining information if the person from whom he seeks information refuses to cooperate. The police would never be able to exercise reasonable judgment to enter a dwelling even if the circumstances warranted the entry.

Since the scope of the search was reasonable once the officer entered the apartment, the denial of the motion to quash arrest and suppress evidence was affirmed.

People v. Arnold, 394 Ill.App.3d 63, 914 N.E.2d 1143 (2d Dist. 2009) The officer conducted an arrest, rather than a **Terry** stop, where he decided to handcuff defendant inside a convenience store because the officer had seen other persons attempt to flee upon learning that they have an active arrest warrant. The court concluded that the handcuffing would have been reasonable only if there was evidence that the defendant was preparing to flee; otherwise, the officer's experience with other suspects was irrelevant.

People v. Thompson & Hernandez, 337 Ill.App.3d 849, 787 N.E.2d 858 (4th Dist. 2003) "Community caretaking encounters" involve consensual contact between police officers and members of the community. A community caretaking stop is "totally divorced from the detection, investigation, or accusation of evidence relating to the violate of criminal statute," and involves no coercion, detention or seizure.

A community caretaking encounter may become an illegal seizure if the officer's conduct exceeds the scope of the encounter and would cause a reasonable person to believe that he is not free to leave. Where officers stopped the defendants under an agreement with the local housing authority which authorized city police officers to stop and identify unknown persons on housing authority property, but used their car to block the defendants from leaving and shined a spotlight on their truck, a reasonable person would not have felt free to leave. Therefore, even if the stop began as a community caretaking encounter, it evolved to an illegal seizure which tainted both the driver's consent to search the vehicle and evidence found during that search.

§43-4
Probable Cause - Factors

§43-4(a)
Generally

United States Supreme Court

Florida v. Harris, 568 U.S. 237, 133 S. Ct. 1050, 185 L. Ed. 2d 61 (2013) An officer has probable cause to conduct a search when the facts would lead a person of reasonable caution to believe that contraband or evidence of a crime is present. Whether probable cause exists depends on the totality of the circumstances in each case. Probable cause does not depend on whether rigid rules or standards are satisfied.

The Florida Supreme Court erred by holding that an alert by a drug sniffing canine constitutes probable cause only if the State presents the dog's training records, certification records, and "field performance records" showing the number of times the dog alerted but no contraband was found. The Supreme Court concluded that the lower court's ruling created

an inflexible checklist for determining probable cause. Furthermore, a dog's field performance history would likely be misleading because it would not reflect "false negatives," where controlled substances were present but no search was performed because the dog failed to alert. The court added that what appears to be a false positive may in fact be the dog's accurate response to drug residue which remains from controlled substances that were previously in the vehicle.

The court found that the most reliable indicators of a dog's reliability are training and certification records, because training and certification are performed in controlled settings where the trainer knows the location of the samples and when the dog should alert. Because "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert," if a dog has gone through a recent certification or training program in a controlled setting, a court may presume ("subject to any conflicting evidence offered") that the alert in and of itself provides probable cause for a search.

The court stressed, however, that the defendant must be allowed to challenge the evidence of the dog's training by introducing his own evidence or by cross-examining State witnesses. For example, the defense might contest the adequacy of a certification or training program, and "examine how the dog (or handler) performed in the assessments made in those settings." Furthermore, under some circumstances evidence of the field history of the dog or handler may be relevant. Finally, even where a dog is shown to be generally reliable, a particular alert may be unreliable under the circumstances, such as where the handler cued the dog either consciously or inadvertently or where the team was working under unfamiliar conditions.

Here, the record supported the trial court's finding that the dog's alert signified probable cause for the search of defendant's truck. The prosecution presented evidence of the dog's proficiency, including that within the previous two years he had completed a 120-hour training course, received a certification by a private testing company, completed a 40-hour refresher course, and undergone four hours of training exercises each week. Although the certification had expired by the time of the alert in this case, Florida law does not require a private certification.

The court also noted that defendant did not challenge the dog's training in the lower court, and rejected his efforts to do so for the first time on appeal.

The court also rejected the argument that the reliability of the dog's alert was undercut because in the first search, the dog alerted to methamphetamine but the search revealed only precursors to methamphetamine, and when the dog alerted to defendant's truck on a subsequent occasion a search revealed no controlled substances. On each occasion the dog alerted to the door handle of the truck, and dogs may alert to residue odors left by drugs which are no longer in the vehicle. Furthermore, "we do not evaluate probable cause in hindsight, based on what a search does or does not turn up."

The trial court's finding that the dog alert provided probable cause for a search was affirmed.

Illinois Supreme Court

People v. Molina, 2024 IL 129237 Despite its recent holding in **People v. Redmond**, 2024 IL 129201, that, following the legalization of the recreational use of marijuana in Illinois, the odor of *burnt* cannabis emanating from a vehicle, alone, does not provide probable cause to search, the court here held that the odor of *raw* cannabis does provide probable cause to search.

The 5-2 majority based its holding on language in the Vehicle Code, which was amended in the same Regulation Act that legalized cannabis. Under 625 ILCS 5/11-502.15(b), cannabis transported in a motor vehicle must be in a "sealed, odor-proof, child-resistant cannabis container." Thus, when an officer detects the odor of raw marijuana, there is probable cause to believe the defendant is violating the odor-proof container provision of the Vehicle Code.

Defendant pointed out that the Regulation Act includes its own provision regarding possession in a vehicle: 410 ILCS 705/10-35, which requires a "reasonably secured, sealed container," but does not specify that this container must be odor proof. Defendant argued that this requirement controlled, and rendered the odor-proof container provision invalid. The court harmonized these two provisions by treating the more specific odor-proof provision as an additional requirement, finding the legislature did not intended to supercede or modify that requirement with section 10-35.

Having determined that the Act requires citizens to carry cannabis in an odor-proof container, the court next distinguished **Redmond.** The majority held that **Redmond** compared the odor of burnt cannabis to the odor of alcohol. Both may suggest current possession, but these odors could reflect prior use as well. On the other hand, the odor of raw cannabis strongly indicates the current presence of cannabis. Thus, unlike **Redmond**, the officer here had probable cause.

Two justices dissented, finding "absurd" the distinction between the odor of burnt and raw cannabis. The dissent reasoned that, just as the odor of burnt cannabis cannot inform an officer when that cannabis was burned, the odor of raw cannabis cannot inform an officer whether the cannabis was currently in the vehicle.

People v. Redmond, 2024 IL 129201 Following the legalization of recreational use of marijuana in Illinois, the odor of burnt cannabis emanating from a vehicle, alone, no longer provides probable cause to search. Probable cause to search exists where the evidence known to the investigating officer raises a "fair probability that contraband or evidence of a crime will be found in a particular place." An officer is not required to eliminate any innocent explanations for suspicious facts in making a probable cause determination; the analysis requires only that the facts available would warrant a reasonable man to believe there is a reasonable probability that a search will uncover contraband or evidence of criminal activity.

Prior to 2013, all cannabis was considered contraband; it could not be possessed legally for any purpose. During that time period, **People v. Stout**, 105 Ill. 2d 77 (1985), was decided, holding that the odor of cannabis emanating from a defendant's vehicle, alone, was sufficient to establish probable cause to search that vehicle. In 2013, some cannabis possession became legal for medical purposes, and in 2016, possession of less than 10 grams of cannabis was decriminalized and made a civil law violation, punishable only by fine. At that time, possession of more than 10 grams remained a criminal offense. In **People v. Hill**, 2020 IL 124595, the court considered the propriety of a search conducted during that period, holding that the odor of cannabis in a vehicle remained a factor in a probable cause analysis, but declining to address the question of whether **Stout** remained good law in light of medical use and decriminalization because the officer in **Hill** had relied on more than just the odor of cannabis.

Effective January 1, 2020, the legislature legalized cannabis possession, consumption, use, purchase, and transportation for personal use by persons at least 21 years of age. Transportation in a vehicle must be "in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving." 410 ILCS 705/10-35(a)(2)(D) Individuals may not use cannabis in any motor vehicle or in any public place. 410 ILCS 705/10-

35(a)(3)(D), (F). And, the Illinois Vehicle Code prohibits the use of cannabis in a vehicle upon a highway and provides that no driver may possess cannabis in a vehicle upon a highway "except in a sealed, odor-proof, child-resistant cannabis container." 625 ILCS 5/11-502.15(a), (b).

Stout is no longer good law with regard to searches occurring on or after January 1, 2020. "[G]iven the fact that under Illinois law the use and possession of cannabis is legal in some situations and illegal in others, the odor of burnt cannabis in a motor vehicle, standing alone, is not a sufficiently inculpatory fact that reliably points to who used the cannabis, when the cannabis was used, or where the cannabis was used."

Under legalization, cannabis is akin to alcohol, which also is legal to use and posses under some circumstances and illegal under others. For example, alcohol may not be transported in an open container in the passenger area of a vehicle, and a person may not drive a vehicle while the alcohol concentration in his blood, breath, or other bodily substance exceeds 0.08. The odor of alcohol, alone, is insufficient to establish probable cause to search a vehicle, and cannabis is now on the same footing.

Applying the totality of the circumstances analysis to the facts here, the Court determined that the officer did not have probable cause to search defendant's vehicle. Defendant was stopped for driving 73 miles per hour in a 70-mile-per-hour zone and having an improperly secured license plate on I-80 in Henry County. He said he was traveling from Des Moines to Chicago, which is not an inculpatory fact. While defendant's vehicle continued to smell of cannabis even after he exited it, that fact supported only the inference that he had smoked cannabis in the car at some point. But given that defendant himself did not smell of cannabis and that he exhibited no signs of impairment, the odor was not indicative of recent use. While Defendant's failure to produce his driver's license suggested a violation of the Vehicle Code provision requiring a driver to have his license in his immediate possession when operating a vehicle, that violation does not add to the probable cause analysis because it does not make it any more likely that evidence of cannabis use or possession would be found in the vehicle. Indeed, the officer confirmed during the stop that defendant did in fact have a valid Illinois driver's license. And although the officer felt defendant was not providing direct answers with regard to his living arrangements when defendant stated that he lived in Chicago but was temporarily staying in Des Moines because of the pandemic, that fact did not make it any more likely that his car contained contraband or evidence of a crime. Additional relevant facts were that defendant did not delay in pulling over, did not make any furtive movements, cooperated with the officer, did not exhibit any signs of impairment, and did not have visible cannabis or drug paraphernalia in the vehicle. Thus, the trial court properly granted his motion to suppress.

People v. Grant, 2013 IL 112734 Probable cause to make an arrest exists where, in view of the totality of the circumstances, there is sufficient information to justify a belief by a reasonably cautious person that the arrestee has committed a crime. The factual knowledge of the arresting officer, based upon his or her law enforcement experience, is relevant in determining whether there is probable cause. Whether probable cause exists is governed by common sense considerations, and does not require proof beyond a reasonable doubt.

A two-part standard of review is applied to the trial court's ruling on a motion to quash arrest and suppress evidence. While the reviewing court must give deference to the trial court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence, the lower court's ultimate ruling is reviewed *de novo*.

Defendant was arrested for violating a city ordinance which outlawed "soliciting unlawful business." The ordinance made it unlawful to use the public way to solicit any

unlawful business, including the illegal sale of narcotics. The officers who made the arrest testified that as they were driving past defendant in an unmarked car, they saw him standing in a "highly used narcotics sale spot" and yelling "dro, dro" to a passing vehicle. The arresting officer testified that based upon his experience in making narcotics arrests, the term "dro, dro," is slang for the sale of cannabis.

The officer acknowledged that defendant did not attempt to flee, had nothing in his hands, and did not drop anything. The officer also acknowledged that he did not observe the defendant make any sales of controlled substances. A custodial search at the scene revealed that defendant had four plastic bags of what appeared to be cannabis. A subsequent search at the police station revealed $160 in cash and four small bags of a white rock-like substance which the officers suspected was cocaine.

The court held that the officers had probable cause to make an arrest for the ordinance violation of soliciting unlawful business. The arresting officer testified that based on his experience, "dro, dro" is slang for the sale of cannabis. A police officer is permitted to testify concerning his expertise concerning the behavior and language patterns of people commonly observed on the streets, including persons who are committing criminal activities. Similarly, an officer's knowledge of slang which typically accompanies drug transactions is admissible. Because the officers observed defendant yelling slang for cannabis sales to a passing vehicle, they had probable cause to believe that the offense of solicitation of unlawful business was occurring.

The court rejected the argument that it was unlikely defendant was soliciting unlawful business where he yelled "dro, dro" only once, and that it was more likely he was acting for an innocent reason, such as trying to get the attention of an acquaintance. The court also rejected the argument that a single statement of "dro, dro" was insufficient to support probable cause, noting that a single act may constitute soliciting unlawful business.

The court also stressed that defendant was not arrested solely because he was in a high crime area. Instead, the fact that the incident happened in an area where drug sales were known to occur was only one factor in the conclusion that probable cause existed.

Finally, the court rejected the argument that the finding of probable cause was unjustified because none of the typical *indicia* of illegal drug sales were present. The court stressed that the defendant was arrested for the ordinance violation of soliciting unlawful business, which does not depend on whether any additional indications of drug transactions were found.

Defendant's conviction for possession of cocaine was affirmed.

People v. McCarty & Reynolds, 223 Ill.2d 109, 858 N.E.2d 15 (2006) Probable cause exists where the totality of the facts within the knowledge of the affiant are sufficient to warrant a person of reasonable caution in believing that the law has been violated and that evidence of the violation will be found on the premises to be searched. On review, the sufficiency of a probable cause finding will be affirmed if the magistrate had a "substantial basis" for concluding that probable cause existed.

People v. Lee, 214 Ill.2d 476, 828 N.E.2d 237 (2005) The officers testified that the area in which the arrest occurred was known to be one in which unlawful drug use and trafficking occurred. However, in the absence of "any overt act by the defendant," mere presence in a high crime area does not constitute probable cause. Furthermore, probable cause was not created by one officer's testimony that he knew defendant had previously been arrested for a drug offense, especially where the defendant did not flee or attempt to avoid the police when

they approached, or by the fact that one of the men standing with defendant was a known member of a street gang. Probable cause to arrest a particular individual does not arise from probable cause to arrest another person in his company. See also, **People v. Creach**, 79 Ill.2d 96, 402 N.E.2d 228 (1980) (probable cause must be particularized to the person arrested, and "does not arise merely from the existence of probable cause to arrest another person in the company of that individual"); **People v. Drake**, 288 Ill.App.3d 963, 683 N.E.2d 1215 (2d Dist. 1997) (defendant's mere proximity to persons suspected of criminal activity did not give rise to probable cause, and State failed to show any "satisfactory evidentiary connection between defendant and contraband" found in the trunk of the car in which he was a passenger).

People v. James, 118 Ill.2d 214, 514 N.E.2d 998 (1987) The information used to establish probable cause must be accompanied by some *indicia* of reliability. Information was found sufficiently reliable where the source admitted his own involvement in the crime and did not receive leniency in return for the information, and where the information was partially corroborated by other evidence.

People v. Fiorito, 19 Ill.2d 246, 166 N.E.2d 606 (1960) Multiple affidavits may be used to establish probable cause. See also, **People v. Scaramuzzo**, 352 Ill. 248, 185 N.E. 578 (1933) (search warrant is invalid when based on information obtained in a prior, unlawful search).

Illinois Appellate Court

People v. Page, 2024 IL App (1st) 220830 Trial counsel was ineffective for failing to move to suppress a firearm. The evidence at trial consisted of a police officer's description of his review of a POD camera, along with the camera's footage. The footage showed defendant placing an object in his pocket. According to the officer, this object appeared to be a firearm magazine. Officers responded to the scene, and when defendant saw the officers, he threw something into a Kia and ran. The Kia drove off, but officers found a firearm inside a Pontiac that had been parked next to the Kia, and arrested defendant. The trial court reviewed the evidence and found that she could not identify the object defendant placed into his pocket. She also found, however, that he appeared to make a "racking" motion as if he was holding a firearm. The court found defendant guilty of armed habitual criminal.

The appellate court reversed and remanded because there was a reasonable probability that, had counsel filed a motion, it would have been successful. The trial court's review of the footage confirmed that it was unclear if the object defendant placed in his pocket was a magazine, let alone an illegally long magazine. If it was a suspected firearm, as the trial court concluded, the officers would had to have known that defendant couldn't legally carry it in order to have probable cause to search him or the Pontiac. The State did not argue that the gun was in plain sight or that the flight provided probable cause.

Although the State argued that the claim was better-suited to a post-conviction petition because the officers did not offer their reasons for the search, the appellate court disagreed. First, time was of the essence because the post-conviction process takes so long that defendant may have completed his sentence before obtaining a ruling. Second, prior cases have found that an ineffectiveness claim for failing to file a motion to suppress is cognizable on direct appeal where no new facts are necessary to determine whether counsel's decision was reasonable. See, **People v. Little**, 322 Ill. App. 3d 607, 613-14 (2001). Finally, the idea that the officers could have added testimony to justify the search if the claim were brought in a collateral proceedings is a "heads I win, tails you lose" proposition where "the

lack of evidence on the issue of probable cause is precisely what a motion to suppress would have prevented."

People v. Randall, 2022 IL App (1st) 210846 Under the automobile exception, the police may conduct a warrantless search of a vehicle if there is probable cause to believe that it contains evidence of the commission of a crime. Here, the police searched defendant's vehicle twice. As justification for the first search, officers asserted that defendant (the driver) made furtive movements toward the passenger side of the vehicle as they pulled behind him to effectuate the stop, and that defendant exhibited nervous behavior. The trial court found that this first search was illegal because the officers did not have probable cause. In reviewing the finding as to the first search, the appellate court noted that "nervousness would be expected of any citizen, pulled over for a purported minor traffic infraction, who was removed from the car, handcuffed, and patted down" in the first 90 seconds of the stop. The State did not contest the trial court's conclusion as to the first search, and, notably no contraband was recovered during that search, which the record showed was extensive.

The second search was conducted after the officers learned that defendant had failed to register as a prior firearm offender as required by a city ordinance. During the second search, a firearm was recovered from under the passenger seat of the vehicle. While the trial court upheld the second search, the appellate court reversed. The court held there was no probable cause for the second search. Defendant's failure to register as a prior firearm offender "said little to nothing about whether there was a weapon currently in his vehicle." And, where the initial thorough search had yielded no contraband, "the probable cause scale was essentially zeroed out" with regard to any nervousness and furtive movements observed by the officers.

Because the State could not prevail on the charge of unlawful possession of a weapon by a felon without the suppressed evidence, the court reversed defendant's conviction outright.

People v. Smith, 2022 IL App (1st) 190691 During the initial investigation into the beating death of an individual (Morris), defendant was developed as a suspect. The investigating officer issued an investigative alert for defendant's arrest at that time. Defendant was arrested six months later by a different officer who was a member of the Chicago Police Department's Fugitive Apprehension Unit and who was not otherwise involved in the murder investigation. Prior to trial, defendant filed a motion to suppress, challenging his warrantless arrest. The court denied that motion.

On appeal, defendant argued that his arrest based on an investigative alert was unlawful under the Illinois constitution, which requires "a determination of probable cause supported by an 'affidavit' and made by a neutral magistrate." Defendant did not raise a fourth amendment challenge, and the appellate court noted that the fourth amendment allows an arrest on probable cause supported "by oath or affirmation," while the Illinois constitution contains the more stringent "affidavit" requirement.

Two justices held that the investigative alert system violates the Illinois Constitution. (The third justice would not have reached the merits of the issue.) The delegates to the 1870 Constitution specifically changed the language of Article 1 Section 6 from "oath and affirmation" and added the word "affidavit," signaling their intent to provide Illinois citizens with greater protection from warrantless arrests. The investigative alert system, which depends on unsworn evidence presented to police officers, does not meet the affidavit requirement, which envisions sworn evidence presented to a magistrate. Instead, an investigative alert is more like a "standing order" to arrest, which was found unlawful in

People v. McGurn, 341 Ill. 632 (1930). The appellate court also noted that the police had ample opportunity to obtain a warrant during the six months between the date of the incident and the date of defendant's arrest here. Defendant's arrest pursuant to the investigative alert was unlawful.

The court went on to conclude that a new trial was not required, however, on the basis that the error was harmless. Even without the evidence derived from defendant's unlawful arrest, there was overwhelming evidence of defendant's guilt, including multiple eyewitness identifications. Accordingly, defendant's conviction was affirmed.

People v. Freeman, 2021 IL App (1st) 200053 The trial court erred in denying defendant's motion to suppress evidence seized pursuant to a warrantless search of his person. Testimony established that an officer observed defendant take a plastic bag from his waistband while a man holding cash was standing near him. When the men saw the police, defendant put the plastic bag back into his waistband, and the other man ran off. The officer could not see what was in the plastic bag until after he approached defendant, handcuffed him, and seized the bag from his waistband. Defendant was subsequently charged with possession of cocaine.

The Appellate Court concluded that the officer's observations provided reasonable suspicion for a **Terry** stop but not probable cause for a warrantless search. Neither defendant nor the other man were the target of any particular investigation, and the police did not see them engage in any other suspected drug transactions prior to this incident. Further, all the police observed here was a single attempted transfer of a small unidentified object. Accordingly, the trial court should have granted defendant's motion to suppress. And, because the State could not establish defendant's guilt without the evidence in question, defendant's conviction was reversed outright.

People v. Thomas, 2019 IL App (1st) 170474 Appellate court reversed trial court's order quashing arrest and suppressing handgun. Defendant failed to make prima facie showing of a violation of the fourth amendment. Defendant's flight from police in area known for criminal activity was suggestive of criminal activity justifying further investigation. The officer's pursuit of defendant and another man into the common area of an unlocked apartment building was justified. Further, the building's entryway was not curtilage like the apartment door threshold in **People v. Bonilla**, 2018 IL 122484, and there was no search where the officer saw defendant with a gun in his hand in that common area.

After **People v. Aguilar**, 2013 IL 112116, firearm possession, alone, is not enough to establish probable cause; but firearm possession is still subject to certain regulations including the FOID Card Act and Concealed Carry Act. Here, defendant's firearm possession coupled with his initial flight from the police, his handing off of the weapon to another man inside the apartment building, and his further flight into an apartment unit was sufficient to establish probable cause to believe defendant illegally possessed the gun.

Also, defendant abandoned the gun when he gave it to another individual, who further abandoned it by tossing it down on the second-floor landing of the building. Therefore, there was no fourth amendment protection because there is no search or seizure when police take possession of an abandoned item.

Finally, defendant's warrantless arrest in his girlfriend's apartment unit was proper, regardless of whether there was consent to the police entry. No warrant is required for an officer to enter a residence and arrest a defendant where he committed an offense in the presence of the officer. Also, defendant failed to prove he had an expectation of privacy in the apartment, so he lacked standing to challenge the entry.

People v. Rodriguez, 2018 IL App (1st) 141379-B Probable cause to arrest an individual does not always equate to probable cause to search the arrestee's home. In this murder case, there was probable cause to search defendant's home 10 days after the shooting. The police were searching for a murder weapon, a list of intended victims, and a sweatshirt identified by three eyewitnesses. It is a reasonable inference that a person will keep possessions, including those linking him to a crime, in his home. Defendant here was a 15-year-old boy with no vehicle or other place to keep such items.

People v. Day, 2016 IL App (3d) 150852 The officer lacked probable cause to arrest defendant for DUI. The arrest was based primarily on defendant's performance on field sobriety tests. The reliability of those test results was reduced, however, because the officer conceded that it was cold and raining and that the instructions for field sobriety tests state that the tests are not to be given under such conditions. "[A] reasonably cautious person would give very little, if any, weight to the test results that the person knew to be invalid."

In addition, defendant's alleged "failures" on the field sobriety tests were "technical in nature" and "few in amount," and therefore carried little weight. The officer testified that during the one-leg stand test, defendant dropped his foot once while counting to 30 and "swayed" but did not move his arms. The officer testified that during the walk-and-turn test, defendant failed to place his heel directly to his toe, did not count his steps out loud, and made a "large" instead of a small turn. The court stated that such deficiencies would not lead a reasonable person to believe that defendant was impaired by alcohol, especially when the tests were administered improperly in the cold and rain.

The court acknowledged the officer's testimony that defendant slurred his speech and that an odor of alcohol was present. Such factors may indicate the consumption of alcohol, but do not necessarily establish that defendant was impaired.

In addition, because the trial court granted the motion to quash the arrest, the appellate court inferred that the trial court credited defendant's testimony that he did not exhibit slurred speech. Finally, the court noted that any suspicion of impairment that might have been raised by defendant's physical condition was not corroborated by the other evidence, as defendant committed no driving infractions, was not involved in any accident, was able to communicate clearly and effectively with the officer, and adequately performed field sobriety tests although those tests were improperly administered.

The trial court's order quashing defendant's arrest and suppressing evidence was affirmed.

People v. Motzko, 2017 IL App (3d) 160154 The officer who investigated a one-vehicle motorcycle accident lacked probable cause to arrest the rider for DUI. A security guard told the officer that he saw defendant drive at a high rate of speed, fail to negotiate a turn, and crash. The guard also said he could smell alcohol on defendant's breath. The officer did not question the security guard further.

The officer then questioned defendant, who was being treated at the scene. Defendant said he had been coming from "downtown" and that he had consumed one 20-ounce beer. Defendant declined to take a breath test. He was then taken to the hospital.

At the hospital, the officer conducted Horizontal Gaze Nystagmus testing and concluded that defendant's BAC was greater than .08. Defendant told the officer before the testing that he was blind in his right eye, but the officer did not ask whether defendant had a head injury from the accident or whether dirt or debris got into his eyes as a result of the

accident.

The officer testified that he arrested defendant based on the HGN testing, the odor of alcohol on defendant's breath, defendant's glassy, bloodshot eyes, and defendant's admission of drinking. The officer also believed that since defendant stated he was coming from "downtown" he had probably been at a bar.

In finding that there was no probable cause for the arrest, the Appellate Court noted that under Illinois precedent, the mere odor of alcohol on a person's breath and inadequate performance of field sobriety tests does not create probable cause for a DUI arrest. The same is true for speeding and becoming involved in an accident and the combination of admitting to consuming alcohol and exhibiting glassy, blood-shot eyes.

Evidence of HGN testing, when performed according to protocol by a properly trained officer, is admissible to show that the subject has likely consumed alcohol. However, HGN testing does not constitute evidence of impairment or a particular blood alcohol content or level of intoxication. The officer's testimony that defendant's performance on the HGN testing indicated a BAC in excess of .08 showed that the officer was not properly trained to understand and interpret the results of HGN testing. Thus, the trial court did not err by discounting the officer's testimony.

Furthermore, the arrest could not be based on the security guard's observations where the officer did not question the guard about how fast he thought defendant was going. Finally, where the officer had no experience or qualifications in accident reconstruction, he had no reason to believe that the accident resulted from impaired driving.

Where the trial court finds that State's only witness at a suppression hearing lacks credibility, it acts properly by granting a motion to suppress. The trial court's suppression order was affirmed.

People v. Pulido, 2017 IL App (3d) 150215 The Fourth Amendment requires that a search continue no longer than is necessary to effectuate the purposes of a stop. An investigative stop must cease once reasonable suspicion or probable cause dissipates. However, probable cause does not dissipate merely because it takes a long time to complete a reasonable and thorough search of a vehicle.

Where police stopped defendant's van for speeding, searched the entire vehicle on the shoulder of I-80 after a drug detection canine alerted to the vehicle, and had no reason to believe that the vehicle might have contained a hidden compartment, the probable cause created by the dog's alert expired when the officers were unable to locate any contraband within the vehicle. Once the search of the vehicle was fruitless, the officers lacked authority to transport the vehicle to police headquarters to search a second time. The court rejected the argument that the weather conditions and interests of officer safety justified moving the vehicle, noting that the decision to move the vehicle was made only after the first search failed to disclose any contraband.

The court also noted that even if defendant consented to the search at the scene of the traffic stop, that consent was not sufficiently broad to authorize moving the vehicle to police headquarters for an additional search. "[W]e do not believe an Illinois citizen who is pulled over on a highway and subsequently consents to a search of his vehicle intends to voluntarily and knowingly consent to have his vehicle removed from the highway and relocated to the local police station for a further search once the initial search on the highway is completed."

Because the trial judge erred by denying defendant's motion to suppress, and because the conviction for possession of methamphetamine cannot stand in the absence of the contraband discovered in the second search, the cause was remanded with directions to

vacate the conviction and sentence.

People v. Jones, 2015 IL App (1st) 142997 After defendant was stopped for making a right turn without stopping at the red light, a license check disclosed that there was an "active investigative alert" involving a homicide. The officer had no further information concerning the alert, but with defendant's permission conducted a quick protective pat down which did not reveal any contraband.

The officer informed defendant that he would be detained while more information was sought concerning the alert. Defendant was placed in the backseat of the squad car with the car doors closed, but was not handcuffed. The officer testified that he had experience with narcotics arrests and had seen narcotics packaging, but that he did not see anything suspicious in defendant's car.

While the officer was awaiting information to determine whether the alert "was for probable cause to arrest," backup officers arrived and "secured" defendant's car. According to the State, "securing a car means looking for guns by walking around the car." The backup officer testified that as he was walking around the car, he looked through the rear passenger-side window and saw a square black object wrapped in cellophane and black tape.

The officer entered the car and retrieved the object, which he believed to be cocaine. The object was recovered before any additional information was received concerning the investigative alert, about five to ten minutes after defendant had been placed in the squad car.

Defendant was arrested for possession of cocaine. A search of his person revealed a large bundle of currency in his right front pocket.

The trial court granted defendant's motion to suppress, finding that defendant was arrested without probable cause because he was taken into custody based on the alert. The Appellate Court affirmed the suppression order. The police had no reason to secure defendant's car unless he was already in custody when the backup officer arrived, especially where the traffic stop involved a routine traffic violation. The court concluded that under these circumstances, it was clear that defendant was placed in custody and his vehicle searched based on the investigative alert.

Citing **People v. Hyland**, 2012 IL App (1st) 110966, the court concluded that the fact that a person is subject to an investigative alert shows at most that other officers might possess facts sufficient to support probable cause. The fact that other officers may have some unspecified probable cause doe not justify an investigative detention by officers who lack the specifics of the basis for the alert.

The court also noted the special concurrence of Justices Salone and Neville in **Hyland** "regarding the 'troubling' issue of the legality of the Chicago police department's policy of issuing investigative alerts." Here, the court stated, "This issue remains just as troubling as well as unresolved."

People v. Brown, 2014 IL App (2d) 121167 Whether there is probable cause to justify a search warrant depends on whether, under the totality of circumstances, a person of reasonable caution would be justified in believing that evidence of a crime will be found at the place to be searched. Probable cause requires a probability that evidence of criminal activity will be found, not proof beyond a reasonable doubt.

The issuance of a search warrant is reviewed to determine whether there was a substantial basis for the magistrate to conclude that probable cause existed. Even where the trial court did not hear testimony and there are no facts in dispute, the *de novo* standard of

review is not appropriate. Instead, if the complaint for a search warrant provided a substantial basis for the issuing judge to determine that probable cause existed, the denial of a motion to suppress will be affirmed.

The court rejected the argument that a tip was unreliable because it came from an attorney who was representing two persons who were present at the time of the shooting in question. Defendant argued that a tip from an attorney who represents possible suspects in a crime carries less reliability because an attorney may be presumed to act in the best interest of his clients.

The court noted that the tip was not anonymous, because the attorney was known to the officer to whom the tip was made. Furthermore, the two persons who gave the attorney information about the shooting were both identified by name in the affidavit, enhancing the reliability of the tip. The court concluded that at least some of the information appeared to have been corroborated. Finally, there is no reason to assume that a tip is less reliable just because it came from an attorney whose clients were present at the time of the crime.

Because there was a sufficient basis for the trial court to issue a search warrant, the trial court's order denying defendant's motion to suppress was affirmed.

People v. Jackson, 2014 IL App (3rd) 120239 The Appellate Court found that the police lacked probable cause to arrest the defendant for murder. The offense occurred some six months prior to the arrest. An eyewitness was questioned several times, but failed to identify the shooter until some six months later, when the witness was incarcerated on an unrelated offense. The eyewitness testified at the suppression hearing that he told officers he did not know who committed the offense, but that the officers "pushed" defendant's picture "down my throat" and were "hellbent" that he identify defendant as the perpetrator.

After interviewing the eyewitness, one of the officers then sent out a "49 message" directing patrol officers to arrest defendant for murder. The record was unclear whether officers failed to seek an arrest warrant or whether their request for a warrant was denied.

The court noted that in denying the motion to suppress, the trial court erroneously found that the credibility of the eyewitness on whose statements the arrest was based was irrelevant to the issue of probable cause. In addition, the trial judge erred by basing its finding of probable cause solely on the eyewitness's photo identification of defendant, without considering all of the evidence including the inability of the police to develop any evidence which corroborated the eyewitness's account. Under the totality of circumstances, the evidence was insufficient to support a finding of probable cause.

Because the trial court erroneously denied the motion to suppress, the conviction was reversed and the cause remanded for further proceedings.

People v. Trisby, 2013 IL App (1st) 112552 In a "high narcotic area," the police saw the rear seat passenger of a car accept currency from a woman and give the woman a small unknown object. The police followed the car, and stopped it when the driver failed to use a turn signal. The rear seat passenger was holding a $10 bill in his left hand. He also quickly pulled his right hand from his right front pants pocket and continued to make attempts to move his hand toward that pocket against an officer's instructions to keep his hands stationary. The officer reached into the passenger's right front pants pocket and discovered a rubber-banded bundle of nine plastic bags containing heroin.

Probable cause was not established by the officer's observation of a single hand-to-hand transaction involving an unidentified object together with a few furtive movements towards a pants pocket. Unlike **People v. Grant**, 2013 IL 112734, where a single transaction was

sufficient to establish probable cause, the police did not actually observe the passenger commit a criminal offense.

People v. Williams, 2013 IL App (4th) 110857 In **People v. Stout**, 106 Ill.2d 77, 477 N.E.2d 498 (1985), the court held that the odor of cannabis emanating from a vehicle involved in a traffic stop gives rise to probable cause to make a warrantless search of the vehicle and driver, provided that the officer who detects the odor of cannabis is trained and experienced in such detection. Here, the court held that such probable cause extends not only to the driver and the vehicle, but also to any passengers.

The court acknowledged that probable cause to conduct a warrantless search may not extend to persons who have no connection to the suspected crime except that they are passengers in a car which is the subject of a probable cause determination. However, the court concluded that there is sufficient reason to connect all occupants of a vehicle to probable cause which arises from the odor of marijuana coming from the passenger area of that vehicle.

Defendant's conviction for unlawful possession of cannabis was affirmed.

People v. Harrell, 2012 IL App (1st) 103724 Defendant was stopped by Chicago police officers in the city of Maywood, where he lived. The officers were in Maywood to investigate a tip from a confidential informant who had reported seeing several pounds of cannabis in defendant's residence.

Defendant was stopped after he left his apartment and entered a vehicle with two other men. The three men were taken to the front of defendant's home, where defendant's stepfather gave consent for police to search the home. After the search disclosed cannabis, heroin, drug paraphernalia, and a loaded handgun, defendant was placed in custody.

Defendant was subsequently charged with possession of cannabis with intent to deliver and unlawful use of a weapon by a felon. The trial court granted a motion to suppress statements in which defendant identified himself, gave his address, and admitted possessing the handgun and cannabis. The trial judge found that the Chicago officers lacked authority to investigate and make arrests in Maywood, and the State appealed.

The trial court properly found that defendant was placed in custody before the search of his residence provided probable cause to support an arrest. Because the vehicle was approached by three police officers with their weapons drawn, and the three occupants of the vehicle were handcuffed before they were taken back to defendant's residence, the evidence supported the trial court's finding that an arrest had occurred.

People v. Hopson, 2012 IL App (2d) 110471 An officer testified that he was assigned to a parking lot where there had been recent drug and gun crimes, including two shootings on the previous night. The officer approached defendant, who was sitting in the driver's seat of a parked car. While looking into the car, the officer observed an open bottle of vodka on the floor and a plastic bag containing a green, leafy substance which appeared to be cannabis.

In response to questioning, defendant denied having any identification. There were several young men around the car, which was similar to the situation on the previous night when one of the shootings occurred. The officer seized the suspected cannabis and arrested the defendant.

The court concluded that the officer had probable cause to make an arrest for possession of cannabis. The court rejected the trial court's finding that the State was required to lay a foundation showing that the officer's training and experience enabled him to identify the substance in the plastic bag as cannabis. While an officer's experience and training are

relevant when determining whether probable cause exists, the absence of such testimony is not *per se* fatal to a finding of probable cause.

The court contrasted this case from precedent concerning an officer's ability to distinguish whether a hand-rolled cigarette contains cannabis or tobacco. Although cigarettes containing each substance might appear to be identical, the court found that it was reasonable for the officer to conclude that a green, leafy substance contained in a plastic bag was cannabis rather than some legal substance.

The court also noted that the defendant did not object to the officer's opinion that he believed the substance to be cannabis, and that the defense had an adequate opportunity to cross-examine the officer concerning his experience and training.

The trial court's order granting defendant's motion to suppress was reversed and the cause remanded for further proceedings.

People v. Slavin, 2011 IL App (2d) 100764 While standing outside an ice-fishing shanty, an officer heard the occupants comment on who was going to "pack the bowl" and the quality of the "weed." He also heard a distinctive coughing sound which, based on his training and experience, he knew is made after inhaling cannabis though a pipe. Based on these facts, he possessed probable cause to believe the shanty possessed contraband.

Exigent circumstances existed because the officer could not have called another officer to monitor the scene while he obtained a warrant. Given the officer's reasonable belief that someone in the shanty was smoking cannabis, the suspected cannabis likely would have been removed from the scene or destroyed, either by simply smoking it or dropping it through the hole in the ice to the water below, had the officer delayed his entry. Therefore the warrantless entry was reasonable under the Fourth Amendment.

People v. Smith, 372 Ill.App.3d 179, 865 N.E.2d 502 (1st Dist. 2007) A search warrant is valid where the complaint and supporting affidavit show sufficient information to warrant a reasonable belief that an offense has occurred and that evidence will be found at the place to be searched. The magistrate may draw reasonable inferences from the supporting materials.

Where an informant whose tip is the basis of the affidavit personally appears before the issuing judge, is under oath, and is subject to the judge's observation and assessment of credibility, "additional evidence relating to informant reliability is not necessary." This rule applies even where there is no indication that the informant was questioned by the magistrate, as the "informant's very presence support[s] his or her reliability."

People v. Blair, 321 Ill.App.3d 373, 748 N.E.2d 318 (3d Dist. 2001) In the absence of consent or a warrant, a police officer must have probable cause to effect a seizure. Probable cause exists where the facts available would justify a person of reasonable caution in the belief that the item may be contraband, stolen property, or evidence of a crime.

Even if officers had the consent of defendant's father to inspect files on defendant's computer, they lacked probable cause to seize the computer. Although the computers contained "bookmarks with references to teenagers and so forth," a person of reasonable caution would not have been justified in believing that the computer contained child pornography. At best, the bookmarks constituted ambiguous facts which created mere suspicion of a crime. Thus, even if the search of the computer was lawful, the seizure was improper in the absence of valid consent.

People v. Armstrong, 318 Ill.App.3d 607, 743 N.E.2d 215 (1st Dist. 2000) Probable cause

exists where, under the totality of the circumstances, there is a reasonable basis to believe that the accused has committed an offense. Under Illinois law, information received from third parties must be accompanied by some indicia of reliability in order to constitute probable cause. The combination of several anonymous calls, all without any indicia of reliability, does not constitute probable cause.

§43-4(b)
Effect of Delay

United States Supreme Court

Andersen v. Maryland, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976) Finding of probable cause was not precluded by time lapse of three months between the completion of the real estate transactions, on which the warrant was based, and the searches. It was reasonable to expect that the business records in question would be maintained in the office for a period of time. See also, **People v. Montgomery**, 27 Ill.2d 404, 189 N.E.2d 327 (1963) (eight-day delay between the time the affiant saw the narcotics and the time he signed the affidavit for the warrant was not so unreasonable as to negate the existence of probable cause; there is no hard and fast rule concerning the time within which a complaint for a search warrant must be made, except that it should not be too remote); **People v. Dolgin**, 415 Ill. 434, 114 N.E.2d 389 (1953) (49-day delay not unreasonable where offense was continuing); **People v. Hawthorne**, 45 Ill.2d 176, 258 N.E.2d 319 (1970) (two-week delay not unreasonable).

U.S. v. Harris, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971) Informant's observations made "within the past 2 weeks" were not too stale to establish probable cause.

Illinois Supreme Court

People v. Thompkins, 121 Ill.2d 401, 521 N.E.2d 38 (1988) Search warrant issued 83 days after crime occurred was not based on stale information where "common sense" suggested a "fair probability that the items sought would likely still be available.

Illinois Appellate Court

People v. Meakens, 2021 IL App (2d) 180991The trial court should have suppressed evidence found during a search of defendant's cell phone, because the 16-month delay between the seizure of the phone, and the application for a search warrant and subsequent search, was unreasonable.

Once law enforcement officers have seized an item, they must obtain a search warrant within a reasonable time. When officers fail to seek a search warrant for a seized item, at some point the delay becomes unreasonable and is actionable under the Fourth Amendment. Factors to consider in determining whether a delay is unreasonable under the Fourth Amendment include the defendant's possessory interest in the item, whether the defendant has requested the return of the item, the existence of probable cause for the seizure versus mere reasonable suspicion, and law enforcement's diligence in obtaining the warrant.

Here, the police showed no diligence, having failed to explain the excessive delay, and thus their interests could not outweigh the defendant's possessory interest in his cell phone. The court cited **Riley v. California** 573 U.S. 373, 393-94 (2014), which recognized the extraordinary difference between a cell phone, with its ability to store large amounts of information, and other potential objects of searches. The defendant's possessory interest in

his phone persisted despite his incarceration, because while he could not possess the phone himself, he could have allowed an agent to access the information. The court remanded for a new trial.

People v. Varnauskas, 2018 IL App (3d) 150654 Where defendant's vehicle was equipped with a bicycle rack which obscured all but two numbers of the license plate, a traffic stop for a violation of 625 ILCS 5/3-413(b) was proper. That subsection provides for the placement of vehicle license plates and states that they are to be "free from any materials that would obstruct the visibility of the plate." Defendant's counsel initially filed a motion to suppress, but abandoned that motion based on **People v. Gaytan**, 2015 IL 223, which construed a prior version of the statute as encompassing only obstructions which were physically attached to the license plate, but which also held that officers had an objectively reasonable belief that a trailer hitch violated the statute because it was ambiguous. Counsel's abandonment of the motion was reasonable in light of **Gaytan** and because the statute had since been amended to remove the ambiguity.

During the traffic stop, a K-9 alerted on defendant's vehicle. Two officers searched without locating any contraband and then opted to relocate defendant's vehicle to the police station for further searching, citing cold weather conditions, traffic, and darkness on the side of the road. At the station, drugs were located in a hidden engine compartment. Under these circumstances, probable cause did not dissipate because of the relocation.

The dissenting justice believed that the amended version of Section 3-413(b) only applied to materials actually affixed to the license plate. She also would have followed **People v. Pulido**, 2017 IL App (3d) 150215, and would have concluded that justification for the warrantless search of defendant's vehicle dissipated with its relocation and that the officer needed to get a warrant to continue the search.

People v. Jaynes, 2014 IL App (5th) 120048 A warrant is stale when too much time has elapsed between the occurrence of the facts alleged in the affidavit and the issuance of the warrant. There is no arbitrary cutoff point beyond which probable cause ceases to exist. However, because probable cause depends on whether the totality of the circumstances known to the affiant were sufficient to warrant a person of reasonable caution in believing that criminal activity has occurred and that evidence will be found on the premises to be searched, under particular circumstances staleness may be a relevant factor in determining probable cause.

For example, staleness is highly relevant to a search for perishable or consumable objects, but is rarely a factor when a warrant is sought to search for computer files, as was at issue here. A file that is deleted is merely removed from the user interface and can generally be recovered until it is overwritten. Because even deleted files can likely be recovered by experts, it is only in exceptional circumstances that staleness becomes an issue in searches for computer files.

Here, the search warrant was not based on stale information. Officers received an anonymous complaint that defendant's ex-wife had found child pornography on his computer and that he had a history of molesting children. They attempted to investigate the allegations, but were denied access by defendant to his residence and computer. In the affidavit for the warrant, a detective stated that based on his previous experience, images of child pornography are generally kept for extended periods and can frequently be recovered even if they have been deleted. The court concluded that the allegations in the affidavit provided a sufficient basis for a judge to believe that evidence of child pornography would be

found in defendants' home although two months had passed since police received the anonymous tip. Under these circumstances, the information on which the search warrant was based was not stale.

Defendants' conviction for possession of child pornography was affirmed.

People v. Beck & Riley, 306 Ill.App.3d 172, 713 N.E.2d 596 (1st Dist. 1999) "Staleness" refers to the lapse of time between the facts alleged in an affidavit and the issuance of the warrant. Where the affidavit alleged that defendant was involved in a continuing course of criminal conduct, the fact that some of the allegations concerned activity from nearly two years earlier did not justify a finding of staleness.

The court cautioned that its holding should not be used "as justification for opening up our citizens' homes upon the mere commission of a crime and an affidavit of a law enforcement officer." See also, **People v. Halliday**, 73 Ill.App.3d 615, 392 N.E.2d 389 (3d Dist. 1979) (four-day delay between informer seeing the alleged drugs and the issuance of the search warrant did not negate the existence of probable cause). Compare, **People v. Damian**, 299 Ill.App.3d 489, 701 N.E.2d 171 (1st Dist. 1998) (affirming trial court decision quashing search warrant where six weeks had passed since any criminal activity, there was no evidence of continuing conduct, and a confidential informant was of questionable reliability).

People v. Holmes, 20 Ill.App.3d 167, 312 N.E.2d 748 (1st Dist. 1974) The failure of the search warrant complaint to state the date of the alleged offense was fatal to its sufficiency. "We . . . reject the State's argument that the failure to specify the date of the crime [in a] complaint . . . drafted in the present tense" allows the magistrate to infer that the crime occurred in the recent past.

§43-4(c)
Hearsay

§43-4(c)(1)
Informer Information

United States Supreme Court

Massachusetts v. Upton, 466 U.S. 727, 104 S.Ct. 2085, 80 L.Ed.2d 721 (1984) **Gates** did not merely refine or qualify the two-pronged test (basis of knowledge and veracity of the informer), but rejected it. In addition, pursuant to **Gates** a reviewing court must defer to the decision of the issuing judge instead of conducting a *de novo* probable cause determination.

An affidavit established probable cause where the "pieces fit neatly together and, so viewed, support the magistrate's determination." The informant's description of items in defendant's home tallied with items taken in recent burglaries, she knew of a raid on defendant's motel room which occurred only three hours earlier, she explained the connection between the motel room and defendant's home, she provided a motive for both her attempt at anonymity and for furnishing the information, and the officer reasonably inferred that she was the defendant's ex-girlfriend). Compare, **People v. Crespo,** 207 Ill.App.3d 947, 566 N.E.2d 496 (2d Dist. 1991) (in determining whether there was probable cause for a warrantless arrest, a trial judge is to apply standards at least as stringent as those that guide a judge in deciding whether to issue a warrant; although after **Gates** it is not necessary that the evidence establish both the informant's "basis of knowledge" and "veracity," the

informant's veracity and basis of knowledge remain "highly relevant" factors; the trial court's order granting a motion to suppress was not manifestly erroneous in light of "considerable weaknesses" in terms of the informant's reliability and veracity); **People v. Yarber**, 279 Ill.App.3d 519, 663 N.E.2d 1131 (5th Dist. 1996) (under **Gates**, the informant's veracity, reliability and basis of knowledge remain "highly relevant" in determining whether probable cause exists).

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) A "totality of the circumstances" approach is used to determine whether an informer's tip establishes probable cause for the issuance of a warrant. Under the "totality of the circumstances" test, the magistrate is to make a practical, common-sense decision whether there is a fair probability that evidence of a crime will be found in a particular place.

Illinois Supreme Court

People v. Tisler, 103 Ill.2d 226, 469 N.E.2d 147 (1984) The "totality-of-circumstances" approach adopted in **Gates** applies to probable cause questions under the Illinois Constitution that involve an informant's tip.

Under the totality of the circumstances test, probable cause existed. The informant could be deemed reliable based on accurate information he had previously provided, and the police corroborated many details of the informant's story.

Illinois Appellate Court

People v. Lopez, 2018 IL App (1st) 153331 An anonymous tip can support a traffic stop if the tip is reliable and provides reasonable suspicion for the stop. Here, however, the tip was neither reliable nor sufficiently detailed to provide grounds for the stop. The Court distinguished **Navarette v. California**, 572 U.S. 393 (2014), where a caller made a 911 call describing having been run off the road by a particular vehicle. Here, the tip did not describe what conduct the caller witnessed, but only included a conclusory statement about there being a "DUI driver." And, the identity of the tipster was unknown here, while the 911 call in **Navarette** was traceable.

As a matter of first impression, the Court held that a defendant's identity learned during the course of an unlawful traffic stop is suppressible as fruit of the poisonous tree. The Court declined to apply the holding in **INS v. Lopez-Mendoza**, 468 U.S. 1032 (1984), that "the 'body' or identity of a defendant or respondent in a criminal or civiel proceeding is never itself suppressible as a fruit of an unlawful arrest." **Lopez-Mendoza** involved only a question of personal jurisdiction, and did not concern the admissibility of evidence of identification in the face of a fourth amendment challenge. Further, the officer's observation of the defendant in actual physical control of the vehicle provided the sole evidence of this element of DWLS, and would not have occurred but for the illegal stop. As such, the suppression of this evidence required outright reversal of the conviction.

People v. Miller, 2014 IL App (2d) 120873 Reasonable suspicion to stop a motor vehicle may be based on information obtained from a citizen informant, so long as that information possesses sufficient indicia of reliability. The reliability of the information is enhanced by independent corroboration, and by situations where the citizen informant gives his name, witnesses the reported offense, and offers to sign a complaint. By contrast, the reliability of the information is decreased where the informant is paid, fails to give his name, and does not witness the offense. "Although courts no longer presume that citizen informants are more

reliable than paid informants, this distinction is still relevant in assessing the reliability of the information."

The information provided to the police in this case was sufficiently reliable to provide reasonable suspicion for stopping the car. The informant called the police and told them that defendant had $70 worth of cocaine and a crack pipe in the car (the informant was driving the car and defendant was a passenger). The informant gave the police his name and received no benefit from the police. As a named citizen informant who witnessed the offense, only a minimum amount of corroboration was necessary to establish reliability.

The informant gave the police detailed information about his car and he told them where he would be at a specific time. When the officer arrived at the specified location, she saw a car matching the informant's description. The confirmation of these facts created reasonable suspicion that justified the stop.

The court rejected defendant's argument that the stop was improper because the police only corroborated innocent details, not any unlawful conduct. The police are not always required to corroborate criminal activity. When an informant is reliable and provides specific detail about defendant's criminal activity, the police may act on a tip even if they only corroborate innocent details. If the police always had to corroborate and hence witness criminal activity, "information received from informants would become immaterial."

People v. Allen, 409 Ill.App.3d 1058, 950 N.E.2d 1164 (4th Dist. 2011) The investigatory detention of defendant and his companions was justified by information which the officers obtained from an informant. The informant told a police officer that three people were going to arrive at his apartment in the next 15 minutes to complete a drug transaction, and that he did not have the money to pay for the drugs. The officer testified that the informant sounded "pretty scared."

While the officers were going to the informant's apartment, they received a second call from the informant stating that the persons bringing the drugs had just phoned and said they were exiting the interstate at the same location where the officers had just exited. The officers could see only three vehicles that had exited the interstate at that point; two of the cars were occupied by police officers. The deputies pulled off to allow the third car to pass, and observed three occupants, two of whom matched descriptions of gender and race which had been stated by the informant. The officers were unable to determine the race or gender of the back seat passenger.

The officers followed the car, and called the informant to determine whether the vehicle they were following was the car the informant expected. The informant was unable to identify the car based on the officers' description, but said that the car he was expecting would park in the lot behind his apartment.

When the car parked behind the informant's apartment, the officers made a stop, determined the names of the occupants of the car, and obtained an explanation that the occupants were meeting a friend who had the same first name as the informant. The officers ordered the three persons out of the car and conducted a patdown, but found no weapons or drugs. A search of the vehicle also disclosed no contraband.

The officer then called the informant, who looked out his apartment window and identified the back seat passenger, a white male, as his contact. The informant also stated that the contact was an intermediary between the informant and the dealer, who was a black male. Defendant, the driver of the car, was a black male. When the officer said that the officers had not found any drugs on the suspects or in their car, the informant told the officer to check the suspects' mouths.

The officer felt outside of defendant's lip and believed that defendant was concealing a packet in his mouth. After defendant spit out one packet, the officer reached into the defendant's mouth to recover additional packets which he believed defendant was attempting to swallow. After a struggle, the officers recovered several additional packets of what they suspected to be cocaine.

The court concluded that under these circumstances, the detention was justified at its inception by the information received from the informant and verified by the officers before the stop. Information provided by a third party informant may give rise to a reasonable suspicion of criminal activity if the information is reliable and allows a reasonable person to infer that a crime is about to occur. In determining whether an informant's statements provide a reasonable basis for a **Terry** stop, the court should consider the informant's veracity, reliability, and basis of knowledge.

Under the totality of circumstances, the police had a reasonable suspicion of criminal activity. The officers knew the informant from previous contacts, and he had given information in the past which was consistent with the information he provided on this occasion.

In addition, the informant's identity was known to both the officers and was not concealed from the defendant. The officers identified the informant at the suppression hearing, and the informant testified at defendant's trial and was subject to cross-examination. Thus, this was not a situation involving an anonymous or confidential source, where a greater showing of reliability is required.

The informant identified the basis of his information during the tip and implicated himself in the offense, lending credibility to his claims. Furthermore, the officers were able to corroborate much of the informant's information before the stop, including the race and gender of two of the car's occupants, the precise location of the car at a specified exit at a specific time, and the car's destination. Such corroboration demonstrated that the informant had inside information about the crime he was reporting.

Finally, the tip required immediate police action because the crime was expected to occur within 15 minutes of the initial report and the informant was in personal danger if the officers did not intervene.

The court rejected the argument that the search of defendant's mouth exceeded the scope of a permissible **Terry** stop. The court concluded that based on the information known to the officers before the search of defendant's mouth, a reasonable person would have been justified in concluding that the defendant was involved in a criminal offense. Because the officers had probable cause to make an arrest, the search of the defendant's mouth was a valid search incident to arrest without regard to whether it would have been justified under **Terry**.

Defendant's conviction for unlawful possession of a controlled substance with intent to deliver was affirmed.

People v. Byrd, 408 Ill.App.3d 71, 951 N.E.2d 194 (1st Dist. 2011) The trial court found that the police had reasonable suspicion to support a **Terry** stop of defendant and his car triggered by their observation of a suspicious transaction from the defendant's car between defendant and a woman on the street. The police had probable cause to arrest defendant when he admitted he did not have a valid driver's license.

The judge's ruling that the recovery of a magnetic box containing drugs from under the chassis of defendant's car was a lawful search incident to arrest was incorrect under **Arizona v. Gant**, 556 U.S. __, 129 S.Ct. 1710, ___ L.Ed.2d ___ (2009), where defendant was

in handcuffs near the front of the car when the box was recovered. **Gant** held that the search of a vehicle could not be upheld as a search incident to an arrest where the defendant had been removed from the vehicle and secured in a location from which there was no possibility that he would gain access to the vehicle.

Because the motion to suppress was litigated prior to the decision in **Gant**, the court remanded for a "new suppression hearing to allow the parties to develop the facts in light of **Gant** and to allow the circuit court to make express findings of fact and conclusions of law pursuant to" 725 ILCS 5/114-12(e).

The Appellate Court upheld the trial judge's finding that the police did not have probable cause to believe that defendant had engaged in a drug deal when they stopped defendant's car.

The trial court's determination concerning factual matters at a hearing on a motion to suppress, including reasonable inferences to be drawn from the testimony, is entitled to deference and will not be disturbed on review unless manifestly erroneous. The trial court's finding that probable cause did not exist to arrest defendant for drug dealing was not manifestly erroneous.

The police district had received an anonymous phone call claiming that narcotics transactions involving a Chevrolet Cavalier were occurring in the 7200 block of South Spaulding. The officers then observed defendant engaging in what to the officers appeared to be a drug transaction. Defendant, driving a Chevrolet Cavalier, was flagged down by a woman in the 7200 block of South Spaulding, defendant and the woman engaged in a conversation, and defendant retrieved a small black box from underneath the car and handed the woman shiny objects from the box in exchange for money.

The trial court properly gave little weight to the phone call because such anonymous calls are often unreliable. The phone call was not mentioned in either of the reports prepared by the arresting officers.

The judge also properly discounted the officer's claim that his 14 years as a narcotics officer enabled him to know a drug transaction when he sees one. The judge was free to disregard the officer's claims as subjective impressions of his observations. As a matter of law, a single hand-to-hand street exchange between the defendant and a person who is never questioned regarding what he or she received does not establish probable cause to believe that a drug exchange occurred, where the trier of fact found otherwise.

People v. Rollins, 382 Ill.App.3d 833, 892 N.E.2d 21 (4th Dist. 2008) Anonymous tip received on 911 line is not truly anonymous; the dispatch system may provide enough information to identify the caller, who is subject to a criminal charge for making a false or misleading report, and courts have "repeatedly recognized the improvement in reliability of our 9-1-1 systems."

People v. Smith, 372 Ill.App.3d 179, 865 N.E.2d 502 (1st Dist. 2007) Where an informant whose tip is the basis of the affidavit personally appears before the issuing judge, is under oath, and is subject to the judge's observation and assessment of credibility, "additional evidence relating to informant reliability is not necessary." This rule applies even where there is no indication that the informant was questioned by the magistrate, as the "informant's very presence support[s] his or her reliability."

§43-4(c)(2)
Information From Other Police Officers

United States Supreme Court

U.S. v. Hensley, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985) Under **Whiteley**, the admissibility of evidence discovered during a search incident to an arrest made in reliance on a police flyer or bulletin turns on whether the officers who issued the flyer had probable cause to make the arrest. In such cases, probable cause does not turn on whether the officers who relied on the flyer or bulletin were "themselves aware of the specific facts which led their colleagues to seek their assistance."

Whiteley v. Warden, 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971) Police officers are entitled to act upon and assume that a request for aid by other officers is based upon probable cause; however, where the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the fact that fellow officers made the arrest.

Illinois Appellate Court

People v. Hyland, 2012 IL App (1st) 110966 Police officers may rely on official police communications to effect an arrest or conduct an investigative detention, but the State must demonstrate that the information on which the communication is based establishes probable cause to arrest, or reasonable suspicion that the defendant has committed or is about to commit a crime. An illegal arrest or detention cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to effect the arrest or detention. The admissibility of evidence uncovered during a search incident to an arrest or a frisk following an investigative detention based on a police communication thus depends on whether the officer who issued the communication possessed probable cause to make the arrest or reasonable suspicion to detain.

The police relied on an investigative alert to arrest the defendant and perform a custodial search. Because the State presented no evidence that the facts underlying the investigative alert established probable cause to arrest the defendant, the trial court erred in denying defendant's motion to quash arrest and suppress evidence. Because the State presented no evidence from which it might be inferred that the officer who issued the investigative alert possessed facts that would have justified the stop, any argument that the police performed an investigative detention of defendant also fails.

Unprovoked flight together with an individual's presence in an area of expected criminal activity can be sufficient to establish reasonable suspicion to justify an investigative detention. **Illinois v. Wardlow**, 528 U.S. 119 (2000). While there was evidence that the defendant ran as soon as he saw the police, there was no evidence that the police acted in response to reports of suspected criminal activity or suspicious behavior on the part of the defendant. Therefore the stop of the defendant could not be upheld as a valid investigative detention.

An officer conducting an investigative detention may conduct a pat-down search to determine if the detainee is carrying a weapon if the officer reasonably believes that the detainee is armed and dangerous. The officer must be able to point to specific, articulable facts which, when taken together with natural inferences, would cause a reasonably prudent person to believe that his safety or that of others was in danger.

There is no evidence in the record that the officer who detained defendant pointed to specific, articulable facts that would cause him to think that the defendant was armed and dangerous. Defendant's flight is not an indication that he was armed and dangerous. The investigative alert that led to defendant's detention was based on violation of an order of protection, but the only evidence in the record regarding the details of the violation was

defendant's testimony that he had called someone he was not supposed to call. Such information would hardly suggest that defendant could be a potential danger to the officers.

Salone, J., specially concurred. The goal of investigative alerts, detaining an individual for questioning, is the same as that of an arrest warrant, without the constitutional safeguards. The Chicago Police Department's use of investigative alerts to take individuals into custody and process them as if under arrest institutionalizes an end run around the warrant requirement by permitting a police officer, rather than a judge, to find probable cause. Better law enforcement would be promoted by encouraging the police to seek an arrest warrant or proceed under the current exceptions to the warrant requirement.

People v. Bramlett, 341 Ill.App.3d 638, 793 N.E.2d 203 (1st Dist. 2003) Probable cause for an arrest may be based on information collectively received by several officers working in concert, even if all of the information is not specifically known to the officer who makes the arrest. "[I]n most cases where courts have imputed information from one officer to another for probable cause purposes," however, there has been evidence of "some sort of communication between the officers." Because there was no evidence that officers were working in concert, there was no basis on which to impute a 13-year-old's statement to a second officer.

Furthermore, there was no evidence to show when the youth's statement was obtained, and therefore no basis on which the trial court could have found that the statement was obtained before defendant was arrested.

People v. Crane, 244 Ill.App.3d 721, 614 N.E.2d 66 (1st Dist. 1993) Probable cause may be based on information collectively obtained by several officers working in concert, even where the officer who makes the arrest is unaware of all of the information. However, the State must establish that the officer who ordered the arrest had sufficient facts to establish probable cause.

The State failed to establish the basis for a dispatcher's statement to the arresting officers that defendant was a suspect in the offenses. Although one detective testified that he had developed information that defendant might have been involved in the offenses, he also testified he did not share his information with any other officers. Furthermore, probable cause was not shown by two of the detective's reports, which were filed in separate offices of the police department, especially where there was no indication that the dispatcher or the arresting officers had seen them.

People v. Fenner, 191 Ill.App.3d 801, 548 N.E.2d 147 (2d Dist. 1989) When police officers are acting in concert in an investigation, probable cause can be established from all the information collectively received by the police, even if unknown to the officer who made the arrest.

§43-4(c)(3)
Information From "Average Citizen"

Illinois Supreme Court

People v. Carter, 2021 IL 125954 The police had reasonable suspicion to conduct a **Terry** stop where an anonymous 911 caller described a man waving a gun and assaulting two women, then called a second time with an updated location, and the officer, upon spotting

someone who matched the description at the updated location, corroborated the tip by noticing the suspect holding his waistband.

Although defendant argued that the caller described an assault of two women, and the officer did not see any women, this discrepancy did not significantly diminish the reliability of the tip. Citing **Navarette v. California**, 572 U.S. 393 (2014), the court held that the fact that the suspect was seen shortly after the tip, and the second call, suggested the caller was witnessing the events in real-time. Also, the caller used 911, which adds credibility to the tip because 911 is not truly anonymous, as 911 calls are traceable. Both factors were cited by the **Navarette** court as grounds for reasonable suspicion.

The court found **Florida v. J.L.**, 529 U.S. 266 (2000), distinguishable. **J.L.** found unconstitutional a pat-down based on an anonymous tip describing the suspect and alleging he carried a gun. First, unlike **J.L.,** the tipster here provided real-time descriptions and used 911. More importantly, a long line of precedent has distinguished **J.L.** in cases with an "ongoing emergency," as opposed to a mere description of general criminality. In this case, the tip described an assault in progress, and therefore was more reliable.

Justice Neville, in dissent, would have found no reasonable suspicion where the two aspects of the tip describing criminal behavior – a man waving a gun and assaulting two women – were unsupported by the officer's observations.

People v. Adams, 131 Ill.2d 387, 546 N.E.2d 561 (1989) The Court discussed the distinction between a "paid informant" and an "ordinary citizen," and held that an informer's reliability is a factor to be considered in the totality of circumstances and that "it matters not by what name the informant is labeled." Thus, the basis of the informant's knowledge is relevant to the probable cause determination.

People v. Bean, 84 Ill.2d 64, 417 N.E.2d 608 (1981) Information obtained by telephone from the victim was sufficient to constitute probable cause; the victim was an ordinary citizen (as opposed to a paid informant), and was an eyewitness to the offense. The failure to interview the victim in person did not make the information untrustworthy; "a phone conversation can be the basis for establishing probable cause to arrest."

Illinois Appellate Court

People v. Butler, 2021 IL App (1st) 171400 The Appellate Court upheld a warrantless arrest based on probable cause. The court refused to reach the merits of defendant's claim that the "investigative alert" type of communication, in lieu of a warrant, violated the Illinois Constitution.

An officer investigating a series of sexual assaults interviewed a complainant and obtained evidence implicating defendant. The next day, he attended a roll call meeting at the police station where he advised patrol officers that he was looking for defendant in connection with the offenses. The officer informed the department they should look for a black four-door Lincoln with chrome wishbone rims, license plate number H716863. Later that day, a patrol officer pulled over the Lincoln, and the investigating officer arrived at the scene, observed the matching car, and arrested him.

The court found sufficient probable cause for the arrest. While the patrol officer did not have personal knowledge of the facts underlying the investigation, probable cause may be established from the collective knowledge of police officers working in concert. Here, the complainant provided a description which, although general, did resemble defendant.

Defendant's car, also described by the complainant, was seen in a surveillance video at the place and time of the assault.

In response to defendant's assertion that an arrest based on probable cause nevertheless violates the Illinois Constitution's warrant clause, the Appellate Court noted that **People v. Bass**, 2021 IL 125434 vacated the lower court's holding in support of that argument. To the extent defendant relied on the Appellate Court holding in **Bass**, it was no longer good law and the court declined to follow it. And because the Appellate Court already found probable cause, it had "resolved defendant's arrest issue on other grounds," such that it "need not address his argument that use of the investigative alert by police violates the Illinois Constitution."

People v. Padilla, 2021 IL App (1st) 171632 After receiving an anonymous tip detailing defendant's role in a recent burglary, the police pulled over defendant's car for a seat belt violation. On his lap, defendant carried a plastic bag containing bundled currency and CTA bus passes, two items that were reported stolen in the burglary. Meanwhile, based on the information from the informant, police obtained a warrant to search a two-flat apartment building. The complaint for the warrant alleged the informant saw defendant in the basement apartment with a gun, large quantities of cash and CTA bus passes, and several other items linked to the burglary. The informant further stated that defendant was on parole, a fact corroborated by the police, who learned from the DOC that defendant was paroled to the address of the apartment in question.

In considering whether information provided by an anonymous informant is sufficient to support probable cause, the reliability of the tip hinges on the existence of corroborative details observed by the police. Here, the reliability of the anonymous tip was fully corroborated when the police verified both that defendant was on parole and that he was paroled to the address provided by the anonymous informant. In any event, the law permits the issuance of a search warrant for an individual who is on parole and is alleged by an anonymous informant to possess a firearm. Although the State failed to make this argument, the warrant could stand on those grounds alone.

Defendant further argued that the warrant should not have been granted for the first floor apartment, because although the complaint alleged that these apartments shared a single entrance, trial testimony later clarified that not to be the case. The Appellate Court rejected the claim. Where defendant never raised this claim before or after the inconsistency was revealed at trial, the trial testimony could not be used to attack either the trial court's denial of defendant's claim or the issuing judge's reliance on the four corners of the complaint in issuing the warrant.

People v. McMichaels, 2019 IL App (1st) 163053 Acting on a tip, police stopped defendant on the street and recovered a weapon. Defendant unsuccessfully challenged the stop and seizure and was convicted of armed habitual criminal. The Appellate Court held that the officers had reasonable suspicion at the time of the seizure. Defendant was not seized when officers initially approached and ordered him to show his hands because defendant did not submit, instead placing his hands in his pocket and turning away. The police did seize defendant when an officer grabbed defendant in an attempt to see his hands. At that point, however, the officers had reasonable suspicion. Defendant was found at the location described in the tip and matched the description of the man said to be in possession of a gun. This, coupled with defendant's refusal to show the officers his hands and to instead conceal them in his pocket, amounted to reasonable suspicion.

Once the officers saw the gun, they had probable cause to arrest despite **Aguilar**. Under the totality of the circumstances, the officers could reasonably conclude that defendant was not licensed to carry the gun based on his noncompliance with the officers' request and his furtive movements. Moreover, section 108-1.01 of the Code of Criminal Procedure allows officers to take a weapon during a **Terry** stop if there is a reasonable suspicion of danger. And while the Firearm Concealed Carry Act only requires disclosure of a license at the request of the officer, and here the officers did not first ask if defendant had a license, defendant could have volunteered the license rather than act suspiciously.

People v. Meo, 2018 IL App (2d) 170135 A reliable tip from an informant can support a traffic stop. A 911 call is not an anonymous tip and therefore is not viewed with the usual skepticism applied to tips from confidential informants. Further, a tip concerning a possible drunk driver requires less corroboration because of the imminent danger to the public inherent in DUI.

Here, a gas station employee reported that defendant drove his car over the curb and nearly hit the building. An officer responded, observed defendant drive away from the gas station, and followed. Although it was dark out, defendant turned off his headlights for a few seconds while driving, but he did not commit any traffic violation during the 30 seconds the officer followed him before initiating a stop. The traffic stop was supported by reasonable suspicion; the tip, coupled with the defendant's unexplained blinking of his headlights, provided an adequate basis for the stop. And, there was probable cause for the subsequent DUI arrest where the officer detected an odor of alcohol on defendant, and also observed defendant's bloodshot eyes, slurred speech, and fumbling to provide his license and insurance. Defendant admitted drinking alcohol that night and refused to take a breath test. These factors, considered together, provided probable cause.

People v. Jackson, 2014 IL App (3rd) 120239 Third party information will support a finding of probable cause sufficient to justify a warrantless arrest if the information bears some independent indicia of reliability. An indicia of reliability exists where the facts learned through the police investigation independently verify a substantial part of the information provided by the third party. Furthermore, the personal reliability of the third party must be considered as part of the totality of the circumstances in determining whether probable cause exists.

The Appellate Court found that the police lacked probable cause to arrest the defendant for murder. The offense occurred some six months prior to the arrest. An eyewitness was questioned several times, but failed to identify the shooter until some six months later, when the witness was incarcerated on an unrelated offense. The eyewitness testified at the suppression hearing that he told officers he did not know who committed the offense, but that the officers "pushed" defendant's picture "down my throat" and were "hellbent" that he identify defendant as the perpetrator.

After interviewing the eyewitness, one of the officers then sent out a "49 message" directing patrol officers to arrest defendant for murder. The record was unclear whether officers failed to seek an arrest warrant or whether their request for a warrant was denied.

The court noted that in denying the motion to suppress, the trial court erroneously found that the credibility of the eyewitness on whose statements the arrest was based was irrelevant to the issue of probable cause. In addition, the trial judge erred by basing its finding of probable cause solely on the eyewitness's photo identification of defendant, without considering all of the evidence including the inability of the police to develop any evidence which corroborated the eyewitness's account. Under the totality of circumstances, the

evidence was insufficient to support a finding of probable cause.

Because the trial court erroneously denied the motion to suppress, the conviction was reversed and the cause remanded for further proceedings.

People v. Yarber, 279 Ill.App.3d 519, 663 N.E.2d 1131 (5th Dist. 1996) Anonymous tip on "crimestoppers" line did not provide probable cause for arrest; there was no way for police to determine the reliability of the tip. See also, **People v. Armstrong**, 318 Ill.App.3d 607, 743 N.E.2d 215 (1st Dist. 2000) (probable cause exists where, under the totality of the circumstances, there is a reasonable basis to believe that the accused has committed an offense; combination of several anonymous calls, all without any indicia of reliability, did not constitute probable cause). Compare, **People v. Rollins**, 382 Ill.App.3d 833, 892 N.E.2d 21 (4th Dist. 2008) (anonymous tip received on 911 line is not truly anonymous because the dispatch system may provide enough information to identify the caller, who is subject to a criminal charge for making a false or misleading report; courts have "repeatedly recognized the improvement in reliability of our 9-1-1 systems"); **People v. Brannon**, 308 Ill.App.3d 501, 720 N.E.2d 348 (4th Dist. 1999) (whether informant's tip constitutes probable cause for a search depends on whether the tip is sufficiently reliable; probable cause cannot be based on an anonymous tip that provides only static details about a suspect's life and alleges criminal conduct; however, such a tip may constitute probable cause if corroborated to the extent that it raises a reasonable belief that the suspect has committed an offense; officers had probable cause to search defendant's car trunk based on a Crimestopper's tip as corroborated by officers' investigation; similarity between prior police contacts and the offenses alleged by the anonymous informer indicated reliability; although mere corroboration of innocent details does not provide probable cause, when innocent details of the suspect's life are corroborated it is more likely that an allegation of criminal activity is also true; although tips given in exchange for payment are considered less reliable than tips provided by citizens, tips to the Crimestoppers organization are "more likely than not provided" by citizen informants who are presumed to act out of a desire to help law enforcement rather than for personal gain).

People v. Wilson, 260 Ill.App.3d 364, 632 N.E.2d 114 (1st Dist. 1994) Information did not qualify as having come from the victim and his wife, an eyewitness, where they merely served as conduits of information from a third party whose veracity and basis of knowledge were never verified by the police. Probable cause did not exist based on information naming three black men and describing a fourth as perpetrators of an armed robbery.

People v. Earley, 212 Ill.App.3d 457, 570 N.E.2d 1235 (5th Dist. 1991) Where a tip comes from a "citizen informant," rather than a paid or professional informant, evidence of prior reliability and independent corroboration are unnecessary.

§43-4(d)
Examples: Probable Cause

United States Supreme Court

Maryland v. Pringle, 540 U.S. 366, 124 S.Ct. 795, 157 L.Ed.2d 769 (2003) Where defendant was one of three passengers in a car stopped for speeding in the early morning hours, the officer observed a large amount of rolled money in the glove compartment when the driver retrieved his license and registration, a subsequent search yielded $763 from the glove compartment and five plastic baggies containing cocaine from behind the back seat armrest, and none of the men offered any information when questioned about ownership of the cocaine or the money, the officer had probable cause to arrest all three for possession of the cocaine and money.

Illinois Supreme Court

People v. Grant, 2013 IL 112734 Defendant was arrested for violating a city ordinance which outlawed "soliciting unlawful business." The ordinance made it unlawful to use the public way to solicit any unlawful business, including the illegal sale of narcotics. The officers who made the arrest testified that as they were driving past defendant in an unmarked car, they saw him standing in a "highly used narcotics sale spot" and yelling "dro, dro" to a passing vehicle. The arresting officer testified that based upon his experience in making narcotics arrests, the term "dro, dro," is slang for the sale of cannabis.

The officer acknowledged that defendant did not attempt to flee, had nothing in his hands, and did not drop anything. The officer also acknowledged that he did not observe the defendant make any sales of controlled substances. A custodial search at the scene revealed that defendant had four plastic bags of what appeared to be cannabis. A subsequent search at the police station revealed $160 in cash and four small bags of a white rock-like substance which the officers suspected was cocaine.

The court held that the officers had probable cause to make an arrest for the ordinance violation of soliciting unlawful business. The arresting officer testified that based on his experience, "dro, dro" is slang for the sale of cannabis. A police officer is permitted to testify concerning his expertise concerning the behavior and language patterns of people commonly observed on the streets, including persons who are committing criminal activities. Similarly, an officer's knowledge of slang which typically accompanies drug transactions is admissible. Because the officers observed defendant yelling slang for cannabis sales to a passing vehicle, they had probable cause to believe that the offense of solicitation of unlawful business was occurring.

The court rejected the argument that it was unlikely defendant was soliciting unlawful business where he yelled "dro, dro" only once, and that it was more likely he was acting for an innocent reason, such as trying to get the attention of an acquaintance. The court also rejected the argument that a single statement of "dro, dro" was insufficient to support probable cause, noting that a single act may constitute soliciting unlawful business.

The court also stressed that defendant was not arrested solely because he was in a high crime area. Instead, the fact that the incident happened in an area where drug sales were known to occur was only one factor in the conclusion that probable cause existed.

People v. Hopkins, 235 Ill.2d 453, ___ N.E.2d ___ (2009) The Supreme Court found that the officer had probable cause to arrest the defendant, based on the following facts:

The officer received a report of an armed robbery in progress, and found the defendant sitting in a stopped vehicle in the area of the offense. There were no other vehicles in sight, and the defendant matched the description of the offenders (black males in their 20's). The incident occurred in a predominately white neighborhood, the officer observed defendant's car within two minutes after receiving the report, and the defendant acted in a "nervous,

evasive" manner by leaning forward to "peek" at the officer and then leaning back into his seat. Based on all these factors, the officer clearly had reasonable cause to conduct a **Terry** stop to investigate whether defendant had been involved in criminal activity.

Before making the arrest, the officer learned additional facts which constituted probable cause. When defendant exited his vehicle at the officer's order, the officer noticed that defendant had snow reaching to the mid-calf area of his pants. In addition, defendant was breathing heavily. While performing a patdown, the officer felt defendant's heart beating rapidly. The court deemed all these factors to be consistent with the dispatch that the offenders had fled on foot.

Finally, before the arrest was made the officer received information that one of the offenders was driving a car of the same color as the defendant's vehicle. In view of the recentness of the report of a crime in progress and the factors outlined above, the officer clearly had probable cause to arrest the defendant for armed robbery.

The order reinstating defendant's convictions was affirmed. (See also **APPEAL**, §2-6(a)).

People v. Wear, 229 Ill.2d 545, 893 N.E.2d 631 (2008) An officer had probable cause to make a DUI arrest outside defendant's home where he: (1) observed a vehicle swerving at a "high rate of speed," (2) was forced to take evasive action, (3) saw the car sway and make a "wide" turn onto a narrow street without using a turn signal, (4) tried unsuccessfully to make a stop by using his overhead lights, (5) saw defendant stumble, sway, and stagger when he exited the vehicle upon reaching his residence, (6) unsuccessfully ordered defendant to return to his vehicle, and (7) heard defendant say "I made it home" before entering the residence.

People v. Garvin, 219 Ill.2d 104, 847 N.E.2d 82 (2006) A police officer had probable cause to arrest the defendant where an informant stated that a white van bearing a particular logo was carrying license plates that had been stolen from the informant's company, the officer found the van and a car a short time later, and a check of the license plates on the van indicated both the plates and the van had been reported stolen. The informant identified defendant as one of three men who had been around the van, and the officer could reasonably infer that at least two people had been involved in the theft. The officer could also infer that the three men around the vehicles were connected with each other based on the informant's statements and the unlikelihood that anyone had left or entered the vehicles in the short period between the theft and the time the vehicles were found.

People v. Edwards, 144 Ill.2d 108, 579 N.E.2d 336 (1991) The defendant was convicted of murder and aggravated kidnapping based on evidence that the victim was kidnapped from his home and buried in a box in the ground, where he was asphyxiated.

The Supreme Court held that the police had probable cause based upon the following information: the victim had been kidnapped from his home in the early morning hours, a white van had been seen near the victim's home at 3 a.m on that date, defendant owned a white van, a ransom call had been made from a certain phone booth at a certain time, an FBI agent saw a man matching defendant's description at that telephone booth at the critical time, the man at the telephone booth got into a car owned by defendant's girlfriend, and a short time later defendant and the girlfriend were seen arriving at defendant's home in her car.

People v. Montgomery, 112 Ill.2d 517, 494 N.E.2d 475 (1986) There was probable cause for

defendant's arrest where, by the time defendant arrived at the crime scene, the police had determined that there was no forced entry into either victim's apartment, defendant lived on the victims' property in an unattached rear apartment, defendant had spatters of blood on his pants which were consistent with the fact that blood was found on the victims, and defendant's hands were scraped consistent with signs of a struggle. Defendant's explanation for his appearance — that he had hurt himself fixing his bicycle — was not "inherently implausible but was insufficient to allay the strong probabilities created by the other facts known to the police."

People v. Stout, 106 Ill.2d 77, 477 N.E.2d 498 (1985) A police officer who stopped the defendant's automobile for an illegal turn violation had probable cause to search the vehicle where he smelled what he believed to be the odor of burning cannabis. Based on "the officer's experience and training in the detection of controlled substances," the odor of cannabis was sufficient to establish probable cause despite the lack of corroboration. See also, **People v. Hansen**, 326 Ill.App.3d 610, 761 N.E.2d 376 (4th Dist. 2001) (police officer conducting a traffic stop had probable cause to search the persons of all of the occupants of the automobile where he smelled the odor of burning cannabis emanating from the automobile; however, the court noted that the police reports made no mention that the odor of burning cannabis was detected, and said courts "should be careful not to allow the subjective claim of an odor of burning cannabis, made after the fact, to become a way to justify searching all passengers within the enclosed space of any vehicle as a matter of course"; **People v. Hilt**, 298 Ill.App.3d 121, 698 N.E.2d 233 (2d Dist. 1998) (experienced officer had probable cause to search the entire car for controlled substances after he observed a "knotted piece of a baggie" on the rear floorboard of a car stopped for a registration violation).

People v. Tisler, 103 Ill.2d 226, 469 N.E.2d 147 (1984) Probable cause was established by information from a reliable informant, which was for the most part corroborated, and defendant's evasive conduct when confronted by the officer.

People v. Moody, 94 Ill.2d 1, 445 N.E.2d 275 (1983) Police had probable cause for an arrest where they responded to a burglary at a gun store, found that entry had been made through a plate-glass window, and found droplets of blood near the broken window. the officers contacted area hospitals and discovered that defendant - suffering from a deep cut on his leg - had checked into a hospital 2½ miles from the scene. Finally, there was no police report to support defendant's claim that his wound was suffered when he was assaulted outside a tavern.

People v. Lippert, 89 Ill.2d 171, 432 N.E.2d 605 (1982) Deputy had probable cause to make an arrest where he received a description of the robbers, stopped a vehicle that lacked license plates in the vicinity of the offense, and observed that the occupants met the descriptions. Although the descriptions were general, the area in which the offense occurred was rural, sparsely populated and lightly traveled; thus, "the number of individuals in that area who might be expected to fit these descriptions, particularly the blue-jacket and bushy-hair portions, was sufficiently limited to avoid arbitrary or wholesale arrests."

People v. Free, 94 Ill.2d 378, 447 N.E.2d 218 (1983) The court declined to decide whether an allegedly involuntary statement was erroneously included in the affidavit for search warrant, noting that the affidavit contained probable cause apart from the statement. See

also, **People v. Bell**, 191 Ill.App.3d 877, 548 N.E.2d 397 (1st Dist. 1989) (in-custody statement of a co-defendant was sufficient to establish probable cause for the defendant's arrest; statement was against codefendant's penal interest and was partially verified by the investigation).

People v. Robinson, 62 Ill.2d 273, 342 N.E.2d 356 (1976) An officer had probable cause to make an arrest where, in a high-crime area, he saw the defendants walking through the gangway carrying a television set, a laundry bag filled with materials, and a shotgun partially concealed by a trench coat, the men stopped at the mouth of the gangway and peered up and down the street before proceeding to cross the street, and then crossed at a very fast, brisk gait toward an alley on the other side.

Illinois Appellate Court

People v. Molina, 2022 IL App (4th) 220152 The trial court granted defendant's motion to suppress after finding that the odor of raw cannabis alone did not provide probable cause for a vehicle search. The appellate court reversed.

Despite the passage of various decriminalization laws in Illinois in the past few years, the Illinois Supreme Court's holding in **People v. Stout**, 106 Ill. 2d 77 (1985) has not been overruled. Under **Stout**, the odor of marijuana provides probable cause. Furthermore, under the Vehicle Code, when marijuana is transported in a vehicle, it must be stored in an odor-proof container. This remains true despite the fact that the decriminalization amendments do not require odor-proof containers. Finally, the odor of cannabis may create probable cause that the vehicle contains an illegal amount of cannabis. "Regardless of recent changes in the law legalizing possession of small amounts of cannabis, there are still, among other things, (1) illegal ways to transport it, (2) illegal places to consume it, and (3) illegal amounts of it to possess."

People v. Workheiser, 2022 IL App (3d) 200450 The police had probable cause to arrest defendant for DUI based on the totality of the evidence. The arresting officer observed defendant touching the center line and making wide turns. After the officer followed him with lights and sirens on, the defendant pulled into a gas station, left his car, and tried to enter the gas station before officers ordered him back to the car. Defendant admitted to drinking three beers and exhibited confusion and difficulty following directions, had slurred speech, and had dexterity issues, fumbling with and dropping his wallet. Although it was also revealed that the officer administered a faulty HGN test, the remaining evidence was sufficient to convince a reasonably cautious person that defendant was under the influence of alcohol.

In re M.G., 2022 IL App (4th) 210679 Counsel was not ineffective for failing to seek suppression of evidence seized incident to the minor's arrest. The police had probable cause to arrest the minor where, around 4 a.m., an officer observed a truck in the parking lot of a closed restaurant, with its hazard lights on and front-end damage. Cannabis was seen on the dashboard in plain view. A bystander gave the officer a description of the truck's driver and the direction he fled, and the officer located the minor nearby in some timber. The minor had a key to the truck around his neck. The officer took the minor into custody and searched his backpack, locating a half-full bottle of alcohol and 22 sealed packages of cannabis. On these facts, the officer had probable cause to arrest the minor for illegal possession of the cannabis in plain sight on the truck's dashboard. The subsequent search of the minor's backpack was

a permissible search incident to arrest. Thus, a motion to suppress would have been meritless, and counsel was not ineffective for failing to file such a motion.

People v. Aquisto, 2022 IL App (4th) 200081 A controlled purchase from defendant in the backyard of a house designated as his "parole" residence created probable cause to search the house. Defendant was not observed entering or leaving the house before or after the purchase. But, the house was known to be his residence such that a person of reasonable caution would infer that he probably was using the house as a base for ongoing drug trafficking and that evidence of such trafficking could be found inside. On these facts, the search warrant for the residence was supported by probable cause, and the trial court did not err in denying defendant's motion to suppress evidence discovered during the search of that residence.

People v. Hill, 2020 IL 124595 The search of defendant's vehicle, based primarily on the odor of raw cannabis, was reasonable under the totality of the circumstances. Defendant argued that recent decriminalization of small amounts of cannabis and legalization of medical cannabis should alter the analysis of **People v. Stout**, 106 Ill. 2d 77, 87 (1985), which held the odor of cannabis alone provides an officer probable cause to search a vehicle. The Supreme Court declined to reach this argument because the search in this case was supported by more than the mere odor of cannabis. The court did hold that the odor of cannabis remains one factor in the analysis, noting that despite decriminalization, cannabis remained (at the time of the stop) contraband for non-medical users and that even medical users must abide by strict storage restrictions in vehicles. Here, taking the odor into consideration, along with the visual detection of a loose "bud" in the back seat, and the driver's delay in pulling the car over, the search was reasonable under the totality of the circumstances.

People v. Rice, 2019 IL App (3d) 170134 The police had probable cause to search defendant's car when they smelled marijuana, despite the Illinois' legislature's decision to decriminalize small quantities of marijuana. Decriminalization is not synonymous with legalization, and knowing possession of cannabis, and possession of more than 10 grams, are still unlawful acts. The odor of cannabis is therefore still indicative of criminal activity.

People v. Wise, 2019 IL App (2d) 160611 Probable cause existed to issue a search warrant despite the fact that the issuing judge did not question a confidential informant. A police officer appeared before the judge with the informant and presented the informant's affidavit which stated he had been in defendant's apartment and saw various illegal weapons. When an informant appears before the issuing judge, the fact that he wasn't questioned by the judge is only one factor to be considered, and his presence alone is indicative of reliability. When that presence is coupled with the informant's detailed description of the various weaponry he observed at the apartment, the warrant was based on probable cause.

People v. Hill, 2019 IL App (4th) 180041 Defendant, charged with possession of cocaine, challenged the stop and search of his vehicle. At the hearing, the officer conceded that defendant did not commit a traffic violation, and explained that he stopped the car because he believed defendant's passenger was a man with an outstanding warrant. Upon approaching the car, the officer realized that the passenger was not in fact the man with the warrant, but by then the officer could smell marijuana and initiated a search based on the odor. The trial court found that the passenger did look like the man with the warrant, but

nevertheless suppressed the cocaine discovered in the search because the officer was mistaken and no other conduct supported reasonable suspicion for the stop.

The Appellate Court reversed. A stop is justified even if based on an officer's mistake of fact, as long as the mistake is reasonable. Here, the trial court's finding that the passenger resembled the man with the warrant showed the mistake of fact was reasonable. Once the officer smelled cannabis, he had probable cause to search. Despite recent moves to decriminalize marijuana, it remains illegal to possess in large amounts.

People v. Gill, 2018 IL App (3d) 150594 As a matter of first impression, the Appellate Court concluded that defendant had a reasonable expectation of privacy in his seventh-floor, single occupancy hospital room, relying on the factors set out in **People v. Pitman**, 211 Ill. 2d 502 (2004). Although defendant only occupied the room for a matter of hours, it was of the type often used for longer stays. Defendant had a subjective expectation of privacy, and "concepts of privacy and confidentiality are tantamount concerns in a hospital."

The Fourth Amendment was triggered by a nurse's entry to defendant's hospital room to retrieve defendant's clothing for the police. While the nurse testified at the suppression hearing that he had retrieved the clothing from a nurse's station in a common area, he corrected that testimony at trial to explain he had obtained the clothing from defendant's room and had confused defendant's case with another at the motion hearing. The nurse's trial testimony was clear and unbiased, and the trial court's factual finding that defendant's clothing had been at the nurse's station was "severely undermined" and no longer supported by the manifest weight of the evidence given the trial testimony. Because defendant renewed his motion to suppress in his post-trial motion, the trial evidence was properly considered on review.

Where there had been a suspicious residential fire, the scene smelled of gasoline, defendant had argued with a resident of the home just prior to the fire, and a nurse had informed police that defendant's clothing smelled of gasoline, the police had probable cause to search for defendant's clothing as part of there arson investigation but should have obtained a warrant. The Appellate Court reversed the denial of defendant's motion to suppress his clothing, as well as a canine-alert to that clothing after its seizure.

People v. Zayed, 2016 IL App (3d) 140780 When an officer makes a valid traffic stop, he does not necessarily have the authority to search an occupant unless he discovers specific, articulable facts which provide a reasonable suspicion that the occupant has committed a crime. In **People v. Stout**, 106 Ill. 2d 77 (1985), the Supreme Court held that when an officer, who has training and experience in the detection of controlled substances, detects the odor of a controlled substance, he has probable cause to search a vehicle. Later Appellate Court cases extended that authority to passengers of the vehicle.

Here an officer initiated a valid traffic stop on a car. After he initiated the stop, the officer noticed defendant, who was in the rear passenger seat, making furtive movements as if he were hiding weapons or drugs. As he approached the vehicle, the officer, who had training and experience in identifying the odor of cannabis, detected the strong odor of cannabis. After dealing with the driver, the officer ordered defendant out of the vehicle and conducted a pat-down search for weapons or narcotics.

During the pat-down, the officer detected what he suspected were narcotics in defendant's genital area. The officer testified that people frequently hide narcotics in their genital area. The officer donned rubber gloves and continued searching defendant's genital area. The officer handcuffed defendant, and since it was after dark, moved him in front of the

police car's headlights for better illumination. He ordered defendant to unzip his pants, pulled on the waistband of defendant's underwear, and eventually retrieved a plastic bag.

During the search, defendant fidgeted and complained about the officer exposing his genitals. The officer said there were no cars around, but immediately halted the search while nine cars passed. The officer continued the search and eventually pulled another bag from defendant's genital region. One of the bags contained cocaine.

The Appellate Court first held that the officer, who was trained and experienced in the detection of narcotics, had probable cause to search defendant once he smelled the odor of burnt cannabis coming from the car. But the court further found that even with probable cause, the search itself was unreasonable.

To determine whether a particular search is unreasonable, courts should consider the following four factors: the scope of the intrusion, the manner in which it was conducted, the justification for initiating the search, and the place where it was conducted. Strip searches are not *per se* unreasonable, but they do constitute an extremely significant intrusion into a person's privacy.

The court found that three of the four factors strongly favored suppression. The only factor favoring the State was that the officer had probable cause for initiating the search. But the officer made only inadequate attempts to reduce the intrusiveness of the search, which was conducted on a busy street with streetlights and the headlights of the squad car illuminating defendant. The officer exposed defendant's underwear and defendant showed visible discomfort during the search, including fearing that his genitals would be exposed. The search "involved extremely intrusive means" and "should have been performed in a manner that respected defendant's privacy."

Since the officer failed to conduct the search in "a minimally intrusive nature," the court found the search unreasonable and affirmed the trial court's order suppressing the evidence.

People v. Weaver, 2013 IL App (3rd) 130054 An officer's testimony that he detected the odor of cannabis, when supported by testimony concerning the officer's training and experience in detecting such an odor, provides probable cause for a search. **People v. Stout**, 106 Ill.2d, 477 N.E.2d 498 (1985). Here, an officer testified that he smelled the odor of raw cannabis emanating from the back seat of a car that he stopped for speeding. The officer also testified that he had four years of experience as a State Trooper and had under undergone extensive training in the detection of narcotics and drug trafficking, including how to detect the smell of raw cannabis. The officer stated that based on his training and experience he could differentiate between the odors of raw and burned marijuana.

The court concluded that there was a sufficient evidentiary foundation for the officer's identification of the odor of raw cannabis, and therefore probable cause to justify a search of the trunk of defendant's car after a traffic stop. Defendant's conviction for unlawful cannabis trafficking was affirmed.

People v. Smith, 2012 IL App (2d) 120307 In **People v. Stout**, 106 Ill. 2d 77, 477 N.E.2d 498 (1985), the Supreme Court held that where a trained and experienced police officer detects the odor of burning cannabis during a traffic stop, there is probable cause to search the automobile. The Appellate Court found that **Stout** applies to the odor of raw marijuana as well as that of burnt cannabis. The court concluded that the **Stout** opinion does not suggest that the Supreme Court limited its opinion to the odor of burnt marijuana, and that the basis of **Stout** was that distinctive odors may be persuasive evidence of probable cause.

The court also noted that the weight of foreign authority holds that the smell of raw marijuana is sufficient to furnish probable cause to search a vehicle, at least where there is a sufficient foundation as to the police officer's expertise.

The trial court's order granting defendant's motion to suppress was reversed and the cause was remanded for further proceedings.

People v. Hopson, 2012 IL App (2d) 110471 An officer testified that he was assigned to a parking lot where there had been recent drug and gun crimes, including two shootings on the previous night. The officer approached defendant, who was sitting in the driver's seat of a parked car. While looking into the car, the officer observed an open bottle of vodka on the floor and a plastic bag containing a green, leafy substance which appeared to be cannabis.

In response to questioning, defendant denied having any identification. There were several young men around the car, which was similar to the situation on the previous night when one of the shootings occurred. The officer seized the suspected cannabis and arrested the defendant.

The court concluded that the officer had probable cause to make an arrest for possession of cannabis. The court rejected the trial court's finding that the State was required to lay a foundation showing that the officer's training and experience enabled him to identify the substance in the plastic bag as cannabis. While an officer's experience and training are relevant when determining whether probable cause exists, the absence of such testimony is not *per se* fatal to a finding of probable cause.

The court contrasted this case from precedent concerning an officer's ability to distinguish whether a hand-rolled cigarette contains cannabis or tobacco. Although cigarettes containing each substance might appear to be identical, the court found that it was reasonable for the officer to conclude that a green, leafy substance contained in a plastic bag was cannabis rather than some legal substance.

The court also noted that the defendant did not object to the officer's opinion that he believed the substance to be cannabis, and that the defense had an adequate opportunity to cross-examine the officer concerning his experience and training.

The trial court's order granting defendant's motion to suppress was reversed and the cause remanded for further proceedings.

People v. Allen, 409 Ill.App.3d 1058, 950 N.E.2d 1164 (4th Dist. 2011) The investigatory detention of defendant and his companions was justified by information which the officers obtained from an informant. The informant told a police officer that three people were going to arrive at his apartment in the next 15 minutes to complete a drug transaction, and that he did not have the money to pay for the drugs. The officer testified that the informant sounded "pretty scared."

While the officers were going to the informant's apartment, they received a second call from the informant stating that the persons bringing the drugs had just phoned and said they were exiting the interstate at the same location where the officers had just exited. The officers could see only three vehicles that had exited the interstate at that point; two of the cars were occupied by police officers. The deputies pulled off to allow the third car to pass, and observed three occupants, two of whom matched descriptions of gender and race which had been stated by the informant. The officers were unable to determine the race or gender of the back seat passenger.

The officers followed the car, and called the informant to determine whether the vehicle they were following was the car the informant expected. The informant was unable

to identify the car based on the officers' description, but said that the car he was expecting would park in the lot behind his apartment.

When the car parked behind the informant's apartment, the officers made a stop, determined the names of the occupants of the car, and obtained an explanation that the occupants were meeting a friend who had the same first name as the informant. The officers ordered the three persons out of the car and conducted a patdown, but found no weapons or drugs. A search of the vehicle also disclosed no contraband.

The officer then called the informant, who looked out his apartment window and identified the back seat passenger, a white male, as his contact. The informant also stated that the contact was an intermediary between the informant and the dealer, who was a black male. Defendant, the driver of the car, was a black male. When the officer said that the officers had not found any drugs on the suspects or in their car, the informant told the officer to check the suspects' mouths.

The officer felt outside of defendant's lip and believed that defendant was concealing a packet in his mouth. After defendant spit out one packet, the officer reached into the defendant's mouth to recover additional packets which he believed defendant was attempting to swallow. After a struggle, the officers recovered several additional packets of what they suspected to be cocaine.

The court concluded that under these circumstances, the detention was justified at its inception by the information received from the informant and verified by the officers before the stop. Information provided by a third party informant may give rise to a reasonable suspicion of criminal activity if the information is reliable and allows a reasonable person to infer that a crime is about to occur. In determining whether an informant's statements provide a reasonable basis for a **Terry** stop, the court should consider the informant's veracity, reliability, and basis of knowledge.

Under the totality of circumstances, the police had a reasonable suspicion of criminal activity. The officers knew the informant from previous contacts, and he had given information in the past which was consistent with the information he provided on this occasion.

In addition, the informant's identity was known to both the officers and was not concealed from the defendant. The officers identified the informant at the suppression hearing, and the informant testified at defendant's trial and was subject to cross-examination. Thus, this was not a situation involving an anonymous or confidential source, where a greater showing of reliability is required.

The informant identified the basis of his information during the tip and implicated himself in the offense, lending credibility to his claims. Furthermore, the officers were able to corroborate much of the informant's information before the stop, including the race and gender of two of the car's occupants, the precise location of the car at a specified exit at a specific time, and the car's destination. Such corroboration demonstrated that the informant had inside information about the crime he was reporting.

Finally, the tip required immediate police action because the crime was expected to occur within 15 minutes of the initial report and the informant was in personal danger if the officers did not intervene.

People v. Maxey, 2011 IL App (1st) 100011 The police had reasonable suspicion to stop the car defendant was driving and detain him. The defendant's vehicle matched the description of a robbery offender's vehicle: a red or burgundy-colored car with temporary plates. Defendant matched the description of the suspect: a skinny African-American male. The

car was headed in the same direction as the offender's car and was observed within a mile of the scene of the offense, two or three minutes after the police received radio transmissions related to the robbery.

Police officers may rely on police radio transmissions to make a **Terry** stop even if they are unaware of the specific facts that establish reasonable suspicion. In addition, when officers are acting in concert, reasonable suspicion can be established from all of the information collectively received by the officers, even if that information is not specifically known to the officer who makes the stop. Where the police rely on third-party sources of information, the State must show that information bears some indicia of reliability. The fact that the information came from a victim or an eyewitness is entitled to great weight in evaluating its reliability.

Radio transmissions based on calls received from eyewitnesses possessed the requisite degree of reliability to support the **Terry** stop of defendant. The information was conveyed through 911 emergency services, which also carries a fair degree of reliability, even if the caller does not identify himself, because police maintain records of the calls to investigate false reports, not just to respond to emergency situations. That all four callers provided substantially similar descriptions of the suspect added to their reliability.

The length of defendant's detention and the scope of the investigation did not exceed **Terry**'s limits. Defendant was detained for no more than 15 minutes after he was stopped, and was transported back to the crime scene for a showup before he was arrested. The 15-minute detention of defendant was reasonable where that length of time was required to confirm or dispel the officer's suspicions, given that there was a five-minute wait time for a police wagon to transport the defendant, and defendant had to be transported one mile back to the crime scene. The scope of the investigation was also sufficiently limited where defendant denied involvement in the robbery after he was stopped and agreed to be transported back to the crime scene for identification purposes "to clear this up."

The police possessed probable cause to arrest defendant after he was identified in the showup, considering the totality of circumstances including the information supporting the stop, the discovery of clothing in defendant's car matching that worn by the offender, and that defendant matched the height description of the offender.

The Appellate Court reversed the trial court's order granting the motion to quash arrest and suppress evidence.

People v. Neal, 2011 IL App (1st) 092814 The police may arrest a person without a warrant only where they have probable cause, i.e., where the facts known to the police at the time of arrest would lead a reasonable cautious person to believe that the defendant was committing or had committed a crime. Probable cause is not proof beyond a reasonable doubt. In deciding whether probable cause exists, a law enforcement officer may rely on his training and experience to draw inferences and make deductions that might elude an untrained person.

The police had probable cause to arrest defendant for violation of a municipal ordinance prohibiting solicitation of an unlawful business on the public way where the police observed defendant yelling, "Blows," to passersby at an intersection in the city. An officer testified that he knew based on his 15 years of police experience that "blows" is a term used in the street sale of heroin. Although "blows" might have a meaning other than heroin, the court saw no reason not to accept the officer's testimony. "The touchstone here is probability rather than certainty beyond a reasonable doubt, common sense rather than legal pedantry." The existence of a possible innocent explanation for defendant's conduct did not negate probable cause.

Justice Steele dissented. To find probable cause exists, the majority adopted a definition of soliciting not found in the ordinance or the Criminal Code and significantly lowered the threshold for probable cause by allowing a police officer to act on a hunch or reasonable suspicion.

People v. Slavin, 2011 IL App (2d) 100764 While standing outside an ice-fishing shanty, an officer heard the occupants comment on who was going to "pack the bowl" and the quality of the "weed." He also heard a distinctive coughing sound which, based on his training and experience, he knew is made after inhaling cannabis though a pipe. Based on these facts, he possessed probable cause to believe the shanty possessed contraband.

The guiding principle in determining if exigent circumstances justify a warrantless entry is the reasonableness of the officer's actions, based on the totality of the circumstances known to the officer at the time of the entry. The potential destruction of narcotics does not constitute exigent circumstances sufficient to justify a warrantless entry unless the officer has particular reasons to believe that the evidence will be destroyed.

Exigent circumstances existed because the officer could not have called another officer to monitor the scene while he obtained a warrant. Given the officer's reasonable belief that someone in the shanty was smoking cannabis, the suspected cannabis likely would have been removed from the scene or destroyed, either by simply smoking it or dropping it through the hole in the ice to the water below, had the officer delayed his entry. Therefore the warrantless entry was reasonable under the Fourth Amendment.

People v. Cuebas-Barreto, 405 Ill.App.3d 872, 938 N.E.2d 623 (2d Dist. 2010) There was probable cause to arrest the defendants for involvement in a drug sale under the following circumstances:

The defendants were doing yard work "without much enthusiasm" at the home of one of two co-defendants who had finalized a drug transaction, and who had told the prospective buyers that they were going to get the drugs. The defendants stopped working as soon as the co-defendants arrived. After a brief discussion with the co-defendants, the defendants entered a different vehicle than the one they had driven to the house. They then followed the co-defendants' vehicle on an expressway for approximately 23 miles, until they were stopped and arrested. Throughout the journey, the defendants maintained a distance of one car length between their vehicle and that of the co-defendants.

The court concluded: "The most obvious explanation for all these circumstances is that defendants were in cahoots with [the co-defendants]." The court added that even without any other factors, probable cause might be established by the mere fact that defendants appeared to be traveling in tandem with co-defendants who were known to be driving to a drug transaction.

The trial court's suppression order was reversed and the cause remanded for further proceeding

People v. Johnson, 408 Ill.App.3d 107, 945 N.E.2d 2 (1st Dist. 2010) Defendant was a passenger in a car that was stopped by the police in a high-crime area after it failed to come to a complete stop at a stop sign. Defendant ran from the car when the police were about to ask the driver for his license. The police caught defendant less than a block away and handcuffed him before conducting a pat down, leading to the discovery of a gun in his possession.

Prior to the pat down, the police had no reason to suspect that defendant possessed a

weapon, and defendant did not offer any resistance after his apprehension. Defendant did not match the description of any armed suspect known to the police nor was he in the vicinity of any recent violent crime. His inexplicable flight from the police in a high-crime area following a traffic stop of a car in which he was a passenger did not provide sufficient basis to believe defendant was armed and dangerous as to justify handcuffing as a safety measure. Therefore, the Appellate Court affirmed the circuit court's finding that defendant was arrested when he was handcuffed by the police.

Because the defendant fled from a vehicle that had been lawfully stopped by the police for a traffic violation, the police had probable cause to arrest him for obstructing a peace officer. Obstructing a peace officer is committed by a person who "knowingly restricts or obstructs the performance by one known by the person to be a peace officer . . . of any authorized act within his official capacity." 720 ILCS 5/31-1(a).

When an automobile is apprehended for a traffic stop, the police have a right to detain passengers as well as the driver, even in the absence of any individualized suspicion that the passenger is involved in criminal activity. **Arizona v. Johnson**, 555 U. S. 323, 129 S. Ct. 781 (2009). A passenger who flees from a lawfully-stopped vehicle is attempting to avoid detention by an officer who has a right to seize him. Because the seizure was lawful at its inception, defendant's attempt to evade the police by running from the vehicle gave the officers probable cause to arrest him for obstructing an authorized action by a peace officer. It is irrelevant that the officer did not subjectively believe that he had probable cause to arrest defendant for obstruction.

Because the police had probable cause to arrest defendant, the gun in his waistband was properly recovered in a search incident to his arrest. The Appellate Court reversed the circuit court's order granting the motion to suppress.

People v. Beck & Riley, 306 Ill.App.3d 172, 713 N.E.2d 596 (1st Dist. 1999) The trial court erred by finding that there was no "nexus" between illegal activity (possession of cannabis with intent to deliver) and financial records believed to be in two residences; although the affidavit contained no allegation that defendant was known to keep records of his criminal enterprise at his residences, courts do not always require specific facts to support such an inference.

§43-4(e)
Examples: Lack of Probable Cause

Illinois Supreme Court

People v. Lee, 214 Ill.2d 476, 828 N.E.2d 237 (2005) Probable cause to arrest a particular individual does not arise merely from probable cause to arrest another person in his company. See also, **People v. Creach**, 79 Ill.2d 96, 402 N.E.2d 228 (1980) (probable cause must be particularized to the person arrested, and "does not arise merely from the existence of probable cause to arrest another person in the company of that individual"; **People v. Carnivale**, 61 Ill.2d 57, 329 N.E.2d 193 (1975) (arrest of defendant was unlawful because it was based only on his presence in hotel lobby with two suspected gamblers); **People v. Spriggs**, 38 Ill.App.3d 737, 348 N.E.2d 468 (4th Dist. 1976) (probable cause to arrest tenant of apartment in which cannabis was found did not give probable cause to arrest and search anyone else who happened to be present); **People v. Damon**, 32 Ill.App.3d 937, 337 N.E.2d 262 (1st Dist. 1975) (observation of "hand-rolled cigarette" did not constitute probable cause for an arrest; not all hand-rolled cigarettes are marijuana).

People v. Adams, 131 Ill.2d 387, 546 N.E.2d 561 (1989) Under the totality of circumstances test, the information provided by the informant was insufficient to establish probable cause. The informant had never provided information about anyone else or leading to another arrest, expected to be paid for the information, and on a previous occasion had informed the police about an alleged trip to Kentucky that did not take place. The informant did not indicate that he had personally seen cocaine delivered or implicate himself in any wrongdoing. Thus, "this situation . . . required further verification."

The fact defendant was seen traveling on a highway in Indiana did not establish that he had been in Kentucky, as the informant claimed. The police had no information as to the exact time of defendant's departure or the location in Kentucky where he was to hold a meeting, and were so unsure of the defendant's return route that officers had to be placed on several Indiana highways. Furthermore, there was no independent verification that the person defendant was to meet was in Kentucky, that defendant and the person he was supposed to meet even knew each other, or that defendant was known to be involved in drug trafficking. "[Defendant's] mere presence on . . . a major highway connecting with several other major routes to other States, does not create an inference that [he] was in Kentucky."

People v. Gabbard, 78 Ill.2d 88, 398 N.E.2d 574 (1979) Police lacked probable cause to arrest defendant as he was walking along the shoulder of a highway; although police had seen a bulletin six days earlier concerning an escaped prisoner who might be in the area, defendant was not violating any law, only a general description of the escapee had been provided, and the officer admitted that defendant did not match the description. Defendant's failure to produce his driver's license from his checkbook did not constitute probable cause where he was not operating a motor vehicle when he encountered the officer.

Illinois Appellate Court

People v. Eubanks, 2024 IL App (1st) 221229 Relying on **People v. Redmond**, 2024 IL 129201, the appellate court reversed the denial of defendant's motion to suppress evidence. The search of defendant's vehicle was based solely on the odor of burnt cannabis. The police did not point to any other signs of cannabis consumption or evasive movements by defendant that might have otherwise justified the search. Under **Redmond**, the odor of burnt cannabis, alone, is insufficient to provide probable cause for a vehicle search.

The search could not be upheld as a search incident to arrest, either. At the time of the search, defendant was outside of the car and was not within reaching distance of the passenger compartment, so there was no threat to officer safety from anything inside the vehicle. And, there was no likelihood that evidence of the offenses under investigation – parking at a bus stop and failure to possess a driver's license – would be found in the vehicle.

The court reversed defendant's conviction of unlawful use of a weapon by a felon outright, where the only evidence of that offense was the firearm recovered during the unlawful search.

People v. Redmond, 2022 IL App (3d) 210524 Defendant was driving on Interstate 80 when a police officer observed him traveling three miles per hour over the speed limit and noticed that his license plate was improperly secured. The officer initiated a traffic stop, and defendant immediately pulled to the side of the road. Defendant did not make any furtive movements. Upon approaching defendant's vehicle, the officer smelled a strong odor of burnt cannabis, but did not observe any signs of impairment from defendant. While defendant could

not provide his driver's license, the officer was able to determine that defendant had a valid license. Defendant said he was traveling from Des Moines, where he had been staying with a girlfriend, to Chicago. The officer placed defendant under arrest and searched the vehicle, locating a plastic bag of cannabis in the center console. Defendant was charged with misdemeanor possession of cannabis. He filed a motion to suppress evidence, arguing that the officer lacked probable cause to search his vehicle on these facts, and that motion was granted by the trial court.

The appellate court affirmed. Consistent with its recent decision in **People v. Stribling**, 2022 IL App (3d) 210098, the appellate court held that the odor of burnt cannabis, alone, cannot support probable cause to search the vehicle in light of changes to the law legalizing possession of marijuana for recreational use. And, here, there were no corroborating factors sufficient for a finding of probable cause. Defendant did not delay pulling over, did not make any furtive movements, and was not evasive in his interactions with the officer. No paraphernalia was seen in the vehicle, and defendant did not appear impaired. The officer's testimony that Interstate 80 is a "known drug corridor" was inadequate; it is not reasonable to assume all persons traveling on a major interstate highway are involved in narcotics activity. To conclude otherwise would subject every vehicle traveling on Interstate 80 to a search for narcotics.

People v. Stribling, 2022 IL App (3d) 210098 Warrantless searches are presumptively unreasonable, subject to certain limited exceptions. One such exception is the automobile exception, recognized in **Carroll v. United States**, 267 U.S. 132 (1925), which holds that a warrantless search of a vehicle is not *per se* unreasonable given the transient nature of vehicles which renders it impracticable to secure a warrant before a vehicle leaves the jurisdiction, potentially taking with it contraband or evidence of a crime. Thus, a warrantless search of a vehicle is allowed so long as the police have probable cause. Probable cause to search a vehicle exists where the facts and circumstances known to the officer at the time would warrant a reasonable person to believe there is a reasonable probability that the vehicle contains contraband or evidence of a crime.

Here, defendant was stopped for a traffic violation. When the officer approached defendant's vehicle, the officer detected a strong odor of burnt cannabis emanating from inside. Defendant told the officer that someone had smoked inside the vehicle "a long time ago." The officer then searched the vehicle, finding a handgun in the process.

In **People v. Stout**, 106 Ill. 2d 77 (1985), the Illinois Supreme Court held that the odor of cannabis, alone, provided sufficient probable cause to search a vehicle under the automobile exception. **Stout** was decided at a time when all possession or use of cannabis was illegal. Since that time, however, cannabis law has changed. Illinois has allowed for medical use and possession of cannabis since 2013. And, Illinois has now legalized cannabis for adult, recreational use.

Given the changes in cannabis law, the Court held that the facts presented here did not provide the officer with probable cause to search the vehicle. More specifically, the smell of burnt cannabis, coupled with defendant's admission that someone had smoked in the car a long time ago, was insufficient for a reasonable person to believe there was a reasonable probability that the vehicle contained contraband or evidence of criminal activity. It was legal for defendant to possess some cannabis and even to drive after having smoked cannabis so long as the concentration in his system did not exceed the legal threshold. The officer here did not express any concerns that defendant's driving was impaired.

The odor of burnt cannabis, without any corroborating evidence, is not enough to establish probable cause to search a vehicle. Thus, the circuit court did not err in granting

defendant's motion to suppress a handgun that was found during the warrantless search of his vehicle. While the appellate court could not overrule the Supreme Court's decision in **Stout**, it did hold that **Stout**'s holding is no longer applicable to post-legalization fact patterns.

People v. McClendon, 2022 IL App (1st) 163406 Following his conviction of armed habitual criminal, defendant appealed. Defendant argued that trial counsel provided ineffective assistance on his motion to suppress evidence. Specifically, defendant argued that counsel should have argued that he was illegally seized, and that the gun and defendant's statement were the fruits of that illegal seizure. The Appellate Court agreed.

Police responded to a call of shots fired. They did not have a description of the shooter or any information about whether a vehicle was involved in the incident. About four blocks away from the area, responding officers observed defendant and another man sitting in a parked vehicle. An officer testified that the men slumped down in their seats when the police passed by and then drove away when the officers parked and started to approach. Eventually, other officers were directed to a parking lot where the vehicle had gone after driving away. Defendant and the other man were located on the porch of an adjacent residence, knocking on the door. Officers approached with their guns drawn, and one of the officers said defendant took out a gun and dropped it behind a couch on the porch. It was alleged that defendant later made a statement admitting he had possessed the gun.

The trial court found that defendant had abandoned the gun prior to being seized, and therefore denied the motion to suppress. At the suppression hearing, trial counsel failed to argue that defendant had been seized before abandoning the gun and that it was the illegal seizure that caused the abandonment. The Appellate Court concluded that the motion to suppress would have had merit had counsel made those arguments. Defendant was seized when officers approached the porch with their guns drawn, causing defendant to submit to that show of authority. Further, the police lacked probable cause or reasonable suspicion to seize defendant. No evidence connected him to the call of shots fired, and no officers saw defendant engage in any crime prior to the seizure. Defendant only dropped the gun in response to being seized, thus the gun was the fruit of the illegal seizure.

The Appellate Court reversed defendant's conviction outright. Without the gun, or defendant's later statement, the State had no evidence to support the charge.

People v. Horn, 2021 IL App (2d) 190190 The police lacked probable cause to arrest defendant for drugs found in the trunk of a vehicle. The defendant was a passenger in the vehicle, and while the driver appeared nervous, the police testified that defendant remained calm and polite. Although the two occupants provided different accounts of their purpose for driving from Wisconsin to Chicago, and defendant had previously driven the car, the appellate court found that it was not reasonable for the police to infer that defendant knew the car's trunk contained an urn full of cocaine.

The Appellate Court recognized that in **Maryland v. Pringle**, 540 U.S. 366 (2003), the Supreme Court found the police had probable cause to believe all passengers in a vehicle knew of the drugs hidden in an armrest. But that inference had not been extended to the trunk, and as in **People v. Drake**, 288 Ill. App. 3d 963 (1997), the arrest was illegal. Accordingly, the defendant's postarrest admission that the urn contained his father's ashes should have been suppressed.

People v. Bloxton, 2020 IL App (1st) 181216 Trial counsel rendered ineffective assistance by failing to file a motion to suppress evidence on the grounds that police officers did not have

probable cause to arrest defendant based solely on their observation that he possessed a firearm.

Here, defendant was standing around with a group of people when patrol officers stopped, suspecting that some of the individuals were drinking alcohol from plastic cups. Defendant did not have a cup and was not observed committing any criminal activity. An officer observed a bulge in defendant's pocket, believed it was a gun, and followed defendant as he walked away. The officer ultimately followed defendant onto a porch, observed the handle of a gun in defendant's pocket, and arrested him. The police subsequently discovered that the gun's serial number had been defaced, and defendant had a felony record precluding him from lawfully possessing a firearm.

The Appellate Court held that defendant's walking away did not create probable cause, or even reasonable suspicion, absent other circumstances indicating illegal behavior. And, defendant's possession of a gun, without more, is not enough to establish criminal activity in light of **People v. Aguilar**, 2013 IL 112116. The lawfulness of an arrest focuses on the facts known to the police at the time of the arrest. Here, the police did not know that about defendant's felony record or that the gun had been defaced until after they arrested him. Thus, the police lacked probable cause to arrest him based solely on possession of a gun, and the resulting evidence would have been suppressed had counsel brought such a motion.

The court rejected the State's argument that counsel's decision was a matter of strategy. No reasonable strategy could justify the failure to assert the strongest argument available for defendant. A successful motion to suppress would have resulted in the exclusion of the gun from evidence, preventing defendant's convictions for unlawful possession of a weapon by a felon and possession of a weapon with a defaced serial number. Accordingly, defendant's convictions were reversed outright.

People v. Kaczkowski, 2020 IL App (3d) 170764 At a suppression hearing involving a traffic stop, a dashcam video showed defendant turning into the left lane, putting on his right turn signal, and drifting three lanes over to the far right lane. Asked why he pulled over defendant's car, the officer explained that defendant did not sufficiently pause in the middle two lanes. The circuit court accepted the answer and denied the motion to suppress.

The Appellate Court reversed. The rule that a defendant must signal for 100 feet applies to turns, not lane changes. The officer's mistaken belief was not reasonable because the statutes in question were unambiguous. The court suppressed the controlled substances found as a result of the stop and remanded the case for further proceedings.

People v. Craine, 2020 IL App (1st) 163403 Police lacked probable cause and exigent circumstances to follow defendant into his home and effectuate an arrest and subsequent search of the home. An officer on patrol in an unmarked car heard gunshots in the vicinity, observed defendant and another man on defendant's porch a block or two from the location where he thought the shots originated, and saw defendant holding his hip as if he might have a gun when defendant entered his home. These observations were insufficient to suggest defendant had committed a crime. The officer did not see defendant with a gun, and there was nothing to indicate defendant had recently fired a gun. Even if defendant's entry to his home was construed as "flight," it would not even amount to reasonable suspicion, much less probable cause.

People v. Thomas, 2019 IL App (1st) 162791 Police observed defendant commit a failure-to-signal violation and followed him in order to initiate a traffic stop. By the time the police

caught up to defendant, he had parked, exited the vehicle, and was walking toward a residence with his brother, the passenger. The police shined a spotlight on defendant and his brother and directed them to return. One officer then shined a light inside defendant's vehicle and observed a portion of a handgun magazine sticking out from beneath the passenger's seat. Defendant was handcuffed, and the officer immediately seized the gun. The police did not ask defendant or his brother if they had a FOID card, but later learned defendant did not. Defendant's motion to suppress was denied, and he was convicted of AUUW.

The Appellate Court concluded that the trial court erred in denying defendant's motion to suppress on these facts. Regardless of whether the initial search of the car was justified by safety concerns under **Michigan v. Long**, any item found during such a search, even a weapon, must be returned if the police lack probable cause to believe a crime has been committed. Here, the police did not ask defendant or his brother whether they possessed a FOID card and thus could not have known that the gun possession was unlawful at the time.

Further, the Appellate Court reversed outright, finding that the evidence of defendant's guilt was inadequate. There was no evidence contradicting defendant's testimony that the gun was not visible from the driver's seat. The officer only saw part of the gun by shining his flashlight into the car. Also, defendant did not flee when the police approached, but instead complied with the request to return to the vehicle. And, while the State argued that defendant admitted the gun was his, the record did not support that conclusion. Defendant testified and denied making such an admission. And, while one officer testified that the other officer stated that defendant made "an admission," the substance of that admission was unclear and what one officer said to the other was hearsay.

People v. Brown, 2019 IL App (1st) 161204 Officers on routine patrol saw Brown take a sip from a beer while standing in a parking lot outside a 24-hour gas station. The officers arrested Brown for drinking alcohol "on the public way" in violation of the city code. They searched Brown and found a plastic bag containing a controlled substance.

The trial court improperly denied Brown's motion to quash his arrest and suppress the evidence because the police officers had no reasonable basis to believe that he violated the Municipal Code prohibiting consumption of alcohol on a "public way." The State conceded that the gas station parking lot, by definition, was not a "public way" as contemplated by the Municipal Code, but argued the mistake was reasonable. After a thorough review of the language of the code, Chicago PD directives giving examples of public ways, and caselaw, the Appellate Court disagreed, finding only an unreasonable interpretation of the code would cause officers to believe Brown violated the ordinance. The trial court erred in failing to grant the motion to quash and suppress.

The dissent would have affirmed, noting that the burden was on Brown at the motion to establish he was *not* on the public way, and he failed to present any evidence at the hearing. The dissent also would not have taken judicial notice of the directives because defendant had a duty to present such evidence to the trial court.

People v. Pruitte, 2019 IL App (3d) 180366 Trial court's decision quashing search warrant and suppressing items seized was affirmed. Confidential source's reliability was not established where there was no evidence that the police had any experience with the source and surveillance was not conducted to confirm the source's information. The fact that the source appeared personally before the judge was of little value where the judge specifically relied on the written application in issuing the warrant. The source provided no additional information during his appearance, affording the judge little opportunity to evaluate his reliability. While the warrant application described the place to be searched and the source's

observation of a single incident of criminal activity in that apartment, probable cause was lacking in the absence of evidence of the source's reliability. The good faith exception did not apply because the warrant application provided only generic information and was lacking any indicia of reliability.

The dissenting judge would have deferred to the issuing judge's determination that the warrant was supported by probable cause and the confidential source was credible and reliable because he appeared in court, had experience with controlled substances, and was providing information in an effort to work off his own legal troubles.

In re K.M., 2019 IL App (1st) 172322 The police received a call that people entered respondent's residence carrying a television and other items. They later received a call from a burglary victim indicating a television and other items had been removed from his home, which was near respondent's residence. Responding officers found some of the missing items in respondent's garbage can, which was inside a fence in the curtilage of his garage. They entered the garage and found more items, then called the homeowner, respondent's mother, and asked her to come home. After discussing their discovery with her, she went inside and returned with respondent and the victim's television. Police arrested respondent and he provided an inculpatory statement at the station. Before trial, the trial court suppressed the items found in the garage, but not the television or the statement.

The Appellate Court held that the trial court properly suppressed the evidence found in the respondent's garbage can and garage, but erred in failing to suppress the television as fruit of the poisonous tree. Without the initial discovery of the proceeds in the garage and garbage can, the officers had nothing more than a call of people entering a residence with a television in proximity to an alleged burglary. This falls short of probable cause. The discovery of the television was not attenuated where there was a short and direct link between the illegal search and the respondent's mother's decision to comply with the officers' investigation by retrieving the television. However, the record was inadequate to determine whether the confession was attenuated, so the court remanded for an attenuation hearing.

People v. Burmeister, 313 Ill.App.3d 152, 728 N.E.2d 1260 (2d Dist. 2000) Because a resident terminates any privacy interest in his trash by placing it on the curb where it is readily accessible to third parties, there is no presumption that items found in trash originated from the nearest residence. An application for a warrant did not allege sufficient facts to create probable cause where, although evidence of drug use was found in searches of garbage bags found in front of defendant's house, there was no evidence tying the garbage bags to the defendants.

People v. Elliot, 314 Ill.App.3d 187, 732 N.E.2d 30 (2d Dist. 2000) Police lacked justification to detain defendant for questioning where they found her using the toilet in an apartment in which a search warrant was being executed. Although the officers had probable cause to search the apartment, that probable cause did not extend to the defendant, who was not in possession of or in the vicinity of drugs and who cooperated fully.

People v. Tingle, 279 Ill.App.3d 706, 665 N.E.2d 383 (1st Dist. 1996) Officers lacked probable cause to make an arrest for disorderly conduct where, as police approached, defendant yelled a phrase which the police stated was used to alert narcotic sellers that police are in the area. Disorderly conduct requires the commission of acts that "at least [have] the potential to disturb public order." Thus, to justify an arrest for disorderly conduct there must be "some relationship between the accused's conduct and the public order, or between the

conduct and the right of others not to be harmed or molested."

There was no evidence here that defendant did anything to threaten public order or a breach of the peace; in fact, the crowd dispersed when defendant shouted.

People v. Crane, 244 Ill.App.3d 721, 614 N.E.2d 66 (1st Dist. 1993) Probable cause may be based on information collectively obtained by several officers working in concert, even where the officer who makes the arrest is unaware of all of the information. However, the State must establish that the officer who ordered the arrest had sufficient facts to establish probable cause.

The State failed to establish the basis for a dispatcher's information that defendant was a suspect in the offenses; the detective who was the only disclosed source of information testified that he did not share his information with any other officers, and there was no reason to believe that the dispatcher or the arresting officers had seen the detective's reports.

People v. Merriweather, 261 Ill.App.3d 1050, 634 N.E.2d 361 (2d Dist. 1994) Although a report that defendant possessed a knife or gun created probable cause to search his glove compartment for a weapon, that probable cause did not extend to a prescription bottle that was obviously too small to contain such a weapon.

The officer did not have independent probable cause to search the bottle because he knew that prescription bottles are often used to store illegal drugs, the label did not bear defendant's name, and the bottle gave off a sound that did not resemble prescription tablets. First, shaking the bottle and reading the label was an independent search which was not supported by probable cause, as the bottle could not have contained the weapon in question. Second, there is no nexus between a prescription bottle and criminal activity, because such a bottle is as likely to contain a lawful substance as it is to contain contraband.

People v. Drake, 288 Ill.App.3d 963, 683 N.E.2d 1215 (2d Dist. 1997) 1. By testifying that he was not doing anything unusual at the time of the arrest and had been arrested without a warrant, defendant made a *prima facie* case that the police lacked probable cause. The State failed to rebut this *prima facie* case; defendant's mere proximity to persons suspected of criminal activity does not give rise to probable cause, and State failed to show any "satisfactory evidentiary connection between defendant and contraband" found in the trunk of the car in which he was a passenger.

2. To establish probable cause based on constructive possession, the State must show that defendant knows contraband is present and that the substance is in his immediate and exclusion possession. Although probable cause "need not be proved by the same quantum of evidence required for a conviction," in this case the State failed to make "even a minimal showing that defendant knew of the contraband, that he had immediate possession of it, or that he exercised any degree of control over it."

People v. Damian, 299 Ill.App.3d 489, 701 N.E.2d 171 (1st Dist. 1998) Probable cause to issue a warrant was lacking where a confidential informant had no proven record of reliability and was not brought before the judge who issued the magistrate, police did not personally witness an alleged controlled buy to the informant from the defendant, and the informant had failed to keep a scheduled appointment with police six weeks earlier. Although an informant's lack of reliability can be overcome by the strength of other evidence, there was no such evidence where no independent police investigation corroborated the claim that cocaine would be found at defendant's premises.

People v. Nadermann, 309 Ill.App.3d 1016, 723 N.E.2d 857 (2d Dist. 2000) A police officers' belief that a passenger is intoxicated does not constitute probable cause to believe a crime is being committed. "[I]t is not illegal to have a passenger in your car who is drunk."

People v. Hopkins, 363 Ill.App.3d 971, 845 N.E.2d 661 (1st Dist. 2005) Information known by the arresting officer was insufficient to provide probable cause for an arrest; there was no basis to conclude that defendant had committed a crime merely because he: (1) was a black man in an area where two black men had been reported attempting an armed robbery, (2) had a racing heart or heavy breathing, and (3) had snow on his pants.

People v. Clay, 349 Ill.App.3d 24, 811 N.E.2d 276 (1st Dist. 2004) Police lacked probable cause to arrest the defendant after his wallet was found on the sidewalk outside a currency exchange which had been robbed a short time earlier. Although the wallet justified an inference that defendant had been near the currency exchange about the time of the crime, mere proximity to the scene of a crime, especially on a public street during the daytime, does not provide probable cause for an arrest.

Nor was probable cause provided by the fact that defendant allegedly matched the description of one of the offenders. The only description was for "three black males," without any description of the clothing worn by the offenders or by defendant upon his arrest. Although witnesses described a getaway car, police did not find such a car at the address they found in defendant's wallet or at the time of defendant's arrest.

People v. Yarber, 279 Ill.App.3d 519, 663 N.E.2d 1131 (5th Dist. 1996) Anonymous tip on "crimestoppers" line did not provide probable cause for arrest; there was no way for police to determine the reliability of the tip. See also, **People v. Armstrong**, 318 Ill.App.3d 607, 743 N.E.2d 215 (1st Dist. 2000) (combination of several anonymous calls, all without any indicia of reliability, did not constitute probable cause). Compare, **People v. Rollins**, 382 Ill.App.3d 833, 892 N.E.2d 21 (4th Dist. 2008) (anonymous tip received on 911 line is not truly anonymous because the dispatch system may provide enough information to identify the caller, who is subject to a criminal charge for making a false or misleading report; courts have "repeatedly recognized the improvement in reliability of our 9-1-1 systems"); **People v. Brannon**, 308 Ill.App.3d 501, 720 N.E.2d 348 (4th Dist. 1999) (whether informant's tip constitutes probable cause for a search depends on whether the tip is sufficiently reliable; probable cause cannot be based on an anonymous tip that provides only static details about a suspect's life and alleges criminal conduct; however, a tip may constitute probable cause if corroborated to the extent that it raises a reasonable belief that the suspect has committed an offense; officers had probable cause to search defendant's car trunk based on a Crimestopper's tip as corroborated by officers' investigation, including similarity between prior police contacts and the offenses alleged by the anonymous informer, and corroboration of innocent details of the suspect's life which made it more likely that an allegation of criminal activity is also true; although tips given in exchange for payment are considered less reliable than tips provided by citizens, tips to the Crimestoppers organization are "more likely than not provided" by citizen informants who are presumed to act out of a desire to help law enforcement rather than for personal gain).

People v. $280,020 in U.S.C., 2013 IL App (1st) 111820 Although a cash purchase of a one-way ticket is considered by enforcers of drug laws to be behavior that fits the profile of a drug

courier, that behavior is not sufficient to establish probable cause or even reasonable suspicion to believe that someone who fits the profile is a drug courier.

The fact that the defendant paid cash for a one-way train ticket from Chicago to Seattle, less than 24 hour prior to departure, did not justify a search of defendant's luggage without his consent.

People v. Arnold, 394 Ill.App.3d 63, 914 N.E.2d 1143 (2d Dist. 2009) Under **Terry v. Ohio**, a police officer may briefly detain a person on a reasonable suspicion of current or recent criminal activity, in order to verify or dispel that suspicion. There is no bright line test for distinguishing between a lawful **Terry** stop and an illegal arrest, but the use of handcuffs to restrain the detainee is an indication that an arrest, rather than a **Terry** stop, has occurred. The court acknowledged that the use of handcuffs might be appropriate during some **Terry** stops – such as where there is reason to believe that suspects who outnumber the officers are armed and dangerous. However, arrest-like measures such as handcuffing may be employed during a **Terry** stop only if such measures are reasonable in view of the circumstances which prompted the stop or which develop during its duration.

Here, the officer conducted an arrest, rather than a **Terry** stop, where he decided to handcuff defendant inside a convenience store because the officer had seen other persons attempt to flee upon learning that they have an active arrest warrant. The court concluded that the handcuffing would have been reasonable only if there was evidence that the defendant was preparing to flee; otherwise, the officer's experience with other suspects was irrelevant.

There was no evidence defendant was preparing to flee. After seeing the officer while both he and the officer were in their cars, defendant parked his vehicle at a gas station, entered the station, and remained for several minutes even after the officer entered and called defendant's name. Under these circumstances, there was no reason to believe that defendant was a flight risk.

When the officer handcuffed defendant, he lacked probable cause to make an arrest. The officer was waiting for confirmation from a dispatcher concerning whether defendant had an outstanding warrant; at the moment defendant was handcuffed, the officer knew only that he had seen the defendant's name on a warrant list at some point in the prior week. Because the list was not recent and the officer had no reason to believe that the warrant was active, and because the officer did not wait for the dispatcher's response concerning the status of the warrant, probable cause was lacking.

Citing **People v. Morgan**, 388 Ill.App.3d 252, 901 N.E.2d 1049 (4th Dist. 2009), the court acknowledged that the good faith exception to the exclusionary rule may be applied where the actions of the officer were objectively reasonable, suppression will not have an appreciable deterrent effect on police misconduct, and the benefits of suppression do not outweigh the costs of excluding the evidence.

Because the officer handcuffed defendant despite lacking any knowledge that there was an active arrest warrant, the court held that suppression was appropriate to defer official misconduct. The court also noted that the benefits of suppression would outweigh the costs – "the need to deter police from handcuffing a citizen without confirming whether there was a valid warrant for his arrest outweighs the cost of hindering the State from prosecuting this particular defendant." Thus, the good faith exception did not apply.

The court rejected the argument that apart from the warrant, the officer had probable cause to arrest the defendant because he subsequently learned from the dispatcher that defendant's license was revoked. The court noted that defendant was arrested before the

officer received the dispatcher's message.

The court also found that a search of defendant's car was not a valid search incident to arrest. Under **Arizona v. Gant**, 556 U.S. ____, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), a vehicle may be searched incident to arrest only if there is a reasonable possibility that the arrestee could gain access to the vehicle, or it is reasonable to believe that the vehicle might contain evidence relevant to the offense for which the arrest occurred. Where defendant left his car several minutes before he was arrested, and at the time of the search he had been handcuffed and placed in the back of a squad car, he was not within reaching distance of the car. Furthermore, no evidence relevant to either of the reasons for the arrest – a warrant for violating a municipal ordinance to have an animal vaccinated or the traffic offense of driving with a revoked license – could reasonably be expected to be found in the car. Thus, the search went beyond the scope of a valid search incident to arrest.

People v. Byrd, 408 Ill.App.3d 71, 951 N.E.2d 194 (1st Dist. 2011) The trial court found that the police had reasonable suspicion to support a **Terry** stop of defendant and his car triggered by their observation of a suspicious transaction from the defendant's car between defendant and a woman on the street. The police had probable cause to arrest defendant when he admitted he did not have a valid driver's license.

The judge's ruling that the recovery of a magnetic box containing drugs from under the chassis of defendant's car was a lawful search incident to arrest was incorrect under **Arizona v. Gant**, 556 U.S. __, 129 S.Ct. 1710, ___ L.Ed.2d ___ (2009), where defendant was in handcuffs near the front of the car when the box was recovered. **Gant** held that the search of a vehicle could not be upheld as a search incident to an arrest where the defendant had been removed from the vehicle and secured in a location from which there was no possibility that he would gain access to the vehicle.

Because the motion to suppress was litigated prior to the decision in **Gant**, the court remanded for a "new suppression hearing to allow the parties to develop the facts in light of **Gant** and to allow the circuit court to make express findings of fact and conclusions of law pursuant to" 725 ILCS 5/114-12(e).

The Appellate Court upheld the trial judge's finding that the police did not have probable cause to believe that defendant had engaged in a drug deal when they stopped defendant's car.

The trial court's determination concerning factual matters at a hearing on a motion to suppress, including reasonable inferences to be drawn from the testimony, is entitled to deference and will not be disturbed on review unless manifestly erroneous. The trial court's finding that probable cause did not exist to arrest defendant for drug dealing was not manifestly erroneous.

The police district had received an anonymous phone call claiming that narcotics transactions involving a Chevrolet Cavalier were occurring in the 7200 block of South Spaulding. The officers then observed defendant engaging in what to the officers appeared to be a drug transaction. Defendant, driving a Chevrolet Cavalier, was flagged down by a woman in the 7200 block of South Spaulding, defendant and the woman engaged in a conversation, and defendant retrieved a small black box from underneath the car and handed the woman shiny objects from the box in exchange for money.

The trial court properly gave little weight to the phone call because such anonymous calls are often unreliable. The phone call was not mentioned in either of the reports prepared by the arresting officers.

The judge also properly discounted the officer's claim that his 14 years as a narcotics

officer enabled him to know a drug transaction when he sees one. The judge was free to disregard the officer's claims as subjective impressions of his observations. As a matter of law, a single hand-to-hand street exchange between the defendant and a person who is never questioned regarding what he or she received does not establish probable cause to believe that a drug exchange occurred, where the trier of fact found otherwise.

People v. Colyar, 407 Ill.App.3d 294, 941 N.E.2d 479 (1st Dist. 2010). The plain-view doctrine cannot be relied on to justify an arrest, search, or seizure if the incriminating character of the object in plain view is not immediately apparent.

Ammunition is not contraband *per se*. Possession of ammunition is unlawful only if the possessor does not have a valid FOID card or is a convicted felon who cannot obtain a valid FOID card. Therefore the observation of ammunition in plain view does not furnish probable cause to seize the ammunition, to arrest, or to conduct a search, absent reason to believe that the person in possession of the ammunition does not possess a FOID card or is a convicted felon.

The mere observation of ammunition in a vehicle does not provide probable cause to believe a gun is in the vehicle.

The police observed a bullet on the console of the car defendant was driving, and discovered live ammunition in his pocket after they removed him and his passengers from the car, handcuffed them at the front of the car, and conducted a pat-down search of their persons. Because the police did not ask defendant to produce a FOID card or whether he was a convicted felon, they did not have probable cause to arrest him, search his car, or seize the ammunition found on the console or defendant's person.

A search of a vehicle incident to a **Terry** stop is justified if the police have a reasonable belief that the suspect is dangerous and may gain immediate control of weapons.

Without discussion or analysis, the Appellate Court adopted the trial court's finding that a **Terry** stop occurred based on the plain-view sighting of the bullet. The Appellate Court concluded that the search of defendant's car that resulted in the discovery of a gun under the floor mat of the front passenger floorboard could not be justified as incident to the **Terry** stop based on a belief that the defendant was dangerous. The State did not contend that the police were prompted to search the car by their belief that the defendant was dangerous. Moreover, the defendant was handcuffed with his passengers at the front of his vehicle and could not have gained immediate control of the gun found under the floor mat.

People v. Day, 2016 IL App (3d) 150852 Police lacked probable cause to arrest defendant for DUI. The arrest was based primarily on defendant's performance on field sobriety tests. The reliability of those test results was reduced, however, because the officer conceded that it was cold and raining and that the instructions for field sobriety tests state that the tests are not to be given under such conditions. "[A] reasonably cautious person would give very little, if any, weight to the test results that the person knew to be invalid."

In addition, defendant's alleged "failures" on the field sobriety tests were "technical in nature" and "few in amount," and therefore carried little weight. The officer testified that during the one-leg stand test, defendant dropped his foot once while counting to 30 and "swayed" but did not move his arms. The officer testified that during the walk-and-turn test, defendant failed to place his heel directly to his toe, did not count his steps out loud, and made a "large" instead of a small turn. The court stated that such deficiencies would not lead a reasonable person to believe that defendant was impaired by alcohol, especially when the tests were administered improperly in the cold and rain.

The court acknowledged the officer's testimony that defendant slurred his speech and that an odor of alcohol was present. Such factors may indicate the consumption of alcohol, but do not necessarily establish that defendant was impaired.

In addition, because the trial court granted the motion to quash the arrest, the appellate court inferred that the trial court credited defendant's testimony that he did not exhibit slurred speech. Finally, the court noted that any suspicion of impairment that might have been raised by defendant's physical condition was not corroborated by the other evidence, as defendant committed no driving infractions, was not involved in any accident, was able to communicate clearly and effectively with the officer, and adequately performed field sobriety tests although those tests were improperly administered.

The trial court's order quashing defendant's arrest and suppressing evidence was affirmed.

People v. Hyland, 2012 IL App (1st) 110966 The police relied on an investigative alert to arrest the defendant and perform a custodial search. Because the State presented no evidence that the facts underlying the investigative alert established probable cause to arrest the defendant, the trial court erred in denying defendant's motion to quash arrest and suppress evidence. Because the State presented no evidence from which it might be inferred that the officer who issued the investigative alert possessed facts that would have justified the stop, any argument that the police performed an investigative detention of defendant also fails.

Unprovoked flight together with an individual's presence in an area of expected criminal activity can be sufficient to establish reasonable suspicion to justify an investigative detention. **Illinois v. Wardlow**, 528 U.S. 119 (2000). While there was evidence that the defendant ran as soon as he saw the police, there was no evidence that the police acted in response to reports of suspected criminal activity or suspicious behavior on the part of the defendant. Therefore the stop of the defendant could not be upheld as a valid investigative detention.

An officer conducting an investigative detention may conduct a pat-down search to determine if the detainee is carrying a weapon if the officer reasonably believes that the detainee is armed and dangerous. The officer must be able to point to specific, articulable facts which, when taken together with natural inferences, would cause a reasonably prudent person to believe that his safety or that of others was in danger.

There is no evidence in the record that the officer who detained defendant pointed to specific, articulable facts that would cause him to think that the defendant was armed and dangerous. Defendant's flight is not an indication that he was armed and dangerous. The investigative alert that led to defendant's detention was based on violation of an order of protection, but the only evidence in the record regarding the details of the violation was defendant's testimony that he had called someone he was not supposed to call. Such information would hardly suggest that defendant could be a potential danger to the officers.

Salone, J., specially concurred. The goal of investigative alerts, detaining an individual for questioning, is the same as that of an arrest warrant, without the constitutional safeguards. The Chicago Police Department's use of investigative alerts to take individuals into custody and process them as if under arrest institutionalizes an end run around the warrant requirement by permitting a police officer, rather than a judge, to find probable cause. Better law enforcement would be promoted by encouraging the police to seek an arrest warrant or proceed under the current exceptions to the warrant requirement.

People v. Marcella, 2013 IL App (2d) 120585 The Appellate Court affirmed the trial court's

order granting defendant's motion to suppress evidence, finding that the officers lacked probable cause for an arrest or valid consent for a search. The court also held that even if there was adequate suspicion to justify a **Terry** stop, the officers' actions exceeded the scope of a valid stop.

The parties did not contest that defendant was "seized" where, after landing his plane at DuPage Airport after a flight from Marana, Arizona, he was confronted by several armed agents of the Department of Homeland Security who landed at defendant's hangar in a military helicopter. Defendant and a friend who had helped push defendant's plane into the hangar were handcuffed and frisked by the agents, who had their weapons drawn. Defendant was then questioned about his identity, his flight, and the contents of the plane.

The seizure was not justified by probable cause although defendant had followed an indirect flight path from Arizona to Illinois and had filed a flight plan while he was in-flight, which allowed him to conceal his point of origin. In addition, approximately 25 years earlier defendant had been charged but not convicted of three drug-related offenses. .

The court concluded that under the circumstances, "defendant's outdated criminal history, flight path, and proximity to the Mexican border" were insufficient to constitute probable cause for an arrest.

The court declined to decide whether the seizure was supported by a reasonable suspicion sufficient to justify a **Terry** stop, concluding that even if there was a reasonable suspicion the agents exceeded the permissible scope of a **Terry** stop. Police conduct which occurs during a lawful **Terry** stop renders the seizure unlawful only if the duration of the detention is unreasonably prolonged or the Fourth Amendment is independently triggered.

The court concluded that both alternatives occurred here. First, the Fourth Amendment was triggered because rather than determining whether criminal activity had occurred, the agents made a full custodial arrest without probable cause. The court stressed that defendant was subjected to a full arrest when he was handcuffed by several armed agents who arrived in a military helicopter at defendant's hangar, as no reasonable person in defendant's position would have believed that he was free to terminate the encounter and leave.

The court rejected the State's argument that the agents were merely protecting their safety, noting that a **Terry** frisk is not permitted merely because police believe that drug dealers are likely to carry weapons. Instead, a weapons search is permitted during a **Terry** stop only if there are specific, articulable facts that would warrant a reasonably prudent person to believe that his safety or the safety of others was endangered. There was no reason for officers to fear for their safety here, as defendant did not attempt to flee or to reach for any weapons, and the agents lacked any knowledge that weapons were present or that defendant had a history of using weapons.

In the alternative, the court held that the agents exceeded the scope of a lawful **Terry** stop because they unreasonably prolonged the duration of the detention. Defendant's plane landed at DuPage Airport between 4:30 and 5:00 p.m., and defendant refused to consent to a search at about 5:25 p.m. The Kane County deputy who brought a canine unit to the airport to conduct a drug sniff testified that he had been informed at 3:50 p.m. that an aircraft suspected of drug activity was in route to DuPage Airport, and that he was informed at 4:30 p.m. that a canine unit might be needed. However, the officer was not asked to come to the airport until 5:23 p.m., and he did not arrive until after 6:05 p.m. The court concluded that the detention was prolonged for some 30 to 40 minutes because despite their knowledge that a drug sniff might be required, the agents did not arrange to have the canine unit available when the plane landed.

The court rejected the State's argument that the trial court erred by finding that an agent acted without consent when he entered the plane to retrieve the airworthiness certificate, which the agents demanded from defendant in addition to his pilot's license and medical certificate. The trial judge did not resolve whether defendant consented to the entry, but found that any consent was the fruit of an illegal arrest.

A consent to search that is tainted by an illegal arrest may be valid if the State establishes that the taint of the officers' illegal action was attenuated from the consent. Factors in determining whether the taint is attenuated include: (1) the temporal proximity between the seizure and the consent, and (2) the presence of any intervening circumstances.

The court concluded that where defendant was arrested without probable cause and subjected to a document check, and any consent to allowing an agent to enter the plane occurred relatively quickly after the illegal arrest, the seizure and consent were "inextricably connected" in time. Furthermore, there were no intervening circumstances which would have broken the link between the illegal arrest and the consent. Under these circumstances, the trial court did not err by finding that items seized from the plane were fruits of the illegal arrest.

People v. Motzko, 2017 IL App (3d) 160154 There is probable cause to make an arrest where the facts known to the officer at the time of the arrest would lead a reasonably cautious person to believe that the arrestee has committed a crime. The determination of probable cause is based on the totality of the circumstances at the time of the arrest.

Here, the officer who investigated a one-vehicle motorcycle accident lacked probable cause to arrest the rider for DUI. A security guard told the officer that he saw defendant drive at a high rate of speed, fail to negotiate a turn, and crash. The guard also said he could smell alcohol on defendant's breath. The officer did not question the security guard further.

The officer then questioned defendant, who was being treated at the scene. Defendant said he had been coming from "downtown" and that he had consumed one 20-ounce beer. Defendant declined to take a breath test. He was then taken to the hospital.

At the hospital, the officer conducted Horizontal Gaze Nystagmus testing and concluded that defendant's BAC was greater than .08. Defendant told the officer before the testing that he was blind in his right eye, but the officer did not ask whether defendant had a head injury from the accident or whether dirt or debris got into his eyes as a result of the accident.

The officer testified that he arrested defendant based on the HGN testing, the odor of alcohol on defendant's breath, defendant's glassy, bloodshot eyes, and defendant's admission of drinking. The officer also believed that since defendant stated he was coming from "downtown" he had probably been at a bar.

In finding that there was no probable cause for the arrest, the Appellate Court noted that under Illinois precedent, the mere odor of alcohol on a person's breath and inadequate performance of field sobriety tests does not create probable cause for a DUI arrest. The same is true for speeding and becoming involved in an accident and the combination of admitting to consuming alcohol and exhibiting glassy, blood-shot eyes.

Evidence of HGN testing, when performed according to protocol by a properly trained officer, is admissible to show that the subject has likely consumed alcohol. However, HGN testing does not constitute evidence of impairment or a particular blood alcohol content or level of intoxication. The officer's testimony that defendant's performance on the HGN testing indicated a BAC in excess of .08 showed that the officer was not properly trained to understand and interpret the results of HGN testing. Thus, the trial court did not err by

discounting the officer's testimony.

Furthermore, the arrest could not be based on the security guard's observations where the officer did not question the guard about how fast he thought defendant was going. Finally, where the officer had no experience or qualifications in accident reconstruction, he had no reason to believe that the accident resulted from impaired driving.

Where the trial court finds that State's only witness at a suppression hearing lacks credibility, it acts properly by granting a motion to suppress. The trial court's suppression order was affirmed.

People v. Trisby, 2013 IL App (1st) 112552 In a "high narcotic area," the police saw the rear seat passenger of a car accept currency from a woman and give the woman a small unknown object. The police followed the car, and stopped it when the driver failed to use a turn signal. The rear seat passenger was holding a $10 bill in his left hand. He also quickly pulled his right hand from his right front pants pocket and continued to make attempts to move his hand toward that pocket against an officer's instructions to keep his hands stationary. The officer reached into the passenger's right front pants pocket and discovered a rubber-banded bundle of nine plastic bags containing heroin.

A police officer can effect a limited investigatory stop where there exists reasonable suspicion, based on specific and articulable facts, that the person detained has committed or is about to commit a crime. An officer may also conduct a limited pat-down search of the suspect's outer clothing when the officer has a reasonable fear for his safety or the safety of others.

The search of the passenger's pocket was not reasonable where the officer did not commit a limited pat down for weapons prior to reaching into the pocket and did not indicate that he feared for his safety or that of others.

Once a defendant has established that he was the subject of a warrantless search, the State has the burden of proving that the search was based on probable cause. To establish probable cause, the State must show that a reasonably prudent person in possession of the facts known to the officer would believe that the suspect has committed or is committing a crime.

Observation of a single transaction of unidentified objects does not support a finding of probable cause to believe that a drug transaction has occurred. Furtive movements alone are insufficient to establish probable cause because they may be innocent and are equivocal in nature. Only when furtive movements are coupled with other circumstances tending to show probable cause will the suspicious movement be included in the basis for finding probable cause.

Probable cause was not established by the officer's observation of a single hand-to-hand transaction involving an unidentified object together with a few furtive movements towards a pants pocket. Unlike **People v. Grant**, 2013 IL 112734, where a single transaction was sufficient to establish probable cause, the police did not actually observe the passenger commit a criminal offense.

People v. Bates, 218 Ill.App.3d 288, 578 N.E.2d 240 (1st Dist. 1991) The State contended that police had probable cause based upon statements of a co-defendant, whose conviction had been reversed because the statements had been obtained through police brutality and racial intimidation. The Appellate Court found that even had the co-defendant's statements been admissible on the issue of probable cause to arrest the defendant, they were not sufficiently reliable or corroborated to provide probable cause.

People v. Crowell, 94 Ill.App.3d 48, 418 N.E.2d 477 (3d Dist. 1981) Police lacked probable cause to arrest the defendant where, at a shift meeting, they were directed by their commander to "attempt to locate a white, older model Ford van with blue stripes, no license plates, and a license applied for sticker in the rear window." The officers were not ordered to arrest the driver and had no knowledge of any basis for an arrest. Furthermore, no evidence was presented that facts known to the officers' superiors established probable cause.

§43-5
Warrants – Issuance and Execution

§43-5(a)
Requirements

§43-5(a)(1)
Generally

United States Supreme Court

New York v. P.J. Video, 475 U.S. 868, 106 S.Ct. 1610, 89 L.Ed.2d 87 (1986) A warrant for materials presumptively protected by the First Amendment is to be "evaluated under the same standard of probable cause used to review warrant applications generally," and need not be evaluated by a higher standard of probable cause.

Zurcher v. Stanford Daily, 436 U.S. 547, 98 S.Ct. 1970, 56 L.Ed.2d 525 (1978) The State may obtain a search warrant - as opposed to a subpoena - to search for evidence in a place owned or occupied by a party who is not a criminal suspect. "The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought."

The First Amendment does not prohibit search warrants against newspaper offices even when the newspaper is not suspected of criminal activity. The conditions for a search warrant (probable cause, specificity as to place to be searched and things to be seized, and overall reasonableness) afford sufficient protection against the asserted threats posed by search warrants to the ability of the press to gather, analyze and disseminate news.

Dalia v. U.S., 441 U.S. 238, 99 S.Ct. 1682, 60 L.Ed.2d 177 (1979) The Fourth Amendment requires that: (1) a search warrant be issued by a neutral, disinterested magistrates, (2) those seeking the warrant must demonstrate probable cause to believe that the evidence sought will aid in a particular apprehension or conviction for a particular offense, and (3) the warrant must particularly describe the things to be seized and the place to be searched.

U.S. v. Ventresca, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965) Affidavits for search warrants must be tested in a common sense and realistic fashion.

U.S. v. Grubbs, 547 U.S. 90, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006) Anticipatory search warrants are warrants based upon affidavits showing that probable cause will exist at some future time, although it does not exist when the warrant is issued. Anticipatory warrants are not *per se* unconstitutional; the Fourth Amendment probable cause requirement is satisfied

if there is probable cause to believe that the evidence in question will be present when the warrant is executed.

When the condition which triggers execution of the warrant is something other than the mere passage of time, a warrant can issue only if two probable cause determinations are made. First, the magistrate must determine whether probable cause will exist *if* the triggering condition occurs. Second, the magistrate must determine whether the triggering event is *likely* to occur. The supporting affidavit must provide the magistrate with sufficient information to evaluate both questions.

An anticipatory warrant was properly issued where the affidavit indicated that: (1) probable cause would exist if an obscene videotape which had been ordered by the defendant was delivered to his house, and (2) delivery of the videotape had been arranged by postal inspectors. The affidavit was sufficient to establish both that probable cause would exist once the delivery was made, and that the delivery would likely occur.

Anticipatory search warrants need not specify the triggering condition. The Fourth Amendment sets forth only two matters which must be "particularly described" - the place to be searched, and the persons or things to be seized. Specification of the triggering condition in the warrant is not necessary to "delineate" the officer's authority or to assure the subject of the warrant that the officer is acting within his or her authority. See also, **People v. Bui**, 381 Ill.App.3d 397, 885 N.E.2d 506 (1st Dist. 2008) (anticipatory warrant which provided that a package could be opened at "any location" at which it was "accepted" did not violate the particularity clause of the Fourth Amendment; the location to be searched was sufficiently defined to guide the officers' discretion where police planted a tracking device inside the package, so that no discretion or guesswork was necessary to determine the location of the package and whether it had been opened).

Illinois Supreme Court

People v. Clark, 2024 IL 127838 Defendant was charged with multiple counts of attempt murder and aggravated battery arising out of a gang-related shooting. He was arrested three days after the incident, pursuant to a Chicago Police Department investigative alert which was based upon the statement of a man who told police that he heard defendant admit his involvement in the shooting and disposal of the guns. Defendant filed a motion to suppress in the circuit court, arguing that the police lacked probable cause or a valid arrest warrant and thus his arrest was improper. That motion was denied. Defendant ultimately was convicted of two counts of aggravated battery and sentenced to a total of 32 years of imprisonment.

CPD's investigative alert system is used to record and share information internally that there is probable cause to arrest specific individuals. CPD officers regularly rely on this information in effectuating arrests rather than obtaining judicial arrest warrants.

In the supreme court, defendant argued that absent exigent circumstances or consent, an arrest in the home requires that the police obtain an arrest warrant issued by a neutral magistrate upon a finding of probable cause, relying on **Payton v. New York**, 445 U.S. 573 (1980). An investigative alert is an inadequate substitute for a warrant in that circumstance. The court agreed but found defendant had forfeited the issue. While defendant initially argued in the circuit court that the State failed to establish the existence of valid consent to enter defendant's home to arrest him, he did not include that ground in his post-trial motion, in briefing in the appellate court, or in his petition for leave to appeal.

Defendant also argued that a warrantless arrest pursuant to an investigative alert was unconstitutional, even when effectuated in public. While acknowledging that this claim

also was forfeited because defendant only raised it for the first time on appeal following the 2019 appellate court decision in **People v. Bass**, 2019 IL App (1st) 160640, *aff'd in part and vacated in part*, 2021 IL 125434, the court noted that forfeiture is a limitation on the parties, not the court, and a court may overlook forfeiture where necessary to reach a just result or maintain a sound body of precedent. Here, that meant reaching the merits of defendant's challenge to the investigative alert system.

As to defendant's assertion that the investigative alert procedure created an improper proxy warrant system within CPD, however, the court found that the failure to raise that particular argument in the circuit court deprived it of a proper record upon which to consider the issue. While defendant cited CPD directives and testimony from another case in support of his argument that the investigative alert system was an improper substitute for a judicial warrant, the supreme court declined to consider those sources because they were not part of the record here.

The court did reach the merits on the **Bass**-based argument, specifically that the investigative alert system violated article I, section 6, of the Illinois Constitution. The appellate court in **Bass** had based its decision on the conclusion that the Illinois Constitution provides greater protection than the fourth amendment because it requires that a warrant be based on probable cause supported by "affidavit" rather than by "oath or affirmation," thus going "a step beyond" the fourth amendment.

The supreme court rejected that analysis. First, the court noted that in **People v. Caballes**, 221 Ill. 2d 282 (2006), it relied upon the *similarity* between the language of the fourth amendment and the Illinois Constitution's warrant clause as reason not to depart from lockstep. Historically, the court has construed the phrases "supported by affidavit" and "oath or affirmation" alike, and there was no reason to depart from those holdings here.

Further, that language refers only to the mechanism for obtaining a warrant, not whether a warrant is required in a given circumstance. Under the fourth amendment, it is well established that the constitution does not require an arrest warrant where there exists probable cause, even if there was time to obtain an arrest warrant. **United States v. Watson**, 423 U.S. 411 (1976). Likewise, Illinois has a longstanding tradition of allowing warrantless arrests based on probable cause. And, probable cause may be established by the collective knowledge of the police. Here, the record established that the police collectively had information sufficient to support a finding of probable cause for defendant's arrest. Accordingly, his conviction was affirmed.

Justice Neville authored a lengthy dissent, concluding that the investigative alert system is a racially discriminatory policy which has a disparate impact on Black and Latinx individuals. An included appendix identified 183 criminal cases from Cook County decided in the appellate court between 2007 and 2024, where the defendants included 154 Black men and women, 19 Latinx men, and 1 White woman, as well as 9 cases where the defendant's race could not be determined from the records available.

Additionally, Justice Neville would have found the issue of defendant's warrantless arrest in his home reviewable under the constitutional exception to the forfeiture rule, whereby a constitutional issue that was raised at trial and that defendant could later raise in a post-conviction petition is not subject to forfeiture on direct appeal. And, he would have found no exigent circumstances and no voluntary consent to enter the home to effectuate defendant's arrest.

Finally, Justice Neville also would have held that defendant's warrantless arrest violated the Illinois Constitution where there were no exigent circumstances or other exception to the warrant requirement. He would have held that the investigative alert system

improperly permits extrajudicial determinations of probable cause, and that the better policy would be to require judicially approved warrant for arrests.

People v. Wells, 182 Ill.2d 471, 696 N.E.2d 303 (1998) Where the only asserted justification for the search was that a warrant had been issued, but the State could not find a copy of the alleged warrant, the complaint used to obtain the warrant, or the warrant's return, the trial court did not abuse its discretion by concluding that no warrant had issued.

The trial judge did not err by rejecting evidence which, according to the State, showed that a warrant had been issued. That evidence was not substantiated by the documents that were available when the warrant was allegedly issued, and there were "significant gaps" in the testimony of the officer who supposedly obtained the warrant.

However, the Supreme Court declined to adopt a "bright-line rule" that a search can be justified by a warrant only where a copy of the warrant is introduced in the trial court. Courts of record have inherent power to restore or substitute papers that have been lost or destroyed. In addition, although no Illinois court has granted a petition to restore a search warrant, 705 ILCS 85/2 authorizes a party to seek to have a court declare whether a record once existed and, if so, the substance of that record.

People v. Ross, 168 Ill.2d 347, 659 N.E.2d 1319 (1995) "Anticipatory search warrants" are statutorily barred in Illinois. (**Note**: Effective August 18, 1995, 725 ILCS 5/108-3 was amended to authorize anticipatory search warrants.) See also, **People v. Carlson**, 185 Ill.2d 546, 708 N.E.2d 372 (1999) (good faith exception to the exclusionary rule applied where evidence was seized pursuant to an anticipatory search warrant that was issued and executed before **Ross** was decided; anticipatory search warrants are not unconstitutional under either the Federal or Illinois Constitutions, but until the enactment of P.A. 89-377 were unauthorized by Illinois law); **People v. Bui**, 381 Ill.App.3d 397, 885 N.E.2d 506 (1st Dist. 2008) (even if the anticipatory warrant was invalid, the evidence seized would have been admissible under the "good faith exception" to the exclusionary rule).

People v. Hooper, 133 Ill.2d 469, 552 N.E.2d 684 (1989) In issuing an arrest warrant, the judge is not bound by the four corners of the complaint, but may determine probable cause based on an examination of the complainant or witnesses.

People v. Stansberry, 47 Ill.2d 541, 268 N.E.2d 431 (1971) The affiant may use a fictitious name when signing the complaint for a search warrant. See also, **People v. Fiorito**, 19 Ill.2d 246, 166 N.E.2d 606 (1960) (multiple affidavits may be used to establish probable cause); **People v. Scaramuzzo**, 352 Ill. 248, 185 N.E. 578 (1933) (search warrant is invalid when based on information obtained in a prior, unlawful search).

Illinois Appellate Court

People v. Smith, 2022 IL App (1st) 190691 During the initial investigation into the beating death of an individual (Morris), defendant was developed as a suspect. The investigating officer issued an investigative alert for defendant's arrest at that time. Defendant was arrested six months later by a different officer who was a member of the Chicago Police Department's Fugitive Apprehension Unit and who was not otherwise involved in the murder investigation. Prior to trial, defendant filed a motion to suppress, challenging his warrantless arrest. The court denied that motion.

On appeal, defendant argued that his arrest based on an investigative alert was unlawful under the Illinois constitution, which requires "a determination of probable cause supported by an 'affidavit' and made by a neutral magistrate." Defendant did not raise a fourth amendment challenge, and the appellate court noted that the fourth amendment allows an arrest on probable cause supported "by oath or affirmation," while the Illinois constitution contains the more stringent "affidavit" requirement.

Two justices held that the investigative alert system violates the Illinois Constitution. (The third justice would not have reached the merits of the issue.) The delegates to the 1870 Constitution specifically changed the language of Article 1 Section 6 from "oath and affirmation" and added the word "affidavit," signaling their intent to provide Illinois citizens with greater protection from warrantless arrests. The investigative alert system, which depends on unsworn evidence presented to police officers, does not meet the affidavit requirement, which envisions sworn evidence presented to a magistrate. Instead, an investigative alert is more like a "standing order" to arrest, which was found unlawful in **People v. McGurn**, 341 Ill. 632 (1930). The appellate court also noted that the police had ample opportunity to obtain a warrant during the six months between the date of the incident and the date of defendant's arrest here. Defendant's arrest pursuant to the investigative alert was unlawful.

The court went on to conclude that a new trial was not required, however, on the basis that the error was harmless. Even without the evidence derived from defendant's unlawful arrest, there was overwhelming evidence of defendant's guilt, including multiple eyewitness identifications. Accordingly, defendant's conviction was affirmed.

People v. Aquisto, 2022 IL App (4th) 200081 A controlled purchase from defendant in the backyard of a house designated as his "parole" residence created probable cause to search the house. Defendant was not observed entering or leaving the house before or after the purchase. But, the house was known to be his residence such that a person of reasonable caution would infer that he probably was using the house as a base for ongoing drug trafficking and that evidence of such trafficking could be found inside. On these facts, the search warrant for the residence was supported by probable cause, and the trial court did not err in denying defendant's motion to suppress evidence discovered during the search of that residence.

People v. Davis, 2021 IL App (3d) 180146 The trial court did not err in denying defendant's motion to suppress. Under **People v. Manzo**, 2018 IL 122761, the complaint for search warrant must establish a nexus between defendant, the contraband, and the place to be searched. Here, the State's application for search warrant detailed that at least two controlled purchases were made from defendant inside the residence in question during the preceding month. Police surveillance confirmed that defendant was observed entering and exiting the residence on the date the warrant was issued. This was adequate to establish probable cause that evidence of illegal activity would be present in the residence at the time the warrant was issued.

People v. Jones, 2020 IL App (3d) 170674 The police obtained a warrant to search defendant's residence by alleging that on two occasions, defendant left the residence, sold a small amount of drugs to a nearby confidential informant, and returned to the residence. Under **People v. Manzo**, 2018 IL 122761, a search warrant should not issue based on these facts, because they do not give rise to probable cause to believe the defendant keeps drugs at the residence. The evidence of probable cause in this case was weaker than in **Manzo**,

because the officer did not provide a date for the first transaction. Nor did the warrant application even state defendant lived at the residence.

As in **Manzo**, the warrant here was so lacking as to fall outside the scope of the good faith exception. It would not be reasonable for an officer to rely on this warrant where the complaint contained fundamental errors related to probable cause – it did not establish defendant's relationship to the residence, did not provide dates and times for the transactions, and included no details about defendant's actions before or after the transactions. Thus, the fruits of the search were suppressed and defendant's drug convictions were reversed.

People v. Teague, 2019 IL App (3d) 170017 Where a defendant is seen leaving his residence and proceeds directly to a drug deal, police generally have established a sufficient nexus between the illegal activity and the residence such that a magistrate could find probable cause to issue a search warrant for the residence.

Here, police used an informant to set up a controlled buy. Surveillance officers observed defendant leave his residence and drive directly to the location of the buy, where he sold narcotics to the informant. The officers obtained a warrant to search defendant's person, car, and residence. Inside the residence, officers discovered narcotics, and defendant was charged with possession of a controlled substance with intent to deliver. Unlike **People v. Manzo**, 2018 IL 122761, where the court on similar facts struck down a warrant issued for a third-party's residence from which defendant proceeded to a drug deal, the defendant here left his own residence before immediately proceeding to the drug deal. Moreover, the warrant affidavit here included additional details not present in **Manzo**, including descriptions of the officer's experience with drug investigations and drug dealers.

People v. McGregory, 2019 IL App (1st) 173101 Based on an eight-month delay between the State's seizure of defendant's computer and the State's obtaining a warrant to search that computer, the trial court suppressed information obtained from the search. The State appealed, and the Appellate Court affirmed.

While it was undisputed that the initial seizure of defendant's computer was valid, a seizure can become unreasonable based on its duration. To determine whether a delay is reasonable, courts balance the nature of the Fourth Amendment intrusion against the importance of the government interest justifying the intrusion.

Here, the eight-month delay was inordinately long. Defendant had exercised his possessory interest in the computer by requesting that the police not seize it during their execution of a warrant seeking evidence of drug and weapons offenses. While the seizure was based on probable cause, the State failed to show the necessary urgency in obtaining a warrant to search the computer. Although multiple agencies were involved in investigating defendant, portions of the delay cannot be ignored simply because they were attributable to a different agency than the one who ultimately obtained the warrant to search the computer.

People v. Harris, 2015 IL App (1st) 132162 After a canine alerted to a FedEx package, officers obtained a warrant, opened the parcel, and found cannabis. The package was addressed to "S. Harris" at an address in Lincolnwood. The officers then obtained an anticipatory warrant authorizing a search of "Harris or anyone taking possession" of the package at the address and "any premises or vehicle . . . that the . . . parcel is brought into once the parcel has been delivered." The complaint stated that the warrant would be executed only if the parcel was "accepted" into a location or vehicle.

At the same time, officers obtained an order to install an "electronic monitoring and

breakaway filament device" in the parcel. This device sends an electronic signal when a package is moved or opened. The officers then placed the package on the porch of the home to which it was addressed.

About an hour later, defendant, whose first initial was not "S," pulled into the driveway, retrieved the box, and put it in his vehicle. Defendant presented testimony that the house was owned by his grandmother, whose first name was "Sylvia," but that it had been empty for several years because Sylvia was in a nursing home. Defendant testified that as he was driving past the house he saw the package on the porch and decided to pick it up.

When defendant placed the package in his car, officers decided to execute the warrant although the electronic monitoring device did not indicate that the package had been opened or was being moved. The officers decided to act because "they did not want to get into a car chase in an unfamiliar area around school dismissal time." However, no evidence was presented concerning the proximity of any schools to the house.

The State presented testimony that after he was arrested, defendant made inculpatory statements. Defendant denied making those statements. Defendant was convicted of possession of cannabis but acquitted of possession of cannabis with intent to deliver.

The Appellate Court concluded that defendant's motion to suppress, which was based on the assertion that the triggering condition for execution of the anticipatory warrant had not occurred, should have been granted.

An anticipatory search warrant is a warrant based on an affidavit which alleges that at a future time, probable cause will exist for a search with respect to a certain person or place. Execution of an anticipatory warrant is usually subject to the occurrence of a "triggering condition" other than the mere passage of time. The requirement of a triggering condition ensures that only searches justified by the presence of probable cause will occur.

The triggering condition need not be reflected on the face of the warrant, and may be placed in the supporting affidavits. However, anticipatory warrants are narrowly drawn to avoid premature execution as a result of manipulation or misunderstanding by the police. The purpose of defining a triggering event is to ensure that the officers who execute the warrant serve almost a "ministerial" role in deciding when the warrant should be executed.

The court concluded that the officers erred by making the arrest before the triggering event occurred. The warrant application stated that the warrant would be executed only if the package was "accepted" into a location or vehicle. Under **People v. Bui**, 381 Ill.App.3d 397, 885 N.E.2d 506 (1st Dist. 2008), under similar circumstances a package was "accepted" only when it was received and opened. The court concluded that the only actions attributed to defendant - picking up the package and placing it in his car - did not constitute "acceptance." Therefore, the triggering event had not occurred.

The court rejected the State's argument that the package was accepted when defendant displayed an intent to retain it, stating that such a rule would "cast a wide net" over people and locations which could be searched and would leave the warrant lacking sufficient particularity as to the person or location that could be searched. The court stressed that under the State's argument, officers would have discretion to search a neighbor who picked up the package to hold for the addressee, a thief who saw the package and decided to steal it, or a realtor who placed the package inside the front door when showing the home.

The court also concluded that the officers erred by executing the warrant without waiting until the electronic device attached to the package indicated that it had been opened or moved. First, the electronic device provided objective evidence to identify the person or premises which could be searched under the warrant. Second, the objective evidence from the

device limited the officers' discretion to determine whether the triggering event had occurred.

The court rejected the argument that the good faith exception applied and the evidence therefore need not be suppressed. The good faith exception to the exclusionary rule permits the admission of illegally-seized evidence where the officer had a reasonable belief that the search was authorized by a warrant.

The court concluded that the officers could not have reasonably believed that they were authorized to arrest defendant where they had personally participated in preparing the application for the warrant, including representing that the electronic monitoring and breakaway filament devices would likely "produce evidence of a crime," and knew that the device had not indicated that the package had been opened. In addition, the officers had no prior information to connect defendant to the package or its contents. Under these circumstances, the officers could not have reasonably believed that the warrant authorized a search of defendant merely because he picked up the package and put it in his car.

People v. Rojas, 2013 IL App (1st) 113780 The Appellate Court's review of a magistrate's decision to issue a warrant is deferential, but a reviewing court will not defer to a warrant based on an affidavit that does not provide the magistrate with a substantial basis for determining the existence of probable cause. A conclusory statement of probable cause is insufficient. Reviewing courts will not defer to a warrant based on a bare-bones affidavit or blindly follow a magistrate's probable cause finding.

At issue was whether the affidavit in support of a warrant demonstrated probable cause to search defendant's residence. While there was some evidence of defendant's involvement in criminal drug activity, there was no direct evidence tying that criminal activity to defendant's home. There was an intercepted telephone conversation in which defendant requested that a drug trafficker "come over here close to my house," but the police did not observe the two actually meet or conduct any transaction, and the substance of their conversation would appear relatively innocuous to the average person.

This deficiency was not remedied by an officer's "generic offering that drug trafficking records 'are often maintained under dominion and control of the narcotics traffickers, and as such, are often kept in their residences or other secure locations that cannot be easily identified by law enforcement.'" Without more detail, it was mere conjecture, especially given the minor role defendant played in drug trafficking in comparison to others.

The good-faith exception prevents suppression of evidence obtained by an officer acting in good faith and in reliance on a search warrant that is ultimately found to be without probable cause where the warrant was obtained by a neutral and detached magistrate, free from obvious defects other than non-deliberate errors in preparation, and containing no material misrepresentations. But the good-faith exception does not apply where the affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. If the officer who provided the affidavit did not possess an objectively reasonable belief in the existence of probable cause, suppression is the appropriate remedy. Whether the good-faith exception applies is reviewed *de novo*.

While the 20-page complaint in support of the warrant was not bare-bones, it is bare-bones with respect to probable cause to search defendant's residence. Probable cause to search other locations cannot be bootstrapped to supply probable cause, and by implication, good faith, for the search of defendant's residence. An objectively reasonable officer would not have found probable cause existed to search defendant's residence.

The Appellate Court affirmed the trial court's order suppressing a gun seized during a search of defendant's residence pursuant to the warrant.

Epstein, J., dissented. The complaint did not establish probable cause to search defendant's residence, but the good-faith exception applies because the affidavit was not bare-bones.

People v. Miranda, 2012 IL App (2d) 100769 The compelled extraction of a person's blood or urine for alcohol or controlled substance testing is a "search" under the Fourth Amendment, and is subject to the warrant and probable cause requirements unless a recognized exception applies. In reviewing the sufficiency of an affidavit for a search warrant, a reviewing court determines whether the magistrate had a substantial basis to conclude that probable cause existed.

An affidavit which contained no factual allegations concerning controlled substances, but which stated that defendant exhibited signs that he was under the influence of alcohol during a traffic stop, provided probable cause for a warrant to test defendant's blood sample for alcohol but did not afford probable cause to test a urine sample for controlled substances. The affidavit stated that defendant's eyes were glassy and bloodshot and that he admitted having consumed alcohol. There was a strong odor of alcohol inside the car, and defendant failed three field sobriety tests. Furthermore, at the time of the stop a front-seat passenger was holding two bottles of what appeared to be beer.

There was no mention of controlled substances in the affidavit except in the concluding paragraph, which stated the officer's opinion that defendant was under the influence of alcohol and/or drugs. Under these circumstances, there was no probable cause for a warrant to test defendant's urine sample for the presence of controlled substances.

People v. Taylor, 198 Ill.App.3d 667, 555 N.E.2d 1218 (3d Dist. 1990) The time, date, and judicial signature requirements are not ministerial acts that can be omitted without invalidating a search warrant. "Citizens should not be expected to accept such an incomplete document as authority for the police to search their homes and seize their possessions."

Thus, the warrant was void where it was issued over the telephone but no record of the conversation was made. Furthermore, the warrant was unsigned, undated, and lacked the magistrate's signature when served.

Furthermore, execution of the search warrant did not come within the "good faith" exception where the face of the warrant contained "obvious defects."

People v. Moran, 58 Ill.App.3d 258, 373 N.E.2d 1380 (2d Dist. 1978) Affidavit for search warrant was "technically defective" because it was not properly notarized, but the warrant was upheld because the affiant was sworn before the issuing judge. Compare, **People v. Kleinik**, 233 Ill.App.3d 458, 599 N.E.2d 177 (5th Dist. 1992) (where the officer who requested the warrant was never placed under oath, the Fourth Amendment and Article I, §6 of the Illinois Constitution were violated; officer's signature on notarized document was not adequate replacement being placed under oath).

People v. West, 48 Ill.App.3d 132, 362 N.E.2d 791 (4th Dist. 1977) The issuing judge may not change the caption of the warrant based on a factually unsupported, oral conclusion of a police officer.

People v. Trantham, 55 Ill.App.3d 720, 371 N.E.2d 207 (3d Dist. 1977) Police obtained a search warrant for Apartment 9, but upon arriving at the search scene realized they wanted to search Apartment 2. The police telephoned the issuing judge, and pursuant to his

instructions altered the warrant to indicate Apartment 2. The Appellate Court upheld the warrant, although noting that the better practice would have been to return to the judge and obtain a properly worded warrant.

§43-5(a)(2)
Complaint Alleging Facts

United States Supreme Court

Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) A warrant affidavit must set forth the particular facts and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation of the matter.

Whiteley v. Warden, 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971) Probable cause cannot be based on mere conclusions. The issuing judge must be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant.

Jaben v. U.S., 381 U.S. 214, 85 S.Ct. 1365, 14 L.Ed.2d 345 (1965) Affidavit for arrest warrant was upheld; because of the nature of the crime (tax violations), it was sufficient for an IRS agent to state conclusions rather than bring numerous records and persons to court.

Illinois Supreme Court

People v. Manzo, 2018 IL 122761 Before his trial for gun and drug possession, defendant moved to quash the search warrant and suppress the evidence found in his home as a result of that warrant. Defendant alleged the police lacked probable cause to search his residence, which he shared with his girlfriend Leticia. The warrant targeted Casillas, Leticia's cousin. But it sought to search defendant and Leticia's home, because: (1) on the day of the first undercover controlled buy from Casillas, officers saw Casillas driving Leticia's car, which was registered to defendant's home; and (2) 19 days later, before another controlled buy, Casillas left defendant's home and walked to the nearby supermarket where he sold the drugs. Casillas also made a third sale near defendant's home. The trial and appellate courts upheld the search.

The Illinois Supreme Court reversed in a 4-3 decision. The majority held that the facts known to the police and recited in the warrant failed to establish a sufficient nexus between Casillas' criminal activities and the defendant's home. The link between Casillas and Leticia did not create an inference they engaged in drug dealing together. The fact that Leticia allowed Casillas to drive her car to a drug deal does not establish Leticia knew of Casillas' illegal activities or that this was a regular occurrence. "To hold otherwise could expose virtually any innocent third party to a search of the home." As for the sale occurring after Casillas left the residence, more information is required for probable cause: whether he lived there, how often he visited, how long he stayed before leaving, where he went before, etc. Notably, the warrant did not include information such as Casillas' criminal history, or the officer's experience with the manner in which drug dealers use nearby residences as a "stash house," as was the case in several authorities cited by the State.

Finally, the Court enforced the exclusionary rule because the good faith exception does not apply when the affidavit so lacks indicia of probable cause as to render official belief in its existence unreasonable. Here, the warrant affidavit could be characterized as "bare bones" because it failed to establish the required minimal nexus between defendant's home and the items sought in the warrant. Nothing directly connected Casillas' drug dealing to defendant's

home itself, nor even raised an inference of such a connection.

The dissent disagreed with both conclusions, finding that while Casillas may have simply stopped at defendant's home while carrying the drugs on his person, "it is far more likely" that he used defendant's home to keep a "ready supply" because he was already at the home when contacted by the undercover purchaser. The dissent faulted the majority for isolating each fact rather than considering them in total. Finally, the dissent strongly disagreed that the affidavit could be considered "bare bones" in light of the two concrete connections between Casillas and defendant's residence.

People v. Hooper, 133 Ill.2d 469, 552 N.E.2d 684 (1989) In issuing an arrest warrant, the judge is not bound by the four corners of the complaint, but may determine probable cause based on an examination of the complainant or witnesses.

People v. George, 49 Ill.2d 372, 274 N.E.2d 26 (1971) To support the issuance of a search warrant, the complaint must set forth: (1) facts which would cause a reasonable man to believe a crime had been committed, and (2) facts which would cause a reasonable man to believe the evidence was in the place to be searched.

People v. Tate, 44 Ill.2d 432, 255 N.E.2d 411 (1970) The issuing judge must decide the persuasiveness of the facts relied upon by the affiant to show probable cause; the judge cannot merely accept the unsupported conclusions of the affiant. See also, **People v. Waitts**, 36 Ill.2d 467, 244 N.E.2d 257 (1967) (complaint for arrest warrant in which affiant-police officer merely stated that he had "just and reasonable grounds" to believe that defendant committed the offense was constitutionally defective).

Illinois Appellate Court

People v. Reyes, 2020 IL App (2d) 170379 The trial court did not err when it denied defendant's motion to suppress the search of his cell phone. Defendant was accused of kidnaping and sexually assaulting a child. The evidence showed he grabbed the girl, put her in his car, drove away, assaulted her, and dropped her off nearby. After his arrest two days later, police found a cell phone in his car, which matched the car used in the offense. Applying for a search warrant, a police officer averred that he was an expert in child molestation cases, and that the cell phone could have photographic or video imagery of the offense, and of child pornography. The phone could also contain relevant GPS evidence. The judge issued the warrant, and a search of the phone turned up a video of the offense.

Defendant argued that the warrant issued without probable cause. He asserted that there was no evidence that the defendant possessed the phone at the time of the offense, let alone that he used it. Nor was there any evidence that defendant possessed child pornography. He maintained there was not a sufficient nexus between the crime and the type of potential evidence found on the phone.

The Appellate Court disagreed. First, even if the police hadn't alleged a nexus between the crime and the photos or videos on the phone, it is clear that the phone could be searched for GPS information. And while defendant countered that the police lacked evidence that the defendant carried the phone at the time of the offense, the fact that the phone was found in the car, albeit two days later, allowed for an inference that defendant carried his phone with him while driving. Defendant responded that probable cause to search GPS information did not allow a search of the phone's media. But the State's forensic analyst, who searched the phone, testified that GPS information can be stored in the phone's photo or video files.

In a lengthy concurrence, Justice Birkett strongly advocated for the position that, when there is probable cause to believe defendant has committed the sexual assault of a child, the police should be able to obtain a search warrant for a defendant's phone based on probable cause that it contains child pornography, even if there is no other evidence of child pornography. Citing several cases, statutes such as Illinois' propensity-evidence laws, and some statistics, Justice Birkett concluded that the nexus between sexual abuse of children and the possession of child pornography has been sufficiently established so as to conclude that probable cause of sexual abuse of children equates to probable cause of the possession of child pornography.

People v. Miranda, 2012 IL App (2d) 100769 The compelled extraction of a person's blood or urine for alcohol or controlled substance testing is a "search" under the Fourth Amendment, and is subject to the warrant and probable cause requirements unless a recognized exception applies. In reviewing the sufficiency of an affidavit for a search warrant, a reviewing court determines whether the magistrate had a substantial basis to conclude that probable cause existed.

An affidavit which contained no factual allegations concerning controlled substances, but which stated that defendant exhibited signs that he was under the influence of alcohol during a traffic stop, provided probable cause for a warrant to test defendant's blood sample for alcohol but did not afford probable cause to test a urine sample for controlled substances. The affidavit stated that defendant's eyes were glassy and bloodshot and that he admitted having consumed alcohol. There was a strong odor of alcohol inside the car, and defendant failed three field sobriety tests. Furthermore, at the time of the stop a front-seat passenger was holding two bottles of what appeared to be beer.

There was no mention of controlled substances in the affidavit except in the concluding paragraph, which stated the officer's opinion that defendant was under the influence of alcohol and/or drugs. Under these circumstances, there was no probable cause for a warrant to test defendant's urine sample for the presence of controlled substances.

The court rejected the argument that even absent probable cause, the good faith exception permitted the admission of the result of the analysis of defendant's urine sample. The good faith exception does not apply if a warrant is based on an affidavit that is so lacking in indicia of probable cause as to render a belief to the contrary entirely unreasonable. Here, the good-faith doctrine did not apply because it was entirely unreasonable to rely on an affidavit which contained no allegations which would have supported a finding of probable cause concerning the presence of controlled substances.

People v. Lenyoun, 402 Ill.App.3d 787, 932 N.E.2d 63 (1st Dist. 2010) The issue of whether a search warrant is supported by probable cause and whether the good faith exception of **United States v. Leon**, 468 U.S. 897 (1984), entitles a police officer to rely on the search warrant are intertwined. If neither the judge issuing the warrant nor the officer executing the warrant could hold an objectively reasonable belief in the existence of probable cause, any search conducted pursuant to the warrant cannot be upheld.

In this case, the police first obtained a warrant authorizing a search of the defendant and his vehicle. The information the police possessed supporting the warrant was as follows: 1) in August 2001, the police arrested Paul Jones in an apartment leased by defendant where they found drugs and weapons; 2) on three different days in February 2004, surveillance officers observed defendant drive from 110 Hillside in Hillside, Illinois, and meet an individual on the street with whom defendant exchanged an item for currency; and 3) on one

of those occasions the police stopped the person who had met with defendant, Darryl Cox, and recovered cocaine; Cox informed the police that he had arranged to purchase the drugs from defendant by calling defendant's cell phone and provided the police with that number.

The police executed the search warrant on defendant and his vehicle after they observed defendant depart the Hillside address. They found no contraband, but did find a list that contained the word "dope," and four business cards, one of which displayed the phone number Cox had given the police. The police connected that number to defendant but not to the Hillside address. A K-9 unit alerted to the interior of defendant's car and the $352 found on his person. Defendant refused to consent to a search of the Hillside address and denied that the Hillside address was his residence even though it was listed on his driver's license.

The police then obtained a warrant to search the Hillside address, relying on the same information they had submitted to obtain the first warrant, as well as the additional circumstances they learned during the execution of the first warrant.

The circuit court granted defendant's motion to quash the warrant and the Appellate Court affirmed. The Appellate Court acknowledged that the first warrant for the search of the vehicle was valid, but found that nothing submitted in support of the second warrant demonstrated a fair probability that contraband would be found at the Hillside address. It would be unprecedented to hold that a judicial determination of probable cause to search a vehicle established by an outdoor drug sale could to support a successive warrant for a search of the seller's residence. The good-faith doctrine did not save the search because neither the issuing judge nor the executing officer could have held an objectively reasonable belief in the existence of probable cause to search the residence.

People v. Harshberger, 24 Ill.App.3d 335, 321 N.E.2d 138 (5th Dist. 1974) Warrant to search defendant's car was invalid where the affidavit merely stated that because controlled substances were found on defendant's person, there "may be more in his car."

§43-5(a)(3)
Neutral and Detached Judge

United States Supreme Court

Lo-Ji Sales v. N.Y., 442 U.S. 319, 99 S.Ct. 2319, 60 L.Ed.2d 920 (1979) A search warrant may only be issued by a neutral and detached judicial officer. The judge was not neutral and detached where he became a member (if not the leader) of the police operation and took an active part in the search of a bookstore.

Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) Search warrant may only be issued by a "neutral and detached magistrate." See also, **Shadwick v. Tampa**, 407 U.S. 345, 92 S.Ct. 2119, 32 L.Ed.2d 783 (1972) (municipal court clerks who were authorized by city charter to issue arrest and search warrants qualified as "neutral and detached magistrates"); **Conally v. Georgia**, 429 U.S. 245, 97 S.Ct. 546, 50 L.Ed.2d 444 (1977) (judge who is paid a fee for issuing search warrants is not "neutral and detached"; any warrants which he issues violate the Fourth and Fourteenth Amendments).

§43-5(a)(4)
Description of Place or Person to be Searched

United States Supreme Court

Dalia v. U.S., 441 U.S. 238, 99 S.Ct. 1682, 60 L.Ed.2d 177 (1979) A warrant must particularly describe the place to be searched. See also, **Stanford v. Texas**, 379 U.S. 476, 85 S.Ct. 506, 13 L.Ed.2d 432 (1965) (same).

Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979) A warrant to search a place does not normally authorize a search of each individual in that place.
Maryland v. Garrison, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987) A warrant's description of the place to be searched, an apartment, was broader than appropriate where it was based on the mistaken belief that there was only one apartment on the pertinent floor. Although police searched the wrong apartment, the factual mistake did not invalidate the warrant.

Illinois Supreme Court

People v. McCarty & Reynolds, 223 Ill.2d 109, 858 N.E.2d 15 (2006) A warrant's description is sufficient if the officer executing the warrant is able, with reasonable effort, to identify the place to be searched. Where the description is called into question only upon its execution, and the description's inaccuracy is minimal, courts may rely on other information known to the executing officer to determine whether the description was sufficient.

Where the warrant described the trailer to be searched according to the identity of the individual residing there, the approximate mileage between an intersection and the property on which the trailer sat, and the position of the trailer in relation to other trailers on the property, and where the officer in charge of executing the warrant had served papers at the trailer on previous occasions and was therefore familiar with its location, the fact that there was a previously-unknown, uninhabited trailer on the property did not make the description inadequate.

People v. Smith, 20 Ill.2d 345, 169 N.E.2d 777 (1961) A search warrant must contain a sufficiently detailed description of the premises to be searched, in order to avoid any unnecessary or unauthorized invasion of the right of security. It should identify the premises in such a manner as to leave the officer no doubt and no discretion as to the premises to be searched. See also, **People v. Watson**, 26 Ill.2d 203, 186 N.E.2d 326 (1962) (description of place to be searched is sufficient if it particularly points to a definitely ascertainable place so as to exclude all others; warrant that described premises as apartment 604 at 2300 S. State was sufficient to permit search of apartment 604 at 2310 S. State, which was the first building on the even side of the street in the 2300 block); **People v. Mecca**, 132 Ill.App.3d 612, 270 N.E.2d 456 (1st Dist. 1971) (warrant which specified address as "3322 South Western Boulevard" was valid even though search was at "3322 South Western Avenue"). Compare, **People v. Sanchez**, 191 Ill.App.3d 1099, 548 N.E.2d 513 (1st Dist. 1989) (search warrant for 4844 West North Avenue did not allow search of next door building even if officers believed that premises extended into the next building; the evidence showed that two separate buildings shared a common wall but had separate addresses).

Illinois Appellate Court

People v. Lance, 2021 IL App (1st) 181665 The Appellate Court rejected defendant's claim that the search warrant for his person lacked sufficient particularity. The warrant authorized Chicago police to search "Woo," an "unknown male Black," around 5'7", early 40's, with a dark complexion. The warrant further authorized a search of the premises described as "[t]he entire first floor apartment of a two story red brick building located at 1415 N.

Laramie Ave., Chicago, Illinois Cook County." The warrant authorized the seizure of "[h]eroin and any evidence showing proof of residency" as well as other drug paraphernalia.

Defendant argued that the use of a nickname and a generic description that would match not just defendant but thousands of other Chicagoans, rendered the warrant insufficiently particular. The Appellate Court found no authority in support of defendant's claim that a nickname with a generic description was insufficient. But the court did not reach the issue, since the defendant was not personally searched pursuant to the warrant. When officers entered the residence, they saw defendant sitting near drugs, and heard defendant claim ownership of the drugs. This admission provided sufficient probable cause to arrest and search the defendant. Defendant made no argument that the warrant's description of the place to be searched was deficient, so the officers had the right to be in the residence when they observed the drugs and heard defendant's admission.

People v. Pruitte, 2019 IL App (3d) 180366 Trial court's decision quashing search warrant and suppressing items seized was affirmed. Confidential source's reliability was not established where there was no evidence that the police had any experience with the source and surveillance was not conducted to confirm the source's information. The fact that the source appeared personally before the judge was of little value where the judge specifically relied on the written application in issuing the warrant. The source provided no additional information during his appearance, affording the judge little opportunity to evaluate his reliability. While the warrant application described the place to be searched and the source's observation of a single incident of criminal activity in that apartment, probable cause was lacking in the absence of evidence of the source's reliability. The good faith exception did not apply because the warrant application provided only generic information and was lacking any indicia of reliability.

The dissenting judge would have deferred to the issuing judge's determination that the warrant was supported by probable cause and the confidential source was credible and reliable because he appeared in court, had experience with controlled substances, and was providing information in an effort to work off his own legal troubles.

People v. Ross & Schriefer, 2017 IL App (4th) 170121 Defendants were charged with unlawful possession with intent to deliver cannabis within 1000 feet of a school and unauthorized production or possession of cannabis sativa plants. Both sought to suppress evidence on the basis of a defective search warrant. The trial court granted their motions to suppress.

The property searched pursuant to the warrant was located at the corner of Greely and Chestnut Streets in Monticello, Illinois. There were two buildings on the property - a tan two-story house and a blue, barn-shaped structure that had been used as a residence previously. The search was of the tan house, which displayed the numbers 1002 on its front. The barn, which was located north of the house, was associated with the address 817 North Greely Street.

The search warrant described the property to be searched as 817 North Greely Street, "a single family, tan, two-story dwelling located on the east side of North Greely Street with the number 817 displayed on the front, a detached barn to the north of the residence."

Other than the mistake with regard to the house numbers, the warrant was sufficiently descriptive to be upheld. Law enforcement officers were not confused in executing the warrant. And, the reference to the barn in the warrant was made in such a way as to make clear that it was not the target of the warrant. While one of the officers realized the mistake after arriving at the property, it was too late to correct it because the occupants had

already been alerted to the police presence.

The trial court's suppression order was reversed and the matter remanded for further proceedings.

People v. Urbina, 393 Ill.App.3d 1074, 916 N.E.2d 1 (2d Dist. 2009) The particularity requirement of the Fourth Amendment requires a search warrant to state with particularity the place to be searched and the persons or things to be seized. The purpose of the particularity requirement is twofold: (1) to prevent general warrants, and (2) to prevent police from exercising broad discretion concerning the matters covered by the warrant.

When a search involves a building with multiple units, the warrant must specify the precise unit that is to be searched.

Where officers were executing a search warrant for apartment "D" of a four unit building, described in the warrant as being located "on the left top of the stairs with the letter D affixed to the door," the particularity requirement was violated when officers discovered that apartment "C" was to the left of the top of the stairs, and that apartment "D" was to the right. Because officers improperly exercised discretion by electing to search apartment "C," the search was improper. The court noted that the proper remedy would have been to contact the judge who issued the warrant to obtain further guidance.

The court distinguished this situation from cases in which the good faith exception applied, noting that in those cases the officers believed that they were searching the place described in the warrant and learned only after the search commenced that the warrant's description was inadequate. Here, the officers knew there was a blatant ambiguity in the warrant, but exercised their discretion to decide which of two possible locations to search.

The court rejected the State's argument that exigent circumstances justified the warrantless entry. The State argued that returning to the magistrate for further guidance might have resulted in the destruction of evidence or a violent response by the apartment's occupants when the officers returned.

The State bears the burden of demonstrating exigent circumstances justifying a warrantless entry to a private residence. Potential destruction of narcotics does not constitute an exigent circumstance sufficient to justify a warrantless entry unless the officers have a particularized reason to believe that the evidence in question will be destroyed. Because there was no such evidence in this case, the exigent circumstances argument failed.

The court also rejected the argument that an erroneous description of the location to be searched can be dismissed as merely a "technical error."

Because the trial court should have granted the motion to suppress, the defendants' convictions for possession of a controlled substance with intent to deliver were reversed. Because on remand the State would not be able to prove the defendants guilty of the charges without using the suppressed evidence, the convictions were reversed outright.

People v. Bui, 381 Ill.App.3d 397, 885 N.E.2d 506 (1st Dist. 2008) An "anticipatory warrant" which provided that it could be executed at any location at which a certain package containing controlled substances was "accepted" did not violate the particularity clause. The Fourth Amendment requires that two matters be particularly described in a warrant - the place to be searched and the person or things to be seized. A warrant is sufficiently descriptive if, by use of reasonable effort, an officer attempting to execute the warrant can identify the persons or places to be searched.

Because the warrant authorized police to search any location in which the package was accepted, and because police had planted a tracking device inside the package, no

discretion or guesswork was necessary to determine the location of the package and whether it had been opened.

People v. Burmeister, 313 Ill.App.3d 152, 728 N.E.2d 1260 (2d Dist. 2000) A warrant's description is sufficient where it leaves no discretion as to the person or premises to be searched. At a minimum, the description must allow the police, with reasonable effort, to identify the place that is to be searched.

Where the complaint mistakenly claimed that the defendants' home was on the east side of the street, and a residence on the east side closely resembled the residence that was to be searched, the officers executing the warrant should have concluded that the description was inaccurate and sought clarification before entering the defendants' home. The court noted that there was no evidence that the affiant was present when the warrant was executed, and no guarantee that the right home was searched.

People v. Mabry, 304 Ill.App.3d 61, 710 N.E.2d 454 (2d Dist. 1999) An error in the description of the premises to be searched is not fatal if, with reasonable effort, the police are able to identify the place intended to be searched.

The command section of the warrant was incomplete because it did not provide explicit authorization to search a residence or the address of the residence to be searched. In addition, the warrant failed to describe the defendant and specify whether he was to be searched. Although the list of items to be seized referred to "said premise," the command section contained "no indication of which premise is referenced." Thus, standing alone, the command section of the warrant was clearly insufficient to satisfy the specificity requirement.

Supporting documents and the caption of a warrant may be used to correct an incomplete or incorrect address in the command section, but not where the warrant contains no address or indication of the intended target of the search. The court also refused to incorporate the description of the residence from the caption of the warrant form into the command section; "[t]he presence of that description [in the caption] does not automatically lead to the conclusion that the issuing judge found probable cause to search those premises."

People v. Luckett, 273 Ill.App.3d 1023, 652 N.E.2d 1342 (1st Dist. 1995) Whether a warrant violates the particularity requirement involves two questions: (1) whether the warrant was valid when issued, and (2) whether the warrant was validly executed. A warrant authorizing the search of "3604 W. Monroe St., 1st Floor Apartment" satisfied the particularity clause where police discovered that contrary to their earlier belief, the building contained two apartments on the first floor.

The description was not vague when the warrant was issued, because the police reasonably believed that the building contained only one first-floor apartment. Information discovered after a warrant is issued does not retroactively invalidate it.

The warrant was validly executed because the police acted reasonably upon discovering that the building contained more than one first-floor apartment. Whether it was reasonable for officers to continue the search depends on three factors: (1) whether the officers reasonably should have discovered the existence of multiple apartments before executing the warrant, (2) whether police discovered the existence of multiple apartments only after the search had progressed to the point that withdrawal would have jeopardized its success, and (3) whether police reacted to the discovery of multiple apartments by confining the search to the apartment that was most likely intended to be covered by the warrant. All three factors were satisfied; when the first apartment turned out to be vacant, police

proceeded to the second apartment where they discovered cocaine, drug paraphernalia and a handgun.

People v. Simmons, 210 Ill.App.3d 692, 569 N.E.2d 591 (2d Dist. 1991) A "John Doe" warrant (one authorizing the search of an unidentified person) is illegal unless it somehow "names the person or describes him" in such a way "as to leave the executing officer no doubt or discretion about whom to search." A warrant was overbroad where it authorized the search of a particular residence which was alleged to contain a "Smoker room" where people could use cocaine which they purchased in the house, and also authorized the search of "an unidentified male black, approximately 5'8", 180 lbs. with brown hair and brown eyes, medium complexion and approximately 22 years of age." Because most African-Americans have dark hair and dark eyes, the warrant's description amount to a "young black male, 5 feet, 8 inches in height and weighing 180 pounds." Such a description would fit a large number of people and did not limit the officers' discretion. See also, **People v. Reed**, 202 Ill.App.3d 760, 559 N.E.2d 1169 (3d Dist. 1990) (a warrant which authorized search of "Harrington and other persons present" in a public bar was unconstitutionally overbroad because it allowed the search of all persons in a public place during normal business hours; the good-faith exception was inapplicable because the warrant was based on a 'bare bones' affidavit and was so facially overbroad that the officers could not have reasonably believed it was valid).

Even if the warrant was valid, the search of defendant was beyond its scope. The description in the warrant — 5'8" tall and 180 pounds — was of a heavy-set or muscular individual. The defendant, by contrast, was "tall and of average build."

Police did not have authority to search defendant merely because he was in the "Smoker room," which contained drug paraphernalia. Under **Illinois v. Ybarra,** 444 U.S. 85 (1979), a person who merely happens to be on premises which are the subject of a search warrant may not be searched unless he is shown to have a connection to the premises or there is independent probable cause. There was no showing that defendant was anything other than a social guest, and there was no probable cause where there was no contraband in open view, defendant cooperated with the police, and there was no indication that the room was used exclusively for drug consumption.

People v. Fragoso, 68 Ill.App.3d 428, 386 N.E.2d 409 (1st Dist. 1979) Search warrant which listed an address "3445 W. Diversey," but failed to set out the city or county, was upheld. Because the complaint was brought by Chicago police concerning drug sales in Chicago, and the warrant was issued by a Cook County judge, there was no confusion, no possibility of error and no room for police discretion in executing the warrant.

§43-5(a)(5)
Description of Items to be Seized

United States Supreme Court

Groh v. Ramirez, 540 U.S. 551, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) The Fourth Amendment requires that a search warrant describe with particularity "the person or things to be seized." The particularity requirement was violated by a warrant which, in the space intended for a description of the items to be seized, described the house that was to be searched. Because the warrant omitted any description of the evidence to be seized, it was clearly invalid.

The warrant's lack of a description was not cured by the description in the warrant application; the Fourth Amendment requires particularity in the *warrant*, not the supporting documents. Because the warrant did not purport to incorporate the application, the court did not decide whether a warrant may constitutionally cross-reference other documents.

The court rejected the argument that although the warrant violated the particularity clause, the search was "functionally equivalent" to a search under a valid warrant because the magistrate found probable cause for the search, the petitioner orally described the objects to be seized to the magistrate, and the search did not exceed the limits intended by the magistrate and described by the petitioner. The warrant "did not describe the items to be seized *at all* [and] was so obviously deficient that we must regard the search as 'warrantless.'"

The court rejected the argument that the warrant was sufficient because the search actually conducted by the officers did not exceed the scope of that which had been set forth in the application and authorized by the magistrate:

> "[U]nless the particular items described in the affidavit are also set forth in the warrant itself (or at least incorporated by reference, and the affidavit present at the search), there can be no written assurance that the Magistrate actually found probable cause to search for, and to seize, every item mentioned in the affidavit. . . . The mere fact that the Magistrate issued a warrant does not necessarily establish that he agreed that the scope of the search should be as broad as the affiant's request."

Lo-Ji Sales v. N.Y., 442 U.S. 319, 99 S.Ct. 2319, 60 L.Ed.2d 920 (1979) Search warrant that authorized seizure of "other similarly obscene materials" found in a bookstore was an invalid general warrant because it failed to particularly describe the things to be seized.

The warrant was also invalid because blank spaces were left in the description of items to be seized, to be filled in while the search was conducted. The Fourth Amendment does not countenance open-ended warrants.

Andersen v. Maryland, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976) Based on its context, the phrase "together with other fruits, instrumentalities and evidence of crime at this time unknown," at the end of an exhaustive list of particularly described documents, must be read as authorizing only a search for evidence relating to the crime in question and not a search for evidence of other crimes.

Stanford v. Texas, 379 U.S. 476, 85 S.Ct. 506, 13 L.Ed.2d 431 (1965) A search warrant must particularly describe the "things to be seized"; nothing can be left to the discretion of the officer executing the warrant.

Illinois Supreme Court

People v. McCarty & Reynolds, 223 Ill.2d 109, 858 N.E.2d 15 (2006) A search warrant must describe the items to be seized with sufficient particularity that the officer making the search will seize only the specified property. The description of "methamphetamine[,] records of drug transactions[,] drug paraphernalia[,] and United States currency" was sufficient because it identified items which could easily be identified as contraband, and because there was no reason to believe that a more precise description was feasible. See also, **People v. Curry**, 56 Ill.2d 162, 306 N.E.2d 292 (1973) (when property of a specified nature is to be seized, rather than particular property, a description of its characteristics is sufficient;

general description of the items to be seized (i.e., material dealing with a call girl operation) was sufficiently specific).

Illinois Appellate Court

People v. Boose, 2018 IL App (2d) 170016 The trial court properly suppressed evidence not particularly described in the warrant authorizing a search of defendant's house. In a murder investigation, an officer mistakenly used a complaint for search warrant with boilerplate language pertaining to drug investigations. Although he added items relevant to the murder investigation to the complaint's list of items to be seized, the actual approved warrant did not include these additional items. The Appellate Court agreed that the warrant did not incorporate these items by reference, and the complaint was not attached to the warrant given to the officers who executed the search. Thus, the warrant did not authorize the seizure of the items relevant to the murder investigation.

The majority refused to address whether the exclusionary rule should apply in the absence of police misconduct, an issue raised by the dissent, because the State did not argue the issue before the court.

The dissent would have held that the warrant did incorporate the complaint and affidavit, and that because the error was an honest mistake by the officer it should not trigger the exclusionary rule.

People v. Urbina, 393 Ill.App.3d 1074, 916 N.E.2d 1 (2d Dist. 2009) The particularity requirement of the Fourth Amendment requires a search warrant to state with particularity the place to be searched and the persons or things to be seized. The purpose of the particularity requirement is twofold: (1) to prevent general warrants, and (2) to prevent police from exercising broad discretion concerning the matters covered by the warrant.

When a search involves a building with multiple units, the warrant must specify the precise unit that is to be searched.

Where officers were executing a search warrant for apartment "D" of a four unit building, described in the warrant as being located "on the left top of the stairs with the letter D affixed to the door," the particularity requirement was violated when officers discovered that apartment "C" was to the left of the top of the stairs, and that apartment "D" was to the right. Because officers improperly exercised discretion by electing to search apartment "C," the search was improper. The court noted that the proper remedy would have been to contact the judge who issued the warrant to obtain further guidance.

The court distinguished this situation from cases in which the good faith exception applied, noting that in those cases the officers believed that they were searching the place described in the warrant and learned only after the search commenced that the warrant's description was inadequate. Here, the officers knew there was a blatant ambiguity in the warrant, but exercised their discretion to decide which of two possible locations to search.

The court rejected the State's argument that exigent circumstances justified the warrantless entry. The State argued that returning to the magistrate for further guidance might have resulted in the destruction of evidence or a violent response by the apartment's occupants when the officers returned.

The State bears the burden of demonstrating exigent circumstances justifying a warrantless entry to a private residence. Potential destruction of narcotics does not constitute an exigent circumstance sufficient to justify a warrantless entry unless the officers have a particularized reason to believe that the evidence in question will be destroyed. Because there was no such evidence in this case, the exigent circumstances argument failed.

The court also rejected the argument that an erroneous description of the location to be searched can be dismissed as merely a "technical error."

Because the trial court should have granted the motion to suppress, the defendants' convictions for possession of a controlled substance with intent to deliver were reversed. Because on remand the State would not be able to prove the defendants guilty of the charges without using the suppressed evidence, the convictions were reversed outright.

People v. Capuzi, Koroluk & Perez, 308 Ill.App.3d 425, 720 N.E.2d 662 (2d Dist. 1999) Although a search warrant need not provide a "minute and detailed" description of the targeted property, it must provide enough information to allow officers to distinguish between the property to be seized and other property that may be on the premises. Whether a description is sufficiently specific is determined on a case-by-case basis. A generic description is sufficient where specific information is not available, but may be insufficient if a more detailed description could have been provided.

Where more specific descriptions were available concerning several items of stolen property, it was improper to use only general descriptions. The court rejected the State's argument that more precise descriptions were impractical because the defendants were suspected of a large number of burglaries; although in some cases it might be "impractical" to require detailed description when a large number of crimes are involved, in this case a task force had been investigating the burglaries for some time and had developed detailed information concerning the stolen property. In addition, the State made only a "minimal" effort to describe the items despite having more specific information in its possession, and the warrant provided no basis on which the officers could distinguish between the property authorized to be seized and that legitimately belonging to the defendants.

People v. Thiele, 114 Ill.App.3d 189, 448 N.E.2d 1025 (3d Dist. 1983) A search warrant was invalid for failing to satisfy the particularity requirement of the Fourth Amendment, the Illinois Constitution and Illinois statutes; the warrant commanded officers to search defendant's motor vehicle and seize "[i]tems taken from the Donovan Grade School and Martinton Grain Company, constituting evidence of" burglary and theft. The warrant was clearly inadequate because there was "nothing in the warrant which limited the scope of the property to be seized or to curtail the discretion of the officers in executing the warrant." See also, **People v. Holmes**, 20 Ill.App.3d 167, 312 N.E.2d 748 (1st Dist. 1974) (search warrant was defective because it did not describe the objects to be seized with sufficient particularity; "undetermined amount of U.S. currency" and "weapon" are meaningless and too broad).

§43-5(a)(6)
Attacking the Truth of the Complaint

United States Supreme Court

U.S. v. Jacobs, 986 F.2d 1231 (8th Cir. 1993) By failing to inform the magistrate that a drug-sniffing dog did not "alert," the officer violated **Franks v. Delaware**, 438 U.S. 154 (1978). Because the information would have been critical to a finding of probable cause, the Court inferred that the officer omitted it with the intention of misleading the magistrate. At the very least, the omission of such highly relevant information could only have been done with reckless disregard of the truth.

In addition, the second **Franks** requirement was satisfied because the affidavit would not have supported a finding of probable cause had the absence of an "alert" been revealed.

Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) A hearing must be held where the defendant makes a substantial preliminary showing that an allegedly false statement: (1) is necessary to the finding of probable cause, and (2) was included in the warrant affidavit either knowingly and intentionally or with reckless disregard for the truth. The defendant's showing must be more than conclusory, supported by more than a mere desire to cross-examine, and allege that the affiant acted with deliberate falsehood or reckless disregard for the truth.

The allegations must be accompanied by an offer of proof which specifically designates the portion of the affidavit alleged to be false, and should be accompanied by a statement of supporting reasons. Affidavits and other reliable statements of witnesses should be furnished, or their absence satisfactorily explained.

If after the challenged material is disregarded there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required. However, if the remaining content is insufficient, the defendant is entitled to a hearing.

Illinois Supreme Court

People v. Chambers, 2016 IL 117911 Under **Franks v. Delaware**, 438 U.S. 154 (1978), a hearing is required if the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the warrant affidavit, and the allegedly false statement is necessary to the finding of probable cause. Under **Franks**, the challenge must be more than conclusory, must be supported by more than a mere desire to cross-examine, must allege deliberate falsehood or reckless disregard for the truth, and must be accompanied by an offer of proof which specifically points out the portion of the warrant affidavit that is claimed to be false.

When the defendant makes the necessary showing, the trial court must examine the warrant affidavit, setting aside the allegedly false or reckless statements, and determine whether the remaining content is sufficient to support a finding of probable cause. If not, the defendant is entitled to a **Franks** hearing.

Although the manifest weight of the evidence standard of review applies when reviewing the trial court's ruling on the merits after a full **Franks** hearing, the ruling on the threshold question of whether to hold an evidentiary hearing is reviewed *de novo*. The court noted that the reviewing court and the trial court are equally capable of determining whether the motion and supporting documents have made a substantial preliminary showing.

An informant identified only as "John Doe" appeared at the warrant hearing, but the record did not reflect exactly what occurred at the hearing. Defendant's motion for a **Franks** hearing contained an affidavit from Miles Copeland stating that he had been the informant, that he had appeared at the warrant hearing, that he was instructed by the officer not to speak, and that he was not questioned by the judge. Copeland also stated that he had signed a false affidavit because a police officer threatened him with a five-year prison sentence if he did not do so.

Rejecting the reasoning of **People v. Gorosteata**, 374 Ill. App. 3d 203, 870 N.E.2d 936 (1st Dist., 2007), the court concluded that **Franks** applies even where the search warrant rests on the statements of an informant who personally appeared at the warrant hearing and who could have been questioned by the magistrate. The court stated that a rule precluding a **Franks** hearing if an informant appeared at the warrant hearing would shield police misconduct such as conspiring with an informant or coercing an informant into making false statements in an affidavit or in testimony to the court. Thus, the presence of the informant

at the warrant hearing does not foreclose the possibility of a **Franks** hearing, but is one factor to be considered in determining whether a substantial preliminary showing under **Franks** has been made.

The court rejected the argument that unless the State acknowledges the identity of the informant on whose statements a warrant was based, a defendant can not make the showing required by **Franks**:

> The State would have us create a catch-22 so that even if the informant comes forward with evidence that would justify a **Franks** hearing, the State would be able to defeat the motion by refusing to acknowledge that he is the informant. We reject this approach. If the informant has self-identified and the defendant has otherwise sufficiently alleged intentional, knowing, or reckless falsehoods in his **Franks** motion, whether this individual was the actual informant can be ascertained at an evidentiary hearing.

Defendant's third motion for a **Franks** hearing, together with affidavits establishing his alibi for the time of the offense, presented a substantial preliminary showing that falsehood had been included in the warrant application either deliberately or with reckless disregard of the truth. The court also concluded that if the allegedly reckless or false statements were set aside, the warrant affidavit contained nothing but the officer's suspicions that drug sales and possession of weapons were occurring at a particular address. Because these allegations would not be sufficient to meet the probable cause standard, the cause was remanded for a **Franks** hearing.

People v. Petrenko, 237 Ill.2d 490, 931 N.E.2d 1198 (2010) **Franks v. Delaware**, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), allows a defendant to attack the validity of a search warrant on the ground that the police omitted information material to the finding of probable cause from the affidavit supporting issuance of the warrant for the purpose of misleading the magistrate.

The court found that where one of the facts mentioned in the affidavit was that defendant's fingerprint was discovered on an empty jar at the murder scene in which the deceased was known to keep his rent money in cash, the omission of the fact that the defendant had been a guest in the deceased's home five days prior to the murder was not material because it would not have defeated a finding of probable cause. Therefore, there was no possible legal merit to the post-conviction claim that appellate counsel was ineffective for neglecting to argue on appeal that trial counsel was ineffective for failing to make a **Franks** challenge to the search warrant due to omission of that fact from the affidavit.

The court affirmed the appellate court's affirmance of the summary dismissal of defendant's *pro se* post-conviction petition.

People v. Sutherland, 223 Ill.2d 187, 860 N.E.2d 178 (2006) A **Franks** hearing may be based on the knowing or intentional omission of critical information from the warrant affidavit. A "substantial preliminary showing" requires more than a mere allegation, but less than proof by a preponderance of the evidence.

However, a defendant is not entitled to a **Franks** hearing merely because officers failed to pursue the best police practices or investigative techniques. Furthermore, **Franks** does not require police to include what they believe to be unreliable information in an affidavit submitted in support of a warrant application, even if that evidence would affect the

probable cause determination.

Although some of the statements which police left out of the affidavits should have been included, even if all of the statements had been placed in the affidavit the finding of probable cause would not have been affected.

People v. Vauzanges, 158 Ill.2d 509, 634 N.E.2d 1085 (1994) Where the trial court doubts the credibility of the police officer/affiant "with respect to the existence of the informant," it has discretion to compel disclosure of police files or the informant's identity at an *in camera* hearing. After the trial court has examined the informant or the files *in camera*, it may in its discretion order disclosure of the informant's identity.

Here, the record did not reflect whether the *in camera* inspection ordered by the trial court ever occurred. The trial court "may have abused its discretion" if it ruled without inspecting police files it had ordered to be disclosed, especially where the State failed to rebut defendant's showing that the informant did not exist and refused to allow the officer to testify whether he had said that defendant might "weasel out" of the case.

People v. Eyler, 133 Ill.2d 173, 549 N.E.2d 268 (1989) The trial judge did not err by denying a motion for a **Franks** hearing where inaccurate statements in the search warrant affidavit were not shown to have been deliberate falsehoods. In addition, the remainder of the affidavit was sufficient to establish probable cause. See also, **People v. Hickey**, 178 Ill.2d 256, 687 N.E.2d 910 (1997) (remaining allegations established probable cause).

People v. Lucente, 116 Ill.2d 133, 506 N.E.2d 1269 (1987) The Supreme Court discussed the rules regarding challenges to the veracity of a search warrant, as set out in **Franks v. Delaware**, and upheld the quashing of the warrant in this case.

The trial judge properly concluded that defendant made a substantial preliminary showing under **Franks**. The Court rejected the State's claim that the defendant's "alibi-type" showing was insufficient because it "does not negate the possibility that the informant, rather than the officer-affiant, made the misstatements." Such a "rigid interpretation" of **Franks** would "require defendants faced with anonymous-informant-based warrants to do the impossible."

People v. Martine, 106 Ill.2d 429, 478 N.E.2d 262 (1985) The defendant failed to make an adequate showing for a **Franks** hearing; allegations that no drug sale had occurred on the date claimed by an informant, even supported by the affidavits of furnace repairmen that they did not see anyone on the premises on that date, did not make a "substantial preliminary showing" to overcome the presumption of validity that attaches to affidavits supporting search warrants.

Because the repairmen admitted that they were in and out of the premises, their affidavits did not negate the possibility that cocaine purchases occurred while they were away. Furthermore, the affidavits did not indicate that while working on the furnace the men were in a position to observe what was occurring elsewhere on the premises.

The court upheld the trial judge's ultimate finding that the affiant-officer included deliberate falsehoods or acted in reckless disregard of the truth in preparing the warrant affidavit. The trial judge found that the officer's testimony was "incredible," especially concerning his claim that he had abandoned his informant files when he was transferred to another job. See also, **People v. Pearson**, 271 Ill.App.3d 640, 648 N.E.2d 1024 (1st Dist. 1995) (following **Lucente**; defendant who makes substantial showing that affidavit contains

informant's "blatant" lies or substantially false statements is entitled to a hearing because there is substantial likelihood that such information was not "appropriately accepted" by the officer and a greater probability that the officer "exhibited a reckless disregard for the truth"; defendant was entitled to a **Franks** hearing where he submitted several affidavits that provided an "apparently airtight alibi" for the time of the alleged offense, especially where the affidavits were sufficiently detailed to expose the affiants to perjury prosecutions if their statements turned out to be false).

Illinois Appellate Court

People v. Heibenthal, 2024 IL App (4th) 221109 Prior to defendant's trial for drug possession, he challenged the veracity of the affidavit leading to the issuance of a search warrant for his home. The trial court denied a **Franks** hearing, but the appellate court reversed.

In the affidavit requesting the warrant, an officer attested that he reviewed a video call made by defendant's sister, Mallory, to a jail inmate. He stated that Mallory lived with defendant, and that Mallory held cannabis plants during the call. He also averred that Mallory did not have a medical cannabis card, which would allow her to grow the plants.

To make the requisite preliminary showing for a **Franks** hearing, defendant's challenge to the affidavit must be more than conclusory and must be supported by more than a mere desire to cross-examine. He must present allegations of deliberate falsehood or of reckless disregard for the truth and provide an offer of proof with specificity as to the claims in the affidavit that are being challenged as false. Finally, defendant must provide affidavits or otherwise reliable statements of witnesses.

Here, defendant made more than a conclusory challenge to the affidavit. He presented allegations that Mallory did possess a valid medical cannabis card at the time of the search and did not live at defendant's address. He asserted that the averments to the contrary were made with deliberate falsity or a reckless disregard for the truth. He provided a sworn affidavit from Mallory and a copy of her medical cannabis card showing it was valid during the relevant date. He provide Mallory's Illinois driver's license showing her address. Although the officer who sought the warrant relied on another detective for some of this information, the government cannot "insulate one officer's deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity." **Franks v. Delaware**, 438 U.S. 154, 163 n.6 (1978).

Because the facts sworn to by the officer, after removing the alleged untruths, were insufficient to establish probable cause, remand for a **Franks** hearing was required.

People v. Kimmons, 2022 IL App (2d) 180589 Defendant, who had entered a fully-negotiated guilty plea to unlawful possession with intent to deliver cocaine, subsequently filed a post-conviction petition arguing that his trial counsel was ineffective for not filing a motion to suppress. The trial court summarily dismissed the petition as untimely and without merit.

The Appellate Court noted that summary dismissal on the basis of timeliness is unquestionably improper, but affirmed the dismissal on the basis that defendant's guilty plea had waived all non-jurisdictional errors, including whether counsel had rendered deficient performance by not filing a motion to suppress. Defendant argued that an exception to the waiver rule applied, specifically that he received deficient advice from counsel, rendering his plea involuntary. The court rejected that argument, citing the absence of any argument that

defendant wished to challenge the warrant but was dissuaded from doing so by erroneous legal advice from counsel.

And, the court went on to conclude that even if the waiver rule was relaxed, defendant failed to state the gist of a claim that plea counsel's decision not to challenge the warrant was deficient. Defendant's claim was based on an argument that the warrant affidavit contained material omissions, specifically with regard to the criminal background of the confidential informant. But, the informant appeared before the issuing judge during the warrant application proceedings, and the applicable law provided that such appearance under oath obviated the need for additional evidence relating to the informant's reliability. Thus, a **Franks** motion would have been denied had it been filed.

People v. Davis, 2021 IL App (3d) 180146 The trial court did not err in denying defendant's motion to suppress. Under **People v. Manzo**, 2018 IL 122761, the complaint for search warrant must establish a nexus between defendant, the contraband, and the place to be searched. Here, the State's application for search warrant detailed that at least two controlled purchases were made from defendant inside the residence in question during the preceding month. Police surveillance confirmed that defendant was observed entering and exiting the residence on the date the warrant was issued. This was adequate to establish probable cause that evidence of illegal activity would be present in the residence at the time the warrant was issued.

People v. Padilla, 2021 IL App (1st) 171632 After receiving an anonymous tip detailing defendant's role in a recent burglary, the police pulled over defendant's car for a seat belt violation. On his lap, defendant carried a plastic bag containing bundled currency and CTA bus passes, two items that were reported stolen in the burglary. Meanwhile, based on the information from the informant, police obtained a warrant to search a two-flat apartment building. The complaint for the warrant alleged the informant saw defendant in the basement apartment with a gun, large quantities of cash and CTA bus passes, and several other items linked to the burglary. The informant further stated that defendant was on parole, a fact corroborated by the police, who learned from the DOC that defendant was paroled to the address of the apartment in question.

In considering whether information provided by an anonymous informant is sufficient to support probable cause, the reliability of the tip hinges on the existence of corroborative details observed by the police. Here, the reliability of the anonymous tip was fully corroborated when the police verified both that defendant was on parole and that he was paroled to the address provided by the anonymous informant. In any event, the law permits the issuance of a search warrant for an individual who is on parole and is alleged by an anonymous informant to possess a firearm. Although the State failed to make this argument, the warrant could stand on those grounds alone.

Defendant further argued that the warrant should not have been granted for the first floor apartment, because although the complaint alleged that these apartments shared a single entrance, trial testimony later clarified that not to be the case. The Appellate Court rejected the claim. Where defendant never raised this claim before or after the inconsistency was revealed at trial, the trial testimony could not be used to attack either the trial court's denial of defendant's claim or the issuing judge's reliance on the four corners of the complaint in issuing the warrant.

People v. Williams, 2020 IL App (1st) 190418 The trial court erred in granting a **Franks** hearing, quashing the warrant, and suppressing the evidence. The State and defense agreed that the warrant application contained an inaccuracy – the "John Doe" averred he purchased

drugs at defendant's apartment, and included in his affidavit the fact that defendant's apartment had one bedroom. Upon execution of the warrant, officers found out that defendant had a two-bedroom apartment. These facts did not warrant a **Franks** hearing because defendant did not allege the false statement was made knowingly, intentionally, or with reckless disregard for the truth. Nor was the detail about the number of bedrooms necessary for a finding of probable cause.

People v. Ortega, 2020 IL App (1st) 162516 A truck driver transporting a vehicle to a third party contacted the police when he opened the trunk of that vehicle and discovered bundles wrapped in duct tape. Those packages were ultimately found to contain cannabis, and defendant was arrested after the vehicle was delivered and he was observed removing the packages.

Trial counsel filed a motion to suppress, as well as a **Franks** motion, but did not present evidence on either motion at a hearing. The motion to suppress challenged both the initial search of the vehicle as well as the subsequent search of the packages found in the trunk. The trial court denied the motion to suppress on the basis that the truck driver was a bailee who had possession of the vehicle and could therefore allow it to be searched. The trial court held that a **Franks** hearing was not necessary.

The agreed upon facts did not resolve the questions of whether the police had probable cause to open the packages, whether the police opened those packages prior to obtaining a warrant, or whether there were misrepresentations in the facts contained in the complaint for search warrant. Counsel rendered deficient performance by not requesting an evidentiary hearing, and had counsel requested an evidentiary hearing, there was a reasonable probability of a different outcome. Thus, defendant received ineffective assistance of counsel. The Appellate Court reversed and remanded for a *Franks* hearing, and retained jurisdiction over the ultimate question of whether defendant's motion to suppress was properly denied because that issue could become moot depending on the outcome on remand.

People v. Wise, 2019 IL App (2d) 160611 Probable cause existed to issue a search warrant despite the fact that the issuing judge did not question a confidential informant. A police officer appeared before the judge with the informant and presented the informant's affidavit which stated he had been in defendant's apartment and saw various illegal weapons. When an informant appears before the issuing judge, the fact that he wasn't questioned by the judge is only one factor to be considered, and his presence alone is indicative of reliability. When that presence is coupled with the informant's detailed description of the various weaponry he observed at the apartment, the warrant was based on probable cause.

People v. Chambers, 2014 IL App (1st) 120147 In reviewing a trial court's denial of a hearing pursuant to **Franks v. Delaware**, 438 U.S. 154 (1978), there is a presumption of validity concerning the affidavit supporting a search warrant, and a reviewing court will not disturb the trial court's judgment if it is exercised within permissible limits. The standard of review is thus whether the trial court abused its discretion.

To obtain a **Franks** hearing, a defendant must make a substantial preliminary showing that the affiant knowingly and intentionally, or with reckless disregard for the truth, included a false statement in a warrant affidavit, and that the false statement was necessary for a finding of probable cause.

To prevail at a **Franks** hearing, a defendant must prove his claim of perjury by a preponderance of the evidence. Since the standard for meeting the threshold requirement to

obtain a hearing must logically be less than the standard required at the hearing itself, the Illinois Supreme Court has held that the precise standard lies somewhere between mere denials and proof by a preponderance of the evidence.

As an initial matter, the Appellate Court rejected the State's argument that **Franks** did not apply to this case because the confidential informant appeared and testified before the judge who issued the warrant, and thus the judge could personally observe and assess the informant's credibility. The informant's appearance before a judge is but one factor to consider in deciding whether a defendant is entitled to a **Franks** hearing. To hold otherwise would defeat the purpose of **Franks** by insulating a warrant affidavit that contains a false statement from any attack simply because the informant appeared before the issuing judge.

The Appellate Court held that under the facts of this case, defendant was entitled to a **Franks** hearing. The police obtained a search warrant based on a complaint signed and sworn by a police officer and confidential informant. The complaint stated that the informant told the officer he had purchased drugs from defendant at 4:30 pm on April 18, 2007, at defendant's home on Parkside.

Defendant filed a motion for a **Franks** hearing alleging that the officer and informant committed perjury in the complaint, since at the time informant claimed he was at the Parkside home purchasing drugs, defendant was at another location. In his affidavit in support of the motion, defendant stated that his mother owned the Parkside home, and defendant would occasionally stay there, but he lived at a different location on Sherwood. On April 18, 2007, defendant was at his home on Sherwood all day long and never was at Parkside.

The motion included affidavits from defendant's stepfather, mother, girlfriend, and a family friend, who stated that defendant was at the Sherwood home on April 18, 2007. The motion also contained an affidavit from the informant, now identified, stating that he had signed a false affidavit and lied to the jduge who issued the search warrant because the officer who filed the complaint had threatened him with five years imprisonment.

The Appellate Court held that the affidavits submitted by defendant raised a question about his presence at the Parkside address and were sufficiently detailed to subject the affiants to perjury if the allegations were untrue. The affidavit of the informant, if believed, was sufficient to show that the officer had knowledge that the allegations in the complaint were untrue. Under these circumstances, defendant met the standard for obtaining a **Franks** hearing. Any inconsistencies in the affidavit would be best resolved by an evidentiary hearing, where the court could determine the credibility of the witnesses.

The Appellate Court retained jurisdiction and remanded the cause to the trial court for the sole purpose of holding a **Franks** hearing.

People v. Voss, 2014 IL App (1st) 122014 Under **Franks v. Delaware**, 438 U.S. 154 (1978), a defendant may obtain a hearing challenging the veracity of the affidavits supporting a search warrant by making a substantial preliminary showing that an intentionally, knowingly, or recklessly false statement was included by the affiant in the warrant affidavit, and that the false statement was necessary to finding probable cause. A substantial preliminary showing lies somewhere between mere denial and proof by a preponderance.

The trial court's denial of a **Franks** hearing is reviewed under an abuse of discretion standard. Given the fluidity of relevant factors in reviewing this decision, the abuse of discretion standard will often be determinative. Because there is no formula for deciding whether a trial court made the correct decision in granting or denying a hearing, as long as the decision is not arbitrary or fanciful, the decision should be affirmed.

The court identified 10 non-exhaustive factors to consider in reviewing the trial court's decision:

(a) whether defendant's motion is supported by affidavits from interested or disinterested parties;

(b) whether there is objective evidence to corroborate defendant's affidavits;

(c) whether the information in the affidavits would make it impossible for the confidential informant's testimony to be true;

(d) whether defendant has asserted an actual alibi or just a general denial;

(e) whether the information supporting probable cause has been supplied by an informant or other confidential source;

(f) whether the warrant affiant took steps to corroborate information from the informant;

(g) the facial plausibility of information provided by an informant;

(h) whether the affiant had prior experience with the informant;

(i) whether there are reasons to disbelieve the informant; and

(j) whether the informant appeared before the issuing magistrate.

Here a police officer submitted a sworn affidavit in support of a search warrant stating that a confidential informant purchased cannabis from defendant at defendant's apartment on February 14, 2011. The officer averred that he later drove the informant to defendant's apartment to confirm the location and also confirmed that the nickname the informant used belonged to defendant. Both the informant and the officer appeared before the issuing magistrate.

Defendant filed a motion for a **Franks** hearing claiming that he sold no drugs from his apartment on February 14, 2011, and had not even been home for the majority of the day. In support of the motion, defendant attached his own affidavit and affidavits from other residents of his apartment including his girlfriend and two roommates. All averred that no drug sales occurred that day and that defendant had been gone for the majority of the day. The trial court denied the motion.

The Appellate Court affirmed the denial, holding that the majority of the factors supported the trial court's decision. Defendant's affidavits were from interested parties and there was no objective evidence to corroborate the affidavits. The affidavits did not make it impossible that the informant's testimony was true since they only established that defendant was away from the apartment for part of the day. That also meant that they were not true alibis, but only mere denials. Finally, the officer corroborated the informant's information and both of them appeared before the magistrate. Under these circumstances, the trial court did not abuse its discretion in denying the motion.

People v. Caro, 381 Ill.App.3d 1056, 890 N.E.2d 526 (1st Dist. 2008) A "substantial preliminary showing" is something between a mere denial and proof by a preponderance of the evidence. Whether the defendant has made the necessary preliminary showing is within the discretion of the trial court, whose ruling will not be disturbed absent an abuse of discretion.

Defendant made a sufficient preliminary showing to obtain a **Franks** hearing. The affidavit claimed that an informant had purchased controlled substances from defendant at the latter's apartment. Defendant submitted his own affidavit, as well as affidavits from his two roommates, showing that he worked on the day of the alleged buy and that no one visited the apartment after work. In view of the corroborated alibi and the fact that the affidavits were sufficiently detailed to trigger penalties for perjury if untrue, the trial court did not

abuse its discretion by ordering a **Franks** hearing.

In addition, the judge did not abuse his discretion by quashing the warrant. The relevant inquiry is whether defendant proved, by a preponderance of the evidence, that: (1) the affiant included false statements in the warrant affidavit with reckless disregard of the truth, and (2) the statements were necessary to the finding of probable cause.

The trial court's finding that the informant's statements were false was supported by the affidavits of defendant and his roommates. Furthermore, the officer who executed the affidavit "acted with reckless disregard for the truth or falsity of the statements provided by the informant" where he did not investigate the truthfulness of the informant's allegations by checking the informant's background, conducting surveillance of defendant's building, or authorizing a controlled buy. Finally, the statements were clearly necessary to the finding of probable cause.

People v. Hoye, 311 Ill.App.3d 843, 726 N.E.2d 180 (2d Dist. 2000) **Franks** applies to the affidavits of private informants as well as to affidavits of police officers. **Franks** does not permit the affidavit of a police officer to be impeached by attacking the veracity of an unsworn informant on whom the officer relied, but does apply where an informant's affidavit is submitted in support of a warrant request.

People v. Gomez, 236 Ill.App.3d 283, 603 N.E.2d 702 (1st Dist. 1992) Defendant made a sufficient showing to obtain a **Franks** hearing where he showed, among other things, that the affidavit in his case utilized language that was substantially identical to the language in nine previous complaints.

§43-5(b)
Execution of Warrants

§43-5(b)(1)
Manner of Entry

United States Supreme Court

Hudson v. Michigan, 547 U.S. 586, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006) The suppression of evidence is not an appropriate remedy for a violation of the "knock-and-announce" requirement, because the deterrent effect of the exclusionary rule in preventing violations of the "knock and announce" rule would not justify the exclusion of relevant evidence of wrongdoing. The "knock and announce" requirement is not intended to protect "one's interest in preventing the government from seeing or taking evidence described in a warrant," but to protect the safety of officers and occupants of premises, prevent the destruction of property by giving occupants an opportunity to avoid forced entry, and protect "those elements of privacy and dignity that can be destroyed by a sudden entrance." Because the interests violated by a breach of the "knock and announce" rule "have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable."

The court also concluded that the possibility of civil liability and internal discipline by police departments serve as effective deterrents to violations of the "knock and announce" rule, without incurring the social costs of excluding relevant evidence by applying the exclusionary rule.

In a concurring opinion, Justice Kennedy stated that the court's opinion should not be read as suggesting that violations of the knock-and-announce requirement or that the

continued operation of the exclusionary rule is in doubt.

U.S. v. Banks, 540 U.S. 31, 124 S.Ct. 521, 157 L.Ed.2d 343 (2003) The constitution is not offended by a state statute authorizing a magistrate to dispense with the "knock and announce" requirement upon reasonable grounds or where exigent circumstances exist. Even where a warrant does not specifically authorize a "no knock" entry, however, police may make such an entry if there is a reasonable suspicion of exigency upon their arrival. Whether there is a reasonable suspicion of exigency depends on all of the factors known to the officers at the time of their entry.

Where officers were executing a search warrant for cocaine, it was reasonable to believe that waiting more than 15 to 20 seconds after knocking and announcing would result in destruction of the cocaine. Because only facts known to the police at the time of the entry are to be considered, it was irrelevant that the defendant was in the shower and unable to destroy cocaine. The court rejected the argument that 15 to 20 seconds would not have been sufficient time for defendant to get to the door even had he heard police knock; "what matters is the opportunity to get rid of cocaine, . . . not travel time to the entrance."

Wilson v. Arkansas, 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995) Compliance with the "knock and announce" rule, which permits a law enforcement officer to forcibly enter a dwelling only after announcing his presence and authority, is a factor to be considered in determining whether a particular search is "reasonable" under the Fourth Amendment. Although a search or seizure may be "reasonable" despite the officer's failure to "knock and announce," and though the factors at issue here (fear for the officers' safety and that evidence would be destroyed) might be sufficient to make an unannounced search reasonable, the cause was remanded for the lower court to make the initial determination of reasonableness. See also, **Richards v. Wisconsin**, 520 U.S. 385, 117 S.Ct. 1416, 137 L.Ed.2d 615 (1997) (the Fourth Amendment does not permit a blanket presumption that all cases involving a particular type of criminal activity are necessarily accompanied by sufficient exigent circumstances to justify a "no-knock" entry; the "knock and announce" rule is excused only where there is a reasonable suspicion that knocking and announcing would, *in the particular case at issue*, be dangerous or futile or allow evidence to be destroyed; there were sufficient exigent circumstances to justify a "no-knock" entry in this case where it was reasonable to believe that defendant slammed door to hotel room because he realized the callers were police officers); **U.S. v. Ramirez**, 523 U.S. 65, 118 S.Ct. 992, 140 L.Ed.2d 191 (1998) (to justify a "no knock" entry, the officers must have a reasonable suspicion that knocking and announcing would be dangerous or futile or would inhibit the effective investigation of the crime; no greater exigency is required for a "no knock" entry where property is damaged in the course of the entry; however, because the manner of an officer's entry to a home is a component of the reasonableness of the search, "[e]xcessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search not subject to suppression"; forced entry to execute search warrant was not improper where officers had information that an escaped prisoner with a history of violence was in the home and had access to weapons; it was also reasonable to break a window to discourage the occupants of the home from rushing to the stash of weapons).

Dalia v. U.S., 441 U.S. 238, 99 S.Ct. 1682, 60 L.Ed.2d 177 (1979) The Fourth Amendment does not *per se* prohibit covert entry for the purpose of installing otherwise legal electronic

bugging equipment. Furthermore, in authorizing the installation of such equipment the judge is not required to explicitly authorize covert entries.

Illinois Supreme Court

People v. Wright, 183 Ill.2d 16, 697 N.E.2d 693 (1998) It is reasonable to dispense with the "knock and announce" requirement where police believe that under the particular circumstances, knocking and announcing would be dangerous or futile or would allow evidence to be destroyed. The mere presence of firearms or drugs is insufficient to justify an unannounced entry.

Furthermore, the "general dangers presented by drugs and firearms" and defendant's alleged gang membership were insufficient to show that defendant had "a violent nature," and there was no reason to believe that gang members seen at defendant's apartment a week earlier would be present when the warrant was served.

People v. Krueger, 175 Ill.2d 60, 675 N.E.2d 604 (1996) Under Illinois case law, police need not comply with the knock and announce requirement where there are sufficient "exigent circumstances" to justify an unannounced intrusion. Exigent circumstances include such factors as danger to the officers executing the warrant, circumstances in which an announcement would be useless, or a reasonable belief that evidence will be destroyed if an announcement is made.

However, possession of the firearm by an occupant of the building "within a reasonable period of time" preceding the entry is not a sufficiently exigent circumstance to excuse compliance with the knock and announce rule. Under **People v. Condon**, 148 Ill.2d 96, 592 N.E.2d 951 (1992), the mere presence of firearms in a home does not justify a "no-knock" entry unless there is reason to believe the weapon will be used against police.

Illinois Appellate Court

People v. Davis, 398 Ill.App.3d 940, 924 N.E.2d 67 (2d Dist. 2010) The court held that police improperly seized a suspected controlled substance and a digital scale which an officer observed while in the defendant's apartment to make a warrantless arrest. Therefore, the defense motion to suppress evidence should have been granted.

Absent exigent circumstances, police may not enter a private residence to make a warrantless search or arrest. The State bears the burden of demonstrating sufficient exigent circumstances to justify a warrantless entry to a residence.

Whether exigent circumstances justify a warrantless entry to a private residence depends on the facts of each case, considering factors such as: (1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by police during which a warrant could have been obtained; (3) whether a grave offense was involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting on a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though not consensual, was made peaceably. This list of factors is not exhaustive, but illustrates the type of evidence which is relevant to the question of exigency.

There were insufficient exigent circumstances to justify a warrantless entry to an apartment to arrest the defendant for battery. The evidence presented by the State did not suggest that defendant posed an immediate or real threat of danger or likelihood of flight,

and the circumstances did not suggest that the delay required to obtain an arrest warrant would have impeded the investigation or prevented defendant's apprehension. Although battery involves a form of violence and defendant allegedly punched the complainant, there was nothing to indicate that the offense was particularly "grave," no evidence of any injury or medical treatment on the part of the complainant, and no reason to believe that defendant was armed or otherwise posed a threat.

There was also no evidence that defendant was likely to flee unless swiftly apprehended, especially where defendant did not appear to know that police were looking for him.

The court acknowledged that only a short period of time passed between the battery and the officer's arrival at defendant's apartment, and that there was no unjustifiable delay. In addition, there was probable cause for an arrest, the police had reason to believe defendant was in the apartment, and the officer entered the apartment peaceably. However, "we are not persuaded that these circumstances, without more, necessitated prompt action by the police in the form of a warrantless entry and arrest."

The court rejected the argument that the warrantless entry into the apartment was justified by the "hot pursuit" doctrine. The "hot pursuit" doctrine applies where police initiate a valid arrest in public, but the arrestee attempts to thwart the arrest by escaping to a private place. The court concluded that the "hot pursuit" doctrine was inapplicable here, because the defendant was never in public. Instead, he remained in the apartment at all times, and even attempted to retreat further into the apartment when he opened the door and saw the officer. The court stressed that the arrest was not initiated in a public place, but when the officer entered the apartment and handcuffed defendant.

The court also questioned whether defendant would have been in a "public" place even if he had been in the doorway of his apartment, because the apartment door opened into a hallway that was locked at the street and accessible only to the tenants and the landlord.

The court concluded that after the arrest was complete, defendant's girlfriend did not voluntarily consent to allowing police to reenter the apartment for the purpose of seizing the scale and suspected controlled substance. The officer told the girlfriend that he would get a search warrant if the girlfriend refused to consent, that the girlfriend would be charged "with anything he found pursuant to a search warrant," and that if she consented to a search police would not jail her or file any charges that night. A recording of the conversation also showed that an unidentified male told the girlfriend that if she was taken to jail immediately, DCFS would have to be called to care for her children, who were in the apartment.

An officer does not vitiate consent to search by communicating his intent to engage in a certain course of conduct, so long as there are legitimate grounds to carry out the conduct in question. However, consent may be involuntary if the officer lacks legal grounds to carry out the conduct or where false or misleading information is given. Furthermore, consent is involuntary where it is given solely as the result of acquiescence or submission to an assertion of police authority, or where the consent is "inextricably bound up with illegal conduct and cannot be segregated therefrom."

The court concluded that the officer's illegal entry to the apartment, and illegal discovery of a scale and white powder, were "inextricably bound up" with the subsequent request for consent. Furthermore, despite his statements to the girlfriend, the officer could not have obtained a warrant based either on the evidence discovered during the illegal entry to the apartment or on the battery complainant's claim that drugs were being sold from the apartment.

On the latter point, the court noted that complainant's statement about drugs was

totally uncorroborated. Furthermore, the complainant had a motive to lie because she was a drug abuser who admitted that she owed money to defendant for drugs and who claimed that she had been the victim of a battery. Furthermore, there was no showing that the complainant had provided the police with reliable information in the past. Under these circumstances, the officer lacked any basis on which a warrant could have been obtained.

Because there was no valid exception to the Fourth Amendment to justify the warrantless entry to defendant's apartment, and the seizure of evidence and consent to search were obtained through exploitation of the illegal entry, the trial court should have granted defendant's motion to suppress. Because the State could not prevail at trial without the illegally seized evidence, the convictions were reversed outright.

People v. Glorioso, 398 Ill.App.3d 975, 924 N.E.2d 1153 (2d Dist. 2010) In **Hudson v. Michigan**, 547 U.S. 586 (2006), the United States Supreme Court held that under the federal constitution, the exclusionary rule does not apply to violations of the "knock-and-announce" rule. The Second District concluded that defendant failed to carry his burden to show that the Illinois Supreme Court would depart from the "lockstep" doctrine concerning **Hudson**. Thus, the Illinois Constitution's exclusionary rule does not apply to "knock and announce" violations.

The court noted that **People v. Krueger**, 175 Ill.2d 60, 675 N.E.2d 604 (1996), in which the Supreme Court parted from the "lockstep" doctrine, concerned an unconstitutional statute which had the potential to violate the constitutional rights of many persons, rather than a court decision which affected only an individual case.

§43-5(b)(2)
Scope of Search

United States Supreme Court

Bailey v. United States, 568 U.S. 186, 133 S. Ct. 1031; 185 L.Ed.2d 19 (2013) Officers executing a search warrant may detain the occupants of the premises while the search is conducted even if there is no particular suspicion to believe that an individual is involved in criminal activity or poses a specific danger to the officers. **Michigan v. Summers**, 452 U.S. 692 (1981). This categorical rule allows detention because the character of the additional intrusion is slight, while the justifications for detention are substantial. These justifications are: (1) officer safety, (2) facilitation of completion of the search, and (3) prevention of flight.

The interests that justified the categorical rule in **Summers** do not apply where an individual is not detained in the immediate vicinity of the premises to be searched. The police can mitigate the risk to officer safety posed by a returning occupant by taking routine precautions. The risk that an occupant will interfere with the proper execution of the search by hiding or destroying evidence, and the concern that flight of an occupant might damage the integrity of a search do not apply to an individual not in the immediate vicinity of the search. Applying these rationales for detention to individuals not in the immediate vicinity of the search would extend the rationale for the rule beyond its justification.

Moreover, there is an additional level of intrusiveness where an individual is detained away from the vicinity of a search, resembling a full-fledged arrest.

"Limiting the rule of **Summers** to the area in which an occupant poses a real threat to the safe and efficient execution of a search warrant endures that the scope of the detention incident to a search is confined to its underlying justification."

The police detained defendant about a mile from the premises for which the police had

obtained a search warrant, after he was observed leaving the premises prior to execution of the warrant. There was no indication that defendant was aware of the impending search. Because defendant was detained at a point beyond any reasonable understanding of the immediate vicinity of the premises, his detention could not be justified based on the rationale of **Summers**.

Muehler v. Mena, 544 U.S. 93, 125 S.Ct. 1465, 161 L.Ed.2d 299 (2005) The Fourth Amendment was not violated where the occupants of premises that were the subject of a search warrant were detained, in handcuffs, for two to three hours while the warrant was being executed. The additional intrusion caused by the detention was slight in comparison to that caused by the search itself, and was justified to prevent flight and the possibility of harm to the officers executing the warrant. In addition, detention of the occupants contributed to the orderly completion of the search, because the detainee could decide to open locked doors or containers rather than have them broken by police. The use of handcuffs was reasonable because the authority to use reasonable force is inherent in the authority to detain, especially where the warrant authorized a search for weapons and gang members in connection with a murder and multiple occupants were detained.

Officers did not violate the Fourth Amendment by asking one of the detainees her name, date and place of birth, and immigration status. Because mere questioning does not constitute a "seizure" and there was no evidence that the length of the detention was prolonged by the questioning, officers did not need reasonable suspicion before asking the questions. See also, **People v. Conner**, 358 Ill.App.3d 945, 842 N.E.2d 442 (1st Dist. 2005) (although the United States Supreme Court had not addressed whether non-residents of a dwelling can be detained while premises are searched, the Appellate Court found that **Michigan v. Summers**, 452 U.S. 692 (1981), which authorized police who were executing a search warrant to detain occupants of the premises during the search, and **Muehler v. Mena**, 544 U.S. 93, 125 S.Ct. 1465, 161 L.Ed.2d 299 (2005), which authorized the use of handcuffs during such detentions, were not necessarily limited to the detention of occupants of a home).

Maryland v. Garrison, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987) Police searched the wrong apartment while executing a search warrant. Since the mistake was objectively understandable and reasonable, the evidence seized need not be suppressed. The search warrant was valid though it authorized a search which turned out to be ambiguous in scope.

Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979) Police may not frisk or otherwise search a person merely because he is present in a public tavern when police execute a warrant to search the tavern and the bartender. A warrant to search a place cannot normally be construed to authorize a search of each individual in that place. See also, **People v. Coats**, 269 Ill.App.3d 1008, 647 N.E.2d 1088 (3d Dist. 1995) (mere presence of a person at a private home where a search warrant is being executed, without more, creates neither probable cause for a search nor reasonable suspicion to frisk for weapons). Compare, **People v. Gutierrez**, 109 Ill.2d 59, 485 N.E.2d 845 (1985) (upholding search of occupant of premises to be searched where there was particularized probable cause based on defendant's behavior upon confronting police).

Illinois Supreme Court

People v. McCavitt, 2021 IL 125550 A woman reported that defendant, a police officer, had sexually assaulted her in his home, and she described hearing the sound of a camera shutter during the assault. Police obtained a warrant to search the home for evidence of the assault, including any equipment that could be used to take and store photos and video. During the search, the police recovered defendant's computer, as well as recording equipment. A preliminary review of the computer's files revealed surreptitious recordings of two other women in defendant's bathroom. Police then obtained a second warrant to search the computer hard drive for evidence of the criminal sexual assault, as well as unlawful video recording.

While executing the warrant to search the computer, the police found evidence related to the sexual assault. They made an EnCase digital copy of defendant's hard drive, but did not search further at that time. Defendant was prosecuted for criminal sexual assault and was acquitted. After the acquittal, the police conducted a search of the EnCase digital copy and found two images of child pornography. They then sought and obtained a new warrant to search the EnCase file for child pornography, and additional images were discovered.

Defendant filed a motion to suppress the child pornography files, which was denied. The Supreme Court affirmed. The Court first held that defendant's privacy interest in the digital copy was equal to his interest in the hard drive itself. An individual's Fourth Amendment interests cannot be extinguished simply by making a copy of evidence in which he has a reasonable expectation of privacy.

Further, defendant's criminal sexual assault acquittal restored his reasonable expectation of privacy in any data that was evidence of the criminal sexual assault because double jeopardy principles would bar re-prosecution on that offense. But, the acquittal did not completely restore his privacy interest in all of the data on the copy of his hard drive where the warrant also authorized a search for evidence of the offense of unauthorized video recording. Thus, the warrant authorized the additional search for digital files which were evidence of the video recording offense, and the child pornography was discovered during that authorized search.

The Supreme Court noted:

> This case presents the most common use of the plain view doctrine in the context of digital data, which occurs when law enforcement examines a computer pursuant to a search warrant and discovers evidence of a separate crime that falls outside the scope of the search warrant. The inquiry focuses on whether an officer is exploring hard drive locations and opening files responsive to the warrant, considering both the types of files accessed and the crimes specified in the warrant.

Because the child pornography was discovered in "plain view" during a proper search, it was admissible. Finally, the eight-month delay between the issuance of the warrant and the second search was not unreasonable given the intervening criminal sexual assault prosecution.

People v. Patterson, 217 Ill.2d 407, 841 N.E.2d 889 (2005) A warrant authorizing the seizure of photographs of specified items also authorizes the seizure of undeveloped film, because a "photograph" is the "exposure of the film at the time the picture is snapped." In addition, police are not required to obtain a second warrant in order to develop exposed film seized under authority of a warrant, because "[d]eveloping the film is simply a method of examining a lawfully seized object."

Illinois Appellate Court

People v. Serrato, 2023 IL App (2d) 220100 The trial court erred in granting defendant's request to suppress a gun recovered from his residence. The gun was seized during the execution of a search warrant which authorized the police to search for evidence of unlawful possession of controlled substances with the intent to deliver. The warrant did not authorize seizing any weapons. An officer testified that the gun was in plain view on the top shelf of a kitchen cabinet, but there was no evidence connecting it to drug dealing. The police who searched the house knew that defendant was a convicted felon.

The State argued that the plain view exception to the warrant requirement applied, and that the police legally seized the gun as evidence of unlawful possession of a firearm by a felon. The trial court disagreed, concluding that the gun's incriminating character was not immediately apparent where it may have been lawfully owned by defendant's girlfriend who was also present in the home at the time of the search.

The appellate court reversed. Even if the police had evidence that defendant's girlfriend owned the gun, that did not resolve the question of whether defendant unlawfully possessed the gun. Multiple people may possess an object simultaneously, and ownership is not a prerequisite to possession. Thus, when police seized the gun, they had probable cause to believe it was evidence of unlawful possession of a weapon by a felon.

People v. Duffie, 2021 IL App (1st) 171620 The trial court erred in denying defendant's motion to suppress evidence that was recovered from a search of his person. At the suppression hearing, police testified they executed a search warrant for Travis Roby and an apartment on South Laflin Avenue in Chicago. During the search, Duffie was found laying on a bed in the rear bedroom, wearing only shorts. Before handing defendant's jeans to him, an officer searched them and found cocaine. Defendant was convicted of possession of the cocaine as well as possession of another controlled substance found in the apartment freezer.

Defendant did not include the suppression issue in his post-trial motion, and he did not argue plain error or ineffective assistance of counsel on appeal. Despite defendant's forfeiture, the appellate court reviewed the issue under the constitutional-issue exception because defendant did raise the issue in the trial court and could later raise it in a post-conviction petition if not addressed on direct appeal.

Under **Ybarra v. Illinois**, 444 U.S. 85 (1979), police must have independent probable cause to conduct a search of a person on the premises whose search is not authorized by the warrant. Whether such probable cause exists is determined by looking at the totality of the circumstances.

Here, defendant was one of several people in the apartment when the warrant was executed. Defendant was not behaving in a suspicious manner when police encountered him in a bedroom; he did not make any furtive movement or attempt to flee. And, no contraband or weapons were visible in the room where he was found. While 735 ILCS 5/108-9 provides that when executing a search warrant police may detain and search any person on the premises in order to protect themselves from attack or prevent disposal or concealment of evidence, there was nothing to suggest that the police were threatened by defendant or that searching his pants was necessary to prevent destruction or concealment of evidence. Defendant's mere presence in the apartment was insufficient to justify the search.

The dissent would have affirmed on the basis that there was evidence defendant was a resident of the apartment, specifically his being found in bed partially clothed and at least one document in the apartment showing that defendant lived there. The dissent concluded

this was sufficient evidence of a connection to the apartment to justify the search without a need for independent probable cause.

People v. McCavitt, 2019 IL App (3d) 170830 After defendant, a Peoria police officer, was found not guilty of criminal sexual assault, he sought return of his personal computer which the police had seized and searched pursuant to a warrant. The judge said he was denying the request until things "cooled down." The next day, a police department investigator conducted a forensic examination of a copy of defendant's hard drive and identified images of suspected child pornography. Another warrant was obtained, additional child pornography was found, and defendant was prosecuted for and convicted of possession of child pornography.

Defendant's motion to suppress the post-acquittal search of his computer files should have been granted. While an individual has a diminished expectation of privacy in items seized and searched by the police, his reasonable expectation of privacy is restored once he has been acquitted. All property seized must be returned to its rightful owner once criminal proceedings have terminated. No charges were pending at the time of the search, and defendant's computer should have been immediately returned upon his acquittal of the sexual assault charges.

Likewise, while it was not error for the police to create a mirror image of defendant's hard drive for use during the sexual assault investigation and trial, the police were not entitled to retain anything beyond the scope of the original warrant. Because the original warrant authorized a search of defendant's computer files for evidence of criminal sexual assault, unlawful restraint, and unlawful video recording, it was error to retain a copy of defendant's entire hard drive and conduct a broader search after defendant's acquittal.

Finally, the investigator could not rely on the original warrant as providing a good faith basis for the subsequent search where he knew that the warrant had already been executed and that defendant had been acquitted.

People v. Jarvis, 2016 IL App (2d) 141231 Here the police obtained a search warrant to search defendant's "person" for controlled substances and paraphernalia associated with such substances. The police arrested defendant and conducted a strip-search which included having defendant squat and cough and spread his legs so the officers could better view the area between his "butt cheeks." As a result of this procedure, the police discovered contraband. The police did not touch defendant's buttocks or conduct a cavity search.

The Appellate Court held that the search was constitutionally permissible since it was within the scope of the search warrant. The warrant specified the places to be searched as including defendant's person and the term person included defendant's body. The warrant specified contraband as one of the items to be seized. The police were permitted to search anywhere it would be reasonable to find contraband and this would include parts of the body made visible during a strip search. Accordingly, the warrant authorized the police to strip-search defendant. There was no further need for the warrant to expressly authorize a strip-search.

People v. Valle, 2015 IL App (2d) 131319 Curtilage is the land immediately surrounding and associated with the home, and it is considered part of the home for Fourth Amendment purposes. Accordingly, a warrant to search a defendant's home necessarily includes the curtilage.

The police obtained a warrant to search defendant's home and in executing the warrant discovered contraband in his detached garage. Defendant argued that the search

was illegal since the warrant did not authorize searching the detached garage.

The Court disagreed, holding that the police had authority to search the detached garage since it was within the home's curtilage. The Court disagreed with **People v. Freeman**, 121 Ill. App. 3d 1023 (2d Dist. 1984), which held that a warrant to search a home did not extend to a detached garage, calling the decision "legally unsound."

People v. Hill, 2012 IL App (1st) 102028 The police stopped a vehicle being driven by defendant because it matched the description of a subject's vehicle and plates named in a search warrant. The warrant authorized the search of the subject and an apartment on West Flournoy. A pat-down search of defendant resulted in the discovery of keys, which defendant admitted were for the apartment on Flournoy. Defendant was taken into custody.

The police used the keys to enter the apartment and conduct a search. The complaint for a warrant indicated that ecstacy would be found in the front bedroom. The police found no drugs in that bedroom but did recover a loaded shotgun inside a bag in a box under the bed in the middle bedroom. When questioned by the police, defendant admitted that the shotgun was his and that he had been living in the apartment with his girlfriend.

At trial, the defense presented evidence that defendant did not live in the apartment although he slept there on occasion. Defendant had been given a key to allow him to let his girlfriend's daughter and brother into the apartment when she was absent. Defendant denied knowledge of the shotgun and making a statement admitting to possession of the shotgun.

Addressing whether counsel was ineffective in failing to move to suppress defendant's post-arrest statement as the fruit of his continued unlawful detention, the Appellate Court concluded that even though the initial stop and search of defendant was lawful, a motion to suppress defendant's statement would have had a reasonable probability of success.

A. The continued detention of defendant was not supported by probable cause or reasonable suspicion. The police recovered no contraband from defendant, only keys. No contraband had yet been recovered from the apartment.

B. Probable cause to support the warrant to search the apartment did not allow the court to assume that there was probable cause or reasonable suspicion to justify the continued detention of the defendant. These are related, but different inquiries: in the case of the detention of the defendant, the inquiry concerns the guilt of defendant, whereas in the case of the search warrant, the inquiry relates to "the connection of the items sought with the crime and to their present location." Where the police found no drugs on defendant and had not yet found any contraband at the apartment, the mere expectation that the police would find drugs in the apartment, without more, could not justify the continued detention of defendant. The State had not argued that the facts alleged in the complaint for search warrant supported an independent finding of probable cause or reasonable suspicion to justify the detention.

C. The continued detention of defendant was not a valid seizure incident to execution of the warrant. **Michigan v. Summers**, 452 U.S. 692 (1981), authorized the detention of occupants of the premises while a search warrant is executed in order to: (1) prevent flight in the event that incriminating evidence is found, (2) minimize the risk of harm to officers, and (3) facilitate the orderly completion of the search. Courts disagree whether this rule can be extended to an occupant who leaves the premises immediately before execution of the warrant who is detained soon as practicable after leaving. The court found it unnecessary to decide whether Illinois should adopt the expansive interpretation of **Summers** where there was no evidence defendant had come from the Flournoy apartment just before his detention.

People v. Chestnut, 398 Ill.App.3d 1043, 921 N.E.2d 811 (4th Dist. 2010) The Appellate Court affirmed the trial court's order granting defendant's motion to suppress evidence which the officers found during a search of defendant's person. Defendant came to a house where a search warrant was being executed, and eventually consented to the search which during which the evidence was discovered.

At the point of the seizure, there was no reasonable suspicion that defendant was engaged in criminal activity. Although defendant was present at a residence that was being searched for illegal drugs, mere presence at the scene of a search does not amount to reasonable suspicion. Furthermore, the officers' belief that defendant entered the porch in a manner which suggested that he was familiar with his surroundings was contradicted by the record; defendant rang the doorbell and entered only after a plainclothes officer opened the door and stepped outside as if to allow defendant to enter.

Under **Michigan v. Summers**, 452 U.S. 692 (1981), a police officer has limited authority to detain occupants of premises that are being searched, in order to ensure that the occupants are unarmed and uninvolved in any criminal activity. It has been held that under **Summers**, "occupants" includes individuals who approach the premises while a search warrant is being executed. (See **U.S. v. Jennings**, 544 F.3d 815 (2008)).

However, "custodial interrogation" of persons detained under **Summers** is permitted only if there is an articulable basis for suspecting criminal activity. Because the police had no reasonable suspicion that defendant was engaged in criminal activity, **Summers** authorized them to ask only for defendant's identity and an explanation of his reasons for being on the property. They could not ask incriminating questions, including whether defendant was in possession of controlled substances.

The court concluded that the interrogation of the defendant was "custodial," because a reasonable person would not have believed he was free to leave where: (1) police asked whether defendant was in possession of controlled substances, (2) defendant was prevented from leaving because one officer was standing in front of him and another behind him and in front of the door, and (3) defendant was restricted to the porch area of the home. In addition, one of the officers testified that defendant was not free to leave.

Because there was no articulable basis to suspect criminal activity, the custodial questioning was not justified under **Summers**.

The court also noted that because the police engaged in custodial interrogation, **Miranda** warnings were required.

Because the detention was invalid, defendant's consent to search his person was tainted by the illegality and was also invalid. Therefore, the trial court properly suppressed evidence which the officers found during the search.

People v. Tate, 367 Ill.App.3d 109, 853 N.E.2d 1249 (2d Dist. 2006) Police are authorized to seize a citizen who comes on the scene during execution of a search warrant if the facts known to the officers would warrant a reasonable belief that immediate action is appropriate to protect the officers' safety. Where defendant pulled into the driveway about 8:15 p.m., the warrant was for a small amount of cannabis that was consistent with personal use, the neighborhood was not dangerous, and the police were familiar with the occupants of the residence and had no reason to believe they were armed or violent, there was no basis to suspect that criminal activity was afoot or that defendant posed a threat to the officers although he was wearing a purple wig and sunglasses on the night before Halloween.

People v. Sanchez, 191 Ill.App.3d 1099, 548 N.E.2d 513 (1st Dist. 1989) Where a search warrant was issued for a specific address, it was improper to search the building next door.

People v. Freeman, 121 Ill.App.3d 1023, 460 N.E.2d 125 (2d Dist. 1984) Where a warrant to search the defendant's home did not mention an unattached garage, a search of the garage was beyond the scope of the warrant.

People v. Harmon, 90 Ill.App.3d 753, 413 N.E.2d 467 (4th Dist. 1980) Where search warrant authorized police to search defendant's residence for large items of railroad property, but instead police searched "every nook and cranny of the house and seized countless items, large and small," the search was "wholly unacceptable in its scope and intensity."

People v. Van Note, 63 Ill.App.3d 53, 379 N.E.2d 834 (1st Dist. 1978) Two-day delay in completing a search pursuant to a warrant, during which time the premises were guarded by police and the business operation completely shut down, was unreasonable and justified suppression of the seized evidence.

§43-5(b)(3)
Miscellaneous

United States Supreme Court

Los Angeles County v. Rettele, 550 U.S. 609, 127 S.Ct. 1989, 167 L.Ed.2d 974 (2007) In a §1983 action, the court held that officers executing a search warrant for three African-Americans who had formerly lived at a home did not violate the Fourth Amendment by requiring persons who had recently purchased the home, and who were Caucasian, to get out of bed and remain unclothed while the deputies determined whether the suspects were present. The officers had no way of knowing whether the African-American suspects were elsewhere in the house, and were entitled to take reasonable action to secure the premises and ensure their own safety.

Although it would be unreasonable for officers to use excessive force or restraints which cause unnecessary pain or are imposed for a prolonged and unnecessary period of time, the occupants were required to stand unclothed for only two and four minutes, respectively. The court also noted that the bedding and blankets could have concealed a weapon; "[t]he Constitution does not require an officer to ignore the possibility that an armed suspect may sleep with a weapon within reach."

Illinois Supreme Court

People v. Eagle Books, Inc., 151 Ill.2d 235, 602 N.E.2d 798 (1992) Police conducted what amounted to an unconstitutional "prior restraint" of materials arguably within First Amendment protection where, in a raid on an adult bookstore, they seized over 700 magazines, including multiple copies of several titles, and "emptied" the store of its stock. Although one copy of an allegedly obscene document may be seized for evidentiary purposes where there is probable cause to believe that obscenity laws are being violated, police may not completely remove a publication from circulation until there is an actual finding of obscenity after an adversarial hearing.

The Court also refused to extend the "good-faith" exception to the exclusionary rule to permit seizure of materials potentially protected by the First Amendment.

People v. Curry, 56 Ill.2d 162, 306 N.E.2d 292 (1973) The failure of the police to give defendant a copy of the search warrant did not invalidate the search. In addition, neither the warrant nor the search were invalidated by the failure to follow the statute relating to procedures (i.e., inventory) to be followed after a warrant has been served. See also, **People v. York**, 29 Ill.2d 68, 193 N.E.2d 773 (1963) (improper return of warrant); **People v. Canaday**, 49 Ill.2d 416, 275 N.E.2d 356 (1971) (inventory); **People v. Hawthorne**, 45 Ill.2d 176, 258 N.E.2d 319 (1970) (untimely return).

Illinois Appellate Court

People v. Nash, 2024 IL App (4th) 221078 Defendant was charged with various offenses arising out of his possession of heroin, cocaine, and a loaded handgun, discovered following a traffic stop. On appeal, defendant argued that his trial attorney was ineffective for failing to seek suppression of the gun and drugs on the ground that the inventory search which led to their discovery was the product of an arrest based on an invalid warrant. Specifically, during the traffic stop, police learned of a warrant for defendant's arrest through a LEADS search, but it was later determined that the warrant had been withdrawn several months before the traffic stop. The warrant was the only basis for defendant's arrest and the subsequent inventory search. Defendant argued that because the warrant was inactive, his arrest violated the fourth amendment and thus the evidence found during the inventory search should have been suppressed.

The purpose of the exclusionary rule is to prevent and deter police misconduct. Here, the police acted properly in relying on the validity of the warrant in LEADS. Indeed, the arresting officer testified that he went a step further and requested that dispatch inquire about the validity of the warrant with the issuing county before initiating the arrest. The police had no way of knowing that there had been a clerical error which led to the warrant's mistakenly remaining active in LEADS after it had been withdrawn. Accordingly, because there was no misconduct by the police, the purpose of the exclusionary rule would not be served by ordering the suppression of evidence here. A motion to suppress on this basis would have failed, and thus defense counsel was not ineffective for not pursuing this ground in the trial court.

People v. Ross & Schriefer, 2017 IL App (4th) 170121 Defendants were charged with unlawful possession with intent to deliver cannabis within 1000 feet of a school and unauthorized production or possession of cannabis sativa plants. Both sought to suppress evidence on the basis of a defective search warrant. The trial court granted their motions to suppress.

The property searched pursuant to the warrant was located at the corner of Greely and Chestnut Streets in Monticello, Illinois. There were two buildings on the property - a tan two-story house and a blue, barn-shaped structure that had been used as a residence previously. The search was of the tan house, which displayed the numbers 1002 on its front. The barn, which was located north of the house, was associated with the address 817 North Greely Street.

The search warrant described the property to be searched as 817 North Greely Street, "a single family, tan, two-story dwelling located on the east side of North Greely Street with the number 817 displayed on the front, a detached barn to the north of the residence."

Other than the mistake with regard to the house numbers, the warrant was sufficiently descriptive to be upheld. Law enforcement officers were not confused in executing the warrant. And, the reference to the barn in the warrant was made in such a way as to

make clear that it was not the target of the warrant. While one of the officers realized the mistake after arriving at the property, it was too late to correct it because the occupants had already been alerted to the police presence.

The trial court's suppression order was reversed and the matter remanded for further proceedings.

People v. Carter, 2016 IL App (3d) 140958 The police searched defendant's home pursuant to a search warrant. When the search had been completed and all the officers were outside the home, they received additional information that defendant had a gun inside the home which had not been discovered during the preceding search. The officers re-entered the home and retrieved the gun.

The trial court granted defendant's motion to suppress the gun. The State conceded on appeal that the search warrant did not authorize the re-entry and second search of the home. Instead, the State argued that the gun would have been found pursuant to the inevitable discovery doctrine because a second search warrant could have been obtained.

The Appellate Court rejected the State's argument. The State's claim that the discovery was inevitable because the police planned to get a search warrant would as a practical matter place police action beyond judicial review and emasculate the warrant requirement.

The trial court's order suppressing the evidence was affirmed.

People v. Harris, 2015 IL App (1st) 132162 After a canine alerted to a FedEx package, officers obtained a warrant, opened the parcel, and found cannabis. The package was addressed to "S. Harris" at an address in Lincolnwood. The officers then obtained an anticipatory warrant authorizing a search of "Harris or anyone taking possession" of the package at the address and "any premises or vehicle . . . that the . . . parcel is brought into once the parcel has been delivered." The complaint stated that the warrant would be executed only if the parcel was "accepted" into a location or vehicle.

At the same time, officers obtained an order to install an "electronic monitoring and breakaway filament device" in the parcel. This device sends an electronic signal when a package is moved or opened. The officers then placed the package on the porch of the home to which it was addressed.

About an hour later, defendant, whose first initial was not "S," pulled into the driveway, retrieved the box, and put it in his vehicle. Defendant presented testimony that the house was owned by his grandmother, whose first name was "Sylvia," but that it had been empty for several years because Sylvia was in a nursing home. Defendant testified that as he was driving past the house he saw the package on the porch and decided to pick it up.

When defendant placed the package in his car, officers decided to execute the warrant although the electronic monitoring device did not indicate that the package had been opened or was being moved. The officers decided to act because "they did not want to get into a car chase in an unfamiliar area around school dismissal time." However, no evidence was presented concerning the proximity of any schools to the house.

The State presented testimony that after he was arrested, defendant made inculpatory statements. Defendant denied making those statements. Defendant was convicted of possession of cannabis but acquitted of possession of cannabis with intent to deliver.

The Appellate Court concluded that defendant's motion to suppress, which was based on the assertion that the triggering condition for execution of the anticipatory warrant had

not occurred, should have been granted.

An anticipatory search warrant is a warrant based on an affidavit which alleges that at a future time, probable cause will exist for a search with respect to a certain person or place. Execution of an anticipatory warrant is usually subject to the occurrence of a "triggering condition" other than the mere passage of time. The requirement of a triggering condition ensures that only searches justified by the presence of probable cause will occur.

The triggering condition need not be reflected on the face of the warrant, and may be placed in the supporting affidavits. However, anticipatory warrants are narrowly drawn to avoid premature execution as a result of manipulation or misunderstanding by the police. The purpose of defining a triggering event is to ensure that the officers who execute the warrant serve almost a "ministerial" role in deciding when the warrant should be executed.

The court concluded that the officers erred by making the arrest before the triggering event occurred. The warrant application stated that the warrant would be executed only if the package was "accepted" into a location or vehicle. Under **People v. Bui**, 381 Ill.App.3d 397, 885 N.E.2d 506 (1st Dist. 2008), under similar circumstances a package was "accepted" only when it was received and opened. The court concluded that the only actions attributed to defendant - picking up the package and placing it in his car - did not constitute "acceptance." Therefore, the triggering event had not occurred.

The court rejected the State's argument that the package was accepted when defendant displayed an intent to retain it, stating that such a rule would "cast a wide net" over people and locations which could be searched and would leave the warrant lacking sufficient particularity as to the person or location that could be searched. The court stressed that under the State's argument, officers would have discretion to search a neighbor who picked up the package to hold for the addressee, a thief who saw the package and decided to steal it, or a realtor who placed the package inside the front door when showing the home.

The court also concluded that the officers erred by executing the warrant without waiting until the electronic device attached to the package indicated that it had been opened or moved. First, the electronic device provided objective evidence to identify the person or premises which could be searched under the warrant. Second, the objective evidence from the device limited the officers' discretion to determine whether the triggering event had occurred.

The court rejected the argument that the good faith exception applied and the evidence therefore need not be suppressed. The good faith exception to the exclusionary rule permits the admission of illegally-seized evidence where the officer had a reasonable belief that the search was authorized by a warrant.

The court concluded that the officers could not have reasonably believed that they were authorized to arrest defendant where they had personally participated in preparing the application for the warrant, including representing that the electronic monitoring and breakaway filament devices would likely "produce evidence of a crime," and knew that the device had not indicated that the package had been opened. In addition, the officers had no prior information to connect defendant to the package or its contents. Under these circumstances, the officers could not have reasonably believed that the warrant authorized a search of defendant merely because he picked up the package and put it in his car.

People v. Hill, 2012 IL App (1st) 102028 The police stopped a vehicle being driven by defendant because it matched the description of a subject's vehicle and plates named in a search warrant. The warrant authorized the search of the subject and an apartment on West Flournoy. A pat-down search of defendant resulted in the discovery of keys, which defendant admitted were for the apartment on Flournoy. Defendant was taken into custody.

The police used the keys to enter the apartment and conduct a search. The complaint for a warrant indicated that ecstacy would be found in the front bedroom. The police found no drugs in that bedroom but did recover a loaded shotgun inside a bag in a box under the bed in the middle bedroom. When questioned by the police, defendant admitted that the shotgun was his and that he had been living in the apartment with his girlfriend.

At trial, the defense presented evidence that defendant did not live in the apartment although he slept there on occasion. Defendant had been given a key to allow him to let his girlfriend's daughter and brother into the apartment when she was absent. Defendant denied knowledge of the shotgun and making a statement admitting to possession of the shotgun.

The continued detention of defendant was not supported by probable cause or reasonable suspicion. The police recovered no contraband from defendant, only keys. No contraband had yet been recovered from the apartment.

Probable cause to support the warrant to search the apartment did not allow the court to assume that there was probable cause or reasonable suspicion to justify the continued detention of the defendant. These are related, but different inquiries: in the case of the detention of the defendant, the inquiry concerns the guilt of defendant, whereas in the case of the search warrant, the inquiry relates to "the connection of the items sought with the crime and to their present location." Where the police found no drugs on defendant and had not yet found any contraband at the apartment, the mere expectation that the police would find drugs in the apartment, without more, could not justify the continued detention of defendant. The State had not argued that the facts alleged in the complaint for search warrant supported an independent finding of probable cause or reasonable suspicion to justify the detention.

The continued detention of defendant was not a valid seizure incident to execution of the warrant. **Michigan v. Summers**, 452 U.S. 692 (1981), authorized the detention of occupants of the premises while a search warrant is executed in order to: (1) prevent flight in the event that incriminating evidence is found, (2) minimize the risk of harm to officers, and (3) facilitate the orderly completion of the search. Courts disagree whether this rule can be extended to an occupant who leaves the premises immediately before execution of the warrant who is detained soon as practicable after leaving. The court found it unnecessary to decide whether Illinois should adopt the expansive interpretation of **Summers** where there was no evidence defendant had come from the Flournoy apartment just before his detention.

People v. Ingram, 143 Ill.App.3d 1083, 494 N.E.2d 148 (4th Dist. 1986) The trial judge properly denied a motion to suppress evidence seized by an officer who conducted the search without reading the search warrant. He was accompanied by an officer who had obtained the warrant, and all of the items seized came within the scope of the warrant.

§43-6
Motor Vehicle Searches

§43-6(a)
Stopping of Vehicles Generally

United States Supreme Court

Kansas v. Glover, 589 U. S. ____ (2020) A police officer has reasonable suspicion to stop a vehicle based on knowledge that the vehicle's owner has a revoked license, whether or not the officer knows for sure that the owner is driving the vehicle. Here, the stipulated facts at

trial showed that the officer ran a license plate, determined the registered owner had a revoked driver's license, pulled over the vehicle, and found the owner was in fact the driver.

The Supreme Court, over one dissenting justice, held that the stopping of the vehicle was a valid seizure under **Terry**. The officer's belief that the driver was the owner of the vehicle was a reasonable, commonsense inference from the known facts. The court cautioned, however, that if other facts suggested the owner was not driving – for instance, if the owner was an older person and the driver appeared young – the officer would not have had grounds to stop the vehicle. But the court also found the officer has no obligation to seek out such dispelling facts prior to the stop.

While concurring Justices Kagan and Ginsburg would in some cases count the revoked license as a fact weighing *against* reasonable suspicion, since one without a license may presumably be less likely to be driving, they concurred here because in Kansas, a driver must repeatedly break the law to earn a revocation.

Heien v. North Carolina, 574 U.S. ___, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014) To justify a traffic stop, an officer must have a "reasonable suspicion" of criminal activity. The Supreme Court found that "reasonable suspicion" may be present where the officer thinks that the driver is violating a valid law, but is mistaken in the belief that the law in question covers the driver's conduct. The court noted precedent holding that seizures may be reasonable even if based on mistakes of fact, and concluded that mistakes of law are equally compatible with the concept of "reasonable suspicion."

No Fourth Amendment violation occurred where a police officer stopped defendant's car because one of the brake lights was malfunctioning, but State law as subsequently interpreted by the State Court of Appeals required only one working brake light. The court concluded that North Carolina law was sufficiently ambiguous that it was reasonable for the officer to believe that all original equipment brake lights were required to be operating properly. Because the stop was reasonable, cocaine which the officer found in a consensual search was properly admitted at a trial for attempted cocaine trafficking.

In a concurring opinion, Justices Kagan and Ginsberg stressed that only reasonable mistakes of law can justify a stop, and that the subjective understanding of an officer is completely irrelevant. The concurrence also stressed the majority's holding that an error in judgement concerning the scope of the Fourth Amendment cannot constitute a "reasonable" mistake. Finally, the concurring justices stressed that for an officer's legal error to be considered reasonable, a "really difficult" or "very hard question of statutory interpretation" must be presented.

Prado Navarette v. California, 572 U.S. 393, 134 S.Ct.1683, 188 L.E.2d 680 (2014) The Fourth Amendment permits a brief investigative stop, including a traffic stop, where an officer has a particularized and objective basis for suspecting that the subject of the stop is engaged in criminal activity. The reasonable suspicion necessary to justify a stop depends on both the content and reliability of the information that is known to the police. Whether a reasonable suspicion exists is determined by the totality of the circumstances. A reasonable suspicion requires considerably less proof of wrongdoing than is required to meet the probable cause standard.

Although an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity, an anonymous tip may justify a reasonable suspicion of criminal activity where the degree of detail included in the tip and the officers' ability to corroborate those details give rise to an inference that the tipster is sufficiently familiar with the subject's

activities to justify a belief that the tip is reliable in its assertion of criminal activity. Thus, in **Alabama v. White**, 496 U.S. 325 (1990), an anonymous tip was sufficient to create a reasonable belief of criminal activity where the anonymous caller claimed that a woman in a brown station wagon with a broken right tail light would drive a specifically-described route and would be transporting cocaine. The court concluded that the tipster's ability to accurately predict the subject's behavior in detail suggested that she was sufficiently familiar with the subject's affairs to justify a reasonable belief in the truthfulness of her claim that the defendant would be committing a crime.

By contrast, in **Florida v. J.L.**, 529 U.S. 266 (2000), a "bare bones" anonymous tip was not sufficiently reliable to permit a stop where the caller claimed only that a young black man dressed in a plaid shirt and standing at a bus stop would be in possession of a firearm. In **J.L.**, the court concluded that the degree of detail did not suggest sufficient familiarity with the subject to justify an inference that the claim of criminal conduct was likely to be true.

Here, a 911 dispatcher received an anonymous call stating that approximately five minutes earlier, a silver pickup truck with the license plate number "8D94925" had run the caller off the roadway near southbound mile marker 88. Investigating officers saw a truck answering the description located 19 miles from mile marker 88 about 18 minutes after the 911 call. After following the truck for five minutes, the officers conducted a traffic stop. They detected the odor of marijuana as they approached the vehicle, and a search revealed 30 pounds of marijuana.

Although it described the case as "close," the court concluded that the anonymous tip bore sufficient indicia of reliability to provide a reasonable suspicion that the crime of DUI was occurring. First, when the caller said that she had been run off the road, she claimed eyewitness knowledge of alleged dangerous driving. Such a claim "lends significant support to the tip's reliability" because it "necessarily implies that the informant knows the other car was driven dangerously."

The reliability of the tip was further enhanced when a truck answering the description was observed 19 miles away approximately 18 minutes after the 911 call, suggesting that the 911 caller had reported the incident immediately. A "contemporaneous report has long been treated as especially reliable," particularly when there is an absence of time to reflect or where the report involves a startling event.

The court also found that the reliability of the tip was enhanced because it was made by using the 911 system, which has "features to allow for identifying and tracing callers" and thus provides at least some safeguards against false reports. Among the features mentioned by the court are that 911 calls can be recorded, law enforcement may verify important information about the caller through Caller ID, and callers are prohibited from blocking Caller ID information. Although 911 calls are not *per se* reliable, "a reasonable officer could conclude that a false tipster would think twice before using" the 911 system to transmit a false report.

In addition to being sufficiently reliable, an anonymous tip can justify an investigative stop only if it provides reasonable suspicion that criminal activity is occurring. The court found that a report that a vehicle has run a car off the road creates a reasonable suspicion of an ongoing crime such as drunk driving, because certain driving behaviors (including weaving, crossing the centerline, and erratically controlling one's vehicle) are reliable indicators of drunk driving. The court acknowledged, however, that not all traffic infractions imply intoxication, and held that unconfirmed reports of driving without a seatbelt or slightly over the speed limit would be so tenuously connected to drunk driving that a stop would be

constitutionally suspect. Furthermore, although running a car off the road could be due to causes other than DUI, "reasonable suspicion 'need not rule out the possibility of innocent conduct.'"

The court rejected the argument that any inference of drunk driving was vitiated by the fact that officers followed the pickup for five minutes before pulling it over, and observed no traffic infractions during that period. The court concluded that the appearance of a marked police car could inspire a driver to be more careful, and that five minutes is not a sufficient period of observation to dispel a reasonable suspicion of drunk driving.

Because the indicia of reliability accompanying the anonymous tipster's 911 call was sufficient to justify an inference that the defendant was committing drunk driving, the officers had a reasonable basis to stop the defendant. Defendants' convictions were affirmed.

Because the issue was whether the 911 call created a reasonable suspicion of the ongoing crime of DUI, the court stressed that it was not required to address the separate question of what factors justify a **Terry** stop to investigate completed criminal activity.

Rodriguez v. United States, 575 U.S. ___ , 135 S. Ct. 1609; 191 L. Ed. 2d 492 (2015) A routine traffic stop is analogous to a **Terry** stop, and like a **Terry** stop is limited in scope to its underlying justification. The acceptable duration of police questioning during a traffic stop is limited by the "mission" of the seizure, which includes addressing the traffic violation which warranted the stop and attending to related highway safety concerns such as checking the driver's license, determining whether there are outstanding warrants, and inspecting proof of insurance and automobile registration. Because the stop is limited in duration to the time necessary to achieve these purposes, the officer's authority to continue the seizure ends when the purposes are or reasonably should have been completed.

The court acknowledged that the Fourth Amendment permits certain investigations that are unrelated to the stop, such as questioning (**Arizona v. Johnson,** 555 U. S. 323, 330 (2009)) or a dog sniff of the exterior of the car (**Illinois v. Caballes,** 543 U. S. 405 (2005)). It stressed, however, that such unrelated investigations are permitted only where the duration of the stop is not prolonged. In other words, a stop can become unlawful if it extends beyond the time reasonably required to complete the mission of the traffic stop.

Here, defendant's car was stopped by a canine officer after it swerved onto the shoulder. After the officer checked the licenses of the driver and passenger, verified the vehicle's registration and proof of insurance, questioned the passenger, and issued a written warning, the officer asked defendant for permission to walk the officer's dog around the vehicle. When defendant refused, the officer instructed defendant to turn off the engine and stand in front of the car until a backup officer arrived.

The second officer arrived after a seven or eight-minute delay. The canine officer then retrieved his dog from his car and walked the dog around defendant's vehicle. The dog alerted on the second pass, and methamphetamine was found in the vehicle.

The Supreme Court concluded that a Fourth Amendment violation occurred when the stop was extended several minutes to wait for the second officer and conduct the dog sniff. First, the lower court erred by finding that the seven to eight-minute delay was *de minimis*. Although **Pennsylvania v. Mimms,** 434 U. S. 106 (1977) held that interests of officer safety outweigh the *de minimis* intrusion on Fourth Amendment rights caused when a lawfully stopped driver was required to exit the vehicle during the stop, the State's interest in officer safety stems from the basic mission of the traffic stop. By contrast, a dog sniff is not connected to roadway safety and is intended to detect evidence of criminal wrongdoing that is unrelated to the basic mission of the stop. "Highway and officer safety are interests different in kind

from the Government's endeavor to detect crime in general or drug trafficking in particular."

Second, the court rejected the prosecution's argument that an officer who expeditiously completes all tasks related to a traffic stop should, in effect, "earn bonus time to pursue an unrelated criminal investigation." Because an officer is required to be reasonably diligent at all times during a traffic stop, an officer who completes a stop expeditiously has merely used "the amount of time reasonably required to complete" the stop's mission. By definition, the Fourth Amendment is violated when a stop is prolonged beyond that point.

The lower court's opinion was vacated and the cause remanded for further proceedings.

Maryland v. Wilson, 519 U.S. 408, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997) The holding of **Pennsylvania v. Mimms** extends to passengers as well as to drivers. Thus, a police officer who makes a traffic stop may order passengers to exit the car even if there is no reason to believe that they have committed a crime or pose a danger.

The **Mimms** rule is based on balancing the public interest against the individual's right to be free from arbitrary interference by law enforcement officers. See also, **People v. Boyd**, 298 Ill.App.3d 1118, 700 N.E.2d 444 (4th Dist. 1998) (under the rationale of **Wilson**, an officer may order passengers to remain within the vehicle).

Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979) Stopping a motor vehicle, and detaining the driver to check the driver's license and registration, is unreasonable under the Fourth Amendment unless there is "at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law." However, roadblock-type stopping of all vehicles may be proper. See also, **Michigan v. Sitz**, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990) (upholding validity of highway sobriety checkpoints). Compare, **City of Indianapolis v. Edmond**, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000) (Supreme Court has approved checkpoints which have the purpose of furthering some legitimate interest other than the mere detection of criminal behavior; where the primary purpose of a vehicle checkpoint program was to interdict unlawful drug possession and trafficking, individualized suspicion of wrongdoing was required for each stop; roadblock established to "thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route" are permissible under the Fourth Amendment, but the exigencies created by such circumstances "are far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction"); **People v. Ray**, 327 Ill.App.3d 904, 764 N.E.2d 173 (5th Dist. 2002) (Fourth Amendment was violated by narcotics checkpoint at last exit before non-existent "drug checkpoint"; primary purpose was to interdict drug traffic, and the fact that drivers left interstate after passing signs warning of checkpoint did not create a reasonable suspicion of wrongdoing).

Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977) Officer may order driver of car stopped for traffic violation to get out of car. Furthermore, a frisk is justified during a traffic stop if there is reason to believe that the person is armed and poses a danger to the officer. See also, **Arizona v. Johnson**, 555 U. S. 323, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009) (where vehicle is lawfully stopped for a traffic violation, officer may perform a patdown of the driver or passengers upon a reasonable suspicion that they may be

armed and dangerous); **Brendlin v. California**, 551 U.S. 249, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007) (a passenger is "seized" whenever the vehicle in which he is riding is subjected to a traffic stop under circumstances in which a reasonable person would not feel free to terminate the encounter).

U.S. v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) Roving Border Patrol officers may "briefly" stop vehicles, in areas near the border, if they are aware of "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country." The Court listed various factors that may be taken into account in deciding whether there is "reasonable suspicion," and held that upon stopping a vehicle the officer "may question the driver and passengers about their citizenship and immigration status [and] ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause." See also, **U.S. v. Martinez-Fuerte**, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) (Border Patrol's routine, warrantless stopping of vehicles at permanent checkpoints or roadblocks on a major highway away from the border for brief questioning of the vehicle's occupants, in the absence of any suspicion, does not violate the Fourth Amendment; although the checkpoint stops are "seizures," the intrusion is "minimal" and the need to control the flow of illegal aliens great; to require reasonable suspicion would be impractical).

Illinois Supreme Court

People v. Cummings, 2016 IL 115769 In **Rodriguez v. United States**, 575 U.S. ___, 135 S. Ct. 1609 (2015), the Supreme Court held that the mission of a traffic stop is to address the traffic violation which warranted the stop and attend to related safety concerns, which typically include checking the driver's license of the operator, determining whether there are outstanding warrants, and inspecting the automobile's registration and proof of insurance. Any actions outside this scope are unlawful if they measurably extend the duration of the stop, unless there is reasonable suspicion to justify the detention. Thus, checking the operator's driver's license is within the mission of a traffic stop whether or not the officer has reasonable suspicion that the vehicle is being operated by an unlicensed driver.

Here, an officer who stopped the van which defendant was driving acted properly by checking defendant's license even though the justification for the stop ceased before the license was requested. The officer stopped the van because it was registered to a woman for whom there was an active arrest warrant. Although the officer could not see who was driving the van when he initiated the stop, he realized as he approached the stopped vehicle that the driver was male and not the woman who was the subject of the arrest warrant.

Although the reason for the stop had been satisfied, the court held that the officer could complete the mission of the stop by examining defendant's driver's license, determining whether there were any warrants, and inspecting the vehicle's registration and proof of insurance. The State was not required to show that the request for defendant's driver's license was justified by any rationale other than the traffic stop.

Because the stop was lawfully initiated and the officer could request defendant's driver's license even after he knew that the basis for the stop no longer applied, the trial court's order granting defendant's motion to suppress was reversed. The cause was remanded for trial on the charge of driving with a suspended license.

People v. Timmsen, 2016 IL 118181 Under **Terry v. Ohio**, an officer may conduct an

investigatory stop if there is a reasonable suspicion that criminal activity has happened or is about to occur. A reasonable suspicion must amount to more than an unparticularized hunch. An investigatory stop must be justified at its inception by specific and articulable facts which justify a governmental intrusion into constitutionally protected interests.

In the absence of reasonable suspicion, an individual has the right to avoid an encounter with police and go about his or her business. A refusal to cooperate with police, without more, does not amount to reasonable suspicion of criminal activity.

At 1:15 a.m. on a Saturday, defendant made a legal U-turn some 50 feet before reaching a State Police safety roadblock. The roadblock was placed on a four-lane highway just across the border between Illinois and Iowa. Defendant made the U-turn at a railroad crossing which was the only place to turn around before reaching the roadblock.

The court concluded that making a U-turn just before reaching a roadblock is a legitimate factor to consider in determining whether there is a reasonable suspicion of criminal activity. The court rejected the argument that making a U-turn near a roadblock is no more than the driver's decision to simply go about his business:

> Defendant's U-turn upon encountering the police roadblock was the opposite of defendant going about his business. Continuing eastbound on the highway would have been going about his business. We cannot view defendant's evasive behavior under these circumstances as simply a refusal to cooperate.

The court rejected the State's argument that the act of avoiding a roadblock is in and of itself sufficient to create a reasonable inference of criminal activity. Whether there is a reasonable suspicion of criminal activity is based on the totality of the circumstances and not on any factor in isolation.

The court also found that the totality of the circumstances justified a reasonable inference that criminal activity was afoot. The encunter occurred in the early morning hours, the roadblock was well marked and could not have been confused with an accident, and the roadblock was not busy and would not have caused a significant delay.

People v. Gaytan, 2015 IL 116223 Defendant was convicted of unlawful possession of cannabis with intent to deliver when cannabis was found in his car after a traffic stop. The car was stopped because police believed that a trailer hitch obstructed the vehicle's license plate. At the time of the stop 625 ILCS 5/3-413(b) provided that a license plate must be securely fastened in a horizontal position, "in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers."

The court concluded that §3-413(b) is ambiguous concerning whether the prohibition applies to all materials which obstruct any part of the license plate, including the ball hitch at issue here, or only to materials which attach to and obstruct the plate. In the course of its holding, the court noted that accepting the State's interpretation of §3-413(b) would render a "substantial amount of otherwise lawful conduct illegal," including transporting electric scooters or wheelchairs on carriers on the back of a car, using bicycle racks, and towing rental trailers.

Applying the rule of lenity, the court concluded that §3-413(b) prohibits only objects which are physically connected or attached to the license plate and which obstruct the visibility and legibility of the plate. However, the court encouraged the General Assembly to clarify whether equipment and accessories attached to a vehicle near the license plate are

restricted.

Although the statute did not apply to a trailer hitch, the court held that the stop was not improper. Under **Heien v. North Carolina**, 474 U.S. ___, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014), the Fourth Amendment is not violated where a police officer pulls over a vehicle based on an objectively reasonable but mistaken belief that traffic laws prohibit defendant's conduct. The court concluded that because §3-413(b) is ambiguous, a definitive interpretation was reached only by applying the rule of lenity, and there was no prior appellate authority concerning the scope of the statute, a reasonable police officer could have believed that §3-413(b) was violated when a trailer hitch was installed on the car.

The court rejected the argument that **Heien** should be rejected as a matter of state law. Illinois follows the "limited lockstep" doctrine when interpreting the search and seizure provision of the Illinois Constitution. Under this doctrine, the court presumes that the drafters of the Illinois Constitution intended the State search and seizure provision to have the same meaning as the Fourth Amendment, unless there is a reason to adopt a different meaning. Although Illinois has a more broad exclusionary rule than does federal law, **Heien** involves not the exclusionary rule but whether there is a Fourth Amendment violation in the first place. Because **Heien** concluded that the Fourth Amendment is not violated where an officer executes a stop due to a reasonable, mistaken belief that a statute prohibits the conduct in question, no issue concerning the Illinois exclusionary rule is presented.

People v. Cummings, 2014 IL 115769 Traffic stops are seizures under the Fourth Amendment, but since they are less like formal arrests and more like investigative detentions, the reasonableness of a traffic stop is gauged by the standard of ***Terry v. Ohio***, 393 U.S. 1 (1968). Under ***Terry***, an officer may briefly detain and question a person if the officer reasonably believes the person has committed or is about to commit a crime.

An investigative traffic stop must be temporary and last no longer than necessary to effectuate the purpose of the stop. The reasonableness of the stop's duration is linked to the reason for the stop. A request for a driver's license is not necessarily permissible in all stops. Instead, a request for identification must be tethered to, and justified by, the reason for the stop.

Here, the officer had reasonable suspicion to stop the van defendant was driving after he learned that there was an outstanding warrant for the registered owner of the vehicle, whom the officer knew was a woman. After he stopped the van, however, the officer discovered that the driver, defendant, was a man, and at that point the reason for the stop disappeared. The officer's further action of requesting defendant's driver's license impermissibly prolonged the stop because it was unrelated to the reason for the stop.

The Court rejected the State's argument that since the request was brief, minimally intrusive, and related vaguely to officer safety, it was reasonable under the totality of the circumstances. The Court also rejected and overruled precedent upholding a broad rule that a police officer may always request identification during a traffic stop, even after reasonable suspicion evaporates. The Court found no constitutional basis for such a rule, and held that unless a request for identification is related to the reason for the stop, it impermissibly extends the stop and violates the Fourth Amendment.

The Court affirmed the suppression of evidence that defendant's driver's license was expired.

The dissent believed that any Fourth Amendment intrusion in asking a driver for his license after he has already been stopped would be minimal, and would therefore hold that whenever an officer lawfully initiates a traffic stop, he may request the driver's license as an

ordinary incident to the stop.

People v. Hackett, 2012 IL 111781 Vehicle stops are subject to the Fourth Amendment requirement of reasonableness. Therefore, the decision to stop a automobile is reasonable where police have probable cause to believe that a traffic violation has occurred.

Even where probable cause is lacking, police are justified in conducting a brief, investigatory stop if they have a reasonable, articulable suspicion that a traffic offense has occurred. A reasonable suspicion exists where there are specific and articulable facts which, taken together with rational inferences from those facts, warrant a belief that a suspect has committed or is about to commit a crime.

625 ILCS 5/11-709(a) provides that where a roadway has been divided into two or more clearly marked lanes, a vehicle "shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Under **People v. Smith**, 172 Ill. 2d 289, 665 N.E.2d 1215 (1996), §11-709(a) imposes two separate requirements: (1) that the motorist drive "as nearly as practicable entirely within one lane," and (2) that the motorist not move from a lane of traffic without determining that the movement can be made safely.

The court concluded that an officer who observed the defendant twice cross the lane marker for no apparent reason had a sufficient basis to conduct a traffic stop to determine whether it was "practicable" for defendant to remain in a single lane. Because an investigatory stop was justified, the trial court's order granting defendant's motion to suppress was reversed. The cause was remanded for further proceedings.

People v. Jones, 215 Ill.2d 261, 830 N.E.2d 541 (2005) Because most traffic stops are more analogous to a **Terry** stop than to a formal arrest, courts use **Terry** principles to analyze Fourth Amendment challenges to traffic stops. Under **Terry**, a law enforcement officer may briefly detain a person for questioning if there is a reasonable belief that the person has committed or is about to commit a crime. However, the detention must be temporary and last no longer than necessary to effectuate the purpose of the stop.

People v. Bartley, 109 Ill.2d 273, 486 N.E.2d 880 (1985) The Court upheld DUI roadblocks where the discretion of the officers conducting the roadblock is limited and the intrusion minimal. See also, **People v. Adams**, 281 Ill.App.3d 180, 687 N.E.2d 536 (2d Dist. 1997) ("city vehicle sticker" roadblock violated Fourth Amendment).

Illinois Appellate Court

People v. Johnson, 2024 IL App (4th) 231185 The trial court did not err in denying defendant's motion to suppress where there was reasonable suspicion to stop defendant's vehicle based upon two 911 calls. Specifically, the caller reported an intoxicated driver with children in the vehicle, driving a gray SUV in the area of a specific apartment complex. The caller provided a possible license plate number. The officer located that vehicle, followed it for a short time, and initiated a traffic stop based on the tip and observations that the vehicle made a couple of abrupt movements, stopped in the road for no reason at one point, and failed to stop behind the white line at an intersection. Defendant was arrested for a DUI violation.

Under **People v. Shafer**, 372 Ill. App. 3d 1044 (4th Dist. 2007), a court considering whether a tip gives rise to reasonable suspicion should consider: (1) whether there is a sufficient quantity of information to determine that the vehicle stopped is the one the tipster identified, (2) the length of time between the tip and locating the vehicle, (3) whether the tip

was based on contemporaneous eyewitness observations, and (4) whether the tip is sufficiently detailed to infer that the tipster witnessed an ongoing motor vehicle offense. Defendant conceded that the tip here was not anonymous because it was the result of a 911 call. The lack of anonymity renders a tip inherently more reliable. Defendant also conceded that the first two **Shafer** factors were present. The court then found the third factor present where the caller first reported an intoxicated driver with children in the vehicle and later called back stating that the vehicle was now leaving the area, indicating that the caller was giving information based upon real-time observations. As to the fourth factor, the court concluded that the tip provided sufficient detail, even where the caller did not stated the basis for their conclusion that the driver was intoxicated, given that the caller must have been in close proximity since they also observed and reported the presence of children in the vehicle and that the caller was concerned enough to place two calls to 911 about the driver. At worst, the fourth factor was "neutral" and the totality of the circumstances were sufficient to provide reasonable suspicion for the traffic stop.

Finally, the court concluded that even if the tip alone did not justify the stop, the officer's additional observations of defendant's driving, coupled with the 911 call, were sufficient to support the stop.

People v. Whiles, 2024 IL App (4th) 231086 The trial court rescinded defendant's statutory summary suspension. The court found that at the time of the request, the police lacked reasonable grounds to believe that he was under the influence. 625 ILCS 5/2-118.1(b)(2). The appellate court reversed.

Defendant argued on appeal that the officer lacked reasonable suspicion to stop the car, because the officer who conducted the stop did not witness any evidence of impaired driving. The appellate court disagreed, citing the principle of imputed collective knowledge. The officer had received a call that a nearby "red Jeep" was "possibly intoxicated" and when he observed a red Jeep, a Michigan police cruiser trailing the jeep flashed its lights at him. The Illinois officer took this to mean that the Michigan officer identified the red Jeep as the potentially intoxicated driver but, because he lacked jurisdiction, the Illinois officer should pull over the car. It later turned out that the Michigan officer had witnessed several acts of reckless driving that amounted to reasonable suspicion of drunk driving. Because the Michigan officer's knowledge could be imputed to the Illinois officer, the stop was made with reasonable reasonable suspicion.

Defendant argued that the knowledge of an officer with no jurisdiction could not be imputed to the officer who conducted the stop. This claim failed in light of **United States v. Hensley**, 469 U.S. 221 (1985), which held that the Kentucky police could rely on a flyer issued by the Ohio police and stop a suspect, as long as the Ohio police had reasonable suspicion. Applying this principle to the instant case, the Michigan officer's reasonable suspicion was imputable to the Illinois officer at the time of the stop.

People v. Fields, 2024 IL App (4th) 210194-B The trial court properly denied defendant's motion to suppress a gun found in her car. The police had sufficient reasonable suspicion to conduct a traffic stop based on his credible testimony that the defendant's car's exhaust system made excessive noise. This would have been a violation of 625 ILCS 5/12-602, which requires motor vehicles to have adequate mufflers or exhaust systems to as to prevent excessive or unusual noise. And while defendant "implicitly" argued on appeal that the stop was motivated by race, where defendant's brief cited Justice Ginsburg's concurring opinion in **Arkansas v. Sullivan**, 532 U.S. 769, 773 (2001), no record evidence supported such an inference of racial profiling, even if the appellate court did admit the stop seemed "unusual."

People v. Tennort, 2023 IL App (2d) 220313 The trial court did not err in denying defendant's motion to suppress evidence where defendant was subject to a motor vehicle stop predicated on reasonable articulable suspicion. The officer who stopped defendant testified that he was in a gas station parking lot addressing an unrelated matter when he observed defendant "driving visibly at a high rate of speed." The officer saw defendant abruptly stop his vehicle in the roadway, pull into the gas station, and lose his balance and stumble when exiting his car. Two passengers then assisted defendant in walking into the gas station. (In a footnote, the court found it irrelevant that defendant had a physical disability related to his legs because the officer was unaware of that fact before deciding to investigate.) Taken together, the facts observed by the officer provided reasonable articulable suspicion for an investigatory stop.

But, the officer did not immediately stop defendant, instead choosing to follow him for three miles after he reentered the vehicle and drove away from the gas station. During that time, the officer did not see defendant commit any traffic violations. Accordingly, defendant argued that any reasonable articulable suspicion dissipated prior to the stop. The appellate court disagreed.

Noting the absence of any case law addressing dissipation of reasonable articulable suspicion under circumstances similar to those presented here, the court looked to **Navarette v. California**, 572 U.S. 393 (2014). In **Navarette**, the Court held that reasonable suspicion provided by an anonymous tip that a truck driver was under the influence did not dissipate when officers pursued the truck for five minutes without noticing any erratic behavior. While extended observation of proper driving might eventually dispel reasonable suspicion, five minutes of proper driving is insufficient to do so. Once an officer has reasonable suspicion, he is not required to follow the vehicle at length to confirm or dispel that suspicion.

Here, the officer suspected defendant was impaired, and that belief was reasonable based upon his personal observations at the gas station. And, the officer did not follow defendant for a prolonged period prior to initiating the traffic stop. The absence of additional erratic driving for a mere three miles did not dispel the officer's reasonable articulable suspicion.

People v. Drain, 2023 IL App (4th) 210355 Defendant challenged the trial court's denial of his motion to suppress evidence, arguing, among other things, that there was no probable cause for the traffic stop, that the stop was unreasonably prolonged to conduct a canine sniff, and that the State failed to establish the canine's reliability. The appellate court affirmed.

Defendant was stopped for a violation of Scott's Law, which requires that, when approaching a stationary emergency vehicle with its warning lights activated, a motorist must move into the non-adjacent lane of traffic or reduce speed if changing lanes would be impossible or unsafe. Defendant asserted that it was not possible for him to switch lanes because there was a semi truck in the lane next to him and that instead he reduced speed. The trial court found, however, that defendant could have safely slowed and moved into the left lane behind the semi truck. The appellate court affirmed on the basis that the trial court's findings were not against the manifest weight of the evidence where the officer testified that the road was flat, nothing obstructed defendant's view of emergency vehicle ahead of him, and traffic was light, all of which would have allowed defendant ample opportunity to slow down and change lanes.

The appellate court also held that the traffic stop was not unreasonably prolonged for a canine sniff. The officer who initiated the stop ran a check on defendant's driver's license

and was in the process of writing defendant a warning when a second officer arrived. Upon arrival, the second officer took over the task of completing the warning, while the original officer conducted the canine sniff. Defendant's assertion that the original officer intentionally delayed completion of the warning was unsupported where defendant did not introduce any evidence about how long it would have taken a reasonably diligent officer to perform that task.

Finally, the appellate court rejected defendant's challenge to the reliability of the canine sniff. The canine officer testified that he was a trained canine officer, that his canine was trained to alert to narcotics, and that his canine exhibited distinct changes in behavior when alerting. Defendant did not challenge that testimony and did not present any evidence to suggest that the canine was unreliable. Accordingly, the trial court properly found that the canine alert provided probable cause to search defendant's vehicle.

People v. Tolliver, 2022 IL App (2d) 210080 Defendant was convicted of armed habitual criminal after an officer searched his car and found a gun. The officer testified that he observed defendant make a u-turn, pull into a gas station for a few minutes, then pull out and park at a bar next door. Defendant went into the bar for several minutes. The officer tried to run the registration numbers from the temporary rear license plate, but it was difficult to read. Eventually he ran the numbers successfully and found the car registered to a female. When defendant left the bar, the officer approached, spoke with defendant, learned his license was revoked, and arrested him. The officer then ordered a K-9 unit, searched the car, and found a gun.

Defendant moved to suppress and the trial court denied the motion. On appeal, defendant argued that the motion to suppress should have been granted because the officer lacked probable cause. Illinois law requires all vehicles to have a legible license plate, but defendant argued his plate must have been legible because the officer was able to successfully run the numbers. The appellate court affirmed, finding sufficient cause to believe defendant failed to comply with the statute's requirement that his car have a "clearly legible" registration. The officer testified defendant's plate was hard to read, and he tried multiple times to run the plate numbers before doing so successfully.

Regardless, no seizure occurred in this case until the officer learned of the revoked license. Defendant stopped his car of his own volition, and the officer's act of approaching him and asking him about his plate and license was a consensual encounter during which a reasonable person would have felt free to leave.

Defendant also argued that the officers prolonged the stop by searching the vehicle after he was already in custody and the car was legally parked in the bar parking lot. Defendant did not raise this issue below, however, so the issue was forfeited, and defendant did not ask for plain error review.

People v. Wallace, 2022 IL App (4th) 210475 A police officer lacked reasonable, articulable suspicion to stop defendant's vehicle based on a window tint violation. Defendant was driving a vehicle registered in Georgia, and the statute regulating vehicle window tint, 625 ILCS 5/12-503, specifically exempts out-of-state vehicles. The officer testified that he ran defendant's license plate prior to the stop. Accordingly, he was aware that the vehicle was registered in another state, and he should have known that the window tint law did not apply to defendant's car and could not form the basis for the traffic stop.

But, the stop of defendant's vehicle was justified on a separate basis. When the officer ran defendant's license plate, he received a response through NCIC that the vehicle was not covered by liability insurance. Under 625 ILCS 5/3-707 and 625 ILCS 5/7-601, Illinois

mandates that vehicles operated within the State be covered by a liability insurance policy. There is no exception for out-of-state vehicles. And, it was reasonable for the officer to rely on the information from NCIC because it is a reliable source.

People v. Haddad, 2021 IL App (3d) 180545 The Appellate Court affirmed the trial court's grant of defendant's motion to suppress evidence discovered during a traffic stop on the basis that the officer lacked reasonable articulable suspicion to support stopping defendant's vehicle for following too closely. Under 625 ILCS 5/11-710(a), the driver of a motor vehicle shall not follow another vehicle more closely than is "reasonable and prudent." Here, while the officer estimated the distance between defendant's vehicle and the one in front of him to be 18 feet, the officer did not offer any objective basis for that estimation. An objective basis could include the time between when each vehicle passed certain landmarks, such as light poles or lines on the roadway, and how that time could be used to estimate the distance and determine whether it was reasonable and prudent. Without such an objective basis, the Appellate Court refused to find manifest error in the trial court's conclusion that the officer lacked reasonable suspicion to justify the stop.

People v. Rice, 2021 IL App (3d) 180549 The Appellate Court vacated defendant's convictions for aggravated DUI and aggravated driving while license suspended, because the officer lacked reasonable suspicion to stop the car. The officer testified that she saw defendant change lanes in an intersection, which she believed was a violation of section 11-709 of the Vehicle Code. But while his statute regulates lane and signal usage, it does not prohibit changing lanes in an intersection.

The State argued that the officer's mistake of law did not invalidate the stop because it was made in good faith. But a mistake of law must be reasonable to avoid suppression. When the officer misinterprets an unambiguous statute, as this officer did, the mistake was not reasonable.

People v. Edwards, 2020 IL App (1st) 182245 The Appellate Court affirmed the denial of defendant's motion to suppress a gun found in his vehicle. Police responded to the location of a "shot spotter" alert, and as they drove northbound, they encountered defendant's car facing south, parked three to six feet from the curb. The defendant was in the driver's seat. The car was far enough in the street so as to require a southbound vehicle to drive into the northbound lane in order to pass it. The officers pulled alongside and after a brief inquiry, during which defendant acted nervously, backed in front of defendant's car in order to block it. Defendant reached below his seat just prior to this maneuver. The officers approached, observed a holster, and engaged in further discussion which suggested defendant possessed a gun. This led to a search of the vehicle and recovery of a gun.

The Appellate Court agreed with defendant that the officers conducted a seizure once they pulled in front of his car. But it rejected defendant's claim that this seizure was unlawful. The officers had reasonable suspicion that defendant may have been violating a municipal ordinance prohibiting parking in such a way as to impede traffic. This suspicion was buttressed by the defendant's reaching under his seat and his nervous demeanor. At that point the officers had the right to investigate further. During this investigation, further facts led to probable cause for a search, including defendant's demeanor, a visible holster, and defendant's misleading explanations about his furtive movements.

People v. Anderson, 2020 IL App (2d) 190443 Erratic driving, including weaving within a single lane, can give rise to reasonable suspicion that a driver is under the influence, thereby

justifying a traffic stop. Here, an officer stopped the same driver twice, five hours apart, both times due to erratic driving. During the second stop, cocaine was found in the vehicle's glove box, and the passenger (Anderson) was charged with possession of a controlled substance.

While the officer concluded at the first stop that the driver was not under the influence, that conclusion did not preclude a finding of reasonable suspicion to justify the second stop. The driver's activities during the intervening hours were unknown; she could have become impaired during that time. Thus, the trial court erred in suppressing the fruits of the second traffic stop as it was supported by reasonable suspicion. The Appellate Court reversed and remanded for further proceedings.

People v. Patel, 2020 IL App (4th) 190917 During a traffic stop for speeding, the officer smelled the odor of alcohol and noted that defendant's eyes were glassy. The officer questioned defendant, who admitted consuming 2.5 IPA beers, which the officer knew generally contained a higher alcohol content than standard beer. After completing the traffic citation, but before giving it to defendant, the officer had defendant exit his vehicle to perform field sobriety tests. Following the tests, defendant was arrested for DUI.

The trial court granted defendant's motion to suppress, concluding that the officer's observations did not provide reasonable articulable suspicion to prolong the traffic stop for the purpose of conducting field sobriety tests where defendant was not seen driving erratically, was not slurring his words, and had no difficulty producing his driver's license and proof of insurance. The Appellate Court disagreed.

While the circumstances of a defendant's driving may be relevant to the question of reasonable suspicion, they were irrelevant to the outcome here because the officer's reasonable suspicion was based on what he observed during his interaction with defendant after he had initiated the traffic stop for speeding. An officer is not required to be certain that a defendant was driving under the influence before conducting field sobriety tests, but rather need only be able to articulate facts suggesting he might have been. Here, the officer pointed to specific, artculable facts to support prolonging the stop for further investigation.

People v. Kaczkowski, 2020 IL App (3d) 170764 At a suppression hearing involving a traffic stop, a dashcam video showed defendant turning into the left lane, putting on his right turn signal, and drifting three lanes over to the far right lane. Asked why he pulled over defendant's car, the officer explained that defendant did not sufficiently pause in the middle two lanes. The circuit court accepted the answer and denied the motion to suppress.

The Appellate Court reversed. The rule that a defendant must signal for 100 feet applies to turns, not lane changes. The officer's mistaken belief was not reasonable because the statutes in question were unambiguous. The court suppressed the controlled substances found as a result of the stop and remanded the case for further proceedings.

People v. Redding, 2020 IL App (4th) 190252 The trial court erred when it suppressed the stop of defendant's vehicle and arrest for DUI. An officer received a report from dispatch about a bar fight between two brothers, and gave a description of the car in which one of the brothers recently fled the scene. When the officer spotted a matching car in the area shortly after receiving the dispatch, he had reasonable suspicion to stop the vehicle.

The trial court had incorrectly determined that the officer's stop was based on an "anonymous tip." The defense did not establish the call was anonymous, only that the officer who received the dispatch did not know the source of the information. But police are entitled to rely on dispatch when provided articulable facts that give rise to reasonable suspicion. And regardless, police may rely on anonymous tips with sufficient indicia of reliability. Here, the

original caller identified the participants in the fight, details about the car, and accurately predicted where the car would be, rendering the stop reasonable.

People v. Shelton, 2020 IL App (2d) 170453-B Under **Navarette v. California**, 572 U.S. 393 (2014), whether information provided via a 911 call provides reasonable suspicion for a traffic stop depends on whether the 911 report creates reasonable suspicion of an ongoing crime, such as DUI, or whether it involves only an isolated episode of past negligence. Here, a 911 caller reported that defendant was asleep at the wheel at an intersection. By the time an officer arrived, defendant was no longer sleeping and was in a fast-food drive-through lane. The officer initiated a traffic stop after defendant drove out of the parking lot. The 911 call provided reasonable suspicion of ongoing criminal activity. Falling asleep at the wheel is an indicator of DUI, especially where it is not particularly late at night. And, sleeping at the wheel presents dangers to other drivers, pedestrians, and property. An officer need not rule out the possibility that defendant was merely tired in order to have reasonable suspicion. Thus, trial counsel was not ineffective for failing to challenge the traffic stop.

People v. Dunmire, 2019 IL App (4th) 190316 At defendant's DUI trial, the trial court erred in suppressing evidence of defendant's intoxication due to an illegal traffic stop. The officer testified at the suppression hearing that he stopped defendant's vehicle based on a suspicion of illegally tinted windows. The officer admitted he did not have the instrument necessary to measure window tint, and in fact misstated the legal tint level (section 12-503 sets the legal tint level at 35%, while the officer testified it was 30%). However, based on his experience, a window tint is illegally dark if he cannot see the outline of the driver through the window, and here he could not see through the window at all. The trial court suppressed, finding the officer had no way to confirm whether the tint was too dark.

The Appellate Court reversed. In reviewing a motion to suppress based on an improper stop, the only question is whether the officer had reasonable suspicion of criminal activity. Here, regardless of whether the officer could prove his suspicion without the necessary tint-measuring instrument, the officer provided sufficient articulable facts to justify the stop, namely, his inability to see through the window at all. It is reasonable for an officer to conclude that if the window completely blocks out all light, then it surpasses the 35% tint level set by the statute. The court remanded for trial on the DUI charges.

People v. Jordan, 2019 IL App (4th) 190223 Police officers received a tip of a "suspicious vehicle" parked in a "high crime" area. Officers approached, and while one officer asked defendant questions, the other saw in plain view a small plastic baggie on the floorboard. In the officer's experience, it was the type of baggie used for drugs. The officers ordered defendant out of the car and called for a dog sniff, which five minutes later resulted in the discovery of methamphetamine. The trial court suppressed the meth, finding that while the initial encounter was not a seizure, defendant was seized when he was removed from the vehicle, and that this seizure and the subsequent search were not justified by the observation of a baggie that may have had an innocent use.

The Appellate Court reversed. It agreed, contrary to defendant's contention, that the initial encounter was not a seizure, but rather a consensual encounter under the **Mendenhall** factors. Only two officers approached the vehicle, they did not display their weapons, they did not command defendant to comply with their orders, and they did not block defendant from leaving. Next, the court held that the officers had reasonable suspicion at the time they did seize defendant by pulling him from the car and holding him until the drug dog arrived. The small baggie, which in the officers' experience tended to be associated with drug

dealing, gave the officers reasonable suspicion. While the trial court found, and the Appellate Court did not dispute, that such baggies are not exclusively used for drugs, and the observation of such a baggie would not lead to probable cause, here, given the circumstances – found on a floorboard in a suspicious vehicle in a high crime area – it did justify further investigation.

People v. Hill, 2019 IL App (4th) 180041 Defendant, charged with possession of cocaine, challenged the stop and search of his vehicle. At the hearing, the officer conceded that defendant did not commit a traffic violation, and explained that he stopped the car because he believed defendant's passenger was a man with an outstanding warrant. Upon approaching the car, the officer realized that the passenger was not in fact the man with the warrant, but by then the officer could smell marijuana and initiated a search based on the odor. The trial court found that the passenger did look like the man with the warrant, but nevertheless suppressed the cocaine discovered in the search because the officer was mistaken and no other conduct supported reasonable suspicion for the stop.

The Appellate Court reversed. A stop is justified even if based on an officer's mistake of fact, as long as the mistake is reasonable. Here, the trial court's finding that the passenger resembled the man with the warrant showed the mistake of fact was reasonable. Once the officer smelled cannabis, he had probable cause to search. Despite recent moves to decriminalize marijuana, it remains illegal to possess in large amounts.

People v. Mueller, 2018 IL App (2d) 170863 The trial court properly quashed and suppressed evidence stemming from an illegal traffic stop. The officer testified that he stopped defendant's car for illegal lane usage because, while following the car, he observed three separate instances during which the car tires touched the lane lines. The Appellate Court affirmed. Illegal lane usage occurs when a driver actually leaves the lane, and touching the line is not leaving the lane. The State's argument that defendant could have been stopped for driving erratically within the lane was forfeited. The stop could not be justified as a good faith mistake because caselaw clearly outlined the elements of illegal lane usage.

People v. Walker, 2018 IL App (4th) 170877 Section 11-801(a)(2) of the Vehicle Code clearly allows a driver to turn left into any available lane of traffic. Therefore the trial court properly suppressed evidence following a stop of defendant's car based on his turning left into the right lane. Although the officer subjectively believed defendant violated the law, a police officer who is acting in defiance of the plain language of an existing statute or judicial order—instead substituting his own erroneous interpretation of the statute or decision—cannot be considered as acting in an objectively reasonable manner.

People v. Varnauskas, 2018 IL App (3d) 150654 Where defendant's vehicle was equipped with a bicycle rack which obscured all but two numbers of the license plate, a traffic stop for a violation of 625 ILCS 5/3-413(b) was proper. That subsection provides for the placement of vehicle license plates and states that they are to be "free from any materials that would obstruct the visibility of the plate." Defendant's counsel initially filed a motion to suppress, but abandoned that motion based on **People v. Gaytan**, 2015 IL 223, which construed a prior version of the statute as encompassing only obstructions which were physically attached to the license plate, but which also held that officers had an objectively reasonable belief that a trailer hitch violated the statute because it was ambiguous. Counsel's abandonment of the motion was reasonable in light of **Gaytan** and because the statute had since been amended to remove the ambiguity.

During the traffic stop, a K-9 alerted on defendant's vehicle. Two officers searched without locating any contraband and then opted to relocate defendant's vehicle to the police station for further searching, citing cold weather conditions, traffic, and darkness on the side of the road. At the station, drugs were located in a hidden engine compartment. Under these circumstances, probable cause did not dissipate because of the relocation.

The dissenting justice believed that the amended version of Section 3-413(b) only applied to materials actually affixed to the license plate. She also would have followed **People v. Pulido**, 2017 IL App (3d) 150215, and would have concluded that justification for the warrantless search of defendant's vehicle dissipated with its relocation and that the officer needed to get a warrant to continue the search.

In re O.S., 2018 IL App (1st) 171765 The odor of marijuana from a parked car in which respondent was a passenger provided officers with reasonable suspicion to believe that criminal activity was afoot. Case law holding that the odor of marijuana is indicative of criminal activity remains viable notwithstanding the recent decriminalization of the possession of not more than 10 grams of marijuana. Even this decriminalized conduct carries civil penalties, and Illinois prohibits the knowing possession of greater amounts of marijuana and prohibits operating a vehicle while impaired and under the influence of marijuana.

People v. Lopez, 2018 IL App (1st) 153331 An anonymous tip can support a traffic stop if the tip is reliable and provides reasonable suspicion for the stop. Here, however, the tip was neither reliable nor sufficiently detailed to provide grounds for the stop. The Court distinguished **Navarette v. California**, 572 U.S. 393 (2014), where a caller made a 911 call describing having been run off the road by a particular vehicle. Here, the tip did not describe what conduct the caller witnessed, but only included a conclusory statement about there being a "DUI driver." And, the identity of the tipster was unknown here, while the 911 call in **Navarette** was traceable.

As a matter of first impression, the Court held that a defendant's identity learned during the course of an unlawful traffic stop is suppressible as fruit of the poisonous tree. The Court declined to apply the holding in **INS v. Lopez-Mendoza**, 468 U.S. 1032 (1984), that "the 'body' or identity of a defendant or respondent in a criminal or civiel proceeding is never itself suppressible as a fruit of an unlawful arrest." **Lopez-Mendoza** involved only a question of personal jurisdiction, and did not concern the admissibility of evidence of identification in the face of a fourth amendment challenge. Further, the officer's observation of the defendant in actual physical control of the vehicle provided the sole evidence of this element of DWLS, and would not have occurred but for the illegal stop. As such, the suppression of this evidence required outright reversal of the conviction.

People v. Meo, 2018 IL App (2d) 170135 A reliable tip from an informant can support a traffic stop. A 911 call is not an anonymous tip and therefore is not viewed with the usual skepticism applied to tips from confidential informants. Further, a tip concerning a possible drunk driver requires less corroboration because of the imminent danger to the public inherent in DUI.

Here, a gas station employee reported that defendant drove his car over the curb and nearly hit the building. An officer responded, observed defendant drive away from the gas station, and followed. Although it was dark out, defendant turned off his headlights for a few seconds while driving, but he did not commit any traffic violation during the 30 seconds the officer followed him before initiating a stop. The traffic stop was supported by reasonable suspicion; the tip, coupled with the defendant's unexplained blinking of his headlights,

provided an adequate basis for the stop. And, there was probable cause for the subsequent DUI arrest where the officer detected an odor of alcohol on defendant, and also observed defendant's bloodshot eyes, slurred speech, and fumbling to provide his license and insurance. Defendant admitted drinking alcohol that night and refused to take a breath test. These factors, considered together, provided probable cause.

People v Lomeli, 2017 IL App (3d) 150815 A patrol officer stopped defendant's vehicle based on his observation of an object hanging from defendant's rearview mirror. That object was determined to be a rosary, approximately one-half inch thick. During the traffic stop, the officer learned that defendant had a suspended license. Defendant was ultimately convicted of driving while suspended.

Prior to trial, defendant filed a motion to suppress arguing that the stop was improper because the officer unreasonably determined that the rosary was a material obstruction. The officer testified that he reasonably believed the object he had observed to be an obstruction at the time he made the stop. The court granted the State's motion for directed finding, concluding that the stop was based on reasonable articulable suspicion and was not "a hunch or a fishing expedition."

An officer can conduct an investigatory stop on the basis of reasonable articulable suspicion, which is less than probable cause. The officer need not determine, prior to the stop, whether the circumstances would satisfy each element of a particular offense. Here, it was not necessary that the officer reasonably believe that the obstruction was material at the time of the stop. The stop was permissible to allow further investigation into the obstruction. The granting of the motion for directed finding was not against the manifest weight of the evidence.

People v. Pulido, 2017 IL App (3d) 150215 The Fourth Amendment requires that a search continue no longer than is necessary to effectuate the purposes of a stop. An investigative stop must cease once reasonable suspicion or probable cause dissipates. However, probable cause does not dissipate merely because it takes a long time to complete a reasonable and thorough search of a vehicle.

Where police stopped defendant's van for speeding, searched the entire vehicle on the shoulder of I-80 after a drug detection canine alerted to the vehicle, and had no reason to believe that the vehicle might have contained a hidden compartment, the probable cause created by the dog's alert expired when the officers were unable to locate any contraband within the vehicle. Once the search of the vehicle was fruitless, the officers lacked authority to transport the vehicle to police headquarters to search a second time. The court rejected the argument that the weather conditions and interests of officer safety justified moving the vehicle, noting that the decision to move the vehicle was made only after the first search failed to disclose any contraband.

The court also noted that even if defendant consented to the search at the scene of the traffic stop, that consent was not sufficiently broad to authorize moving the vehicle to police headquarters for an additional search. "[W]e do not believe an Illinois citizen who is pulled over on a highway and subsequently consents to a search of his vehicle intends to voluntarily and knowingly consent to have his vehicle removed from the highway and relocated to the local police station for a further search once the initial search on the highway is completed."

Because the trial judge erred by denying defendant's motion to suppress, and because the conviction for possession of methamphetamine cannot stand in the absence of the contraband discovered in the second search, the cause was remanded with directions to

vacate the conviction and sentence.

People v. Topor, 2017 IL App (2d) 160119 An officer may conduct an investigatory stop without a warrant or probable cause if he or she reasonably believes that the person stopped is committing, has committed, or is about to commit a crime. Facts giving rise to reasonable suspicion need not be based on personal observations by the officer. Instead, reasonable suspicion may be based on information provided by a member of the public. Where the reasonable suspicion is based on information provided by a citizen informant, that information need possess only some indicia of reliability to justify an investigatory stop.

A citizen informant generally has greater reliability than the typical criminal informant. There are many factors to be considered when determining the reliability of information provided by a citizen, including whether the informant identified himself, offered to sign a complaint, or witnessed the alleged crime, and whether the information was independently corroborated. Factors that weigh against reliability include whether the informant was paid, did not witness the alleged offense, or failed to give their name and contact information. An unverified tip by a known informant may be insufficient to establish probable cause for an arrest but sufficient to justify an investigatory stop.

The court found that there was sufficient reasonable suspicion to conduct an investigatory stop where a citizen informant reported through 911 that he detected the smell of burning cannabis coming from defendant's vehicle. The citizen reported that he was seated in his truck in the drive-up lane at McDonald's when he noticed the odor. The caller gave the dispatcher his name and phone number and gave a detailed description of the car, including the license number. The officer located the car near McDonald's and activated his emergency lights when the car pulled into a gas station.

In finding that there was reasonable suspicion, the court noted that the informant called 911 and identified himself by his full name and telephone number. In addition, the report was corroborated when the officer saw the vehicle near McDonald's. Finally, there was no indication that the informant received any benefit for providing the information, and the informant witnessed the alleged offense because he smelled the marijuana.

The court rejected the argument that the tip was not reliable because the informant did not indicate how he was familiar with the smell of burnt cannabis. The court found that the reasonable suspicion standard does not require an officer to present a foundation for his identification of a particular odor as that of burnt marijuana. The same standard applies to a citizen informant.

Because the information provided by the citizen informant was sufficient to support a reasonable suspicion of criminal activity, the trial court erred by suppressing the evidence.

People v. Bozarth, 2015 IL App (5th) 130147 A seizure occurred where a police officer saw defendant's car drive onto private property, followed and stopped behind defendant's car, exited his squad car with his weapon drawn, and testified that had defendant driven away he probably would have followed her and activated his overhead lights. The court concluded that under these circumstances defendant was seized when the officer pulled behind her vehicle.

Where the officer's uncontroverted testimony established that he lacked any basis to suspect criminal activity when he began following defendant's vehicle and that he went on the private property just to see if anything "might happen," there was no reasonable basis to believe that a crime had or was about to occur. Therefore, the **Terry** stop was improper.

The court rejected the State's argument that the officer was acting in a community

caretaking capacity when he followed defendants's vehicle onto the private drive. Community caretaking occurs where police are performing some act unrelated to the investigation of crime. The officer's testimony "belies the claim that he was acting in a community caretaking capacity where he testified that it entered his mind that [defendant] might be hiding from the police, involved in theft, making methamphetamine, or foul play."

The denial of the defense motion to quash the arrest and suppress evidence was reversed. Because the State could not prevail on remand without the suppressed evidence, the trial court's finding of guilt and order placing defendant on supervision were also reversed.

People v. Gonzalez-Carrera, 2014 IL App (2d) 130968 625 ILCS 5/12-201(b) provides that all motor vehicles other than motorcycles must have at least two lighted tail lamps which are mounted on the left rear and right rear of the vehicle "so as to throw a red light visible for at least 500 feet in the reverse direction." 625 ILCS 5/12-201(c) provides that such tail lights must be illuminated whenever the vehicle's headlights are on. Under §12-201(b), a vehicle's headlights must be illuminated from sunset to sunrise, when rain, snow, fog or other conditions require the use of windshield wipers, and at any other time when due to insufficient light or unfavorable atmospheric conditions persons and vehicles on the highway are not clearly discernible at a distance of 1000 feet.

The court concluded that the officer lacked a reasonable basis to suspect that defendant violated 625 ILCS 5/12-201(b) because the red tail light cover on his vehicle contained a hole which allowed white light to show through when the brakes were activated. Section 12-201(b) requires that tail lights be illuminated from sunset to sunrise, when conditions require the use of windshield wipers, and when persons and vehicles are not clearly discernible at a distance of 1000 feet. Because the stop occurred at 3:40 p.m. and the citation indicated that the conditions were clear and dry, §12-201(b) did not require the use of two red tail lights.

Under these circumstances, the officer lacked a reasonable basis to believe that a traffic offense was occurring. The order granting defendant's motion to suppress was affirmed.

The court concluded that because §12-201(b) was not applicable, it need not determine whether **People v. Girot**, 2013 IL App (3rd) 110936 was correctly decided. **Girot** found that §12-201(b) was violated where defendant drove his vehicle after dark with a hole in the red tail light cover which allowed both red and white light to be visible.

People v. Miller, 2014 IL App (2d) 120873 Reasonable suspicion to stop a motor vehicle may be based on information obtained from a citizen informant, so long as that information possesses sufficient indicia of reliability. The reliability of the information is enhanced by independent corroboration, and by situations where the citizen informant gives his name, witnesses the reported offense, and offers to sign a complaint. By contrast, the reliability of the information is decreased where the informant is paid, fails to give his name, and does not witness the offense. "Although courts no longer presume that citizen informants are more reliable than paid informants, this distinction is still relevant in assessing the reliability of the information."

The information provided to the police in this case was sufficiently reliable to provide reasonable suspicion for stopping the car. The informant called the police and told them that defendant had $70 worth of cocaine and a crack pipe in the car (the informant was driving the car and defendant was a passenger). The informant gave the police his name and received

no benefit from the police. As a named citizen informant who witnessed the offense, only a minimum amount of corroboration was necessary to establish reliability.

The informant gave the police detailed information about his car and he told them where he would be at a specific time. When the officer arrived at the specified location, she saw a car matching the informant's description. The confirmation of these facts created reasonable suspicion that justified the stop.

The court rejected defendant's argument that the stop was improper because the police only corroborated innocent details, not any unlawful conduct. The police are not always required to corroborate criminal activity. When an informant is reliable and provides specific detail about defendant's criminal activity, the police may act on a tip even if they only corroborate innocent details. If the police always had to corroborate and hence witness criminal activity, "information received from informants would become immaterial."

People v. Abdur-Rahim, 2014 IL App (3rd) 130558 Police stopped defendant for following too closely and for improper lane usage. He asked defendant for his driver's license and returned to the squad car to write the tickets. The officer thought that he smelled the odor of burnt cannabis around defendant's truck, but was not sure and told the dispatcher that he was not "going to use that as probable cause to search the vehicle." A backup officer did not smell cannabis but thought that car smelled like "Vick's Vapor Rub all over."

While he was writing the tickets, the officer learned from the dispatcher that defendant was on the terrorist watch list. The officer called for a canine team, believing that the information about the terrorist list would not be resolved quickly and the canine team would have time to arrive.

After about 25 minutes had passed, the officer received a report that defendant was a "Code 3" suspect, which is the lowest priority on the terror suspect list. The officer who made the stop testified that most of the 25-minute delay was due to the need to check the terrorist list information. However, the dashboard videotape revealed that after learning that defendant was a "Code 3" suspect, the same officer stated to the backup officer that they should wait until the canine team arrived to see if the dog alerted and gave them a reason to search the locked bed of defendant's truck.

After several more minutes had passed, the officer returned to defendant's truck and asked him to step out. The officer asked defendant about the smell of cannabis, and defendant stated that he might have the odor on his clothing. When the officer stated that a canine team had been called and that the truck would be searched if the dog alerted, defendant admitted that a device for smoking marijuana was in the car. During the conversation outside the truck, the officer retained defendant's driver's license and defendant was not free to leave.

Defendant was then placed in the squad car and the truck was searched, disclosing a small amount of marijuana and the smoking device. The canine team arrived during the search, and the dog alerted to defendant's truck. A large quantity of cannabis was then found in the truck's bed. Approximately 22 minutes elapsed between the time the officer spoke to defendant outside the truck and the time the search was completed.

The court concluded that the officers unlawfully prolonged the stop in an attempt to obtain additional incriminating evidence about defendant. Once the tickets were written and the issue concerning the terrorism watch list was resolved, the stop could be extended only if there was a lawful, independent basis. The court rejected the argument that the alleged smell of burnt cannabis provided such a basis. Although such an odor might be an adequate basis to extend a stop under some circumstances, the officer here stated that he was not even certain whether he detected the odor of cannabis. Under these circumstances, the officer's

statements amounted to a hunch or suspicion and were not a reasonable, articulable suspicion of criminal activity.

Because defendant's Fourth Amendment rights were violated by the continued detention after the tickets were written, defendant's motion to quash the arrest and suppress evidence should have been granted. The conviction for unlawful possession of cannabis with intent to deliver was reversed outright because without the suppressed evidence, the State would have been unable to prevail at a retrial.

People v. Cummings, 2013 IL App (3d) 120128 Defendant was driving a van which belonged to a female friend who had an outstanding warrant. An officer checked the van's registration, found the warrant, and pulled alongside the van to identify the driver. The officer testified that he was unable to tell whether the driver was a male or female because defendant "pinned" himself back in the seat, obstructing the officer's view. The officer then conducted a traffic stop to determine whether the driver was the person with the outstanding warrant.

As the officer approached the van after the stop, he was able to determine that the defendant was male and therefore not the person with the warrant. He asked for defendant's driver's license, however, and defendant indicated that he did not have a license. Defendant was subsequently charged with driving while a suspended license.

The trial court granted defendant's motion to suppress evidence. The judge found that the officer had a legitimate reason to make the traffic stop, but conducted an unlawful seizure by asking for defendant's license after the purpose of the stop had been completed. The State appealed, and the Appellate Court affirmed the trial court's ruling.

A traffic stop constitutes a "seizure" for purposes of the Fourth Amendment, and requires a reasonable suspicion of criminal behavior. A seizure that is lawful at its inception can become unlawful if it unreasonably prolongs the duration of the detention. Thus, an investigative stop that is originally lawful must cease once the reasonable suspicion which justified it has dissipated, unless there is independent justification under the Fourth Amendment to prolong the stop.

There was no dispute that the original stop was lawful, as the officer had reason to determine whether the driver of the van was the registered owner and was the subject of the warrant. The court concluded, however, that the purpose of the stop was fulfilled once the officer realized that the driver was a male. Because the reason for the stop had been satisfied, and there was no reason no basis to suspect that the defendant or vehicle was in violation of the law, the officer acted unreasonably by prolonging the stop to request defendant's driver's license. Because the investigative stop should have ended before defendant was asked for a driver's license, the trial court did not err by granting the motion to suppress.

The court rejected the State's argument that it is reasonable for an officer to request a driver's license and proof of insurance as part of any traffic stop, even where the purpose for the stop has ended. The court acknowledged that an officer who realizes that the purpose for the stop had dissipated may approach the defendant, explain the reason for the stop, apologize, and advise the defendant that he is free to leave. At that point, the officer may ask to see the driver's license in the context of a consensual encounter, but only after assuring the defendant that he is free to leave.

The trial court's order granting the motion to suppress was affirmed.

People v. Daniel, 2013 IL App (1st) 111876 A vehicle stop is analogous to a **Terry** stop, and as a result is generally analyzed under the principles of **Terry v. Ohio**, 392 U.S. 1 (1968).

A lawful **Terry** stop may be made when the police observe the defendant commit a traffic violation. In the course of such a stop, the police may also order the defendant out of the vehicle.

The police lawfully stopped defendant when they observed him fail to use his turn signal to indicate a lane change, and could order defendant out of the car incident to the stop.

The use of handcuffs may convert a lawful **Terry** stop into an unlawful arrest because it heightens the degree of intrusion and is not generally part of a stop. Whether the handcuffing of the detainee transforms a **Terry** stop into an arrest depends on whether the handcuffing was justified by concerns for officer safety and the safety of the public. The use of handcuffs must be reasonable in light of the circumstances that prompted the stop or that developed during its course.

Concerns for officer safety justified the police handcuffing defendant and did not transform the stop into an unlawful arrest. The police had observed several furtive movements by the defendant driver and his passenger as they approached the car after the stop. An officer testified that as a result, he became concerned for his safety and drew his weapon. The officer repeatedly ordered everyone in the vehicle to raise their hands, but defendant refused to comply. The trial court also observed that the area where the stop occurred was dangerous and police officers had been shot in that area during the previous year.

People v. Girot, 2013 IL App (3d) 110936 The Illinois Vehicle Code requires that all motor vehicles exhibit at least two lighted tail lamps that throw a red light visible for at least 500 feet in the reverse direction. 625 ILCS 5/12-201(b). The Code also provides that "[u]nless otherwise expressly authorized by this Code, all other lighting or combination of lighting on any vehicle shall be prohibited." 625 ILCS 5/12-212.

There was a chip the size of a dime or a nickel in the red plastic lens that covered the taillight of defendant's vehicle. As a result, the taillight emitted a red and white light. This was not authorized by the Code, and provided reasonable suspicion authorizing a police officer to stop defendant's vehicle to investigate the violation.

People v. Butorac, 2013 IL App (2d) 110953 The Fourth Amendment was not violated where Illinois Conservation Police conducted a "safety check" of defendant's boat pursuant to 625 ILCS 45/2-2(a), which authorizes officers to "board and inspect any boat at any time" to determine compliance with the Boat Registration and Safety Act. Thus, plain-view observations by the officers were admissible at defendant's trial for operating a watercraft while under the influence.

The Fourth Amendment protects citizens against unreasonable searches and seizures. Warrantless searches and seizures are *per se* unreasonable unless one of several well-defined exceptions apply. A defendant who raises an "as-applied" challenge to a search conducted pursuant to a statute asserts that under the circumstances of the case, the search in question violated the Fourth Amendment. By contrast, a facial challenge asserts that the statute is unconstitutional in all situations.

At the hearing on a motion to suppress, defendant bears the burden of showing that the search or seizure was unconstitutional. A *prima facie* case of unreasonableness is proven where defendant shows that he was doing nothing unusual to justify the intrusion. At that point, the burden of production shifts to the State to counter the *prima facie* case. Although the burden of production shifts to the State, the ultimate burden of proof remains with the defendant.

In the context of motor vehicles, the U.S. Supreme Court has recognized that under certain circumstances, a fixed checkpoint or roadblock may constitute an exception to the general prohibition against suspicionless, warrantless seizures. Generally, whether a checkpoint is constitutional is determined by balancing the State interests served by the checkpoint with the objective and subjective intrusions resulting from the stop. Suspicionless stops at fixed checkpoints are generally preferred over suspicionless stops by roving patrols, because the intrusion created by the seizure is minimized. Even for fixed checkpoints, however, the State interest being served must be something more than merely "the general interest in crime control."

The "objective intrusion" of a stop refers to the level of physical intrusion that is created, and is measured by factors such as the length of the stop, the nature of the questioning, and whether a search was conducted. The "subjective intrusion" concerns the level of psychological intrusion such as generating fright or annoyance on the part of citizens. There is no "ironclad formula" for measuring the extent of the subjective intrusion created by a roadblock, but factors considered in this regard include whether: (1) the officers were acting with unbridled discretion, (2) the decisions to establish the roadblock and to locate it in a particular place were made by supervisory personnel, (3) vehicles were stopped in a preestablished and systematic fashion, (4) written guidelines for conducting the operation were in place, (5) the official nature of the checkpoint was apparent to motorists, (6) it was obvious that the roadblock was not unsafe, and (7) the checkpoint was publicized in advance. A court need not have evidence on all these factors in order to determine the extent of the subjective intrusion created by a checkpoint.

Because there are crucial differences between stops of watercraft and automobiles, the law governing motor vehicle checkpoints does not necessarily resolve the constitutionality of a "safety stop" of a boat. Because vessels can move in any direction at any time and potentially have access to the open seas, using fixed checkpoints may not be practical. In addition, the documentation system for vessels is significantly different from the vehicle licensing system because more detailed documentation is required for vehicles and the outward markings of watercraft do not indicate whether the vessel is in compliance with State law. Finally, different public interests are at stake concerning boat safety checks because the State has an interest in collecting duties, combating smuggling, and preventing illegal immigration.

The court concluded that it would have been impractical for police to conduct a fixed checkpoint on a river that was 200 yards wide and bordered by two dams that were 6½ miles apart. There were no lane lines or buoy markers, and boat traffic could originate from a number of docks and launches, including some that were private and some which were public. Under these circumstances, it was reasonable to conduct a moving safety check under which the officers attempted to stop every boat on the river to check safety equipment and registration documentation.

The court concluded that the State's interest in boating safety justified the safety check and outweighed the objective and subjective intrusions resulting from the safety check. Concerning the objective intrusion, the stop was brief and involved straightforward questioning. The officers did not board or search defendant's boat, but merely pulled their boat alongside defendant's craft, requested that he put his boat in neutral, and asked to see the boat's safety equipment and registration.

Concerning the subjective intrusion, the officers had stopped some 20-25 boats that evening and were attempting to stop every boat on the river. Thus, the operation was systematic and did not involve unlimited discretion on the part of the officers.

Furthermore, it was obvious to boaters that the officers were conducting an official operation where the officers were in uniform and immediately identified themselves to defendant as conservation officers. The stop occurred during daylight hours, and the record reflects a "fairly mundane and friendly interaction" which did not involve concern or alarm on defendant's part.

The court acknowledged that there was no evidence concerning whether supervisors ordered the safety check, whether there were written guidelines, or whether there was advance publicity of the operation. Because there is no "ironclad formula" for determining the subjective intrusion of a stop, however, the absence of such evidence does not mandate a finding that the operation was unconstitutional.

Because the safety check operation did not violate the Fourth Amendment, it was proper to admit the officers' plain-view observations of numerous empty alcohol bottles in the boat and that defendant had glassy, bloodshot eyes and slurred speech. Defendant's conviction for operating a watercraft under the influence of alcohol was affirmed.

People v. Haywood, 407 Ill.App.3d 540, 944 N.E.2d 846 (2d Dist. 2011) Vehicle stops are generally analyzed under **Terry v. Ohio**, which permits an officer to conduct a brief, investigatory stop where there is a reasonable belief that the person to be detained has committed or is about to commit a crime. An investigatory stop must be justified by specific and articulable facts which, taken together with rational inferences, reasonably warrant the intrusion. A **Terry** stop must be authorized at its inception; a stop that is unsupported by reasonable suspicion cannot be justified by evidence which is discovered as a result of the stop.

An officer can reasonably believe that a person has violated the law only if the acts in question are in fact prohibited. A traffic stop was improper where it was based on the officer's belief that the defendant violated traffic laws by driving past three opportunities to turn with his turn signal activated. The court found that Illinois law does not prohibit such actions, and under some circumstances may require it.

625 ILCS 5/11-804(d), which requires, prohibits, or permits the use of turn signals depending on the circumstances, permits a driver to activate a turn signal without intending to turn unless the vehicle is parked or disabled or the driver is using the turn signal as a "do pass" signal. Furthermore, because §11-804 mandates the minimum (but not the maximum) distance for activating a signal before a turn, and because several opportunities to turn might be located within a short distance, the statute might require a motorist to activate a signal and pass a turn.

The court acknowledged that the stop would have been proper had there been a reasonable belief of a separate, valid basis for stopping the vehicle. An objectively reasonable stop is not invalid merely because the officer acted out of dual motivations, one of which was improper.

The court concluded, however, that 625 ILCS 5/12-208(b), 625 ILCS 5/12-212(b) and 625 ILCS 5/12-212(c), which deal with flashing lights on a vehicle, were intended to specify the equipment which must be on a vehicle and not to regulate drivers' conduct. Therefore, the officer could not have reasonably believed that any of the above sections prohibited driving past three opportunities to turn with a turn signal activated.

The State waived its argument, which it raised for the first time on appeal, that the stop was justified by the possibility that the officer believed defendant was committing a violation by operating a vehicle with a malfunctioning turn signal. The court acknowledged that an officer might reasonably suspect an equipment violation if a driver traveled a long

distance with an activated turn signal or turned the wrong way while the signal was flashing. However, there was no such evidence here.

People v. Byrd, 408 Ill.App.3d 71, 951 N.E.2d 194 (1st Dist. 2011) The trial court found that the police had reasonable suspicion to support a **Terry** stop of defendant and his car triggered by their observation of a suspicious transaction from the defendant's car between defendant and a woman on the street. The police had probable cause to arrest defendant when he admitted he did not have a valid driver's license.

The judge's ruling that the recovery of a magnetic box containing drugs from under the chassis of defendant's car was a lawful search incident to arrest was incorrect under **Arizona v. Gant**, 556 U.S. __, 129 S.Ct. 1710, ___ L.Ed.2d ___ (2009), where defendant was in handcuffs near the front of the car when the box was recovered. **Gant** held that the search of a vehicle could not be upheld as a search incident to an arrest where the defendant had been removed from the vehicle and secured in a location from which there was no possibility that he would gain access to the vehicle.

Because the motion to suppress was litigated prior to the decision in **Gant**, the court remanded for a "new suppression hearing to allow the parties to develop the facts in light of **Gant** and to allow the circuit court to make express findings of fact and conclusions of law pursuant to" 725 ILCS 5/114-12(e).

The Appellate Court upheld the trial judge's finding that the police did not have probable cause to believe that defendant had engaged in a drug deal when they stopped defendant's car.

The trial court's determination concerning factual matters at a hearing on a motion to suppress, including reasonable inferences to be drawn from the testimony, is entitled to deference and will not be disturbed on review unless manifestly erroneous. The trial court's finding that probable cause did not exist to arrest defendant for drug dealing was not manifestly erroneous.

The police district had received an anonymous phone call claiming that narcotics transactions involving a Chevrolet Cavalier were occurring in the 7200 block of South Spaulding. The officers then observed defendant engaging in what to the officers appeared to be a drug transaction. Defendant, driving a Chevrolet Cavalier, was flagged down by a woman in the 7200 block of South Spaulding, defendant and the woman engaged in a conversation, and defendant retrieved a small black box from underneath the car and handed the woman shiny objects from the box in exchange for money.

The trial court properly gave little weight to the phone call because such anonymous calls are often unreliable. The phone call was not mentioned in either of the reports prepared by the arresting officers.

The judge also properly discounted the officer's claim that his 14 years as a narcotics officer enabled him to know a drug transaction when he sees one. The judge was free to disregard the officer's claims as subjective impressions of his observations. As a matter of law, a single hand-to-hand street exchange between the defendant and a person who is never questioned regarding what he or she received does not establish probable cause to believe that a drug exchange occurred, where the trier of fact found otherwise.

The dissent (Robert Gordon, J.) concluded no remand was necessary. Although the trial court incorrectly ruled that the search was valid as incident to the arrest, the search could be upheld on other grounds. First, the defendant had no reasonable expectation of privacy in an unlocked box attached by a magnet to the outside of his vehicle. Second, the police had probable cause to search the box "under the automobile exception to the fourth

amendment, based on: 1. an anonymous and corroborated tip; 2. the observation by the police officers of a single sale of drugs from the box; and 3. a police officer's extensive prior experience in observing drug transactions."

People v. Price, 2011 IL App (4th) 110272 When a police officer observes a driver commit a traffic violation, the officer is justified in detaining the driver to investigate the violation.

The Illinois Vehicle Code provides that "[n]o person shall drive a motor vehicle with any objects placed or suspended between the driver and the front windshield . . . which materially obstructs the driver's view." 625 ILCS 5/12-503(c).

An officer had a reasonable suspicion that an air freshener hanging from the rearview mirror of defendant's vehicle violated the material-obstruction statute and justified the traffic stop of the vehicle. The officer did not pull defendant over merely because of the presence of the air freshener. The officer testified to specific facts supporting his belief that the air freshener was a material obstruction, including its size, the fact that it swayed back and forth, that it hung a few inches below defendant's eye level, and that defendant passed several intersections that would have required defendant to look in its path.

Appleton, J., dissented, expressing his belief that the material-obstruction statute "is being abused to achieve traffic stops where no other probable cause exists."

People v. McQuown, 407 Ill.App.3d 1138, 943 N.E.2d 1242 (4th Dist. 2011) When a police officer observes a driver commit a traffic violation, the officer is justified in briefly detaining the driver to investigate the violation. A seizure that is lawful at its inception may, however, become unlawful if it is prolonged beyond the time reasonably required to complete the purpose of the stop. There is no bright-line rule to indicate when a stop has been unreasonably prolonged. Instead, the duration of the stop must be justified by the nature of the offense and the ordinary inquiries incident to such a stop. Courts must consider the purpose to be served by the stop as well as the time reasonably needed to effectuate that purpose. When a detention is based on reasonable suspicion, the police must diligently pursue a means of investigation likely to quickly confirm or dispel their suspicions.

The police stopped defendant's car at 3:01 p.m. for having an obstructed windshield where she had three air fresheners hanging from her rearview mirror. As it is a violation of the Illinois Vehicle Code to "drive a motor vehicle with any objects placed or suspended between the driver and the front windshield . . . which materially obstructs the driver's view," 625 ILCS 5/12-503(c), the police had probable cause to initiate a valid traffic stop.

After asking defendant for her driver's license and proof of insurance, the officer completed the warning citation at 3:12 p.m. Nothing indicates that the officer returned defendant's license and proof of insurance. Between 3:12 p.m. and 3:25 p.m., the officer requested permission to search the car, but defendant refused. The officer called the canine unit at 3:25 p.m. and it arrived about 3:50 p.m. The purpose of the stop was prolonged beyond the time reasonably required to complete the traffic stop. The "business portion" of the stop took a little over ten minutes, but the officer waited 13 minutes after the initial purpose of the stop had ended to call for the canine unit and the unit did not arrive until 25 minutes later.

The continued detention of defendant after issuance of the citation was not justified by reasonable suspicion based on the officer's observation of the overwhelming smell of vanilla air freshener in defendant's car, her nervousness, her inability to state exactly where she was heading, her frequent looks back to her vehicle, and the fact that the interstate on which she was traveling is known as a drug corridor. The bulk of factors supporting the

officer's reasonable suspicion were known to the officer early in the stop. Instead of calling for the canine unit, the officer attempted to obtain defendant's consent to search for the next 13 minutes. It was only then that the officer called for the canine unit, which did not arrive for another 25 minutes. Therefore the length of the stop was unreasonable.

The Appellate Court affirmed the order granting defendant's motion to suppress cocaine found under the driver's seat after a dog from the canine unit alerted to defendant's car.

People v. Dittmar, 2011 IL App (2d) 091112 A police-citizen encounter qualifies as community caretaking if: (1) the police are performing some function other than the investigation of crime, and (2) the search or seizure is reasonable because it is undertaken to protect the safety of the general public. The community-caretaking doctrine is analytically distinct from consensual encounters, which by their very nature require no justification, and is invoked to validate a search or seizure under the Fourth Amendment.

With his emergency lights activated, a police officer pulled in back of a car stopped by the side of the roadway in a rural area shortly before 6 a.m. The officer had observed the passenger and the driver switch positions as if the passenger intended to drive. The stipulated testimony of the officer was that he stopped to check if the vehicle had mechanical problems or if there were problems with the occupants.

The finding by the circuit court that a seizure occurred when the officer activated his overhead lights as he pulled behind the stopped car was a finding that defendant's Fourth Amendment rights were implicated and that the State needed to justify the infringement on defendant's freedom. That finding did not preclude, and was a necessary predicate of, a finding that the officer was performing a community-caretaking function.

The officer's use of his emergency lights and his informing the dispatcher of the make, model, and license plate number of the car upon his arrival did not demonstrate that the purpose of the stop was investigatory. Use of emergency lights is not *per se* an act of crime detection. On any roadway where there is even potential traffic, it is reasonable for a police officer to activate his emergency lights while stopped to check on a parked vehicle. While police frequently convey information about detained vehicles to the dispatcher while in crime-detection mode, such communications also have the public-safety benefit of tracking the officer's location and activities in case the officer or the occupants of the vehicle go missing.

It was a reasonable public-safety endeavor for the officer to check on the stopped vehicle. His observations could cause the officer to have a genuine concern for the welfare of the travelers and believe that they might need assistance for a mechanical problem or because the driver was suffering from an impairment. Even if he could not be certain that there was an emergency, his lack of certainty had to be weighed against the likelihood that if he did not stop to inquire, the travelers would not receive assistance for some time, given the rural location. He also had to consider potential hazards to the travelers from passing traffic, given that no lights illuminated their car. Therefore the public interest served by the officer's action more than outweighed the intrusion.

Because the officer was justified in further detaining the defendant when he reached the driver's door and detected the strong odor of alcohol, the court reversed the order granting defendant's motion to quash arrest and suppress evidence.

People v. Galvez, 401 Ill.App.3d 716, 930 N.E.2d 473 (2d Dist. 2010) **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), allows the police to temporarily stop an individual for investigation upon reasonable suspicion that a crime has been or is being

committed.

The court acknowledged that the police have grounds for a **Terry** stop of a vehicle if they know that the license of the registered owner of the vehicle has been suspended or revoked. In this case, however, the police stopped a vehicle where they knew that there were two registered owners, a man and a woman, and only the man's license had been revoked. The police stopped the vehicle without first determining that the driver was male. The Appellate Court concluded that it was not reasonable for the police to make a **Terry** stop based on the belief that the driver was unlicensed, as it was more reasonable to believe that the licensed owner would be the driver.

The court affirmed the circuit court's order quashing arrest and suppressing evidence in a prosecution for driving on a revoked license.

People v. Marshall, 399 Ill.App.3d 626, 926 N.E.2d 862 (1st Dist. 2010) Defendant was "seized" where, within seconds after he stopped his car in a "No Parking" zone, an officer pulled behind him and activated his overhead flashing lights. The officer testified that he intended to conduct a traffic stop when he pulled over, and upon reaching the car he immediately asked for a driver's license and proof of insurance. Because no reasonable person would have felt free to decline the request for documentation upon seeing flashing lights and being approached by a uniformed officer, a "seizure" occurred.

Because there were no specific, articulable facts providing a reasonable suspicion that criminal activity had or was about to occur, the officer lacked authority to conduct a **Terry** stop. The court noted the officer's testimony that he had no suspicion that defendant was involved in a crime. Furthermore, defendant did not commit a parking infraction by stopping in the "No Parking" zone, because neither he nor his passenger left the car and there was no evidence that the "No Parking" zone was also a "No Standing" or "No Stopping" area.

The court rejected the argument that the encounter was consensual and did not involve the 4th Amendment because the officer was merely checking on the well-being of defendant and his passenger. Upon reaching defendant's car, the officer immediately demanded defendant's driving documents, without inquiring whether defendant needed help or why he had stopped.

The court rejected the argument that defendant was not "seized" because he stopped his car voluntarily before the officer exercised a show of authority.

People v. Bruni, 406 Ill.App.3d 165, 940 N.E.2d 84 (2d Dist. 2010) In determining whether stopping motorists at a sobriety checkpoint in the absence of individualized suspicion of wrongdoing is constitutionally permissible, courts balance the public interest against the intrusiveness to motorists stopped at a sobriety checkpoint. The duration and intensity of the checkpoint are relevant to judging the intrusiveness of the checkpoint. While courts have upheld checkpoints where the average delay for each vehicle was only a matter of seconds, there is no arbitrary limit on how long a motorist may be detained when an officer's observations during the initial screening warrant a further investigation. To detain a motorist for a more extensive field sobriety testing, articulable suspicion must exist that the motorist is intoxicated.

Defendant's vehicle was stopped at a sobriety checkpoint. A police officer asked for his driver's license and insurance card, and determined that his license was valid and his insurance was current. In response to questioning, defendant disclosed that he was coming from a karaoke party at a friend's house and that he had one beer. The officer noticed a faint odor of alcohol coming from the passenger compartment of the car and that defendant's

eyes were "glossy," meaning that "there was like a haze over them." He asked defendant to step out of the car and perform sobriety tests, which defendant failed. When asked how much time elapsed from when he initially spoke to defendant to when he had defendant walk to where he was going to conduct the field tests, the officer testified that it was "probably" less than ten minutes and "probably" less than five minutes.

The Appellate Court rejected the defense argument that the officer unreasonably prolonged the seizure at the checkpoint. The defense did not satisfy its burden to show that the stop was unreasonably prolonged based on the officer's estimation that defendant most likely was detained for less than five minutes, during which the officer engaged in conduct reasonably related to the objective of confirming or dispelling the suspicion that defendant might be impaired as a result of alcohol consumption.

The officer possessed a reasonable, articulable suspicion that defendant was under the influence of alcohol. The terms "glossy" and "glassy" eyes are used interchangeably as a sign of intoxication. That observation, coupled with the odor of alcohol and defendant's admission to having had one drink, was sufficient to establish reasonable suspicion to further detain defendant, even though driving after consumption of alcohol is not illegal in itself.

People v. Johnson, 379 Ill.App.3d 710, 885 N.E.2d 358 (2d Dist. 2008) The act of operating a vehicle at 4:30 p.m. on a Sunday afternoon did not provide a reasonable suspicion of criminal activity sufficient to authorize a traffic stop, even if the officer knew that the driver had a restricted driving permit which allowed him to drive only to and from work, to receive medical care, and to attend alcohol rehabilitation or other classes. Although there is an increased likelihood that the holder of a RDP is violating the conditions of the permit by driving on a Sunday afternoon, "[m]any people work on Sunday . . . and they may come off shifts at 4 p.m." In addition, the need for emergency medical care may arise any time, and "[s]urely some groups engaged in alcohol rehabilitation meet on Sunday afternoon."

The court declined to consider the State's argument that the suspicionless stop of a driver known to possess a RDP is proper under the "special needs" doctrine.

In the course of its holding, the court rejected the argument that the suspicionless stop of a person who holds a RDP is analogous to the suspicionless search of a probationer or parolee. Unlike parole and probation, the RDP contains no specific condition requiring the holder to submit to random compliance checks.

People v. Greco, 336 Ill.App.3d 253, 783 N.E.2d 201 (2d Dist. 2003) A police officer's observation of a driver weaving within a single lane was sufficient to justify a traffic stop. But see, **People v. Leyendecker**, 337 Ill.App.3d 358, 787 N.E.2d 358 (2d Dist. 2003) (trial court properly found that officer lacked reasonable suspicion where, in two-mile area, defendant's vehicle cross the fog line by approximately one foot while negotiating a curve to the left; the highway had many curves and "poor visibility" but a speed limit of 65 mph, and defendant had otherwise driven properly during the two miles in which the officer followed her).

People v. Isaac, 335 Ill.App.3d 129, 780 N.E.2d 777 (2d Dist. 2002) A stop for a minor traffic violation is permissible if the officer has a reasonable suspicion that the driver has committed, or is about to commit, a crime. The court noted the absence of any Illinois authority, but cited cases from other jurisdictions holding that "impeding traffic" statutes justify a traffic stop if there is evidence that the defendant's slow driving is "directly responsible for slowing other traffic."

There was no reasonable basis to believe that defendant was driving so slowly as to impede traffic. Defendant drove 30 mph in an area with a posted speed limit of 40 and a "regular flow of traffic" of 45 to 50. Although there were six cars behind the defendant and the officer, there were two lanes traveling in the same direction, allowing the cars to easily pass. The court also noted that no cars were behind the defendant when the officer started to follow her.

The court also stressed that the officer's primary concern was not whether defendant was violating the statute, but mere curiosity about why defendant "was driving the way she was." See also**, People v. Brand**, 71 Ill.App.3d 698, 390 N.E.2d 65 (1st Dist. 1979) (improper to stop defendant merely because he was driving 20 m.p.h. in a 45 m.p.h. speed zone; there was no posted minimum speed, and no indication that defendant's driving resulted in a substantial danger to other motorists).

People v. Lagrone, 124 Ill.App.3d 301, 464 N.E.2d 712 (1st Dist. 1984) The fact that a vehicle is transporting household items during mid-morning is "not unusual and provides no basis" for a stop.

§43-6(b)
Automobile Exception ("Carroll Doctrine")

United States Supreme Court

Maryland v. Dyson, 527 U.S. 465, 119 S.Ct. 2013, 144 L.Ed.2d 442 (1999) Where there is probable cause to believe that an automobile contains contraband, the Fourth Amendment permits a search even where there is no exigency precluding the police from obtaining a warrant.

Wyoming v. Houghton, 526 U.S. 295, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999) Where a police officer has probable cause to search a vehicle for evidence of a crime, that probable cause extends to all containers in the car, including those known to be the personal effects of a passenger. Where police officers had probable cause to search a car based on the driver's possession of a hypodermic needle, they acted properly by searching a passenger's purse found on the back seat.

In a concurring opinion, Justice Breyer stressed that the rule announced by the majority applies only to vehicle searches and only to containers found within the vehicle. Thus, probable cause to search a vehicle does not permit a search of a passenger's person.

In addition, the purse in question was "a considerable distance from its owner, who did not claim ownership until police discovered her identification while looking through it." Justice Breyer suggested that the outcome of the case might be different "if a woman's purse, like a man's billfold, were attached to her person. It might then amount to a kind of 'outer clothing.'"

California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991) The automobile exception to the Fourth Amendment permits the opening of any closed container found in an automobile where the police have probable cause to believe that evidence of a crime will be found in either the automobile or the container. (Overruling **Arkansas v. Sanders,** 442 U.S. 753 (1979), which held that although police may seize a container where they have probable cause to believe it contains evidence of a crime, they must obtain a warrant before opening it.)

New York v. Class, 475 U.S. 106, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986) After the defendant was stopped for a traffic violation and had left his car, a police officer reached into the car to move some papers which were obscuring the VIN number on the dashboard. The Court held that the officer's actions were proper; defendant had no reasonable expectation of privacy in the VIN number, and allowing defendant to return to the car to move the papers might have given him access to a concealed weapon.

Therefore, the officer lawfully seized a gun that he saw under the seat.

U.S. v. Johns, 469 U.S. 478, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985) Through air and ground surveillance, customs officials observed two trucks meet aircraft at a remote airstrip about 50 miles from the Mexican border. Officials approached the trucks and smelled the odor of marijuana. In the back of the trucks, they saw packages wrapped in plastic and sealed with tape. The persons in the trucks were arrested, and the packages were taken to a DEA warehouse. Three days later, the packages were opened without a warrant.

The Court held that the search of the packages was proper. The officers had probable cause to believe that not only the packages but also the trucks contained contraband. "Inasmuch as the Government was entitled to seize packages and could have searched them immediately without a warrant, . . . the warrantless search three days after the packages were placed in the DEA warehouse was reasonable and consistent with our precedent involving searches of impounded vehicles."

California v. Carney, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) A motor home is subject to the "automobile exception" when it is on the highway or readily capable of use on the highway and is in a place not regularly used for residential purposes. Here, the motor home was in a public parking lot, and "an objective observer would conclude that it was being used not as a residence, but as a vehicle."

Florida v. Meyers, 466 U.S. 380, 104 S.Ct. 1852, 80 L.Ed.2d 381 (1984) The defendant was arrested and his automobile properly searched. The vehicle was then towed to a wrecker service lot, where it was locked in a secure area. About eight hours later and without obtaining a warrant, the police went to the area, searched the vehicle again and seized evidence. The State court suppressed the evidence seized during the second search, holding that since the vehicle was impounded and the element of mobility removed, a warrant was required.

The Supreme Court held that the second, warrantless search was proper. The justification to conduct a warrantless search of a vehicle existed at the time of the initial stop, and did not vanish once the vehicle had been immobilized. A warrantless search of an impounded vehicle is proper though the vehicle is immobilized and even where it was previously searched. See also, **People v. Smith**, 50 Ill.2d 229, 278 N.E.2d 73 (1972) (delay of six hours between seizure of vehicle from the highway and its warrantless search at the police station did not invalidate the search).

U.S. v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) Under the "automobile exception," where the police have probable cause to search a lawfully stopped vehicle they may make a warrantless search of every part of the vehicle, including closed containers, which might conceal the object of the search (overruling **Robbins v. California**, 453 U.S. 420, 101 S.Ct. 2841, 69 L.Ed.2d 744 (1981), which prohibited the warrantless search of closed

containers).

Michigan v. Thomas, 458 U.S. 259, 102 S.Ct. 3079, 73 L.Ed.2d 750 (1982) Under the "automobile exception," when the police have probable cause to believe there is contraband in a vehicle, a warrantless search of the vehicle may be made at the scene or after the vehicle has been impounded and is in police custody. The justification for the search does not vanish once the vehicle is immobilized, nor does it depend on the likelihood that the vehicle would have been driven away or its contents tampered with during the period required for police to obtain a warrant. See also, **People v. Canaday**, 49 Ill.2d 416, 275 N.E.2d 356 (1971) (where auto is stopped on the highway and police have probable cause to search, the vehicle may be searched, without a warrant, either on the highway or at the police station).

U.S. v. Ortiz, 422 U.S. 891, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975) For Fourth Amendment purposes, there is no distinction between a fixed Border Patrol checkpoint (in which officers stop vehicles suspected of carrying aliens, question the occupants and "inspect" portions of the vehicle where aliens might hide) and a roving patrol, as in **Almeida-Sanchez**. Thus, in the absence of consent or probable cause, the Fourth Amendment prohibits Border Patrol Officers from searching private vehicles at traffic checkpoints removed from the border.

The Court noted that not every aspect of a routine automobile "inspection" necessarily constitutes a search. "It is quite possible, for example, that different considerations would apply to routine safety inspections required as a condition of road use."

Cardwell v. Lewis, 417 U.S. 583, 94 S.Ct. 2464, 41 L.Ed.2d 325 (1974) After defendant was arrested at a police station, the Fourth Amendment was not violated by towing his car from a public parking lot to police impoundment lot or by taking paint samples and tire impressions. The examination was based upon probable cause, nothing in the interior of the vehicle was taken, and "as in **Chambers**" the vehicle was seized from a public place where access was not meaningfully restricted.

Almeida-Sanchez v. U.S., 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973) Warrantless search of automobile by Border Patrol, 25 miles from the border, was not justified as a border search. The search of an automobile does not come within the **Carroll** doctrine where there was no probable cause.

Cady v. Dombrowski, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973) After defendant, a police officer, was involved in an accident, he was taken to the hospital. His disabled vehicle was towed to a garage. In an attempt to find defendant's police revolver, police made a warrantless search of the vehicle.

The Court held that the warrantless search was reasonable because it was standard police procedure to protect the public from having a weapon fall into improper hands.

Carroll v. U.S., 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed.2d 543 (1925) Where there is probable cause to believe that a motor vehicle stopped on the highway contains articles that the police are entitled to seize, a warrantless search is justified.

Illinois Appellate Court

People v. Kendricks, 2023 IL App (4th) 230179 Defendant was convicted of cannabis-related offenses after 10 pounds of marijuana was found in the trunk of his car. On appeal,

he challenged the trial court's denial of his motion to suppress. The evidence introduced at the suppression hearing was that the investigating officer, Andrew Scott, was on patrol when he turned and followed defendant's vehicle to a gas station after he noticed it had Alabama license plates. Defendant parked at a gas pump and went inside the station. Scott parked at an adjacent pump, went inside, and asked defendant if he would consent to a dog sniff of the car. Defendant declined to consent. Scott exited the gas station and conducted a dog sniff of the vehicle anyhow. Scott testified that the dog went "into odor" within a couple seconds and ultimately gave a final alert on the driver's door. The dog was trained to detect methamphetamine, cocaine, and heroin. Ultimately, none of those substances were found, and the marijuana that was found was in the trunk, not the driver's door.

Defendant argued on appeal that the dog sniff constituted an unconstitutional seizure of his vehicle where no specific articulable facts existed to justify the seizure. Defendant also argued that the dog sniff constituted a trespass upon his vehicle where the dog put its paws on the car and its snout underneath it during the sniff, thereby transforming the sniff into a warrantless search unsupported by probable cause. The appellate court did not reach either constitutional issue, however, instead finding that the case could be resolved on the basis of good faith.

The court first pointed to binding appellate court decisions holding that a dog sniff of the exterior of a vehicle parked in a public place was neither a search (**People v. Ortiz**, 317 Ill. App. 3d 212 (2000)), nor a seizure (**People v. Thomas**, 2018 IL App (4th) 170440). Officer Scott thus had a good faith basis upon which to conclude that he did not detain defendant or his vehicle for purposes of conducting the dog sniff against defendant's challenge that it constituted an unconstitutional search and seizure. And, because the dog went "into odor" before putting its paws on the car or its nose underneath it, those subsequent intrusions were supported by probable cause. Going into odor is an indication that narcotics are present. Officer Scott could reasonably conclude that this general alert was enough to create probable cause for a full search of the vehicle, even before the dog gave its final indication as to the location where the smell of narcotics was strongest. Accordingly, the appellate court affirmed the denial of defendant's motion to suppress.

People v. Webb, 2023 IL 128957 Defendant was stopped by the police while driving a semi that lacked federally-required DOT markings and failed to display proper registration. The officer who initiated the stop observed that defendant was in a "panic;" he was disorganized, volunteered that the truck had already been searched for drugs during an earlier traffic stop, and ultimately produced paperwork which did not match the displayed license plate. A canine sniff resulted in a positive alert. The canine was trained to alert to crack cocaine, methamphetamine, heroin, ecstasy, and marijuana. A subsequent search revealed an unlicensed firearm and a large quantity of cannabis.

In the trial court, defendant unsuccessfully sought to suppress the evidence on the basis that the police lacked reasonable suspicion for the stop, impermissibly prolonged the stop to conduct the canine sniff, and searched the truck in violation of the fourth amendment. The trial judge concluded that the police properly stopped defendant's vehicle for a registration violation, the canine sniff was proper, and the dog's alert provided probable cause for the warrantless search of the truck.

On appeal, defendant argued that trial counsel was ineffective for failing to seek suppression on a different basis, specifically that a positive canine alert, without more, was no longer sufficient to establish probable cause because Illinois had legalized possession of cannabis for medical use and the officer did not ascertain whether defendant had a medical cannabis card prior to the search. To succeed on a claim of ineffective assistance, a defendant

must establish both that counsel's performance was deficient and that defendant was prejudiced as a result.

On the question of deficient performance, counsel's performance is evaluated in context of existing law at the time, and an attorney will not be deemed deficient for not making an argument which had no basis in law. Here, controlling law at the time of the traffic stop was that either a canine alert (**People v. Campbell**, 67 Ill. 2d 308 (1977)) or a police officer's detection of the odor of cannabis emanating from a vehicle (**People v. Stout**.106 Ill. 2d 77 (1985)) could establish probable cause for a warrantless search.

Defendant argued, however, that the Supreme Court's statement in **People v. Hill**, 2020 IL 124595, that the medical cannabis act had "somewhat altered the status of cannabis as contraband," should have prompted counsel to seek suppression on that basis here where **Hill** was decided seven months prior to the hearing on defendant's motion to suppress. But, the Court concluded, as it had in **Hill**, that the deputy here relied on more than just the canine alert as justification for conducting a warrantless search. Specifically, the officer noted multiple failures to comply with registration and safety regulations, as well as the fact that defendant was disorganized, volunteered irrelevant and unnecessary information, and was in a "state of panic." Thus, the totality of the circumstances, including the canine alert, were sufficient to justify a reasonable person in believing that the vehicle contained contraband or evidence of criminal activity. Accordingly, counsel did not provide deficient representation by not seeking suppression on the basis of medical cannabis law, and defendant's conviction of cannabis trafficking was affirmed.

People v. Vences, 2023 IL App (4th) 220035 Defendant was convicted of possession of methamphetamine and armed violence. He moved to suppress the drugs and gun, which were discovered by police during a routine traffic stop. Defendant, who was a passenger in the car, argued that the officers impermissibly extended the duration of the stop to investigate him by calling for a canine unit.

The appellate court disagreed. The police may use a canine unit to investigate for drugs during a routine traffic stop as long as the dog sniff does not unnecessarily prolong the stop. Here, the sniff occurred while an officer was still writing up a warning for the driver. The canine officers asked defendant to exit the car, at which time a pipe fell out, causing defendant to flee and eventually drop a gun. This took place about six minutes after the stop. Once the pipe fell, the officers had reasonable suspicion to further investigate. Defendant therefore failed to show the stop was prolonged beyond the time necessary to complete the mission of the stop.

People v. Smith, 2023 IL App (3d) 230060 A vehicle in which defendant was a passenger fled from an attempted traffic stop, disregarding a traffic light and stop sign along the way. The police did not pursue the vehicle, but instead went to the residence of one of the other passengers (Coffie) and waited for the vehicle to arrive there. When it did, the officers told the vehicle's owner that they were going to tow the vehicle for an "Article 36 seizure" because it had been used to commit the offense of aggravated fleeing and eluding. An officer then searched the vehicle before a tow truck arrived, finding a loaded handgun on the rear driver's side seat, under a large bag. Defendant was subsequently charged with aggravated unlawful use of a weapon.

Defendant filed a motion to suppress, arguing that the warrantless search violated the fourth amendment because the police lacked consent or probable cause, and the search was not justified as a search incident to arrest or an inventory search. The circuit court granted defendant's motion, finding that the seizure was a pretext where the initial decision

to stop the vehicle for an equipment violation (no front license plate) was actually based on the officer's observation that defendant and Coffie were in the vehicle and were suspected of having been involved in a shooting a month prior. The court also noted that the officer's tow report did not indicate that the vehicle was being towed for aggravated fleeing and eluding, but rather that it was towed due to the weapons arrest.

On appeal, defendant conceded that the seizure of the vehicle at Coffie's residence was lawful because the police had probable cause to believe it had been used to commit aggravated fleeing and eluding based upon their personal observations. But, defendant argued that the subsequent search of the vehicle was not a valid inventory search, and the appellate court agreed. The officer's invocation of an "Article 36 seizure" was pretext for an investigatory search where the record demonstrated that the police never intended to seize the vehicle for asset forfeiture under that policy and instead used the procedure "as a ruse to conduct a search for contraband." There was no evidence that the officer followed departmental inventory procedure where no inventory log or seizure forms were introduced and where the tow report referenced only the weapons offense.

Additionally, the appellate court found that the State had forfeited any argument that the search should be sustained under the automobile exception to the warrant requirement. While the court concluded that the State had preserved that argument in the trial court, it found the argument forfeited on appeal under Supreme Court Rule 341(h)(7). The State's argument on this point consisted of a single paragraph in its brief and was not supported by pertinent legal authority.

People v. Mallery, 2023 IL App (4th) 220528 In January 2021, police initiated a traffic stop of defendant's vehicle and, during the stop, conducted a canine sniff. After the canine gave a positive alert, the police searched defendant's vehicle and found methamphetamine. Defendant filed a motion to suppress evidence, arguing that because the dog was trained to alert to the odor of cannabis, which is now a legal substance in Illinois, the dog's alert was unreliable and could not provide probable cause for a search. The trial court agreed, and granted defendant's motion to suppress. The State appealed.

The appellate court reversed. **People v. Stout**, 106 Ill. 2d 77 (1985), held that the odor of cannabis alone can establish probably cause for the warrantless search of a vehicle. While the status of cannabis has changed in recent years, such that it is now legal to possess in certain quantities and under certain conditions, **Stout** remains good law. The court noted that there are still illegal ways to transport, consume, and possess cannabis, even after legalization. Thus, the canine's positive alert was sufficient to establish probable cause, even if it was based on the odor of cannabis.

People v. Hall, 2023 IL App (4th) 220209 Defendant was a passenger in a vehicle subject to a traffic stop. The officer who initiated the stop detected the odor of raw cannabis, searched the vehicle, and discovered cannabis and LSD in the back seat where defendant had been sitting. Defendant was charged with possession of a controlled substance and filed a motion to suppress, arguing that the officer lacked probable cause to search the vehicle based solely on the odor of cannabis, a legal substance. The circuit court agreed and granted defendant's motion to suppress.

The appellate court reversed. The court held that **People v. Stout**, 106 Ill. 2d 77 (1985), remains good law in Illinois. **Stout** establishes that the odor of cannabis, alone, can establish probable cause sufficient to justify the search of a vehicle. The Illinois Supreme Court declined to overrule **Stout** in the medical cannabis context in **People v. Hill**, 2020 IL

124595. And, appellate court decisions have continued to follow **Stout** despite additional changes in the law regarding cannabis regulation (**People v. Rowell**, 2021 IL App (4th) 180819; **People v. Molina**, 2022 IL App (4th) 220152). The appellate court also noted that the Vehicle Code requires lawful amounts of cannabis to be transported in an odor-proof container (625 ILCS 5/11-502.1; 625 ILCS 5/11-502.15).

The court rejected the argument that cannabis should be treated like alcohol when considering the question of whether odor alone supports probable cause to search. There are differences in how the two substances are regulated. Specifically, alcohol's legality is not conditioned on the amount possessed, unlike cannabis, and alcohol is not required to be transported in an odor-proof container.

Here, too, the court noted that the officer relied on more than the odor of cannabis. Specifically, upon smelling cannabis, the officer instructed the vehicle's occupants to turn over any cannabis and drug paraphernalia, and the front seat passenger admitted that he had a small amount of cannabis. That admission, coupled with the odor of cannabis, was sufficient to establish probable cause to search the vehicle.

People v. Molina, 2022 IL App (4th) 220152 The trial court granted defendant's motion to suppress after finding that the odor of raw cannabis alone did not provide probable cause for a vehicle search. The appellate court reversed.

Despite the passage of various decriminalization laws in Illinois in the past few years, the Illinois Supreme Court's holding in **People v. Stout**, 106 Ill. 2d 77 (1985) has not been overruled. Under **Stout**, the odor of marijuana provides probable cause. Furthermore, under the Vehicle Code, when marijuana is transported in a vehicle, it must be stored in an odor-proof container. This remains true despite the fact that the decriminalization amendments do not require odor-proof containers. Finally, the odor of cannabis may create probable cause that the vehicle contains an illegal amount of cannabis. "Regardless of recent changes in the law legalizing possession of small amounts of cannabis, there are still, among other things, (1) illegal ways to transport it, (2) illegal places to consume it, and (3) illegal amounts of it to possess."

People v. Redmond, 2022 IL App (3d) 210524 Defendant was driving on Interstate 80 when a police officer observed him traveling three miles per hour over the speed limit and noticed that his license plate was improperly secured. The officer initiated a traffic stop, and defendant immediately pulled to the side of the road. Defendant did not make any furtive movements. Upon approaching defendant's vehicle, the officer smelled a strong odor of burnt cannabis, but did not observe any signs of impairment from defendant. While defendant could not provide his driver's license, the officer was able to determine that defendant had a valid license. Defendant said he was traveling from Des Moines, where he had been staying with a girlfriend, to Chicago. The officer placed defendant under arrest and searched the vehicle, locating a plastic bag of cannabis in the center console. Defendant was charged with misdemeanor possession of cannabis. He filed a motion to suppress evidence, arguing that the officer lacked probable cause to search his vehicle on these facts, and that motion was granted by the trial court.

The appellate court affirmed. Consistent with its recent decision in **People v. Stribling**, 2022 IL App (3d) 210098, the appellate court held that the odor of burnt cannabis, alone, cannot support probable cause to search the vehicle in light of changes to the law legalizing possession of marijuana for recreational use. And, here, there were no corroborating factors sufficient for a finding of probable cause. Defendant did not delay

pulling over, did not make any furtive movements, and was not evasive in his interactions with the officer. No paraphernalia was seen in the vehicle, and defendant did not appear impaired. The officer's testimony that Interstate 80 is a "known drug corridor" was inadequate; it is not reasonable to assume all persons traveling on a major interstate highway are involved in narcotics activity. To conclude otherwise would subject every vehicle traveling on Interstate 80 to a search for narcotics.

People v. Stribling, 2022 IL App (3d) 210098 Warrantless searches are presumptively unreasonable, subject to certain limited exceptions. One such exception is the automobile exception, recognized in **Carroll v. United States**, 267 U.S. 132 (1925), which holds that a warrantless search of a vehicle is not *per se* unreasonable given the transient nature of vehicles which renders it impracticable to secure a warrant before a vehicle leaves the jurisdiction, potentially taking with it contraband or evidence of a crime. Thus, a warrantless search of a vehicle is allowed so long as the police have probable cause. Probable cause to search a vehicle exists where the facts and circumstances known to the officer at the time would warrant a reasonable person to believe there is a reasonable probability that the vehicle contains contraband or evidence of a crime.

Here, defendant was stopped for a traffic violation. When the officer approached defendant's vehicle, the officer detected a strong odor of burnt cannabis emanating from inside. Defendant told the officer that someone had smoked inside the vehicle "a long time ago." The officer then searched the vehicle, finding a handgun in the process.

In **People v. Stout**, 106 Ill. 2d 77 (1985), the Illinois Supreme Court held that the odor of cannabis, alone, provided sufficient probable cause to search a vehicle under the automobile exception. **Stout** was decided at a time when all possession or use of cannabis was illegal. Since that time, however, cannabis law has changed. Illinois has allowed for medical use and possession of cannabis since 2013. And, Illinois has now legalized cannabis for adult, recreational use.

Given the changes in cannabis law, the Court held that the facts presented here did not provide the officer with probable cause to search the vehicle. More specifically, the smell of burnt cannabis, coupled with defendant's admission that someone had smoked in the car a long time ago, was insufficient for a reasonable person to believe there was a reasonable probability that the vehicle contained contraband or evidence of criminal activity. It was legal for defendant to possess some cannabis and even to drive after having smoked cannabis so long as the concentration in his system did not exceed the legal threshold. The officer here did not express any concerns that defendant's driving was impaired.

The odor of burnt cannabis, without any corroborating evidence, is not enough to establish probable cause to search a vehicle. Thus, the circuit court did not err in granting defendant's motion to suppress a handgun that was found during the warrantless search of his vehicle. While the appellate court could not overrule the Supreme Court's decision in **Stout**, it did hold that **Stout**'s holding is no longer applicable to post-legalization fact patterns.

People v. Randall, 2022 IL App (1st) 210846 Under the automobile exception, the police may conduct a warrantless search of a vehicle if there is probable cause to believe that it contains evidence of the commission of a crime. Here, the police searched defendant's vehicle twice. As justification for the first search, officers asserted that defendant (the driver) made furtive movements toward the passenger side of the vehicle as they pulled behind him to effectuate the stop, and that defendant exhibited nervous behavior. The trial court found that this first search was illegal because the officers did not have probable cause. In reviewing the

finding as to the first search, the appellate court noted that "nervousness would be expected of any citizen, pulled over for a purported minor traffic infraction, who was removed from the car, handcuffed, and patted down" in the first 90 seconds of the stop. The State did not contest the trial court's conclusion as to the first search, and, notably no contraband was recovered during that search, which the record showed was extensive.

The second search was conducted after the officers learned that defendant had failed to register as a prior firearm offender as required by a city ordinance. During the second search, a firearm was recovered from under the passenger seat of the vehicle. While the trial court upheld the second search, the appellate court reversed. The court held there was no probable cause for the second search. Defendant's failure to register as a prior firearm offender "said little to nothing about whether there was a weapon currently in his vehicle." And, where the initial thorough search had yielded no contraband, "the probable cause scale was essentially zeroed out" with regard to any nervousness and furtive movements observed by the officers.

Because the State could not prevail on the charge of unlawful possession of a weapon by a felon without the suppressed evidence, the court reversed defendant's conviction outright.

People v. Villareal, 2022 IL App (2d) 200077 After her motion to suppress was denied, defendant proceeded to a stipulated bench trial in order to preserve the suppression issue for review. On appeal, the court first found that defendant's stipulated bench trial was tantamount to a guilty plea where the trial judge repeatedly confirmed that defendant was stipulating to the evidence's sufficiency to support a finding of guilt.

The court then noted that there is a split of authority regarding whether a defense is effectively preserved by a stipulated bench trial that is tantamount to a guilty plea, citing **People v. Bond**, 257 Ill. App. 3d 746 (2d Dist. 1994) (defense not waived by stipulated bench trial tantamount to a guilty plea), and **People v. Gonzalez**, 313 Ill. App. 3d 607 (2d Dist. 2000) (consideration of issue foreclosed by stipulated bench trial that was tantamount to a plea). The appellate court went on to find that **Gonzalez** was based on a misreading of **People v. Horton**, 143 Ill. 2d 11 (1991), which did not suggest that a defendant fails to preserve issues by stipulating to the sufficiency of the evidence. Accordingly, the court stated it was following its earlier decision in **Bond** and would reach the merits of defendant's preserved suppression issue.

Ultimately, the court found the suppression issue without merit. There was no dispute that the traffic stop which led to the search was valid. During the stop, the officer smelled cannabis, and a passenger handed him two small bags of cannabis. This supported a warrantless search of the vehicle and any containers therein that might reasonably contain contraband, which included defendant's purse. Inside the purse, the officer observed an identification card. The officer testified that he immediately knew the card was fraudulent, entitling him to remove it and investigate further. Defendant asserted that the identification was in a tight, opaque sleeve in her wallet, however, and that it's incriminating nature was not immediately observable. The appellate court concluded that, under either version, the search was proper. Either the plain view exception applied if the officer's version was correct, or the search of the wallet sleeve was justified by the possibility that contraband such as cannabis or other drugs could be easily concealed in that location. Accordingly, the appellate court affirmed.

People v. McGhee, 2020 IL App (3d) 180349 Search of locked glove compartment was justified under the automobile exception to the warrant requirement. After observing open

alcohol in a vehicle driven by defendant and occupied by three additional passengers, it was reasonable for officers to believe additional open containers of alcohol could have been present in the glove compartment even though all six bottles of beer in the six pack had been accounted for prior to the search.

People v. Hill, 2020 IL 124595 The search of defendant's vehicle, based primarily on the odor of raw cannabis, was reasonable under the totality of the circumstances. Defendant argued that recent decriminalization of small amounts of cannabis and legalization of medical cannabis should alter the analysis of **People v. Stout**, 106 Ill. 2d 77, 87 (1985), which held the odor of cannabis alone provides an officer probable cause to search a vehicle. The Supreme Court declined to reach this argument because the search in this case was supported by more than the mere odor of cannabis. The court did hold that the odor of cannabis remains one factor in the analysis, noting that despite decriminalization, cannabis remained (at the time of the stop) contraband for non-medical users and that even medical users must abide by strict storage restrictions in vehicles. Here, taking the odor into consideration, along with the visual detection of a loose "bud" in the back seat, and the driver's delay in pulling the car over, the search was reasonable under the totality of the circumstances.

People v. Davis, 2019 IL App (1st) 160408 During an ongoing narcotics investigation, police observed a white object being passed into a vehicle in which defendant was a passenger. After stopping the vehicle and obtaining the driver's consent to search, the police exceeded the scope of that consent by disassembling portions of the vehicle to access hidden compartments. While the driver indicated the location of the contraband by nodding toward the back of the vehicle during the police encounter, a reasonable person in the driver's position would not have understood his consent to include removal of interior panels to access hidden compartments.

Under the "automobile exception" to the warrant requirement, however, the search of the hidden compartments was justified. The police had observed the transfer of the item into the vehicle during surveillance as part of a narcotics investigation, had not seen the item thrown or dropped from the vehicle between the transfer and the traffic stop, and did not see the item in the vehicle during the search of the passenger compartment. Considering the totality of the circumstances, the police had probable cause to search.

People v. Christmas, ___ Ill.App.3d ___, 920 N.E.2d 1240 (2d Dist. 2009) The trial judge erred by denying defendant's motion to suppress based on the following facts:

An FBI agent who was conducting a court-authorized wiretap of Melvin Gordon's telephone, as part of a year-long investigation of Gordon, heard a conversation between Gordon and an unknown male which lead him to believe that a narcotics transaction was about to occur. Surveillance was established at the bowling alley parking lot where the unidentified male and Gordon had agreed to meet. A van driven by Gordon pulled into a parking lot and parked behind a red BMW which was driven by a man who later identified as defendant. The defendant opened and then closed the trunk of the BMW, and then entered the bowling alley.

The officer did not see any transaction occur, and the van driven by Gordon left the parking lot. The surveillance officer entered the bowling alley and saw defendant bowling.

A short time later, the officer saw Gordon return to the bowling alley parking lot. Both men entered the BMW (with defendant on the passenger side), and an unidentified black male entered the van. Both vehicles were driven to the parking lot of an apartment complex.

Defendant left the lot a few minutes later, driving the BMW.

An officer stopped the BMW at the surveillance officer's request. Upon being stopped, defendant immediately stated that the officer did not have permission to search the car. The officer searched the inside of the car despite the defendant's statement, and in the trunk found a bowling bag which contained cocaine.

The Appellate Court concluded that even if there was reasonable suspicion to stop the vehicle, the officer lacked probable cause to search the car. Under the automobile exception, officers may conduct a warrantless search of a lawfully stopped vehicle if there is probable cause to believe that the vehicle contains contraband or evidence of criminal activity. The officer saw no transaction of any kind, and witnessed no criminal activity. In addition, because Gordon's wiretapped conversation occurred with an unidentified man, the agents had nothing more than a hunch that defendant was the expected buyer. "The agents had no way of determining whether defendant was the individual talking to Gordon on the phone or just a random acquaintance who happened to run into Gordon at the bowling alley."

The court rejected the argument that it was "clear" that defendant was the buyer because he showed up at the bowling alley at the time of the allegedly transaction. The bowling alley was a public establishment, and the officer testified that he observed defendant bowling.

Even if the agents had reason to believe that defendant was the individual speaking on the phone to Gordon, probable cause was lacking to believe that there would be evidence of the crime in the car. The officers did not observe defendant or Gordon enter or leave any apartment at the complex, and there was no evidence of any conversations between the men after they met. The officers did not observe any exchange of currency or narcotics, did not observe anyone carrying anything into or out of an apartment, and did not observe anyone place a bowling bag into defendant's trunk. "At most, [the officer] had the vaguest of hunches that defendant's trunk contained narcotics."

People v. Bowman, 164 Ill.App.3d 498, 517 N.E.2d 771 (5th Dist. 1988) Where the police lawfully discovered two marijuana cigarettes and a pipe containing cannabis residue in the passenger compartment of defendant's car, the police were justified in searching the trunk and a briefcase that could have contained additional cannabis.

People v. Binder, 180 Ill.App.3d 624, 536 N.E.2d 218 (4th Dist. 1989) Where police saw that a parked car contained beer, and the owner showed a license indicating that he was minor, there was probable cause to believe that illegal possession and consumption of alcohol by minors was occurring. Therefore, officers were justified in searching the entire car, including the trunk.

People v. Henry, 48 Ill.App.3d 606, 363 N.E.2d 112 (2d Dist. 1977) The probable cause necessary to permit a warrantless search of a vehicle does not require a belief that any occupant of the vehicle committed a crime; it is sufficient if there is probable cause to believe the vehicle contains evidence of a crime.

§43-6(c)
Searches After Minor Traffic Stops

United States Supreme Court

Rodriguez v. United States, 575 U.S. ___ , 135 S. Ct. 1609; 191 L. Ed. 2d 492 (2015) A

routine traffic stop is analogous to a **Terry** stop, and like a **Terry** stop is limited in scope to its underlying justification. The acceptable duration of police questioning during a traffic stop is limited by the "mission" of the seizure, which includes addressing the traffic violation which warranted the stop and attending to related highway safety concerns such as checking the driver's license, determining whether there are outstanding warrants, and inspecting proof of insurance and automobile registration. Because the stop is limited in duration to the time necessary to achieve these purposes, the officer's authority to continue the seizure ends when the purposes are or reasonably should have been completed.

The court acknowledged that the Fourth Amendment permits certain investigations that are unrelated to the stop, such as questioning (**Arizona v. Johnson,** 555 U. S. 323, 330 (2009)) or a dog sniff of the exterior of the car (**Illinois v. Caballes,** 543 U. S. 405 (2005)). It stressed, however, that such unrelated investigations are permitted only where the duration of the stop is not prolonged. In other words, a stop can become unlawful if it extends beyond the time reasonably required to complete the mission of the traffic stop.

Here, defendant's car was stopped by a canine officer after it swerved onto the shoulder. After the officer checked the licenses of the driver and passenger, verified the vehicle's registration and proof of insurance, questioned the passenger, and issued a written warning, the officer asked defendant for permission to walk the officer's dog around the vehicle. When defendant refused, the officer instructed defendant to turn off the engine and stand in front of the car until a backup officer arrived.

The second officer arrived after a seven or eight-minute delay. The canine officer then retrieved his dog from his car and walked the dog around defendant's vehicle. The dog alerted on the second pass, and methamphetamine was found in the vehicle.

The Supreme Court concluded that a Fourth Amendment violation occurred when the stop was extended several minutes to wait for the second officer and conduct the dog sniff. First, the lower court erred by finding that the seven to eight-minute delay was *de minimis*. Although **Pennsylvania v. Mimms,** 434 U. S. 106 (1977) held that interests of officer safety outweigh the *de minimis* intrusion on Fourth Amendment rights caused when a lawfully stopped driver was required to exit the vehicle during the stop, the State's interest in officer safety stems from the basic mission of the traffic stop. By contrast, a dog sniff is not connected to roadway safety and is intended to detect evidence of criminal wrongdoing that is unrelated to the basic mission of the stop. "Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular."

Second, the court rejected the prosecution's argument that an officer who expeditiously completes all tasks related to a traffic stop should, in effect, "earn bonus time to pursue an unrelated criminal investigation." Because an officer is required to be reasonably diligent at all times during a traffic stop, an officer who completes a stop expeditiously has merely used "the amount of time reasonably required to complete" the stop's mission. By definition, the Fourth Amendment is violated when a stop is prolonged beyond that point.

The lower court's opinion was vacated and the cause remanded for further proceedings.

Florida v. Harris, 568 U.S. 237, 133 S. Ct. 1050, 185 L. Ed. 2d 61 (2013) An officer has probable cause to conduct a search when the facts would lead a person of reasonable caution to believe that contraband or evidence of a crime is present. Whether probable cause exists depends on the totality of the circumstances in each case. Probable cause does not depend on whether rigid rules or standards are satisfied.

The Florida Supreme Court erred by holding that an alert by a drug sniffing canine constitutes probable cause only if the State presents the dog's training records, certification records, and "field performance records" showing the number of times the dog alerted but no contraband was found. The Supreme Court concluded that the lower court's ruling created an inflexible checklist for determining probable cause. Furthermore, a dog's field performance history would likely be misleading because it would not reflect "false negatives," where controlled substances were present but no search was performed because the dog failed to alert. The court added that what appears to be a false positive may in fact be the dog's accurate response to drug residue which remains from controlled substances that were previously in the vehicle.

The court found that the most reliable indicators of a dog's reliability are training and certification records, because training and certification are performed in controlled settings where the trainer knows the location of the samples and when the dog should alert. Because "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert," if a dog has gone through a recent certification or training program in a controlled setting, a court may presume ("subject to any conflicting evidence offered") that the alert in and of itself provides probable cause for a search.

The court stressed, however, that the defendant must be allowed to challenge the evidence of the dog's training by introducing his own evidence or by cross-examining State witnesses. For example, the defense might contest the adequacy of a certification or training program, and "examine how the dog (or handler) performed in the assessments made in those settings." Furthermore, under some circumstances evidence of the field history of the dog or handler may be relevant. Finally, even where a dog is shown to be generally reliable, a particular alert may be unreliable under the circumstances, such as where the handler cued the dog either consciously or inadvertently or where the team was working under unfamiliar conditions.

Here, the record supported the trial court's finding that the dog's alert signified probable cause for the search of defendant's truck. The prosecution presented evidence of the dog's proficiency, including that within the previous two years he had completed a 120-hour training course, received a certification by a private testing company, completed a 40-hour refresher course, and undergone four hours of training exercises each week. Although the certification had expired by the time of the alert in this case, Florida law does not require a private certification.

The court also noted that defendant did not challenge the dog's training in the lower court, and rejected his efforts to do so for the first time on appeal.

The court also rejected the argument that the reliability of the dog's alert was undercut because in the first search, the dog alerted to methamphetamine but the search revealed only precursors to methamphetamine, and when the dog alerted to defendant's truck on a subsequent occasion a search revealed no controlled substances. On each occasion the dog alerted to the door handle of the truck, and dogs may alert to residue odors left by drugs which are no longer in the vehicle. Furthermore, "we do not evaluate probable cause in hindsight, based on what a search does or does not turn up."

The trial court's finding that the dog alert provided probable cause for a search was affirmed.

Arizona v. Johnson, 555 U. S. 323, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009) Where a vehicle is lawfully stopped for a traffic violation, the officer may perform a patdown of the driver or passengers upon a reasonable suspicion that they may be armed and dangerous. See also,

Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977) (a frisk is justified during a traffic stop if there is reason to believe that the person is armed and poses a danger to the officer).

Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) Police officers may make a "protective search" of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, when they have reasonable suspicion that the stopped motorist is dangerous and may gain immediate control of weapons. If the officers discover other contraband while they are conducting such a search, they may seize it. Also, the fact that the motorist is under the officers' control during the stop does not make the protective search unreasonable. See also, **People v. Hilt**, 298 Ill.App.3d 121, 698 N.E.2d 233 (2d Dist. 1998) (where experienced officer observed a "knotted piece of a baggie" on the rear floorboard of a car stopped for a registration violation, there was probable cause to search the entire car for controlled substances; the officer had prior experience in which such containers held narcotics, and the stop occurred in the early morning hours in an area known as being the scene of drug transactions).

Illinois Supreme Court

People v. Molina, 2024 IL 129237 Despite its recent holding in **People v. Redmond**, 2024 IL 129201, that, following the legalization of the recreational use of marijuana in Illinois, the odor of *burnt* cannabis emanating from a vehicle, alone, does not provide probable cause to search, the court here held that the odor of *raw* cannabis does provide probable cause to search.

The 5-2 majority based its holding on language in the Vehicle Code, which was amended in the same Regulation Act that legalized cannabis. Under 625 ILCS 5/11-502.15(b), cannabis transported in a motor vehicle must be in a "sealed, odor-proof, child-resistant cannabis container." Thus, when an officer detects the odor of raw marijuana, there is probable cause to believe the defendant is violating the odor-proof container provision of the Vehicle Code.

Defendant pointed out that the Regulation Act includes its own provision regarding possession in a vehicle: 410 ILCS 705/10-35, which requires a "reasonably secured, sealed container," but does not specify that this container must be odor proof. Defendant argued that this requirement controlled, and rendered the odor-proof container provision invalid. The court harmonized these two provisions by treating the more specific odor-proof provision as an additional requirement, finding the legislature did not intended to supercede or modify that requirement with section 10-35.

Having determined that the Act requires citizens to carry cannabis in an odor-proof container, the court next distinguished **Redmond.** The majority held that **Redmond** compared the odor of burnt cannabis to the odor of alcohol. Both may suggest current possession, but these odors could reflect prior use as well. On the other hand, the odor of raw cannabis strongly indicates the current presence of cannabis. Thus, unlike **Redmond**, the officer here had probable cause.

Two justices dissented, finding "absurd" the distinction between the odor of burnt and raw cannabis. The dissent reasoned that, just as the odor of burnt cannabis cannot inform an officer when that cannabis was burned, the odor of raw cannabis cannot inform an officer whether the cannabis was currently in the vehicle.

People v. Redmond, 2024 IL 129201 Following the legalization of recreational use of marijuana in Illinois, the odor of burnt cannabis emanating from a vehicle, alone, no longer provides probable cause to search. Probable cause to search exists where the evidence known to the investigating officer raises a "fair probability that contraband or evidence of a crime will be found in a particular place." An officer is not required to eliminate any innocent explanations for suspicious facts in making a probable cause determination; the analysis requires only that the facts available would warrant a reasonable man to believe there is a reasonable probability that a search will uncover contraband or evidence of criminal activity.

Prior to 2013, all cannabis was considered contraband; it could not be possessed legally for any purpose. During that time period, **People v. Stout**, 105 Ill. 2d 77 (1985), was decided, holding that the odor of cannabis emanating from a defendant's vehicle, alone, was sufficient to establish probable cause to search that vehicle. In 2013, some cannabis possession became legal for medical purposes, and in 2016, possession of less than 10 grams of cannabis was decriminalized and made a civil law violation, punishable only by fine. At that time, possession of more than 10 grams remained a criminal offense. In **People v. Hill**, 2020 IL 124595, the court considered the propriety of a search conducted during that period, holding that the odor of cannabis in a vehicle remained a factor in a probable cause analysis, but declining to address the question of whether **Stout** remained good law in light of medical use and decriminalization because the officer in **Hill** had relied on more than just the odor of cannabis.

Effective January 1, 2020, the legislature legalized cannabis possession, consumption, use, purchase, and transportation for personal use by persons at least 21 years of age. Transportation in a vehicle must be "in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving." 410 ILCS 705/10-35(a)(2)(D) Individuals may not use cannabis in any motor vehicle or in any public place. 410 ILCS 705/10-35(a)(3)(D), (F). And, the Illinois Vehicle Code prohibits the use of cannabis in a vehicle upon a highway and provides that no driver may possess cannabis in a vehicle upon a highway "except in a sealed, odor-proof, child-resistant cannabis container." 625 ILCS 5/11-502.15(a), (b).

Stout is no longer good law with regard to searches occurring on or after January 1, 2020. "[G]iven the fact that under Illinois law the use and possession of cannabis is legal in some situations and illegal in others, the odor of burnt cannabis in a motor vehicle, standing alone, is not a sufficiently inculpatory fact that reliably points to who used the cannabis, when the cannabis was used, or where the cannabis was used."

Under legalization, cannabis is akin to alcohol, which also is legal to use and posses under some circumstances and illegal under others. For example, alcohol may not be transported in an open container in the passenger area of a vehicle, and a person may not drive a vehicle while the alcohol concentration in his blood, breath, or other bodily substance exceeds 0.08. The odor of alcohol, alone, is insufficient to establish probable cause to search a vehicle, and cannabis is now on the same footing.

Applying the totality of the circumstances analysis to the facts here, the Court determined that the officer did not have probable cause to search defendant's vehicle. Defendant was stopped for driving 73 miles per hour in a 70-mile-per-hour zone and having an improperly secured license plate on I-80 in Henry County. He said he was traveling from Des Moines to Chicago, which is not an inculpatory fact. While defendant's vehicle continued to smell of cannabis even after he exited it, that fact supported only the inference that he had smoked cannabis in the car at some point. But given that defendant himself did not smell of cannabis and that he exhibited no signs of impairment, the odor was not indicative of recent use. While Defendant's failure to produce his driver's license suggested a violation of the

Vehicle Code provision requiring a driver to have his license in his immediate possession when operating a vehicle, that violation does not add to the probable cause analysis because it does not make it any more likely that evidence of cannabis use or possession would be found in the vehicle. Indeed, the officer confirmed during the stop that defendant did in fact have a valid Illinois driver's license. And although the officer felt defendant was not providing direct answers with regard to his living arrangements when defendant stated that he lived in Chicago but was temporarily staying in Des Moines because of the pandemic, that fact did not make it any more likely that his car contained contraband or evidence of a crime. Additional relevant facts were that defendant did not delay in pulling over, did not make any furtive movements, cooperated with the officer, did not exhibit any signs of impairment, and did not have visible cannabis or drug paraphernalia in the vehicle. Thus, the trial court properly granted his motion to suppress.

People v. Cummings, 2016 IL 115769 In **Rodriguez v. United States**, 575 U.S. ___, 135 S. Ct. 1609 (2015), the Supreme Court held that the mission of a traffic stop is to address the traffic violation which warranted the stop and attend to related safety concerns, which typically include checking the driver's license of the operator, determining whether there are outstanding warrants, and inspecting the automobile's registration and proof of insurance. Any actions outside this scope are unlawful if they measurably extend the duration of the stop, unless there is reasonable suspicion to justify the detention. Thus, checking the operator's driver's license is within the mission of a traffic stop whether or not the officer has reasonable suspicion that the vehicle is being operated by an unlicensed driver.

Here, an officer who stopped the van which defendant was driving acted properly by checking defendant's license even though the justification for the stop ceased before the license was requested. The officer stopped the van because it was registered to a woman for whom there was an active arrest warrant. Although the officer could not see who was driving the van when he initiated the stop, he realized as he approached the stopped vehicle that the driver was male and not the woman who was the subject of the arrest warrant.

Although the reason for the stop had been satisfied, the court held that the officer could complete the mission of the stop by examining defendant's driver's license, determining whether there were any warrants, and inspecting the vehicle's registration and proof of insurance. The State was not required to show that the request for defendant's driver's license was justified by any rationale other than the traffic stop.

Because the stop was lawfully initiated and the officer could request defendant's driver's license even after he knew that the basis for the stop no longer applied, the trial court's order granting defendant's motion to suppress was reversed. The cause was remanded for trial on the charge of driving with a suspended license.

People v. Bartelt, 241 Ill.2d 217, 948 N.E.2d 52 (2011) A police officer conducted surveillance at defendant's apartment for one and one-half hours, and observed that defendant's truck was parked on the sidewalk. When defendant left the apartment and drove off in the truck, the officer followed to make a stop for the parking violation. Because the officer had heard that defendant used methamphetamine, the officer called for a canine unit to make a dog sniff during the stop.

Within three minutes of the initial stop, while the officer was conducting a computer check of the defendant's driver's license and insurance information, the canine team arrived. One of the officers instructed defendant to roll up her windows and turn the blowers on high. The officer testified that this "set-up procedure" was done to force air from inside the vehicle out through the seams, facilitating the canine sniff. While the original officer was finishing

the computer check, but before he started to write a citation for the parking violation, the dog alerted on both doors of truck.

A search of defendant and her passenger disclosed nothing suspicious. However, a search of the truck and defendant's purse revealed a digital scale containing white powder residue, several burnt pieces of tinfoil, and a pen casing with a burnt end and a powder substance on the inside. Defendant was charged with unlawful possession of methamphetamine.

The State conceded that defendant was ordered to comply with the set-up procedure and was not informed that she could refuse. The trial court granted a motion to suppress, finding that although a canine sniff is not a "search" under **Illinois v. Caballes**, 443 U.S. 405 (2005), compelling a suspect to perform the set-up procedure allows officers to manipulate the air within a vehicle in a way which exposes the ambient air to the canine in a way that would not occur naturally.

The Appellate Court reversed, finding that a dog sniff is not a "search" under the Fourth Amendment and that the set-up procedure did not interfere with any reasonable expectation of privacy. The court also noted that the procedure insures that the dog remains outside the vehicle during the sniff.

After noting that the case presented an issue of first impression nationwide, the Supreme Court found that the only issue properly before it was whether the "set-up procedure" constituted an illegal "search." A "search" occurs when police action infringes upon an expectation of privacy which society is prepared to recognize as reasonable. Conduct which does not compromise any legitimate expectation of privacy does not constitute a "search."

A citizen has no legitimate interest in possessing contraband. Under **Caballes**, a canine sniff by a well-trained narcotics detection dog is not a "search" because the sniff discloses only the presence or absence of contraband, which may not be legally possessed. Because the dog sniff was conducted from outside defendant's truck, without any intrusion on an expectation of privacy which society would recognize as reasonable, it did not constitute a "search." Because no unreasonable "search" occurred, the trial court erred by granting suppression.

The court also found that the set-up procedure was analogous to the luggage "prepping" procedure approved in **United States v. Viera**, 644 F.2d 509 (5th Cir. 1981). In **Viera**, the Fifth Circuit Court of Appeals approved a procedure by which agents pressed luggage lightly with their hands and slowly circulated the air, in order to cause a scent to emit from the baggage so that a canine sniff could be conducted.

The court refused to consider whether ordering the defendant to comply with the set-up procedure constituted an unreasonable "seizure." The court interpreted the defendant's briefs as raising only a "search" issue, and stated that the "seizure" question would be held "for a case where the issue is properly before us and has been fully briefed and argued."

In a dissenting opinion by Justice Freeman, three justices (Freeman, Burke and Theis) noted that the defendant's brief expressly stated that the set-up procedure converted the traffic stop into an impermissible "seizure." The dissent also noted that the issue had been litigated in the suppression hearing and expressly ruled upon by the trial court. The dissent concluded that by treating the case as presenting only a "search" issue, "[t]he majority . . . answers a question not presented by this appeal, and declines to address the question squarely raised. . . ."

The dissent added that because the issue was novel and a matter of first impression, "it is . . . not surprising that both parties - as well as the courts - have struggled in defining

the precise contours of the proper arguments and analysis." The dissenters also stated that making a strict waiver construction based on a distinction between "search" and "seizure" is especially inappropriate because the parameters of the Fourth Amendment are intentionally imprecise to allow a practical, case-by-case approach.

On the merits, the dissenters concluded that police conducted an improper "seizure" by ordering the defendant to assist them in facilitating a canine sniff. The dissent noted that **Viera** was distinguishable because in that case a police officer, rather than the defendant, "prepped" the luggage for the dog sniff. The dissent also found that the continued viability of **Viera** is placed into question by **Bond v. U.S.**, 529 U.S. 334 (2000), in which the U.S. Supreme Court held that a border patrol agent violated the Fourth Amendment by squeezing soft-sided luggage in an effort to determine its contents.

The trial court's suppression order was reversed, and the cause was remanded for further proceedings.

People v. Colyar, 2013 IL 111835 A brief investigatory stop is reasonable and lawful under the Fourth Amendment when a totality of the circumstances reasonably lead a police officer to conclude that criminal activity may be afoot and the subject may be armed and dangerous. The officers need not be certain that the suspect is armed to conduct a search for weapons. The issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety and the safety of others is in danger. A protective search of a passenger compartment of a vehicle is also permitted during an investigatory stop, limited to the area where a weapon may be located or hidden, if the officers possess a reasonable belief that the suspect is dangerous and could gain control of a weapon.

Two police officers approached a vehicle that was blocking the entrance to a motel parking lot. The car contained a driver, the defendant, and a passenger. Another passenger exited the motel and entered the rear of the vehicle as the officers approached. As the officers spoke with defendant, they observed a plastic bag containing a large bullet in plain view in the center console of the car. They ordered the occupants out of the car and handcuffed them. The police discovered that the plastic bag also contained five rounds of .454-caliber ammunition, and conducted a pat-down search of defendant and his passengers. When another bullet matching the recovered ammunition was found in defendant's pocket, the officers searched the car and recovered a .454 revolver under the front-passenger floor mat.

Because the defendant did not challenge the propriety of the officers' initial encounter with defendant, his passengers, and the vehicle, the Illinois Supreme Court declined to address its legality.

The court concluded that a reasonably cautious individual in a similar situation could reasonably suspect the presence of a gun based on the observation of the bullet in the center console. "Common sense and logic dictate that a bullet is often associated with a gun." Based on the presence of the bullet and a reasonable inference that a gun may be present in the vehicle, the officers had reason to believe that their safety was in danger. Because protective searches are not dependent on the existence of probable cause to arrest for a crime, the officers did not need to eliminate any legal explanation for defendant's possession of the bullet before investigating further or suspecting danger.

It was reasonable for the police to order the defendant and the passengers out of the car and search them for weapons. The handcuffing of the defendant and his passengers did not transform the investigative stop into an illegal arrest. The handcuffing was reasonable and a necessary measure where the officers were outnumbered, and could reasonably suspect that one or more of the detainees possessed a gun and could access it if not handcuffed. The

recovery of additional ammunition from the plastic bag and the defendant's person did nothing to dispel the officers' reasonable suspicion that a gun was present. Thus a protective search of the passenger compartment of the vehicle, which lead to the recovery of the gun, was also reasonable.

People v. Oliver, 236 Ill.2d 448, 925 N.E.2d 1107 (2010) Under **U.S. v. Mendenhall**, 446 U.S. 544 (1980), a person is "seized" under the 4th Amendment if, considering the totality of the circumstances, a reasonable person would have believed he was not free to leave. **Mendenhall** recognized four factors to be considered when determining whether a "seizure" has occurred: (1) the threatening presence of several officers; (2) display of a weapon by an officer; (3) physical touching of the citizen by an officer; and (4) use of language or tone of voice which compel compliance with the officer's requests. The factors listed in **Mendenhall** are not exhaustive, and other coercive behavior may constitute a "seizure." However, the absence of all **Mendenhall** factors is "highly instructive" in determining whether a "seizure" has occurred.[2]

Here, none of the **Mendenhall** factors were present. The court rejected defendant's argument that a non-**Mendenhall** factor was present because the officer sought to search the trunk of defendant's car only after the officer conducted a 10- to 15-minute consensual search of the interior of the car. Defendant argued that he was not free to leave during the consensual search because the officer told him where to stand.

The court stated:

> We cannot accept defendant's argument . . . because it would transform every consensual vehicle search into an unconstitutional seizure. Obviously, defendant had to wait somewhere while [the officer] conducted the consensual interior search of his vehicle. . . . [I]t was entirely reasonable for [the officer] to direct defendant and his passenger to stand at opposite ends of the vehicle parked safely along the roadside after receiving consent to search.

Because defendant had not been "seized" when he gave permission to search the trunk, the trial court acted properly by denying the motion to suppress cocaine found in defendant's trunk.

People v. Bridgewater, 235 Ill.2d 85, 918 N.E.2d 553 (2009) Under **Arizona v. Gant**, ___ U.S. ___, 129 S.Ct. 710, 173 L.Ed.2d 485 (2009), a vehicle search incident to an occupant's arrest is authorized only if: (1) the arrestee is unsecured and within reaching distance of the vehicle's passenger compartment at the time of the search, or (2) the officers reasonably believe that evidence relevant to the crime of arrest may be found in the vehicle. Where the defendant was handcuffed and placed inside a squad car at the time the vehicle search took place, and had been arrested for obstructing a peace officer while in a convenience store, there was no reasonable basis to search defendant's car even though the incident began when the officer attempted to conduct a stop for speeding.

People v. Cosby & Mendoza, 231 Ill.2d 262, 898 N.E.2d 603 (2008) **People v. Gonzalez**, 204 Ill.2d 220, 789 N.E.2d 260 (2003), adopted a framework for determining whether post-stop questioning violates the Fourth Amendment. Under **Gonzalez**, questioning after a traffic stop is permissible if it is related to the initial justification for the stop or there is a reasonable suspicion of criminal activity. Questioning which is not supported by either a

connection to the stop or reasonable suspicion is impermissible if it either prolongs the traffic stop or changes its fundamental nature.

In **People v. Harris**, 228 Ill.2d 222, 886 N.E.2d 947 (2008), the court concluded that the first prong of **Gonzalez** - "changing the fundamental nature" of the stop - has been unequivocally overruled by the United States Supreme Court. Thus, questioning which is unrelated to the reason for the stop and not based on reasonable suspicion violates the Fourth Amendment only if it prolongs the stop. See also, **People v. Starnes**, 374 Ill.App.3d 329, 871 N.E.2d 815 (2d Dist. 2007) (if traffic stop is proper, police actions which do not unreasonably prolong the stop or independently trigger Fourth Amendment protections are permissible even if the character of the encounter is changed).

If the traffic stop is terminated before the officer requests consent to search the vehicle, the Fourth Amendment is violated if the request constitutes a second "seizure." In determining whether a traffic stop has ended, the court appeared to assume that in most cases, returning a driver's documents and issuing a ticket ends the traffic stop.

However, a stop might not have ended if an officer simultaneously returns the driver's documents and requests consent to search, or exercises a "show of authority" that suggests the driver is not free to leave. Here, the record was silent concerning whether the officer delayed between returning defendant Cosby's documents and requesting consent to search the car. Thus, there was no basis on which to find that the request to search was made as part of the traffic stop.

If the stop has been terminated, a request for consent to search is improper only if the objective circumstances suggest that a second "seizure" has occurred. A "seizure" occurs when a reasonable person in the suspect's position would believe he or she is not free to leave.

Factors to be considered in determining whether a reasonable person would feel free to leave were outlined in **U.S. v. Mendenhall**, 446 U.S. 544 (1980), and include: (1) the threatening presence of a number of officers, (2) the display of a weapon, (3) any physical touching of the defendant, and (4) any language or tone suggesting that compliance with the officer's request is compelled.

The court acknowledged that under **People v. Luedemann**, 222 Ill.2d 530, 857 N.E.2d 187 (2006), the **Mendenhall** factors are not exclusive. Thus, a person may be found to have been "seized" based on other evidence. The court stated that even if the **Mendenhall** factors are not conclusive, however, their absence is "highly instructive."

The court also concluded that the factors deemed relevant in **Luedemann** - several officers "boxed in" the car, approached from all sides, pointed weapons at the driver, ordered the driver to put his hands on the steering wheel, and used flashing lights – were inapplicable here. In **Luedemann**, defendant's car was legally parked by the driver before police approached; in this case, defendant's car was parked on the shoulder because the officer made a traffic stop.

Noting that none of the **Mendenhall** factors were present, the court concluded that neither defendant was "seized" here. Compare, **People v. Oliver**, 387 Ill.App.3d 1045, 901 N.E.2d 482 (3d Dist. 2009) (defendant and his passenger would not have felt free to leave after a traffic stop, and therefore were subjected to a second "seizure" during which the officers sought consent to search the trunk of the vehicle; at the time of the questioning defendant and the passenger had been directed to stand at opposite ends of the vehicle, and after stating that the men were free to leave if the passenger drove the officer immediately asked whether there was anything illegal in the car).

In a dissenting opinion, Justices Freeman, Kilbride, and Burke found that the majority opinion "has created additional confusion" in Illinois search and seizure law. The

dissenters noted that **Luedemann** recently held that whether a "seizure" exists is based on considerations broader than the four factors outlined in **Mendenhall**. The dissenters would have applied the **Luedemann** factors without regard to the reason the defendant's car was parked, and would have considered any other evidence objectively suggesting that the defendant was not free to leave. Finally, the dissenters would have held that the officer failed to clearly indicate that the traffic stop was over where there was no showing that he paused between returning the documents and requesting consent to search.

People v. Moss, 217 Ill.2d 511, 842 N.E.2d 699 (2005) A patdown is appropriate during a traffic stop where necessary to assure the officers' safety. Although the practice of routinely patting down every person outside a vehicle during a traffic stop would not survive scrutiny "in the abstract," a patdown was reasonable where the stop was on a rural road, the officers were outnumbered by the occupants of the stopped car, the occupants were sufficiently known that a backup officer came to the scene as soon as he heard the names over the radio, all three occupants had been associated with the possession of weapons, one of the three had recently been arrested for a weapons-related offense, and the defendant was on MSR. In addition, the defendant had consented to a request to search his vehicle, which required the officer conducting the search to place himself in a "compromising position."

The patdown did not exceed the permissible scope of a frisk under **Terry**. Because the purpose of a patdown is to insure that a suspect is not armed, the officer conducting the frisk cannot manipulate items found during the patdown unless such actions are reasonably likely to discover weapons on the suspect's person. Here, the officer testified that he could not identify the object in the defendant's pocket, but said that he knew of weapons of a similar size and shape.

Illinois Appellate Court

People v. Eubanks, 2024 IL App (1st) 221229 Relying on **People v. Redmond**, 2024 IL 129201, the appellate court reversed the denial of defendant's motion to suppress evidence. The search of defendant's vehicle was based solely on the odor of burnt cannabis. The police did not point to any other signs of cannabis consumption or evasive movements by defendant that might have otherwise justified the search. Under **Redmond**, the odor of burnt cannabis, alone, is insufficient to provide probable cause for a vehicle search.

The search could not be upheld as a search incident to arrest, either. At the time of the search, defendant was outside of the car and was not within reaching distance of the passenger compartment, so there was no threat to officer safety from anything inside the vehicle. And, there was no likelihood that evidence of the offenses under investigation – parking at a bus stop and failure to possess a driver's license – would be found in the vehicle.

The court reversed defendant's conviction of unlawful use of a weapon by a felon outright, where the only evidence of that offense was the firearm recovered during the unlawful search.

People v. Drain, 2023 IL App (4th) 210355 Defendant challenged the trial court's denial of his motion to suppress evidence, arguing, among other things, that there was no probable cause for the traffic stop, that the stop was unreasonably prolonged to conduct a canine sniff, and that the State failed to establish the canine's reliability. The appellate court affirmed.

Defendant was stopped for a violation of Scott's Law, which requires that, when approaching a stationary emergency vehicle with its warning lights activated, a motorist must move into the non-adjacent lane of traffic or reduce speed if changing lanes would be

impossible or unsafe. Defendant asserted that it was not possible for him to switch lanes because there was a semi truck in the lane next to him and that instead he reduced speed. The trial court found, however, that defendant could have safely slowed and moved into the left lane behind the semi truck. The appellate court affirmed on the basis that the trial court's findings were not against the manifest weight of the evidence where the officer testified that the road was flat, nothing obstructed defendant's view of emergency vehicle ahead of him, and traffic was light, all of which would have allowed defendant ample opportunity to slow down and change lanes.

The appellate court also held that the traffic stop was not unreasonably prolonged for a canine sniff. The officer who initiated the stop ran a check on defendant's driver's license and was in the process of writing defendant a warning when a second officer arrived. Upon arrival, the second officer took over the task of completing the warning, while the original officer conducted the canine sniff. Defendant's assertion that the original officer intentionally delayed completion of the warning was unsupported where defendant did not introduce any evidence about how long it would have taken a reasonably diligent officer to perform that task.

Finally, the appellate court rejected defendant's challenge to the reliability of the canine sniff. The canine officer testified that he was a trained canine officer, that his canine was trained to alert to narcotics, and that his canine exhibited distinct changes in behavior when alerting. Defendant did not challenge that testimony and did not present any evidence to suggest that the canine was unreliable. Accordingly, the trial court properly found that the canine alert provided probable cause to search defendant's vehicle.

People v. Partin, 2022 IL App. (2d) 210445 After a State interlocutory appeal, the Appellate Court held that the trial court erred in suppressing contraband found during an inventory search of defendant's truck. Police lawfully pulled over the truck after witnessing the failure to use a turn signal. The police learned that the driver had an outstanding warrant, so he was placed under arrest. Defendant, who was in the passenger seat, owned the truck, but his license was suspended. A backseat passenger also lacked a license. The officers therefore decided to impound and tow the car. As they did so, defendant's wife, a co-owner of the vehicle who claimed to have a valid license, arrived at the scene and asked to take custody of the truck. The police denied her request and in the ensuing inventory search, found methamphetamine.

The trial court suppressed the evidence, finding the police lacked grounds to impound the truck and conduct an inventory search, because the ordinance allowing for the impounding of a vehicle was discretionary and defendant's wife was available to remove the truck from the road.

A warrantless search is *per se* unreasonable only if it does not fall within one of the few exceptions to the warrant requirement, one of which is an inventory search of a lawfully impounded vehicle. The threshold issue in considering whether the police have conducted a valid inventory search incident to a tow is whether the impoundment of the vehicle was proper.

Police may generally impound an abandoned vehicle that is parked illegally or otherwise causing an obstruction. That was not the case here. But courts have sanctioned other grounds for towing, as long as the officers' rationale is reasonable. Here, a city ordinance specifically provided the police with authority to impound a car driven by the subject of an outstanding arrest warrant. Although the defendant's wife arrived at the scene, this did not negate the officers' discretion, as she arrived after the decision had been made, and regardless, defendant never provided proof that she had a valid driver's license.

People v. Sims, 2022 IL App (2d) 200391 The trial court did not err in denying defendant's motion to suppress where the judge specifically found credible the officer's testimony that he smelled the odor of raw cannabis emanating from defendant's vehicle during a traffic stop. While the legislature had decriminalized possession of less than 10 grams of cannabis in 2016, and this stop occurred in 2018, possession of cannabis remained illegal. Decriminalization is not synonymous with legalization, and thus the odor of cannabis was indicative of criminal activity and was a sufficient basis for a warrantless search.

Further, the officer's credibility was not undermined by his failure to immediately search the vehicle upon detecting the odor of cannabis, by his asking defendant whether anyone had *smoked* cannabis in the vehicle even though he only said he smelled *raw* cannabis, or by the discovery of only a small amount of raw cannabis in the passenger compartment of the vehicle. Prior to the search, the officer had defendant exit his vehicle and sit in the squad car with the officer while he prepared a warning ticket for the traffic violation, which was not improper. It also was not improper to inquire about burnt cannabis; the officer was not limited to asking only about raw cannabis. And, defendant failed to offer any explanation in support of his assertion that an officer trained in the detection of cannabis would be unable to detect the odor of seven grams of the substance.

People v. Sanchez, 2021 IL App (3d) 170410 Trial court did not err in denying motion to suppress evidence obtained as the result of a dog sniff of defendant's vehicle during a traffic stop. Just over seven minutes had passed from the time defendant's vehicle was stopped to the time the dog alerted on defendant's vehicle. During that time, the officer who initiated the stop was checking defendant's driver's license and criminal history, checking for outstanding warrants, and inspecting the vehicle's registration and insurance, while a second officer conducted the dog sniff. The fact that the initial officer did not complete a warning ticket until after defendant's vehicle had been searched, and defendant had been transported to the police station, was of no consequence; he was properly gathering information for the warning ticket at the time the dog alerted on defendant's vehicle.

The dissenting justice would have reversed on the basis that the officer's activities constituted a drug interdiction investigation unrelated to the mission of the traffic stop. The officer's questions to defendant focused on where he was going, where he had been, how long he would be in Illinois, and when he had to return the rental car he was driving. The dissenting justice concluded that the information the officer was gathering was unrelated to the speeding stop and was solely focused on confirming his suspicion that defendant was transporting drugs.

People v. Williams, 2020 IL App (1st) 172992 The trial court committed manifest error in denying defendant's motion to suppress drugs seized from defendant's car as the result of a warrantless search. Officers stopped defendant's vehicle for having an expired license plate. At the suppression hearing, one officer testified that he smelled raw cannabis on approaching the vehicle. A second officer, who did not testify, conducted the search of the vehicle. There was no evidence that this second officer smelled cannabis, and no evidence that the first officer directed the second to conduct the search. While one officer may generally rely on information obtained from another officer to support his actions, here there was no evidence that the second officer obtained any information from the first before searching the vehicle. Without the suppressed evidence, the State could not establish defendant's guilt of possession of cannabis, so the Appellate Court reversed outright.

People v. Bujari, 2020 IL App (3d) 190028 A state trooper performed a "Level 3" commercial vehicle inspection on a semi-truck driven by defendant. These inspections authorize an officer to request documentation from a truck driver to ensure compliance with regulations. During the inspection, the officer noticed irregularities in the closing and locking of the truck's rear doors, and in the driver's log book. Nevertheless, he handed the defendant his report and told him he was free to go. But he then asked consent to conduct a dog sniff. Defendant both protested and consented, but ultimately got in the truck to leave. As defendant prepared the truck to leave, the officer escorted his canine around the vehicle and the canine alerted. The officer arrested defendant. Before trial, a motion to suppress was denied and defendant was convicted of possession with intent to deliver more than 5000 grams of cannabis.

The Appellate Court held that this encounter did not violate the Fourth Amendment. First, the initial encounter was a valid inspection under the administrative code, and administrative searches implicate lesser privacy concerns. Moreover, the court found that the officer had reasonable suspicion to prolong the stop due to the irregularities he discovered during the inspection. Nevertheless, the officer did not prolong the stop, instead telling defendant he was free to go. Thus, at the time of the dog sniff, defendant was not detained. Dog sniffs occurring without a seizure do not implicate the Fourth Amendment.

People v. Thomas, 2019 IL App (1st) 162791 Police observed defendant commit a failure-to-signal violation and followed him in order to initiate a traffic stop. By the time the police caught up to defendant, he had parked, exited the vehicle, and was walking toward a residence with his brother, the passenger. The police shined a spotlight on defendant and his brother and directed them to return. One officer then shined a light inside defendant's vehicle and observed a portion of a handgun magazine sticking out from beneath the passenger's seat. Defendant was handcuffed, and the officer immediately seized the gun. The police did not ask defendant or his brother if they had a FOID card, but later learned defendant did not. Defendant's motion to suppress was denied, and he was convicted of AUUW.

The Appellate Court concluded that the trial court erred in denying defendant's motion to suppress on these facts. Regardless of whether the initial search of the car was justified by safety concerns under **Michigan v. Long**, any item found during such a search, even a weapon, must be returned if the police lack probable cause to believe a crime has been committed. Here, the police did not ask defendant or his brother whether they possessed a FOID card and thus could not have known that the gun possession was unlawful at the time.

Further, the Appellate Court reversed outright, finding that the evidence of defendant's guilt was inadequate. There was no evidence contradicting defendant's testimony that the gun was not visible from the driver's seat. The officer only saw part of the gun by shining his flashlight into the car. Also, defendant did not flee when the police approached, but instead complied with the request to return to the vehicle. And, while the State argued that defendant admitted the gun was his, the record did not support that conclusion. Defendant testified and denied making such an admission. And, while one officer testified that the other officer stated that defendant made "an admission," the substance of that admission was unclear and what one officer said to the other was hearsay.

People v. Cassino, 2019 IL App (1st) 181510 The trial court properly suppressed drugs found during the inventory search of a vehicle following a traffic stop. The search came about when, after the trooper pulled defendant over for speeding, he contacted the rental car company who owned the car and determined that defendant's name was not on the rental agreement. The trooper complied with the company's request to impound the car, and at that time conducted the inventory search that revealed the drugs.

The Appellate Court affirmed the suppression of the drugs. The search occurred following an improper seizure absent reasonable suspicion. The stopping of the vehicle for speeding allowed the officer to seize the vehicle long enough to write a ticket and attend to any safety concerns. **Rodriguez v. United States**, 575 U.S. ___, 135 S. Ct. 1609 (2015). Here, the trooper improperly prolonged the stop when he took the time to call the rental car company, an inquiry not related to the speeding ticket or to road safety.

People v. Lee, 2018 IL App (3d) 170209 The trial court properly suppressed evidence discovered while the police unlawfully extended a traffic stop beyond its scope. After pulling over the vehicle for a traffic violation and issuing a citation, the officers asked the occupants to wait while they summoned a drug-sniffing dog. The State conceded that the officers lacked probable cause or reasonable suspicion to extend the stop, having only a hunch that defendant was transporting cannabis, but argued that any encounter after the issuance of the citation was consensual because the officers told the defendant and his passenger they were free to go. Analyzing the encounter under factors found in **United States v. Mendenhall**, 446 U.S. 544 (1980), the Appellate Court noted that the officers commanded the defendant to stop talking and ordered him over to his car, actions which would cause a reasonable person to believe he was not free to leave.

People v. Thomas, 2018 IL App (4th) 170440 During a traffic stop, an officer issued defendant a warning for an obstructed windshield and told defendant that he was free to go. The officer then asked defendant a series of questions about his criminal history, whether he had drugs in the car, and whether the officer could search the car. Defendant did not give consent to search, and the officer twice confirmed that defendant was free to go. The officer then told defendant he was going to have a K-9 walk around the vehicle. The K-9 arrived within 10 minutes and ultimately alerted on the vehicle, resulting in discovery of cannabis.

While the additional questioning of defendant was not a seizure, the officer's telling defendant he was going to have a K-9 sniff the vehicle was. There was no reasonable suspicion to justify that second seizure. Defendant's nervousness, his driving slightly below the speed limit, that he was on a lengthy road trip for only a short stay at his destination, and his driving straight through, slightly off his route, and without more than a backpack, even when considered together did not rise to reasonable suspicion. The Appellate Court upheld the trial court's order granting defendant's motion to suppress.

People v. Veal, 2017 IL App (1st) 150500 For purposes of determining the legality of a search of an automobile or driver which occurs after a traffic stop is completed, a stop "ends" when officers return the driver's license and other paperwork. At that point, the driver is generally free to leave. Any subsequent search must be supported on grounds that are independent of the initial violation which prompted the stop.

Noting a lack of Illinois authority, the court found that where a traffic stop results in an arrest of the driver, the stop "ends" from a passenger's perspective when a reasonable person in the passenger's position would understand that he or she is free to leave. Where the original justification for a stop was that rear seat passengers were not wearing seat belts, the court concluded that a reasonable passenger would not have believed he was free to leave once the driver was handcuffed.

Thus, the stop had not ended when the officer ordered the passengers out of the car and discovered a handgun where one of the passengers had been seated. Because no Fourth Amendment violation occurred when officers seized the weapon, the trial court properly

denied defendant's motion to suppress the weapon.

People v. Heritsch, 2017 IL App (2d) 151157 The permissible duration of a traffic stop is defined by the "mission" of the stop; that is, the stop may become unlawful if prolonged beyond the time reasonably required to address the traffic violation that warranted the stop.

Defendant was stopped for crossing the fog line. The officer who initiated the stop, Zapf, had previously received a description of defendant's vehicle in connection with a possibly impaired driver. Three more officers, including Bogdonas, also responded to the scene.

After obtaining defendant's license and insurance, Zapf asked Bogdonas to seek defendant's consent to search the car. Meanwhile, Zapf determined that defendant's license was valid and there were no outstanding warrants, and decided to issue a warning. Upon learning from Bogdonas that defendant refused consent to search, however, Zapf decided to issue a citation and called for a drug dog. While Zapf was still in his squad car writing the citation, the drug dog arrived and alerted on defendant's vehicle. Defendant was ultimately convicted of possessing 10 to 30 grams of cannabis.

Defendant argued that Zapf improperly prolonged the stop by attempting to gain consent to search, by abandoning the warning in favor of issuing a citation, and by arranging for a K-9 officer to respond to the scene. While the choice to issue a citation rather than a warning was "questionable," this choice was not a departure from the mission of the stop. Plus, Zapf had only written defendant's name on the warning before making the change, so the switch had only a negligible effect.

The court did agree that the dog sniff was unrelated to the mission of the stop. Relying on ***Reedy***, 2015 IL App (3d) 130955, the court held that in order to warrant suppression, however, defendant must establish the drug sniff prolonged the stop. The court deferred to the trial judge's factual finding that Officer Zapf was working at a normal pace and was not delaying for the purpose of getting a drug dog to the scene. Seeking consent and calling for the K-9 added only about a minute to the length of the stop. This was not enough time to establish that the drug dog would not have arrived and alerted on the vehicle in the absence of the very short delay.

People v. Zayed, 2016 IL App (3d) 140780 When an officer makes a valid traffic stop, he does not necessarily have the authority to search an occupant unless he discovers specific, articulable facts which provide a reasonable suspicion that the occupant has committed a crime. In **People v. Stout**, 106 Ill. 2d 77 (1985), the Supreme Court held that when an officer, who has training and experience in the detection of controlled substances, detects the odor of a controlled substance, he has probable cause to search a vehicle. Later Appellate Court cases extended that authority to passengers of the vehicle.

Here an officer initiated a valid traffic stop on a car. After he initiated the stop, the officer noticed defendant, who was in the rear passenger seat, making furtive movements as if he were hiding weapons or drugs. As he approached the vehicle, the officer, who had training and experience in identifying the odor of cannabis, detected the strong odor of cannabis. After dealing with the driver, the officer ordered defendant out of the vehicle and conducted a pat-down search for weapons or narcotics.

During the pat-down, the officer detected what he suspected were narcotics in defendant's genital area. The officer testified that people frequently hide narcotics in their genital area. The officer donned rubber gloves and continued searching defendant's genital area. The officer handcuffed defendant, and since it was after dark, moved him in front of the

police car's headlights for better illumination. He ordered defendant to unzip his pants, pulled on the waistband of defendant's underwear, and eventually retrieved a plastic bag.

During the search, defendant fidgeted and complained about the officer exposing his genitals. The officer said there were no cars around, but immediately halted the search while nine cars passed. The officer continued the search and eventually pulled another bag from defendant's genital region. One of the bags contained cocaine.

The Appellate Court first held that the officer, who was trained and experienced in the detection of narcotics, had probable cause to search defendant once he smelled the odor of burnt cannabis coming from the car. But the court further found that even with probable cause, the search itself was unreasonable.

To determine whether a particular search is unreasonable, courts should consider the following four factors: the scope of the intrusion, the manner in which it was conducted, the justification for initiating the search, and the place where it was conducted. Strip searches are not *per se* unreasonable, but they do constitute an extremely significant intrusion into a person's privacy.

The court found that three of the four factors strongly favored suppression. The only factor favoring the State was that the officer had probable cause for initiating the search. But the officer made only inadequate attempts to reduce the intrusiveness of the search, which was conducted on a busy street with streetlights and the headlights of the squad car illuminating defendant. The officer exposed defendant's underwear and defendant showed visible discomfort during the search, including fearing that his genitals would be exposed. The search "involved extremely intrusive means" and "should have been performed in a manner that respected defendant's privacy."

Since the officer failed to conduct the search in "a minimally intrusive nature," the court found the search unreasonable and affirmed the trial court's order suppressing the evidence.

People v. Litwin, 2015 IL App (3d) 140429 The reasonableness of actions taken by police during a traffic stop involves a dual inquiry: (1) whether the officer's actions were justified at their inception, and (2) whether the actions were reasonably related in scope to the circumstances which justified the stop in the first place. Defendant conceded that an officer had reason to make a stop after defendant's vehicle crossed the fog line, but argued that the officer unreasonably prolonged the stop past the time needed to complete its purpose.

Police conduct which occurs during an otherwise lawful seizure renders the seizure unlawful if it unreasonably prolongs the duration of the detention or independently triggers the Fourth Amendment. The Appellate Court concluded that in this case, the duration of the traffic stop was unreasonably prolonged.

The stop lasted between 45 and 90 minutes, but the officer issued only a warning ticket for improper lane usage. The court noted that there were significant discrepancies in the testimony concerning the time of the stop and the length of its duration. The squad car video did not help in determining this question, because it contained only part of the encounter and, according to a defense expert, did not appear to be the original tape.

The court concluded that even if the arresting officer's testimony was believed, the officer took at least 10 minutes and possibly as much as 45 minutes to run defendant's driving information and issue a warning ticket. Although there is no bright line rule for determining when a traffic stop is unreasonably prolonged, the court found that the totality of the circumstances indicate that there was unreasonable delay here.

Because the stop was unreasonably prolonged, the Fourth Amendment was violated

unless there was an independent justification for the delay. The court concluded that the dispositive question was whether the officer was credible in his claim that he detected the odor of marijuana as soon as he approached defendant's vehicle.

The court found that even if defendant's version of the events was disbelieved, the officer's testimony was not credible. Although the officer testified that he smelled cannabis as soon as he began talking to defendant, he asked for consent to search instead of acting on the reasonable suspicion provided by the alleged odor. The complete stop was not recorded by the squad car camera, and the officer gave conflicting answers about the reliability of the recording equipment by stating at one hearing that the camera malfunctioned half the time and at a different hearing that the camera had malfunctioned "maybe" twice in 10 or 11 years.

The court also noted other inconsistences in the officer's testimony between the two suppression hearings, and that a drug dog which arrived with a second officer failed to alert when walked around defendant's car. Although the second officer stated that his dog was distracted by the dog that was in the car of the officer who made the stop, the court found the testimony of the "simultaneous misbehaving of two highly trained dogs and the inability of their handlers to control them [to be] extremely suspect."

The court concluded that in light of all the evidence, the manifest weight of the evidence contradicted the trial court's finding that the officer who conducted the stop was credible in his assertion that he smelled cannabis. The trial court's denial of the motion to suppress evidence was reversed.

People v. Smith, 2015 IL App (1st) 131307 After the police stopped defendant's car for committing a moving violation, the officers saw defendant make a "furtive gesture" by reaching with his right hand towards a pouch on the back of the front passenger seat. The officers asked defendant and his passenger to step out of the car, and then searched the area where defendant had been reaching and recovered a handgun and ammunition.

In **Michigan v. Long**, 463 U.S. 1032 (1983), the Supreme Court extended **Terry** to traffic stops and held that when the police have effected a traffic stop, they may search the passenger compartment of the car, limited to those areas where a weapon may be placed or hidden, if they possess a reasonable belief based on specific and articulable facts that the defendant is dangerous and may gain immediate control of a weapon.

The Appellate Court held that defendant's furtive gestures, without more, did not provide the officers with a reasonable basis to search the car. Although furtive movements may justify a search when coupled with other circumstances, they are insufficient taken alone to provide the basis for a search.

The Court suppressed the evidence recovered from the search and reversed defendant's weapon's convictions since that was the only evidence supporting his convictions.

People v. Thomas, 2014 IL App (3d) 120676 The police lawfully stopped a car because the driver did not dim his bright lights. (Defendant was the owner of the car and a passenger.) An officer approached the driver, obtained the necessary documentation, and told the driver that he was going to conduct a free-air canine sniff. The sniff began five to seven minutes into the stop.

The court rejected defendant's argument that the stop was unreasonably prolonged, not simply because of the duration of the stop, but because the officer's purpose deviated from stopping the car for a headlight infraction to conducting a free-air sniff. The officer had a drug-sniffing dog in his patrol car and conducted the sniff without delay. The officer posed no additional questions to delay defendant and no additional probable cause was needed to

conduct the sniff. The change in purpose thus did not create an unreasonable delay.

The court also rejected defendant's argument that he was subjected to an illegal search when the police ordered him to roll up the windows and turn on the heater prior to the canine sniff. The court pointed out that the Illinois Supreme Court has already held that this procedure was not sufficiently intrusive to offend the fourth amendment. **Bartelt**, 241 Ill. 2d 217 (2011).

Although the court was bound by **Bartelt**, it believed that the United States Supreme Court would ultimately overrule **Bartelt**. Although a person has a lesser expectation of privacy in a motor vehicle, the procedure employed here was not a free-air sniff of the exterior of the car. Instead, the police forced the car's occupants to make available to the police something that is normally on the interior of the car. This procedure is analogous to ordering a person to empty his pockets and throw the contents onto the ground, at which point the police discover contraband. Such a procedure involves a search governed by the fourth amendment.

People v. Ferris, 2014 IL App (4th) 130657 The Appellate Court upheld the suppression of drugs found in defendant's book bag located in the trunk of a friend's car. Police stopped the car for speeding and the driver did not completely pull the car onto the shoulder, even though there was ample room, so it remained partially in the roadway. The officer arrested the driver for driving on a suspended license, and determined from a field sobriety test that defendant was unfit to drive. Defendant refused to allow the officer to search the car. Against the wishes of defendant, the officer had the car towed, and transported the driver to the police station in a nearby town.

The police searched the driver's purse at the station and found drugs. The police placed a hold on the car and arranged for a dog to conduct a drug sniff of the car. After the dog alerted during the drug sniff, the police obtained a search warrant, searched the car and its contents, and discovered drugs in defendant's book bag.

The court first held that defendant had a legitimate expectation of privacy in her friend's car. Although defendant had no ownership interest, he was legitimately present in the car during the road trip. He had a possessory interest in his book bag, clothing and other personal items stored in the trunk. Under these facts, defendant had an expectation of privacy in the car that society would regard as reasonable.

The court also held that the officer unreasonably prolonged the seizure of the car by towing it and later placing a hold on it. The reason for the traffic stop was speeding. Once the officer arrested the driver, however, the seizure of the car should have ended unless towing the car was a reasonable exercise of the community-caretaking function.

Under the caretaking function, there must be a standard police procedure that authorizes towing. Otherwise, the police may use unbridled discretion to create an opportunity for an inventory search. In the present case, the court found it unclear whether any statute or other standard procedure authorized towing a mechanically sound vehicle attended by its owner.

The police do have authority to remove cars that impede traffic or threaten public safety, and here the car was partially parked in the roadway. But that just happened to be where Biddle stopped the car, and the officer could give no reason why he did not have her pull completely onto the shoulder, where it would have been legal to leave the car for up to 24 hours. If the justification for the tow was the location of the car in the roadway, then it was the officer's responsibility to have Biddle pull the car completely onto the shoulder. Alternatively, the officer and the occupants could have pushed the car onto the shoulder.

Because the officer did neither of these things, the State cannot rely on illegal parking as a justification for community-caretaking.

The court also found that the police further prolonged the seizure by placing a hold on the car while waiting for the drug-sniffing dog. The discovery of contraband in the driver's purse did not provide grounds for refusing to relinquish the car to its owner.

If the police had not towed the car and placed a hold on it, they never would have been able to conduct the drug sniff, and they would have never acquired probable cause for the search warrant, which in turn led to the search of the car and the book bag in the trunk. The discovery of drugs inside defendant's book bag was thus the fruit of the illegal seizure of the car. The court affirmed the suppression of the evidence.

People v. Abdur-Rahim, 2014 IL App (3rd) 130558 In general, an officer may stop a vehicle and detain its occupants based on an observation that a traffic offense has been committed. A seizure that is lawful at its inception may become unlawful under the Fourth Amendment, however, if the duration of the stop is unreasonably prolonged or the officer's actions independently trigger Fourth Amendment protections. An investigative stop that is lawful at its inception must cease once the reasonable suspicion which justified it is dissipated, unless there is a separate Fourth Amendment justification for prolonging the stop.

The officer's mere hunches and suspicions do not justify extending an investigatory stop. Furthermore, a routine traffic stop may not be used as subterfuge to obtain evidence based merely on the officer's suspicions.

Where a flier or bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense, an officer may rely on the bulletin in making a stop to check identification, pose questions, or briefly detain a suspect while attempting to obtain further information. Evidence recovered during the course of a stop based on a bulletin is admissible if the stop was not significantly more intrusive than would have been permitted by the department which issued the bulletin.

Here, an officer stopped defendant for following too closely and for improper lane usage. He asked defendant for his driver's license and returned to the squad car to write the tickets. The officer thought that he smelled the odor of burnt cannabis around defendant's truck, but was not sure and told the dispatcher that he was not "going to use that as probable cause to search the vehicle." A backup officer did not smell cannabis but thought that car smelled like "Vick's Vapor Rub all over."

While he was writing the tickets, the officer learned from the dispatcher that defendant was on the terrorist watch list. The officer called for a canine team, believing that the information about the terrorist list would not be resolved quickly and the canine team would have time to arrive.

After about 25 minutes had passed, the officer received a report that defendant was a "Code 3" suspect, which is the lowest priority on the terror suspect list. The officer who made the stop testified that most of the 25-minute delay was due to the need to check the terrorist list information. However, the dashboard videotape revealed that after learning that defendant was a "Code 3" suspect, the same officer stated to the backup officer that they should wait until the canine team arrived to see if the dog alerted and gave them a reason to search the locked bed of defendant's truck.

After several more minutes had passed, the officer returned to defendant's truck and asked him to step out. The officer asked defendant about the smell of cannabis, and defendant stated that he might have the odor on his clothing. When the officer stated that a canine team had been called and that the truck would be searched if the dog alerted, defendant admitted

that a device for smoking marijuana was in the car. During the conversation outside the truck, the officer retained defendant's driver's license and defendant was not free to leave.

Defendant was then placed in the squad car and the truck was searched, disclosing a small amount of marijuana and the smoking device. The canine team arrived during the search, and the dog alerted to defendant's truck. A large quantity of cannabis was then found in the truck's bed. Approximately 22 minutes elapsed between the time the officer spoke to defendant outside the truck and the time the search was completed.

The court concluded that the officers unlawfully prolonged the stop in an attempt to obtain additional incriminating evidence about defendant. Once the tickets were written and the issue concerning the terrorism watch list was resolved, the stop could be extended only if there was a lawful, independent basis. The court rejected the argument that the alleged smell of burnt cannabis provided such a basis. Although such an odor might be an adequate basis to extend a stop under some circumstances, the officer here stated that he was not even certain whether he detected the odor of cannabis. Under these circumstances, the officer's statements amounted to a hunch or suspicion and were not a reasonable, articulable suspicion of criminal activity.

Because defendant's Fourth Amendment rights were violated by the continued detention after the tickets were written, defendant's motion to quash the arrest and suppress evidence should have been granted. The conviction for unlawful possession of cannabis with intent to deliver was reversed outright because without the suppressed evidence, the State would have been unable to prevail at a retrial.

People v. Lopez, 2013 IL App (1st) 111819 A Fourth Amendment "seizure" occurs where, by means of physical force or show of authority, an officer restrains the liberty of a citizen. Not every encounter between the police and a private citizen results in a seizure. The Fourth Amendment is not violated where a police officer approaches a person in public to ask questions, if the person is willing to listen.

A person is "seized" for purposes of the Fourth Amendment if, under the circumstances, a reasonable innocent person would not feel free to terminate the encounter and leave. Factors which may indicate that a seizure has occurred include the threatening presence of several officers, the display of a weapon by an officer, any physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request is required.

No Fourth Amendment seizure occurred where officers responded to an anonymous call regarding a suspicious vehicle, observed the defendant sitting in a pickup truck which was partially blocking an alley, approached the vehicle with one officer on each side, and asked for defendant's driver's license and an explanation of what he was doing. A seizure arose only when officers issued tickets and conducted field sobriety tests, at which point they had a reasonable, articulable suspicion that defendant was intoxicated while in control of a motor vehicle.

The court rejected the argument that the encounter constituted a seizure because one officer approached on each side of the vehicle. In **People v. Cosby**, 231 Ill.2d 262, 898 N.E.2d 603 (2008), the Illinois Supreme Court held that the fact that officers approach a vehicle on both sides does not create a seizure where there is no indication that the officers touched the defendant's person, displayed weapons, or used language or a tone of voice indicating that the citizen had no choice but to comply, unless the officers approached in such a way as to "box in" the vehicle and make it impossible for the driver to leave. Here, the officers did not attempt to box in defendant's vehicle or take any actions which would have led a reasonable person to believe that he could not leave.

Because the officers did not conduct a "seizure" when they approached defendant's car in the alley and asked for his driver's license and an explanation of what he was doing, the trial court erred by granting the motion to suppress evidence. The suppression order was reversed and the cause remanded for further proceedings.

People v. Daniel, 2013 IL App (1st) 111876 A vehicle stop is analogous to a **Terry** stop, and as a result is generally analyzed under the principles of **Terry v. Ohio**, 392 U.S. 1 (1968). A lawful **Terry** stop may be made when the police observe the defendant commit a traffic violation. In the course of such a stop, the police may also order the defendant out of the vehicle.

The police lawfully stopped defendant when they observed him fail to use his turn signal to indicate a lane change, and could order defendant out of the car incident to the stop.

The use of handcuffs may convert a lawful **Terry** stop into an unlawful arrest because it heightens the degree of intrusion and is not generally part of a stop. Whether the handcuffing of the detainee transforms a **Terry** stop into an arrest depends on whether the handcuffing was justified by concerns for officer safety and the safety of the public. The use of handcuffs must be reasonable in light of the circumstances that prompted the stop or that developed during its course.

Concerns for officer safety justified the police handcuffing defendant and did not transform the stop into an unlawful arrest. The police had observed several furtive movements by the defendant driver and his passenger as they approached the car after the stop. An officer testified that as a result, he became concerned for his safety and drew his weapon. The officer repeatedly ordered everyone in the vehicle to raise their hands, but defendant refused to comply. The trial court also observed that the area where the stop occurred was dangerous and police officers had been shot in that area during the previous year.

People v. Williams, 2013 IL App (4th) 110857 In **People v. Stout**, 106 Ill.2d 77, 477 N.E.2d 498 (1985), the court held that the odor of cannabis emanating from a vehicle involved in a traffic stop gives rise to probable cause to make a warrantless search of the vehicle and driver, provided that the officer who detects the odor of cannabis is trained and experienced in such detection. Here, the court held that such probable cause extends not only to the driver and the vehicle, but also to any passengers.

The court acknowledged that probable cause to conduct a warrantless search may not extend to persons who have no connection to the suspected crime except that they are passengers in a car which is the subject of a probable cause determination. However, the court concluded that there is sufficient reason to connect all occupants of a vehicle to probable cause which arises from the odor of marijuana coming from the passenger area of that vehicle.

Defendant's conviction for unlawful possession of cannabis was affirmed.

People v. Smith, 2012 IL App (2d) 120307 In **People v. Stout**, 106 Ill. 2d 77, 477 N.E.2d 498 (1985), the Supreme Court held that where a trained and experienced police officer detects the odor of burning cannabis during a traffic stop, there is probable cause to search the automobile. The Appellate Court found that **Stout** applies to the odor of raw marijuana as well as that of burnt cannabis. The court concluded that the **Stout** opinion does not suggest that the Supreme Court limited its opinion to the odor of burnt marijuana, and that the basis of **Stout** was that distinctive odors may be persuasive evidence of probable cause.

The court also noted that the weight of foreign authority holds that the smell of raw marijuana is sufficient to furnish probable cause to search a vehicle, at least where there is a sufficient foundation as to the police officer's expertise.

The trial court's order granting defendant's motion to suppress was reversed and the cause was remanded for further proceedings.

People v. Byrd, 408 Ill.App.3d 71, 951 N.E.2d 194 (1st Dist. 2011) The judge's ruling that the recovery of a magnetic box containing drugs from under the chassis of defendant's car was a lawful search incident to arrest was incorrect under **Arizona v. Gant**, 556 U.S. __, 129 S.Ct. 1710, ___ L.Ed.2d ___ (2009), where defendant was in handcuffs near the front of the car when the box was recovered. **Gant** held that the search of a vehicle could not be upheld as a search incident to an arrest where the defendant had been removed from the vehicle and secured in a location from which there was no possibility that he would gain access to the vehicle.

Because the motion to suppress was litigated prior to the decision in **Gant**, the court remanded for a "new suppression hearing to allow the parties to develop the facts in light of **Gant** and to allow the circuit court to make express findings of fact and conclusions of law pursuant to" 725 ILCS 5/114-12(e).

People v. McQuown, 407 Ill.App.3d 1138, 943 N.E.2d 1242 (4th Dist. 2011) When a police officer observes a driver commit a traffic violation, the officer is justified in briefly detaining the driver to investigate the violation. A seizure that is lawful at its inception may, however, become unlawful if it is prolonged beyond the time reasonably required to complete the purpose of the stop. There is no bright-line rule to indicate when a stop has been unreasonably prolonged. Instead, the duration of the stop must be justified by the nature of the offense and the ordinary inquiries incident to such a stop. Courts must consider the purpose to be served by the stop as well as the time reasonably needed to effectuate that purpose. When a detention is based on reasonable suspicion, the police must diligently pursue a means of investigation likely to quickly confirm or dispel their suspicions.

The police stopped defendant's car at 3:01 p.m. for having an obstructed windshield where she had three air fresheners hanging from her rearview mirror. As it is a violation of the Illinois Vehicle Code to "drive a motor vehicle with any objects placed or suspended between the driver and the front windshield . . . which materially obstructs the driver's view," 625 ILCS 5/12-503(c), the police had probable cause to initiate a valid traffic stop.

After asking defendant for her driver's license and proof of insurance, the officer completed the warning citation at 3:12 p.m. Nothing indicates that the officer returned defendant's license and proof of insurance. Between 3:12 p.m. and 3:25 p.m., the officer requested permission to search the car, but defendant refused. The officer called the canine unit at 3:25 p.m. and it arrived about 3:50 p.m. The purpose of the stop was prolonged beyond the time reasonably required to complete the traffic stop. The "business portion" of the stop

took a little over ten minutes, but the officer waited 13 minutes after the initial purpose of the stop had ended to call for the canine unit and the unit did not arrive until 25 minutes later.

The continued detention of defendant after issuance of the citation was not justified by reasonable suspicion based on the officer's observation of the overwhelming smell of vanilla air freshener in defendant's car, her nervousness, her inability to state exactly where she was heading, her frequent looks back to her vehicle, and the fact that the interstate on which she was traveling is known as a drug corridor. The bulk of factors supporting the officer's reasonable suspicion were known to the officer early in the stop. Instead of calling for the canine unit, the officer attempted to obtain defendant's consent to search for the next 13 minutes. It was only then that the officer called for the canine unit, which did not arrive for another 25 minutes. Therefore the length of the stop was unreasonable.

The Appellate Court affirmed the order granting defendant's motion to suppress cocaine found under the driver's seat after a dog from the canine unit alerted to defendant's car.

People v. Burei, 404 Ill.App.3d 558, 937 N.E.2d 297 (1st Dist. 2010) Where an officer saw a vehicle make an abrupt traffic maneuver and observed that the vehicle's windshield was cracked, he clearly had probable cause to make a traffic stop. Thus, the stop was justified at its inception.

Questioning that is unrelated to the initial justification for a traffic stop satisfies the scope requirement of **Terry** if it does not impermissibly prolong the detention. A traffic stop ends once officers return the driver's documents after a traffic stop.

Thus, questioning which occurs after the documents are returned (i.e., after the stop has ended) is improper only if a second "seizure" occurred. Generally, a second "seizure" occurs if a reasonable person in the driver's position would not have felt free to leave.

Because there was no evidence that the officers ever returned the driver's paperwork after the stop, and thus no evidence that the traffic stop had ended, questioning which resulting in consent to search the vehicle improperly prolonged the detention. Thus, the attempt to obtain consent to search prolonged the "seizure" and resulted in "tainted" consent.

The trial court's order granting defendant's motion to suppress was affirmed.

People v. Colyar, 407 Ill.App.3d 294, 941 N.E.2d 479 (1st Dist. 2010) The plain-view doctrine cannot be relied on to justify an arrest, search, or seizure if the incriminating character of the object in plain view is not immediately apparent.

Ammunition is not contraband *per se*. Possession of ammunition is unlawful only if the possessor does not have a valid FOID card or is a convicted felon who cannot obtain a valid FOID card. Therefore the observation of ammunition in plain view does not furnish probable cause to seize the ammunition, to arrest, or to conduct a search, absent reason to believe that the person in possession of the ammunition does not possess a FOID card or is a convicted felon.

The mere observation of ammunition in a vehicle does not provide probable cause to believe a gun is in the vehicle.

The police observed a bullet on the console of the car defendant was driving, and discovered live ammunition in his pocket after they removed him and his passengers from the car, handcuffed them at the front of the car, and conducted a pat-down search of their persons. Because the police did not ask defendant to produce a FOID card or whether he was a convicted felon, they did not have probable cause to arrest him, search his car, or seize

the ammunition found on the console or defendant's person.

A search of a vehicle incident to a **Terry** stop is justified if the police have a reasonable belief that the suspect is dangerous and may gain immediate control of weapons.

Without discussion or analysis, the Appellate Court adopted the trial court's finding that a **Terry** stop occurred based on the plain-view sighting of the bullet. The Appellate Court concluded that the search of defendant's car that resulted in the discovery of a gun under the floor mat of the front passenger floorboard could not be justified as incident to the **Terry** stop based on a belief that the defendant was dangerous. The State did not contend that the police were prompted to search the car by their belief that the defendant was dangerous. Moreover, the defendant was handcuffed with his passengers at the front of his vehicle and could not have gained immediate control of the gun found under the floor mat.

People v. Clark, 394 Ill.App.3d 344, 914 N.E.2d 734 (1st Dist. 2009). Where defendant had been placed in the backseat of a police car by the time his car was searched, and there was no reason to believe that evidence of failing to come to a complete stop would be found by searching the vehicle, a search of the rear seat and ashtray was not valid incident to the arrest.

The court rejected the State's argument that the search was valid as an inventory search. A valid warrantless inventory search must satisfy three criteria: (1) the original impoundment of the vehicle must have been lawful; (2) the purpose of the inventory search must be either to protect the owner's property, protect the police against false claims of lost, stolen or vandalized property, or protect the police from dangerous items in the car; and (3) the inventory search must be conducted in good faith pursuant to reasonable, standarized police procedures and not as a pretext. Standarized police procedures need not be in writing; however, there must be evidence that the police in fact acted according to standarized department procedures.

An inventory search is not justified merely because a car will be left unattended after the arrest of the sole occupant for a traffic offense. An inventory stop was not justified where the record showed only that the vehicle was stopped on a residential street, but no evidence of its exact location, that it was illegally parked, or that it would be a threat to public safety or convenience if left alone. The court also noted that the arresting officer testified only that he searched the car because there was no passenger available to drive and the car was going to be towed. Although police department regulations required an inventory search of a vehicle which was to be towed, the officer did not testify that standard police procedure required him to tow a vehicle that would be left unattended when the driver was arrested. Thus, there was insufficient evidence to show that the search was in accordance with standardized police procedures or that the decision to impound was lawful.

The trial court's order denying defendant's motion to quash arrest and suppress evidence was reversed. Because the State would be unable to prove beyond a reasonable doubt that defendant unlawfully possessed a controlled substance where the substance in question had been suppressed, the conviction and sentence were reversed outright.

People v. Davenport, 392 Ill. App. 3d 19, 910 N.E.2d 134 (3d Dist. 2009) A traffic stop ends when the officer returns the defendant's identifying documents and any ticket or citation. Once the stop has ended, a request to conduct a search is independent of the stop. Such a request is improper only if the officer's actions constitute a new "seizure." Whether a person has been seized depends on whether a reasonable person would have believed that he or she was not free to leave.

The officer conducting the traffic stop engaged in coercive conduct which would have caused reasonable persons to believe they were not free to leave. Although the officer told defendant and the other occupants of the stopped vehicle they were free to go, he also ordered the occupants to exit the vehicle, required one occupant to sit in his squad car, and responded to the defendant's refusal to consent to a search by stating that he would detain the vehicle until he could perform a search. Under such circumstances, a reasonable person would not have believed she was free to leave, despite the officer's statement that she could "walk away, hop the fence," or have the officer call someone to arrange a ride. "[T]hese are not viable options for people traveling on an interstate highway between Colorado and Michigan."

The officer lacked any reasonable, objective basis to support the seizure. The officer stated that he suspected that the car contained contraband because it was traveling from Colorado on Interstate 80, he believed that Colorado was a hub for drug distribution and that Interstate 80 was a main corridor for drug trafficking, the occupants of the vehicle seemed "very nervous," and the vehicle slowed as it passed the trooper just before the stop. The court concluded that such factors showed only a "hunch" of criminal activity.

Because the trial court erred by denying defendant's motion to suppress, the convictions were reversed and the cause remanded for further proceedings.

People v. Estrada, 394 Ill.App.3d 611, 914 N.E.2d 679 (1st Dist. 2009) The Appellate Court affirmed the trial judge's order granting defendant's motion to suppress, finding that the trial court's factual rulings were not contrary to the manifest weight of the evidence and that the lower court was correct in its legal conclusions.

Whether a "seizure" occurs where an officer approaches the occupant of a parked car depends on whether a reasonable person in the occupant's position would have believed that he was free to decline the officer's inquires and terminate the encounter. A "seizure" does not exist merely because an officer approaches a parked vehicle and seeks to question the occupant. An encounter may become a "seizure," however, if the officer through physical force or show of authority restrains the occupant's liberty.

Here, officers conducted a "seizure" where, after seeing defendant sitting in a parked car and talking to a pedestrian on the driver's side of the vehicle, the officers proceeded the wrong way down a one-way street and stopped their squad car "askew" to defendant's car.

The officers lacked reasonable suspicion on which to conduct the stop. At most, the fact that defendant was sitting in a vehicle with the engine running and engaging in a brief conversation with a pedestrian amounted to a hunch that a narcotics transaction was occurring.

Whether an articulable and reasonable suspicion exists for a traffic stop is determined based on the factors known to the officer *before* the stop is made. Two additional factors reported by the officers – that defendant's car had no City of Chicago sticker and that defendant moved a plastic bag to the rear of the car when he saw the police – were not known until after the stop, and thus could not be considered in determining the legitimacy of the stop.

The court also noted that the absence of a city sticker would not have constituted reasonable suspicion in any event, because a sticker is required only for vehicles that are registered in the City of Chicago. Furthermore, police could have merely left a ticket for the sticker violation on the windshield of the car, and did not need to detain defendant as he attempted to leave.

Similarly, defendant's admission that he did not have a valid license or proof of insurance could not be considered in determining whether the traffic stop was proper,

because that information became known only after the seizure occurred.

Even had there been a reasonable, articulable suspicion of criminal activity, the officers would not have been justified in searching defendant's car after he fled the scene during police questioning. Under **Arizona v. Gant**, 556 U.S. ____, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), a vehicle may be searched incident to the arrest or attempted arrest of a recent occupant only if: (1) the arrestee is within reaching distance of the passenger compartment at the time of the search, or (2) it is reasonable to believe that the search will disclose evidence of the offense for which the arrest was made. Because there was no reason to believe that evidence of a licensing violation was likely to be found in the car, and defendant not within reaching distance of the vehicle at the time of the search, neither condition was satisfied.

The court rejected the argument that the exclusionary rule was inapplicable because the defendant "abandoned" the vehicle by fleeing in response police questioning. First, the State waived the argument by failing to present it in the trial court. Second, even if the claim had been properly preserved, a defendant who exits a car, and closes and locks the doors, has not exhibited an intent to abandon the vehicle.

People v. Terry, 379 Ill.App.3d 288, 883 N.E.2d 716 (4th Dist. 2008) Police did not violate the Fourth Amendment by questioning a passenger and requesting consent to search his person. The stop was proper because the vehicle had an inoperable registration light, and asking whether defendant had any knives, guns, drugs, or needles was "the equivalent of asking defendant whether he possessed items of contraband," for which there is no legitimate expectation of privacy and no Fourth Amendment protection.

The duration of the stop was not prolonged by the questioning, because the driver was simultaneously questioned by a different officer and had consented to a search of the vehicle, necessitating a delay.

People v. Roberson, 367 Ill.App.3d 193, 854 N.E.2d 317 (4th Dist. 2006) Citing **Illinois v. Caballes**, 543 U.S. 405 (2005), the court concluded that the Fourth Amendment prohibits a warrant check of a passenger, during a lawful traffic stop, if the check extends the duration of the stop beyond what would otherwise have been required or infringes on the passenger's legitimate expectation of privacy.

People v. Gilbert, 347 Ill.App.3d 1034, 808 N.E.2d 1173 (4th Dist. 2004) The court rejected the argument that whenever police have a statutory right to arrest for a minor offense, they may do so and conduct a search incident to arrest. Although the U.S. Supreme Court has held that the Fourth Amendment does not prohibit arrests for traffic offenses, the court noted that the Illinois Supreme Court has rejected the argument that in the absence of extenuating circumstances, a minor traffic violation justifies a custodial arrest. "To allow a full custodial arrest of a driver stopped for a minor traffic violation without extenuating circumstances is not compatible with the temporary, investigative nature of a **Terry** stop."

There were no extenuating circumstances justifying a custodial arrest where the officer testified that he did not fear for his safety and that neither defendant nor his passengers acted suspiciously. The officer acknowledged that he observed no offense other than a broken taillight, for which he planned to write a warning. The court found that a "reasonable officer who did not fear for his safety and/or observe anything more suspicious than a taillight violation would not have made a full custodial arrest."

The court also stressed that defendant was not arrested for the taillight violation, for

which the officer wrote a warning ticket. Because there was no arrest for the traffic violation, the search could not be justified as incident to an arrest. Compare, **People v. Taylor**, 388 Ill.App.3d 169, 902 N.E.2d 751 (2d Dist. 2009) (neither the Fourth Amendment nor the Illinois Constitution was violated by a search incident to arrest for two petty offenses, although the officer made the arrest only because defendant could not post bond and did not issue citations for the petty offenses after discovering controlled substances during the search).

People v. Smith, 315 Ill.App.3d 772, 734 N.E.2d 1039 (4th Dist. 2000) A general search is not justified where a vehicle is stopped for a minor traffic violation. However, an officer who makes a legitimate traffic stop may conduct a limited search for weapons where he reasonably believes, based on specific and articulable facts, that his safety or the safety of others is in danger. In addition, where as the result of the search or in plain view the officer discovers items which would justify a reasonable person to believe that the car contains contraband, there is probable cause to search the rest of the car.

Where there was a valid traffic stop, the defendant voluntarily showed the officer the contents of her purse as she retrieved the identification, and the officer saw defendant push a clear plastic bag to the bottom of her purse, the officer had probable cause to check the bag to see whether it contained crack cocaine. Once he determined that the bag did not contain contraband, however, "there was nothing else in plain view that warranted a continuation of the search." Because the basis for the search was the suspicion that the plastic bag contained cocaine, "[o]nce that concern was satisfied, [the officer] was not free to search further merely to satisfy his curiosity."

People v. Fulton, 289 Ill.App.3d 970, 683 N.E.2d 154 (1st Dist. 1997) It is the responsibility of an officer who conducts a traffic stop to insure that the defendant parks his car in a safe, legal location. Thus, where the defendant was arrested after a traffic stop, the officer could not "take advantage" of his own improper actions to enter defendant's car in order to move it. Narcotics discovered when the officer entered the car should have been suppressed.

People v. Arteaga, 274 Ill.App.3d 781, 655 N.E.2d 290 (3d Dist. 1995) Where defendant's car was stopped because it had no visible registration, but the officer observed a valid temporary registration card in the rear window as he approached the car, there was no authority to justify a further detention. Requiring defendant to wait merely so the officer could conduct a license check constituted a "seizure" without lawful justification.

§43-6(d)
Search and Seizure of Passengers

United States Supreme Court

Brendlin v. California, 551 U.S. 249, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007) A passenger is "seized" whenever the vehicle in which he is riding is subjected to a traffic stop under circumstances in which a reasonable person would not feel free to terminate the encounter. Thus, a passenger has standing to challenge the legality of a stop, even where the officer who conducted the stop lacked any intent toward the passenger.

Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) A passenger on an interstate bus was not "seized" where officers with no reason to suspect him of criminal

activity approached during an intermediate stop and asked permission to search his luggage. Whether a "seizure" occurs depends on whether a reasonable person in the defendant's position would have felt free to refuse to cooperate and to terminate the encounter; the fact that a confrontation occurs in a location from which the defendant cannot depart is but one factor to consider.

Illinois Supreme Court

People v. Bass, 2021 IL 125434 After the complainant went to the Chicago Police Department, accused defendant of sexual assault, and identified him in a photo array, the police issued an investigative alert. The alert stated that officers had determined the existence of probable cause for defendant's arrest.

Three weeks later, police pulled over a car for running a red light. While one officer gave the driver a ticket, the other officer had the passengers, including defendant, exit the car. The officers ran the driver's, defendant's, and at least one other passenger's name through the computer in their squad car. They learned of the investigative alert, arrested defendant, and eventually elicited a custodial statement. The driver was given a warning. A motion to suppress, raising an improper seizure and warrantless arrest, was denied, and defendant was convicted of criminal sexual assault and sentenced to eight years in prison.

The Appellate Court held that the statement should have been suppressed for two reasons. First, two justices would have found the warrantless arrest illegal because the investigative alert system violates the Illinois Constitution. The warrant clause of Article 1 Section 6 uses the word "affidavit" rather than "oath and affirmation" as the requisite standard of evidence to obtain an arrest warrant, signaling the framers' intent to provide Illinois citizens with greater protection than the federal constitution. The investigative alert system, which depends on unsworn evidence presented to police officers, does not meet the affidavit requirement.

Second, all three justices agreed that regardless, the warrant check on defendant was improper because it went beyond the mission of the stop, and measurably extended the stop, in violation of **Rodriguez v. United States**, 135 S. Ct. 1609 (2015).

The Supreme Court affirmed on the **Rodriguez** issue, holding that defendant made a *prima facie* case of an illegal seizure by establishing that the police detained him without a warrant while they ran a warrant check on him. The warrant check was unrelated to the mission of the stop – investigation of a traffic offense – and therefore the State bore the burden of showing that it either was done for public safety reasons, or that it did not measurably extend the stop.

Here, the State conceded no public safety rationale justified the warrant check, but maintained that it did not measurably extend the stop. The Supreme Court disagreed, noting that the "sparse" testimony by the officers at the suppression hearing did not reveal the order or timing of the warrant checks in relation to checking the driver's license and writing a warning. Defendant's contention that the check must have added some time to the stop was therefore unrebutted. As such, the State did not meet its burden of proving the stop was not measurably extended.

The court then vacated the portion of the appellate court's holding invalidating the investigative alert. The court held that the question was moot once the court suppressed the defendant's statement pursuant to the **Rodriguez** issue. Reaching the investigative alert issue would violate the court's rule against advisory opinions and reaching unnecessary constitutional issues. Two justices disagreed with this portion of the opinion and would have reached the issue. They noted that both issues had been appealed by the State, and both

presented constitutional questions, so there was no reason to bypass one issue in favor of the other.

Illinois Appellate Court

People v. Wallace, 2023 IL App (1st) 200917 The appellate court affirmed the denial of defendant's motion to suppress a gun found during a **Terry** frisk.

Defendant was the front-seat passenger in a car that was pulled over for a broken taillight. The officers were on patrol in the area because it was late evening and the area had seen a gang conflict with several recent shootings. As one officer approached the driver side, Officer Zeman approached the passenger side. Zeman smelled alcohol and cannabis. He testified, and his body cam footage confirmed, that he asked the passengers about the smell of alcohol and the rear passenger admitted they had been drinking. Zeman noticed a bag of suspected cannabis next to defendant's leg. He also saw a bulge in defendant's jacket pocket. Defendant took a "big swallow," his breathing was heavy, and he did not make eye contact. Zeman opened the door and asked defendant to step out, but defendant declined. Zeman reached for the bulge, determined it to be a firearm, and removed it from defendant's pocket.

The totality of the circumstances justified Officer Zeman's limited search for weapons from defendant. He already had probable cause to remove the passengers and search the vehicle for drugs and open alcohol given the odors, the admission, and the visible cannabis. The area was known for gang warfare. Zeman noticed suspicious behavior – lack of eye contact, refusal to exit the car, the large gulp, and the bulge. For these reasons, he could reasonably suspect defendant was armed and dangerous.

Finally, the court rejected defendant's argument that Zeman should have first asked whether defendant had a FOID card or CCL. Defendant's argument relied on cases since vacated and other inapposite authority. Regardless, the possession of a FOID card or CCL (which defendant did not have), would not negate the fact that the officer suspected defendant of being armed and potentially dangerous, and that a frisk was necessary to ensure his safety while he searched the car.

People v. Banta, 2021 IL App (4th) 180761 Following a traffic stop, a dog sniff was conducted resulting in an alert for the odor of drugs. At that point, defendant passenger was asked to exit the vehicle and consented to a pat down. No weapons were discovered. Subsequently, officers searched defendant a second time, resulting in the discovery of heroin in defendant's buttocks. At the suppression hearing, defendant testified that he objected to this second search, and the officer testified that defendant "did not tell me no." The trial court denied defendant's motion to suppress.

The Appellate Court noted that in order for a defendant's nonverbal conduct to constitute voluntary consent to search, it must be "unmistakably clear." A police video of the interaction here did not record sound, but did show defendant complying with an instruction to turn around. Defendant also placed his hands behind his back to be handcuffed. Those gestures were a submission to authority but not an unmistakably clear consent to a second search. Acquiescence to authority does not equate to consent, even if defendant did not verbally object to the second search. The State had the burden to show voluntary consent and failed to do so here. The Appellate Court reversed the denial of defendant's suppression motion.

People v. Sutton, 2020 IL App (1st) 181616 The police did not violate the Fourth Amendment when they detained and questioned the passenger of a lawfully stopped vehicle.

Officers stopped the car when they observed defendant not wearing a seat belt. The police discovered the driver's license had been suspended, and arrested the driver. The police then began questioning defendant, who admitted to possessing marijuana, leading to a citation, a pat-down search and recovery of a handgun.

Although defendant argued the stop was completed once the driver was arrested, and that any further detention of defendant unlawfully prolonged the stop without reasonable suspicion, the Appellate Court held that the stop was not complete upon the arrest of the driver. The officers had to remain on the scene waiting for the car to be impounded, and for a transport car for the driver. The questioning of defendant, whose conduct was the cause for the stop in the first place, did not prolong the stop.

People v. Burns, 2020 IL App (3d) 170103 Odor of cannabis in a vehicle justified search of defendant who was the vehicle's passenger. Whether odor is of raw or burnt cannabis does not matter; under **People v. Stout**, 106 Ill. 2d 77 (1985), and subsequent cases, the smell of cannabis allows the search of a vehicle and its occupants.

The investigatory stop was not converted into an arrest when the officers handcuffed defendant prior to searching him. When defendant exited the vehicle, officers observed a gun in his back pocket. The fact that officers did not first ascertain whether defendant had a concealed carry permit for the gun did not render the handcuffing improper. Handcuffing a defendant is permissible if it is reasonable and necessary for officer safety, as it was under the totality of the circumstances here.

People v. McKelvy, 2019 IL App (2d) 180630 Defendant was a passenger in a vehicle stopped for speeding. The vehicle matched the description of a vehicle that had been involved in a shooting a short time earlier and a short distance away. While the officer who initiated the stop was running warrant checks on the driver and passengers, additional officers arrived and ordered defendant and the other occupants out of the vehicle. At that time, a gun was found in defendant's waistband, and another gun was located in the car.

The trial court erred in granting a motion to suppress the guns. Only a short time had passed between the initiation of the stop and the discovery of the guns, and the officer who initiated the stop had not yet issued either a warning or a ticket. And, even if ordering the individuals out of the vehicle was not related to the mission of the traffic stop, safety concerns justified that action where the vehicle matched the description of a vehicle involved in a recent shooting.

People v. Ferris, 2014 IL App (4th) 130657 The Appellate Court upheld the suppression of drugs found in defendant's book bag located in the trunk of a friend's car. Police stopped the car for speeding and the driver did not completely pull the car onto the shoulder, even though there was ample room, so it remained partially in the roadway. The officer arrested the driver for driving on a suspended license, and determined from a field sobriety test that defendant was unfit to drive. Defendant refused to allow the officer to search the car. Against the wishes of defendant, the officer had the car towed, and transported the driver to the police station in a nearby town.

The police searched the driver's purse at the station and found drugs. The police placed a hold on the car and arranged for a dog to conduct a drug sniff of the car. After the dog alerted during the drug sniff, the police obtained a search warrant, searched the car and its contents, and discovered drugs in defendant's book bag.

The court first held that defendant had a legitimate expectation of privacy in her friend's car. Although defendant had no ownership interest, he was legitimately present in

the car during the road trip. He had a possessory interest in his book bag, clothing and other personal items stored in the trunk. Under these facts, defendant had an expectation of privacy in the car that society would regard as reasonable.

The court also held that the officer unreasonably prolonged the seizure of the car by towing it and later placing a hold on it. The reason for the traffic stop was speeding. Once the officer arrested the driver, however, the seizure of the car should have ended unless towing the car was a reasonable exercise of the community-caretaking function.

Under the caretaking function, there must be a standard police procedure that authorizes towing. Otherwise, the police may use unbridled discretion to create an opportunity for an inventory search. In the present case, the court found it unclear whether any statute or other standard procedure authorized towing a mechanically sound vehicle attended by its owner.

The police do have authority to remove cars that impede traffic or threaten public safety, and here the car was partially parked in the roadway. But that just happened to be where Biddle stopped the car, and the officer could give no reason why he did not have her pull completely onto the shoulder, where it would have been legal to leave the car for up to 24 hours. If the justification for the tow was the location of the car in the roadway, then it was the officer's responsibility to have Biddle pull the car completely onto the shoulder. Alternatively, the officer and the occupants could have pushed the car onto the shoulder. Because the officer did neither of these things, the State cannot rely on illegal parking as a justification for community-caretaking.

The court also found that the police further prolonged the seizure by placing a hold on the car while waiting for the drug-sniffing dog. The discovery of contraband in the driver's purse did not provide grounds for refusing to relinquish the car to its owner.

If the police had not towed the car and placed a hold on it, they never would have been able to conduct the drug sniff, and they would have never acquired probable cause for the search warrant, which in turn led to the search of the car and the book bag in the trunk. The discovery of drugs inside defendant's book bag was thus the fruit of the illegal seizure of the car. The court affirmed the suppression of the evidence.

People v. Hunter, 2013 IL App (3d) 110310 The court concluded that a passenger in a vehicle that was the subject of a traffic stop could not challenge the basis for the stop where, instead of remaining in the vehicle when the driver pulled over, he fled the scene and submitted to police only after he was wounded in a shootout. Because defendant was not seized by virtue of the traffic stop, he could not challenge the basis for the stop.

People v. Neuberger, 2011 IL App (2d) 100379 Probable cause to search a vehicle for contraband does not automatically confer authority to conduct an incidental search of the occupants, even if the contraband in question is the sort that could easily be concealed on one's person. **United States v. Di Re**, 332 U.S. 581 (1948). An officer who detects the odor of burning cannabis emanating from a lawfully stopped vehicle has probable cause to search both the driver and its occupants. **People v. Stout**, 106 Ill.2d 77, 477 N.E.2d 498 (1985); **People v. Boyd**, 298 Ill.App.3d 1118, 700 N.E.2d 444 (4th Dist. 1998). It follows from those cases that where the presence of drugs is detected by a canine sniff of a vehicle, probable cause exists to search the vehicle and all of its occupants.

Defendant was the front-seat passenger in a vehicle lawfully stopped by the police. The search of defendant's person after a drug-detection dog alerted when the dog reached the handle of the front passenger door was therefore lawful. The court did not err in refusing to

suppress drugs recovered from defendant's shoe in the course of that search.

The court rejected the approach taken in **People v. Fondia**, 317 Ill.App.3d 966, 740 N.E.2d 839 (4th Dist. 2000), that a drug-sniffing dog's alert to a vehicle does not justify a search of the occupants of the vehicle unless the occupants are first sniffed individually. The existence of probable cause may depend not only on what information is known to the police, but also on whether the police refrained from obtaining readily available information. But the dog-sniff scenario presented in this case did not violate that rule. The court declined to second-guess the officer's decision not to have the dog sniff the defendant, which appeared to the court to be consistent with the officer's training and justified by the risk of injury to the defendant. The burden was on the defendant to establish that a particular investigative technique should have been employed, and the defendant failed to sustain that burden.

People v. Johnson, 408 Ill.App.3d 107, 945 N.E.2d 2 (1st Dist. 2010) Defendant was a passenger in a car that was stopped by the police in a high-crime area after it failed to come to a complete stop at a stop sign. Defendant ran from the car when the police were about to ask the driver for his license. The police caught defendant less than a block away and handcuffed him before conducting a pat down, leading to the discovery of a gun in his possession.

When an automobile is apprehended for a traffic stop, the police have a right to detain passengers as well as the driver, even in the absence of any individualized suspicion that the passenger is involved in criminal activity. **Arizona v. Johnson**, 555 U. S. 323, 129 S. Ct. 781 (2009). A passenger who flees from a lawfully-stopped vehicle is attempting to avoid detention by an officer who has a right to seize him. Because the seizure was lawful at its inception, defendant's attempt to evade the police by running from the vehicle gave the officers probable cause to arrest him for obstructing an authorized action by a peace officer. It is irrelevant that the officer did not subjectively believe that he had probable cause to arrest defendant for obstruction.

Because the police had probable cause to arrest defendant, the gun in his waistband was properly recovered in a search incident to his arrest. The Appellate Court reversed the circuit court's order granting the motion to suppress.

§43-7
Searches and Seizures in Sensitive Areas

§43-7(a)
Homes and Dwellings

United States Supreme Court

Caniglia v. Strom, 593 U. S. ____ (No. 20–157, 2021) After a domestic disturbance and suicide attempt at his home, the plaintiff, encouraged by his wife and the police, sought treatment at a hospital. The police stayed at the scene, entered his home without a warrant and seized his firearm. Plaintiff sued based on a Fourth Amendment violation. The lower court dismissed the claim, citing the community caretaking exception to the warrant requirement as discussed in **Cady v. Dombrowski**, 413 U. S. 433.

The Supreme Court reversed. In **Cady**, the police made a warrantless entry to an impounded vehicle to retrieve an unsecured firearm. In finding the seizure to be reasonable, the court noted that police are at times called upon to engage in "community caretaking" activities, particularly with regard to vehicles. The **Cady** court did not create a blanket

exception to the Fourth Amendment for any act that may be characterized as community caretaking. Rather, the **Cady** court found the officer acted reasonably on the specific facts of that case, including the fact that the police entered a vehicle in police custody, not a home. Reiterating that the home is constitutionally different, the Supreme Court refused to extend **Cady** to a warrantless entry into a home.

Collins v. Virginia, 584 U.S. ___, 138 S. Ct. 1663; 201 L. Ed. 2d 9 (2018) The automobile exception to the warrant requirement does not permit the warrantless entry to the curtilage of a home in order to search a vehicle parked therein. Here, the police had probable cause to believe that defendant was in possession of a stolen motorcycle. From the street in front of defendant's girlfriend's home, an officer could see a tarp covering what appeared to be a motorcycle. The officer walked up the home's driveway to where the motorcycle was parked, adjacent to the home in an area partially enclosed by side and back walls, which were approximately the height of a car. The officer lifted the tarp, ran a search of the motorcycle's license plate and vehicle identification numbers, photographed the motorcycle, and returned to his squad car to await defendant's return home. When defendant arrived, he was arrested. The intrusion of the curtilage of the home violated the Fourth Amendment.

Brigham City Utah v. Stewart, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006) Among the exigencies recognized as justifying a warrantless entry to a residence are the need to fight a fire or investigate its cause, prevent the imminent destruction of evidence, or engage in "hot pursuit of a fleeing suspect."

In addition, a warrantless entry to a home is appropriate to assist persons within the home who are seriously injured or threatened with serious injury. An entry to render assistance is proper if a reasonable police officer would believe that the circumstances justify the entry. The subjective intent of the law enforcement officer is irrelevant.

In a concurring opinion, Justice Stevens held that "[f]ederal interests are not offended when a single State elects to provide greater protection for its citizens than the Federal Constitution requires."

Dow Chemical v. U.S., 106 S.Ct. 1819, 90 L.Ed.2d 226 (1986) Though no warrant was obtained, authorities did not act improperly by using an airplane in public airspace to take aerial photographs of an industrial plant. Open areas of an industrial plant complex are not analogous to the curtilage of a dwelling.

California v. Carney, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) A motor home is subject to the "automobile exception" when it is on the highway or readily capable of use on the highway and is in a place not regularly used for residential purposes. Here, the motor home was in a public parking lot, and "an objective observer would conclude that it was being used not as a residence, but as a vehicle."

Thompson v. Louisiana, 469 U.S. 17, 105 S. Ct. 409, 83 L.Ed.2d 246 (1984) There is no "murder scene" exception to the warrant requirement; police erred by entering home 35 minutes after defendant's daughter called police after the defendant allegedly shot her husband and then ingested pills in a suicide attempt.

Illinois Supreme Court

People v. Aljohani, 2022 IL 127037 Warrantless searches and seizures within one's home are presumptively unreasonable given that "the home is first among equals" when it comes to the Fourth Amendment. That presumption may be overcome in certain circumstances, including where there are exigent circumstances. One such exigency can be found when there is a need to provide aid to persons who are seriously injured or threatened with such injury.

Here, the Court adopted the test set forth in **People v. Lomax**, 2012 IL App (1st) 103016, to determine whether the emergency aid exception applies. Specifically, the emergency aid doctrine requires that the police have (1) reasonable grounds to believe an emergency exists and (2) a reasonable basis, approximating probable cause, connecting the emergency with the place to be entered or searched.

In the instant case, the police responded to an early-morning 911 call from an apartment tenant, reporting loud arguing and wrestling in defendant's upstairs apartment, followed by someone saying "Are you okay?" and "Get up." When the police went to defendant's apartment to investigate, defendant opened the door about a foot, said everything okay, and told the police that his brother was sleeping. The officers went back downstairs, spoke with the 911 caller who insisted that someone in the apartment had been injured, and then returned to defendant's apartment. This time, they received no answer in response to several minutes of knocking. The police then returned to their squad car, preparing to leave, but decided that "something didn't feel right."

Upon driving around to the alley behind the apartment, the police observed that a back gate was open, the garage door was open, and a side door to the building was open. The officers went back into the building, proceeded upstairs, and discovered the door to defendant's apartment wide open. They knocked and announced their presence, received no response, and entered the apartment where they found defendant's brother unresponsive in a bedroom.

On these facts, the totality of the circumstances supported application of the emergency aid exception. The passage of 15-to-20 minutes between when the officers initially arrived and when they entered defendant's apartment was not fatal. During that time, the officers were investigating the incident and developed a reasonable belief that an emergency existed inside the apartment. Thus, the circuit court did not err in denying defendant's motion to suppress evidence.

People v. Burns, 2016 IL 118973 For Fourth Amendment purposes, "curtilage" consists of the area immediately surrounding and intimately associated with a home. In **Florida v. Jardines**, 569 U.S. ___, 133 S. Ct. 1409, 185 N.E.2d 495 (2013), the United States Supreme Court held that the porch of a private residence was part of the curtilage, and that a dog sniff conducted by a canine which was brought onto the porch therefore constituted a "search" under the Fourth Amendment.

The **Jardines** majority based its holding on the homeowner's property rights, but a concurring opinion found that the search also constituted a Fourth Amendment violation based on privacy grounds. The majority stressed that because there was a physical intrusion into a protected area, it need not conduct a "reasonable expectation of privacy" analysis.

In the course of the **Jardines** opinion, the court noted that although there is an implicit license for individuals to approach a home, knock, wait to be received, and leave unless invited to stay, that implicit license does not extend to bringing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence.

Here, the court rejected the argument that **Jardines** applies only to single-family residences and not to leased apartments or condominiums where a canine sniff is conducted

from common areas of multi-unit buildings. Police received an anonymous tip that defendant was selling marijuana out of her apartment, and gained access to the common area of her three-story apartment building by knocking on the door and being allowed in by another resident. The common areas of the building were not accessible to the general public.

Officers then used a trained dog to conduct a sniff of the third floor landing outside defendant's apartment. One other apartment and a storage closet shared the landing. The dog alerted outside defendant's door.

The court rejected the State's argument that the landing was not part of the "curtilage" of defendant's apartment. The curtilage consists of areas that are intimately connected to the activities of the home. Defendant lived in a locked building to which the public had no access unless admitted by a resident. The landing was immediately in front of defendant's apartment door, and by its nature was limited to use by defendant and the occupants of the other apartment on the third floor. The court also noted that the search occurred in the early morning hours, when a resident might reasonably expect that persons will not come to the door without an invitation. Under these circumstances, the landing qualified as curtilage.

The court rejected the State's argument that the good faith exception should apply. Under 725 ILCS 5/114-12(b)(1), (b)(2), the trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer pursuant to: (1) a search or an arrest warrant obtained from a neutral and detached judge where the warrant was free from obvious defects other than non-deliberate errors in preparation, contained no material misrepresentation by any agent of the State, and was reasonably believed by the officer to be valid, or (2) a warrantless search incident to an arrest for violation of a statute or local ordinance which is later declared unconstitutional. The U.S. Supreme Court has expanded the good-faith exception to include good-faith reliance upon binding appellate precedent that specifically authorized a particular practice but was subsequently overruled. **Davis v. United States**, 564 U.S. 229, ___, 131 S. Ct. 2419, 2429 (2011).

The court concluded that there was no binding Illinois precedent permitting the canine search which occurred here, and that there is precedent from the Appellate Court that the Fourth Amendment applies to the common areas of a locked apartment building. Under these circumstances, there was no binding precedent authorizing the search on which the officers could rely.

The court rejected the argument that the anonymous tip and the corroboration obtained by police were sufficient to constitute probable cause even without the alert by the drug dog.

The Appellate Court's order affirming the suppression order entered by the trial court was affirmed.

People v. Wear, 229 Ill.2d 545, 893 N.E.2d 631 (2008) Generally, searches and seizures inside a home without a warrant are presumed to be unreasonable. Thus, an entry to a home to conduct a **Terry** stop, for which only reasonable suspicion is required, violates the Fourth Amendment.

The constitutional "sanctity" of the home is limited, however. Among the exceptions to the warrant requirement is the "hot pursuit" doctrine, which allows an officer with probable cause to arrest a suspect outside a home to enter the home to complete the arrest if the suspect retreats inside the residence. In other words, a suspect "may not defeat an arrest that was set in motion in a public place by escaping to a private place."

Illinois Appellate Court

People v. McCall, 2021 IL App (1st) 172105 After his murder conviction, the trial court held a preliminary **Krankel** inquiry on defendant's allegations of ineffective assistance of counsel. The motion was denied without a **Krankel** hearing. A majority of the Appellate Court affirmed.

The majority first held that defendant failed to show possible neglect for failing to file a motion to suppress evidence found in defendant's home, where a triple murder took place. The police did not violate the fourth amendment because the items were found in plain view after a warrantless entry that was justified by the emergency aid exception. As in **People v. Ramsey**, 2017 IL App (1st) 160977, the Appellate Court held that officers who are legally inside a home may recover items in plain view, and it does not matter whether the recovering officers, including evidence technicians, arrive after the emergency has ended. As long as the initial responding officers could have recovered the evidence because it was in plain view, the search complies with the fourth amendment.

Nor did defendant show possible neglect for failing to file a motion to suppress defendant's custodial statements. When detectives brought defendant into an interview room, they told defendant that they'd been looking for him because people in the neighborhood said that defendant had killed his family. Defendant told the detectives that he killed them in self-defense, explaining how it happened. The detectives offered defendant medical attention, left the interview room "for a short time" and then returned and advised defendant of his **Miranda** rights. Defendant provided further statements admitting to the crimes but asserting self-defense.

The failure to file a motion was sound strategy where the defense theory at trial was self-defense, and the custodial statements supported that defense. Thus, there was no reason to suppress the initial statement. Furthermore, the post-warning statement was not elicited via the deliberate "question first, warn later" technique that violates the fifth amendment. The unwarned "interrogation" in this case was a single statement by a detective that the police had been looking for defendant and then a follow-up question later referencing defendant's response. It resembled the permissible interrogation in **Oregon v. Elstad**, 470 U.S. 298 (1985), and was a far cry from the systematic, exhaustive, psychologically skillful interrogation in **Missouri v. Seibert**, 542 U.S. 600 (2004). In any event, suppression of the statements would not have affected the outcome of the case. Defendant contended that absent his statements, he could have pursued a reasonable doubt strategy at trial, but the Appellate Court found the evidence overwhelming.

The dissent would have remanded for a full **Krankel** hearing because trial counsel's explanation for failing to file a **Seibert** motion did not adequately address the issues with the statements. In fact, counsel's explanation betrayed a fundamental misunderstanding of what occurred. The video of the interrogation, which was not played at the preliminary **Krankel** inquiry, plainly showed that there was a pre-warning statement that would have been suppressed, and a post-warning statement that at least arguably could have been suppressed, but counsel's explanation showed she was unaware of these circumstances. The dissent disagreed with the majority's decision to "fill in the blanks" on behalf of trial counsel, noting that the entire purpose of **Krankel** is to provide the Appellate Court with a record on which to evaluate an ineffectiveness claim.

People v. Baker, 2021 IL App (3d) 190618 The Appellate Court upheld the denial of defendant's motion to suppress the search of an SD card containing child pornography

because the card was voluntarily retrieved from defendant's home by his wife. Working off a tip from defendant's friend, officers knocked on defendant's door and spoke to his wife. The wife acknowledged the existence of the SD card, but did not want to retrieve it in front of defendant because she feared he would become violent. The officers called defendant outside and asked to speak with him about a domestic disturbance. The wife then retrieved the card and handed it to the officers.

In Illinois, proof that spouses have common authority over a space creates a rebuttable presumption that each spouse has authority not only over containers within that space that are jointly owned or used by the spouses, but also over containers owned or used by one spouse alone. Proof of sole ownership alone does not rebut the presumption; defendant must also show that he restricted access to the container. Here, defendant did not rebut the presumption, and therefore his wife could consent to the removal of the SD card from the apartment.

Defendant argued that he had a right to object to the search, but the officers interfered with that right by removing him from the home. If a defendant is removed from his property by police who have reasonable grounds to do so, consent by a co-resident is sufficient. Reasonable grounds for removing a defendant from his apartment include allowing officers to speak with a potential domestic violence victim outside of the defendant's potentially intimidating presence. Here, based on the wife's statement that she feared violence, the police could rightfully remove defendant from the property.

Finally, defendant challenged the seizure of the card. Although a third party's common authority gives her power to consent to a search, it does not give her power to consent to the government's seizure of an item in which she has no ownership interest. But, if police discover an item during a lawful search (such as pursuant to consent), they may seize it if they have probable cause to believe it is contraband or evidence of a crime. Here, the police had probable cause to believe the SD card contained child pornography because defendant's friend told them about the card and its contents.

People v. Kulpin, 2021 IL App (2d) 180696 The police could lawfully enter defendant's apartment without a warrant because they reasonably believed they needed to offer emergency aid. A woman reported her daughter missing and directed them to defendant's apartment, stating her daughter was last with defendant and that he had abused her in the past. Defendant appeared intoxicated and told the police he dropped the daughter off at work. The officers knew, however, that the daughter had not shown up at work. Defendant refused permission to enter, stating he had drugs in the house. The officers saw the daughter's car parked outside. At this point, it was reasonable to act under the emergency-aid exception to the warrant requirement because there were sufficient facts to justify a belief that someone inside defendant's apartment may need help.

People v. Kolesnikov, 2020 IL App (2d) 180787 The Appellate Court affirmed the defendant's drug conviction, holding that the police properly used their community-caretaking powers when they made a warrantless entry into defendant's home and discovered marijuana plants.

Two officers were dispatched to defendant's home because defendant's girlfriend forwarded the police an email containing defendant's threat to commit suicide. While they were at the scene, she texted the officers a photograph of someone, whom they could not identify, in a bathroom holding a knife. When defendant answered the door, he was intoxicated and evasive. Defendant would not confirm whether he sent the email or that he was the person in the photograph. He was not wearing the clothes seen in the photo, so the

officers wondered whether somebody else was inside and in danger of imminent harm. Defendant was placed in an ambulance and officers noticed cuts on his arm. The police entered the home and discovered marijuana plants.

Defendant alleged that once the police placed defendant in the ambulance, they should have known that the situation was under control. The call was about defendant's suicide attempt, not a threat to anyone else. The cuts on defendant's arm showed that defendant was the one who had the knife. The Appellate Court refused to second guess the officers' testimony that they remained concerned about the situation. It held that the officers reasonably believed there may have been others in danger, and that their belief was based on articulable facts rather than a mere hunch. Their entry into the house was therefore a proper use of their role as community caretakers.

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. Craine, 2020 IL App (1st) 163403 Police lacked probable cause and exigent circumstances to follow defendant into his home and effectuate an arrest and subsequent search of the home. An officer on patrol in an unmarked car heard gunshots in the vicinity, observed defendant and another man on defendant's porch a block or two from the location where he thought the shots originated, and saw defendant holding his hip as if he might have a gun when defendant entered his home. These observations were insufficient to suggest defendant had committed a crime. The officer did not see defendant with a gun, and there was nothing to indicate defendant had recently fired a gun. Even if defendant's entry to his home was construed as "flight," it would not even amount to reasonable suspicion, much less probable cause.

People v. Smock, 2018 IL App (5th) 140449 Police intrusion into defendant's home to arrest him following a neighbor's noise complaint was not justified by exigent circumstances. The

disorderly conduct charge was a Class C misdemeanor, there was no evidence that defendant posed any danger, and the delay to obtain a warrant would not have impeded defendant's arrest. The police simply could have handed the ticket to defendant with a notice to appear.

Likewise, while defendant opened his door to the police, he never crossed the threshold to the outside. When defendant retreated from the doorway, the police intrusion into his home was not justified by "hot pursuit" because the arrest had not been set in motion while defendant was in a public place. Defendant never left the confines of his home. The Appellate Court reversed the denial of defendant's *pro se* motion to suppress.

People v. Dawn, 2013 IL App (2d) 120025 Under the Fourth Amendment, a warrantless intrusion into a person's home is presumptively unreasonable absent consent or unless probable cause combined with exigent circumstances justify the intrusion.

Because the police had a mere hunch that defendant was involved in drug dealing based on an alderman's nonspecific secondhand complaint, the possibility that defendant might destroy drugs did not justify the warrantless intrusion into his home.

It is the State's burden to prove that an entry into a home fits within the consent exception to the warrant requirement. The police must act within the scope of the consent given, measured objectively. To establish the scope of the consent, it is important to consider any express or implied limitations or qualifications with respect to matters such as duration, area and intensity.

The trial court's finding that the police did not exceed the scope of defendant's sister's consent to the police to enter the home was against the manifest weight of the evidence. Defendant's sister invited the police into the first floor of the home in response to an officer's request to speak to her about suspected recent drug activity at the home. Her consent for the police to enter was limited to that express purpose and to that area. The police exceeded the scope of that purpose and area when they followed the defendant into the basement in the hope of obtaining incriminating evidence or an incriminating admission.

Because the State could not have proved defendant's guilt of possessing cocaine with intent to deliver without evidence obtained through the illegal entry, the Appellate Court reversed defendant's conviction.

People v. Slavin, 2011 IL App (2d) 100764 Acknowledging that even a tent can constitute a dwelling for Fourth Amendment purposes, the court held that a canvas shanty, used for temporary shelter while ice fishing, was not the equivalent of a tent because it contained no sleeping bag or other sleeping arrangements. The court also rejected the State's argument that the shanty was the equivalent of an automobile and therefore exempt from the warrant requirement. The court upheld the warrantless entry of the shanty to conduct a search because it was supported by both probable cause and exigent circumstances.

While standing outside the shanty, the officer heard the occupants comment on who was going to "pack the bowl" and the quality of the "weed." He also heard a distinctive coughing sound which, based on his training and experience, he knew is made after inhaling cannabis though a pipe. Based on these facts, he possessed probable cause to believe the shanty possessed contraband.

The guiding principle in determining if exigent circumstances justify a warrantless entry is the reasonableness of the officer's actions, based on the totality of the circumstances known to the officer at the time of the entry. The potential destruction of narcotics does not constitute exigent circumstances sufficient to justify a warrantless entry unless the officer has particular reasons to believe that the evidence will be destroyed.

Exigent circumstances existed because the officer could not have called another officer to monitor the scene while he obtained a warrant. Given the officer's reasonable belief that someone in the shanty was smoking cannabis, the suspected cannabis likely would have been removed from the scene or destroyed, either by simply smoking it or dropping it through the hole in the ice to the water below, had the officer delayed his entry. Therefore the warrantless entry was reasonable under the Fourth Amendment.

People v. Meyer, 402 Ill.App.3d 1089, 931 N.E.2d 1274 (4th Dist. 2010) The Fourth Amendment does not protect against anything that the defendant knowingly exposes to another member of the public, including a government agent.

A police informant wore a buttonhole video camera during his controlled purchase of narcotics from defendant in defendant's home. The video was admitted as evidence at defendant's trial. Defendant complained that his attorney was ineffective in failing to suppress the video.

Relying on **Hoffa v. United States**, 385 U.S. 293 (1966), and **Lopez v. United States**, 373 U.S. 427 (1963), the Appellate Court concluded that defendant had no state or federal constitutionally-protected privacy interest in anything that the informant viewed in his home. The video camera merely captured the most reliable evidence of the events that the informant witnessed. Therefore, counsel's failure to move to suppress was not deficient, nor did defendant suffer any prejudice as the motion would fail.

Appleton, J., dissented on the ground that defendant has a constitutionally-protected privacy interest to prohibit the video recording of his home.

People v. Davis, 398 Ill.App.3d 940, 924 N.E.2d 67 (2d Dist. 2010) Police improperly seized a suspected controlled substance and a digital scale which an officer observed while in the defendant's apartment to make a warrantless arrest. Therefore, the defense motion to suppress evidence should have been granted.

Absent exigent circumstances, police may not enter a private residence to make a warrantless search or arrest. The State bears the burden of demonstrating sufficient exigent circumstances to justify a warrantless entry to a residence.

Whether exigent circumstances justify a warrantless entry to a private residence depends on the facts of each case, considering factors such as: (1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by police during which a warrant could have been obtained; (3) whether a grave offense was involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting on a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though not consensual, was made peaceably. This list of factors is not exhaustive, but illustrates the type of evidence which is relevant to the question of exigency.

There were insufficient exigent circumstances to justify a warrantless entry to an apartment to arrest the defendant for battery. The evidence presented by the State did not suggest that defendant posed an immediate or real threat of danger or likelihood of flight, and the circumstances did not suggest that the delay required to obtain an arrest warrant would have impeded the investigation or prevented defendant's apprehension. Although battery involves a form of violence and defendant allegedly punched the complainant, there was nothing to indicate that the offense was particularly "grave," no evidence of any injury

or medical treatment on the part of the complainant, and no reason to believe that defendant was armed or otherwise posed a threat.

There was also no evidence that defendant was likely to flee unless swiftly apprehended, especially where defendant did not appear to know that police were looking for him.

The court acknowledged that only a short period of time passed between the battery and the officer's arrival at defendant's apartment, and that there was no unjustifiable delay. In addition, there was probable cause for an arrest, the police had reason to believe defendant was in the apartment, and the officer entered the apartment peaceably. However, "we are not persuaded that these circumstances, without more, necessitated prompt action by the police in the form of a warrantless entry and arrest."

The court rejected the argument that the warrantless entry into the apartment was justified by the "hot pursuit" doctrine. The "hot pursuit" doctrine applies where police initiate a valid arrest in public, but the arrestee attempts to thwart the arrest by escaping to a private place. The court concluded that the "hot pursuit" doctrine was inapplicable here, because the defendant was never in public. Instead, he remained in the apartment at all times, and even attempted to retreat further into the apartment when he opened the door and saw the officer. The court stressed that the arrest was not initiated in a public place, but when the officer entered the apartment and handcuffed defendant.

The court also questioned whether defendant would have been in a "public" place even if he had been in the doorway of his apartment, because the apartment door opened into a hallway that was locked at the street and accessible only to the tenants and the landlord.

Under the plain view doctrine, an officer may legally seize items where: (1) the officer was legally in the location from which he observed the items; (2) the items were in plain view, (3) the incriminating nature of the items was immediately apparent, and (4) the officer had a lawful right of access to the objects. Because the officer's entry to the apartment to arrest defendant was unlawful, he was not entitled to be in the location from which he viewed the item. Therefore, the plain view doctrine did not apply.

The court rejected the argument that the officer was lawfully in the apartment under the "protective sweep" rule. The State argued that because the officer saw an unidentified male run into a bedroom as defendant was arrested, the officer was entitled to make a "protective sweep" to protect himself.

A "protective sweep" is a quick search of premises incident to arrest, conducted to protect the safety of police officers and others. A protective sweep is limited to a cursory physical inspection of places in which a person might hide. A protective sweep may only be conducted when the officer has a reasonable belief, based on specific and articulable facts, that the area to be swept harbors an individual who poses a danger to officers and others at the scene of an arrest.

The court held that the "protective sweep" doctrine may be invoked only where police enter the premises lawfully. Because the officer's initial entry into the defendant's apartment was unlawful, the "protective sweep" doctrine did not apply.

The court rejected the State's argument that the evidence seized during the search of the apartment was admissible under the "inevitable discovery" doctrine, which holds that the exclusionary rule does not apply to improperly seized evidence if the State can prove by a preponderance that the evidence ultimately or inevitably would have been discovered by lawful means.

The court rejected the State's argument that the evidence would have been inevitably discovered by executing a search warrant issued on the complainant's tip, reiterating that the complainant's tip was insufficient to justify a warrant. Furthermore, there was no reason

to believe that the girlfriend would have consented to a search of the apartment had she been told only of the proper factors - that the complainant had reported a battery and claimed that drugs were being sold from the apartment.

Because there was no valid exception to the Fourth Amendment to justify the warrantless entry to defendant's apartment, and the seizure of evidence and consent to search were obtained through exploitation of the illegal entry, the trial court should have granted defendant's motion to suppress. Because the State could not prevail at trial without the illegally seized evidence, the convictions were reversed outright.

People v. Vought, 174 Ill.App.3d 563, 528 N.E.2d 1095 (2d Dist. 1988) The warrantless entry into defendant's hotel room was unlawful; the fact that a private citizen had seen cocaine in the room did not justify a warrantless entry.

People v. Cohen, 146 Ill.App.3d 618, 496 N.E.2d 1231 (2d Dist. 1986) "Although sufficient to justify the warrantless search of an automobile, having probable cause from the odor of burning cannabis will not alone justify an officer to enter and search a private residence."

§43-7(b)
Airport, Terminal and Public Conveyance Stops

United States Supreme Court

U.S. v. Place, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) Exposing luggage located in a public place to a sniff by a trained narcotic detection dog does not constitute a search. See also, **Illinois v. Caballes**, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005) (use of a narcotics detection dog to sniff a vehicle during a legitimate traffic stop does not violate the Fourth Amendment, at least where the stop is not prolonged beyond the time necessary to write a traffic citation and the sniff does not reveal the presence of non-contraband; a search which reveals only contraband does not compromise any legitimate privacy interest; J. Souter's dissent held that there is an unacceptable risk of false alerts by narcotics-detection dogs, creating a high risk that non-contraband items will be revealed when canine sniffs are used as justification for opening containers during a traffic stop).

Officers may temporarily detain luggage based upon reasonable suspicion. However, in the absence of probable cause, a 90-minute detention was unreasonable.

Florida v. Rodriquez, 469 U.S. 1, 105 S.Ct. 308, 83 L.Ed.2d 165 (1984) The initial contact between police and defendant at an airport, where the police simply asked if defendant would step aside and talk to them, "was clearly the sort of consensual encounter that implicates no Fourth Amendment interest." However, assuming there was a "seizure," it was justified by "articulable suspicion" where defendant and his companions spoke "furtively" to one another upon seeing the officers, one of the group urged the others to "get out of here," and the group gave contradictory statements as to their identities.

U.S. v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) A "seizure" occurs only if a reasonable person would believe she was not free to leave. Defendant's encounter with federal drug agents did not constitute a "seizure" where officers identified themselves, asked to see defendant's ticket, asked if she would accompany them to the airport DEA office for further questioning, and told defendant she could refuse to consent to a search. None of the factors that might indicate a seizure (such as the threatening presence of several officers,

display of a weapon, physical touching or use of language or tone of voice indicating that compliance with the officer's request might be compelled) were present.

U.S. v. Sokolow, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) Defendant was properly subjected to a **Terry** stop where DEA agents had reasonable suspicion to believe that he was acting as a drug courier. The facts known to the agents included: defendant paid $2,100 for airfare from a roll of $20 bills, traveled under a name which did not match the name under which his telephone number was listed, was originally headed for a destination that is a "source city" for illicit drugs, stayed in that city only 48 hours after a flight which took 10 hours, appeared to be nervous, did not check any luggage, and was wearing a black jumpsuit and gold jewelry.

Reid v. Georgia, 448 U.S. 438, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980) A DEA agent's stop of the defendant outside an airport terminal was unlawful because it was based on the agent's suspicion or hunch; defendant merely walked separately from another traveler before joining him in lobby and leaving together.

Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) Agents acted lawfully in asking for and examining defendant's airline ticket and driver's license. The discovery that defendant was traveling under an assumed name, plus the "drug courier profile" (i.e., paying cash for a one-way ticket and checking the suitcases by listing only the assumed name and destination) provided reasonable suspicion for a **Terry** stop.

However, the agents exceeded the scope of a temporary detention. Defendant "was effectively seized for purposes of the Fourth Amendment" where agents told him that he was suspected of transporting narcotics, asked him to accompany them to a room while they retained his ticket and license, and failed to indicate that he was free to depart.

Because the agents did not have probable cause for an arrest and exceeded the limits of an investigative stop, defendant's consent to search the suitcases was tainted by the unlawful confinement. See also, **People v. Hardy**, 142 Ill.App.3d 108, 491 N.E.2d 493 (4th Dist. 1986) (initial stop was lawful, but became unlawful when officer kept defendant's driver's license and asked defendant to follow him to police station).

U.S. v. Drayton, 536 U.S. 194, 122 S.Ct. 2105, 153 L.Ed.2d 242 (2002) 1. So long as a reasonable, innocent person would understand that he or she is free to refuse, the Fourth Amendment is not violated by a law enforcement program under which police officers request consent to search the luggage and persons of bus passengers. The court held that reasonable persons in the defendants' positions would have felt free to refuse to consent where three plainclothes officers boarded an interstate bus during a scheduled stop, quietly spoke to passengers, and requested permission to search. The officers did not brandish weapons or make any intimidating movements, left the aisle free so passengers could leave, and showed their badges only to establish their identities.

2. The co-defendant was not "seized" although he was asked to consent to a search only after his companion consented, was searched, and was arrested for possessing controlled substances. "The arrest of one person does not mean that everyone around him has been seized. . . If anything, Brown's arrest should have put Drayton on notice of the consequences of . . . answering the officers' questions." Furthermore, the officers' demeanor did not change after the first defendant was arrested and did not imply that the second defendant was required to also consent.

People v. Besser, 273 Ill.App.3d 164, 652 N.E.2d 454 (4th Dist. 1995) Under **Florida v. Bostick**, 501 U.S. 429 (1991), police officers "seize" a passenger on a common carrier if their questioning would cause a reasonable, innocent person to conclude that he was not free to end the encounter. The trial court could legitimately find that defendant was "seized" where the questioning occurred not during a brief encounter, but during a 15 or 20-minute period during which every passenger was questioned, the police directed additional questioning to the defendant and one other passenger without advising them that they were free to terminate the encounter, and the officers used a drug dog to examine the baggage compartment of the bus while defendant was being questioned. In addition, the search occurred at 2:50 a.m. in the cramped interior of a bus, one officer testified that he would have stopped anyone who tried to leave the bus, and defendant could have reasonably assumed that unless he admitted owning a particular bag the officers would treat it as abandoned property.

Illinois Appellate Court

People v. Bailey, 273 Ill.App.3d 431, 652 N.E.2d 1084 (1st Dist. 1995) Although a DEA agent needed only a "reasonable suspicion" based on specific facts in order to detain defendant's luggage at a train station, there was no "reasonable suspicion" where the "tip" on which the agent relied was "comprised of wholly innocent facts" (that defendant had boarded in Texas, would change trains in Chicago, had purchased his ticket for cash and occupied a handicapped compartment though he was not disabled) that would have described "a very large category of presumably innocent travelers." Furthermore, there was nothing suspicious about defendant's travel or behavior - he traveled conspicuously in a disabled compartment and did nothing suspicious upon reaching Chicago. Finally, defendant explained the discrepancy in names between his driver's license and ticket; the Court found that defendant's claim of traveling under an alias to escape the attention of an ex-spouse was "an explanation for traveling 'anonymously' that most people would agree happens to be not uncommon."

People v. Yarber, 279 Ill.App.3d 519, 663 N.E.2d 1131 (5th Dist. 1996) A police officer may approach a person to investigate possible criminal behavior where he has specific, articulable facts reasonably suggesting that the person has committed (or is about to commit) a criminal offense. An anonymous tip can supply the basis for a **Terry** stop if it "bears some indicia of reliability and/or other information establishes the 'requisite quantum of suspicion.'"

An anonymous tip did not establish that the informant had reliable knowledge of defendant's activities where it did not establish the source of the informant's knowledge and merely repeated hearsay reports from other individuals. In addition, the officers were able to corroborate only the "static details" of defendant's life.

A "reasonable and articulate suspicion requires more than corroboration of innocent details"; otherwise, "for all the police knew, [the defendant could be] . . . the victim of a malicious prank." In the absence of any reason to believe the anonymous informant had reliable knowledge of defendant's affairs, there was no reason to credit her claims that defendant was committing a crime. Therefore, police lacked a reasonable, articulable suspicion on which to stop defendant as he left the train.

People v. Oliver, 236 Ill.2d 448, 925 N.E.2d 1107 (2010) Under **U.S. v. Mendenhall**, 446 U.S. 544 (1980), a person is "seized" under the 4th Amendment if, considering the totality of the circumstances, a reasonable person would have believed he was not free to leave.

Mendenhall recognized four factors to be considered when determining whether a "seizure" has occurred: (1) the threatening presence of several officers; (2) display of a weapon by an officer; (3) physical touching of the citizen by an officer; and (4) use of language or tone of voice which compel compliance with the officer's requests. The factors listed in **Mendenhall** are not exhaustive, and other coercive behavior may constitute a "seizure." However, the absence of all **Mendenhall** factors is "highly instructive" in determining whether a "seizure" has occurred.[1]

Here, none of the **Mendenhall** factors were present. The court rejected defendant's argument that a non-**Mendenhall** factor was present because the officer sought to search the trunk of defendant's car only after the officer conducted a 10- to 15-minute consensual search of the interior of the car. Defendant argued that he was not free to leave during the consensual search because the officer told him where to stand.

The court stated:

> We cannot accept defendant's argument . . . because it would transform every consensual vehicle search into an unconstitutional seizure. Obviously, defendant had to wait somewhere while [the officer] conducted the consensual interior search of his vehicle. . . . [I]t was entirely reasonable for [the officer] to direct defendant and his passenger to stand at opposite ends of the vehicle parked safely along the roadside after receiving consent to search.

Because defendant had not been "seized" when he gave permission to search the trunk, the trial court acted properly by denying the motion to suppress cocaine found in defendant's trunk.

People v. $280,020 in U.S.C., 2013 IL App (1st) 111820 Although a cash purchase of a one-way ticket is considered by enforcers of drug laws to be behavior that fits the profile of a drug courier, that behavior is not sufficient to establish probable cause or even reasonable suspicion to believe that someone who fits the profile is a drug courier.

The fact that the defendant paid cash for a one-way train ticket from Chicago to Seattle, less than 24 hour prior to departure, did not justify a search of defendant's luggage without his consent.

People v. Marshall, 399 Ill.App.3d 626, 926 N.E.2d 862 (1st Dist. 2010) A citizen has been "seized" under the 4th Amendment when, by means of physical force or show of authority, his liberty is restrained by official action. A "seizure" has occurred where a reasonable person under the same circumstances would not feel free to decline the officer's request and terminate the encounter.

Defendant was "seized" where, within seconds after he stopped his car in a "No Parking" zone, an officer pulled behind him and activated his overhead flashing lights. The officer testified that he intended to conduct a traffic stop when he pulled over, and upon reaching the car he immediately asked for a driver's license and proof of insurance. Because no reasonable person would have felt free to decline the request for documentation upon seeing flashing lights and being approached by a uniformed officer, a "seizure" occurred.

Because there were no specific, articulable facts providing a reasonable suspicion that criminal activity had or was about to occur, the officer lacked authority to conduct a **Terry** stop. The court noted the officer's testimony that he had no suspicion that defendant was involved in a crime. Furthermore, defendant did not commit a parking infraction by stopping

in the "No Parking" zone, because neither he nor his passenger left the car and there was no evidence that the "No Parking" zone was also a "No Standing" or "No Stopping" area.

The court rejected the argument that the encounter was consensual and did not involve the 4th Amendment because the officer was merely checking on the well-being of defendant and his passenger. Upon reaching defendant's car, the officer immediately demanded defendant's driving documents, without inquiring whether defendant needed help or why he had stopped.

The court rejected the argument that defendant was not "seized" because he stopped his car voluntarily before the officer exercised a show of authority.

The State argued that because no "police misconduct" was involved, the 4th Amendment exclusionary rule did not apply. The court distinguished this case from **People v. McDonough**, 395 Ill.App.3d 194, 917 N.E.2d 590 (4th Dist. 2009), which held that no misconduct occurred where an officer pulled behind a car that was stopped on a narrow shoulder to see if the driver needed assistance, and turned on his overhead lights for safety reasons. Here, defendant stopped not on the shoulder of a busy road, but in a "No Parking" zone on a residential street. Furthermore, the officer did not attempt to see whether the occupants needed assistance, but intended to conduct a traffic stop. The court concluded that because police misconduct occurs when an officer makes an illegal seizure, the exclusionary rule applied.

Because there was no tactical reason to refrain from challenging the stop and a high probability that a motion to suppress would have been successful, defense counsel was ineffective. (See **COUNSEL**, §13-4(b)(4)). Because the State could not have prevailed in the absence of the suppressed evidence, the conviction for driving while license revoked was reversed.

§43-7(c)
Inmate, Parolee, and Probationer Searches

United States Supreme Court

Florence v. Board of Chosen Free Holders County of Burlington, 566 U.S. 318, 132 S. Ct. 1510; 182 L. Ed. 2d 566 (2012) In light of correctional officials' responsibility to insure the security of jails, the Fourth Amendment does not require reasonable suspicion before authorities conduct strip searches, including visual examination of body cavities, where arrestees for minor offenses are to be assigned to the general population of a detention facility. Courts should defer to the judgment of correctional officials concerning security requirements of jails, unless the record contains substantial evidence that the policies in question are unnecessary or are unjustified in response to the problem of jail security. The court concluded that a policy mandating strip searches of all persons assigned to general population "struck a reasonable balance between inmate privacy and the needs of the institutions."

The court pointed out that there are security and health risks to both staff and inmates in a detainee population, that persons arrested for minor offenses may "turn out to be the most devious and dangerous criminals," and that inmates might attempt to use persons arrested for minor offenses to smuggle contraband once it became known that such arrestees are not subjected to the same search requirements as other inmates. In addition, jail officials have limited information about persons being admitted to jail and might have difficulty implementing a standard requiring a degree of suspicion before a search can be performed. Finally, jail officials need to have easily administered rules for admitting

detainees.

A plurality of the court noted, however, that this case involves only the situation where a detainee arrested on a minor offense is to be assigned to general population and will have substantial contact with other detainees. Where arrestees for minor offenses can be held separately from other detainees, the same considerations may not apply. The plurality also found that this case did not present the narrow exception proposed by Justice Alito in his concurring opinion; Justice Alito stated that it would not necessarily be reasonable to conduct a strip search of an arrestee whose detention has not been reviewed by a judicial officer and who can be held in facilities apart from the institution's general population.

Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013) 1. In **Schmerber v. California**, 384 U.S. 757 (1966), the Supreme Court upheld a warrantless blood test of a DUI arrestee after finding that the officer might reasonably have believed that he was confronted with an emergency in which the delay required to obtain a warrant might threaten to destroy evidence of the defendant's blood alcohol level. In **Schmerber**, the arrestee had been injured in an accident and was taken for medical treatment before he was arrested for DUI.

The court rejected the State's argument that due to the natural metabolization of alcohol in the bloodstream, there should be a *per se* rule that any person arrested for DUI may be subjected to a warrantless, nonconsensual blood test. The court stressed that a citizen clearly has a privacy interest which protects against forced physical intrusions of his or her body. In addition, warrantless searches are reasonable under the Fourth Amendment only if a recognized exception to the warrant requirement applies. One recognized exception allows a warrantless search where exigent circumstances make a warrant impractical, including where an immediate search is necessary to prevent the imminent destruction of evidence.

Whether exigent circumstances justify a warrantless search depends on whether, under the totality of the circumstances, it is reasonable to proceed without a warrant. Although the alcohol level of a person's blood begins to dissipate once the alcohol is fully absorbed, and continues to decline until the alcohol is eliminated, that fact does not mean that the "totality of circumstances" test should be abandoned. Instead, "where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." Although in some cases it may be impractical to obtain a warrant, that "is a reason to decide each case on its facts, . . . not to accept the 'considerable overgeneralization' that a *per se* rule would reflect." The court noted that some delay is inevitable in DUI cases where the arrestee refuses to submit to a breathalyzer, because the defendant must be transported to a medical facility in order for his blood to be drawn. It is possible that while one officer is transporting the defendant to such a facility, a second officer could start the warrant process.

Furthermore, since **Schmerber** was decided there have been technological advances which allow for a more expeditious process of applying for a warrant. In addition, once blood alcohol testing is eventually performed, expert testimony allows the State to calculate and present the blood alcohol level at the time of the offense.

Noting that a case-by-case approach is common in Fourth Amendment cases, a plurality of the court rejected the argument that a bright line rule is needed to provide adequate guidance to law enforcement officers. The court also found that although a motorist has a diminished expectation of privacy in the operation of a motor vehicle, that lesser expectation does not apply to a motorist's privacy interest in preventing a government agent from piercing his or her skin for the purpose of obtaining a blood sample.

The plurality also rejected the argument that the government's compelling interest in

combating drunk driving justifies the use of warrantless blood tests. First, the general importance of the government's interest does not justify departing from the warrant requirement without showing sufficient exigent circumstances to make it impractical to obtain a warrant. Second, states have a broad range of legal tools to combat drug driving, including implied consent laws. Third, many states already place restrictions on the use of warrantless blood testing, indicating that warrantless testing is not essential for effective drunk-driving enforcement.

The State did not argue that there were exigent circumstances in this case, and no exigency was apparent from the record where the officer admitted that he knew a that a prosecutor was on call, he had no reason to suspect that a judge would have been unavailable, and he failed to request a warrant solely because he thought that no warrant was required. Under these circumstances, the court declined to specify all of the factors which might be relevant in determining whether a law enforcement officer acts reasonably by taking a blood test without first obtaining a warrant.

Samson v. California, 547 U.S. 843, 126 S.Ct. 2193, 165 L.Ed.2d 250 (2006) The Fourth Amendment was satisfied by a search performed under a California statute that required a parolee to agree to warrantless, suspicionless searches at any time.

Generally, a search satisfies the Fourth Amendment if, under the totality of the circumstances, the intrusion on an individual's privacy rights is justified by the promotion of a legitimate State interest. In **U.S. v. Knights**, 534 U.S. 112 (2001), the court found that in view of the reduced expectation of privacy held by a probationer and the fact that the probationer had notice of the possibility of a search, a probation condition which authorized a warrantless search was "reasonable" when justified by a reasonable suspicion of criminal activity. However, the **Knights** court declined to decide whether a suspicionless search would also be "reasonable."

The court concluded that because: (1) parole is more like imprisonment than probation, (2) an inmate who does not want to agree to the search requirement may choose to serve his full term in prison rather than go on parole, and (3) the search condition is clearly expressed to parolees, any expectation of privacy on the part of a California parolee is not one which society would recognize as legitimate.

The court also found that the State's interests in combating recidivism and promoting the reintegration of parolees into society are substantial. Finally, California law does not permit blanket discretion in searching parolees, but protects against "arbitrary, capricious or harassing searches."

Because the search was reasonable under the Fourth Amendment, the court found that it need not determine whether: (1) a parolee's acceptance of the search condition constitutes consent for all future searches, or (2) the parole search was justified under the "special needs" doctrine.

In dissent, Justices Stevens, Souter and Breyer found that under Supreme Court precedent, parolees have some expectation of privacy. The dissenters noted that even a reduced expectation of privacy can be overcome only by either individualized suspicion or the "special needs" doctrine. See also, **People v. Wilson**, 228 Ill.2d 35, 885 N.E.2d 1033 (2008) (MSR condition requiring parolees to consent to a search was not prospective consent for every search that might occur while defendant was on MSR; instead, defendant was charged with the duty to either submit to a search when asked to do so or face possible revocation of MSR; however, because parolees have lesser expectation of privacy, a warrantless and suspicionless search of a parolee's person or residence is "reasonable" under the Fourth Amendment); **People v. Moss**, 217 Ill.2d 511, 842 N.E.2d 699 (2005) (signing statutory MSR

condition to "consent to a search of your person, property, or residence under your control" was not prospective consent to any search conducted while defendant was on MSR; plain language of the document should be interpreted as requiring defendant to either consent to a request to search or face possible revocation of his MSR).

U.S. v. Knights, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001) Only "unreasonable" searches violate the Fourth Amendment. The reasonableness of a search is determined by comparing the intrusion to one's privacy interests with the extent to which the search is necessary to promote a governmental interest.

Because the recidivism rate of probationers "is significantly higher than the general crime rate," the State has a legitimate interest in protecting potential victims of crimes by apprehending probationers who continue to violate the law, and a probationer with notice that he is subject to a search has a diminished reasonable expectation of privacy in remaining free of searches conducted upon reasonable suspicion, the Fourth Amendment is not violated by a warrantless search of a probationer's residence based upon reasonable suspicion that he is involved in a criminal offense.

The court found it unnecessary to decide whether a probationer's acceptance of a condition authorizing searches constitutes consent to a search, or whether the diminished expectation of privacy on the part of a probationer authorizes a search without any degree of individualized suspicion. See also, **People v. Lampitok**, 207 Ill.2d 231, 798 N.E.2d 91 (2003) (probation order providing that probationer "shall submit to a search of her person, residence, or automobile at any time as directed by her Probation Officer to verify compliance with the conditions" of probation did not constitute prospective consent for a search of any residence; the plain language of the condition affirmatively required the probation officer to ask the probationer to consent to a particular search prior to conducting it; probation officers may conduct a warrantless search of a probationer's residence if they have a reasonable suspicion that a probation condition has been violated, but the scope of the search is limited to evidence of the violation). Compare, **People v. Thornburg**, 384 Ill.App.3d 625, 895 N.E.2d 13 (2d Dist. 2008) (although officers had no reason to believe a probationer was involved in any sort of criminal activity, a Computer Use Agreement which defendant entered as a condition of probation permitted a suspiciousless search of his computer; agreement provided that defendant was not to use the Internet for sexual purposes and was subject to unannounced examinations of his computer, software and other electronic devices).

Illinois Supreme Court

People v. Garcia, 2021 IL App (1st) 190026 Defendant was convicted of escape after he removed an electronic monitoring device during pre-trial home confinement. Police discovered the device in defendant's apartment while responding to a tampering alert. Defendant's brother-in-law allowed the police into defendant's apartment. Defendant was not home.

The Appellate Court rejected defendant's claim that his attorney was ineffective for failing to file a motion to suppress. While defendant argued that his brother-in-law lacked authority to admit the police into his apartment, the police already had authority to enter based on defendant's waiver of his fourth amendment rights when he agreed to the electronic monitoring program. When he enrolled in the program, defendant signed a document stating that he "agreed to admit representatives of this program into [his] residence twenty-four hours per day to ensure compliance with the conditions of this program."

The Appellate Court found no caselaw directly addressing privacy restrictions faced by those on pre-trial release. But authority addressing similar situations in parole and probation cases, including People v. Absher, 242 Ill. 2d 77, 83 (2011), have consistently upheld agreements whereby fourth amendment rights are bargained away in exchange for more favorable sentences or freedoms. The Appellate Court saw no reason not to apply the same principles to pre-trial release. Although defendant, unlike a probationer or parolee, was not subject to punishment, it made little sense to restrict him from improving his lot by waiving some privacy in exchange for the freedom of pre-trial release.

People v. Absher, 242 Ill.2d 77, 950 N.E.2d 659 (2011) Pursuant to a fully negotiated guilty plea to retail theft, defendant was placed on probation for two years with the first year to be "intensive probation supervision." As part of the intensive probation, defendant agreed to abide by a number of conditions, including that he would "submit to searches of [his] person, residence, papers, automobile and/or effects at any time such requests are made by the Probation Officer, and consent to the use of anything seized as evidence in Court proceedings."

At a meeting between defendant and his probation officer, the latter believed that defendant was under the influence of drugs. The probation officer contacted the State's Attorney's office and obtained authorization to search defendant's home.

When the probation officer and city officers arrived at the residence, defendant attempted to deny them entry. The officers forced entry, searched the premises, and found crack cocaine, marijuana, and several lighters and pipes.

The Supreme Court concluded that by entering a fully negotiated guilty plea and accepting a probation sentence which included the search condition, defendant waived his Fourth Amendment rights concerning searches which had a legitimate law enforcement objective.

Law enforcement officers generally may not enter or search a person's home without a warrant, unless there are exigent circumstances. Several exceptions to the warrant requirement have been recognized, however, including searches under voluntary consent and searches based on special law enforcement needs where there are diminished expectations of privacy and only minimal intrusions to those expectations.

Generally, contract law principles apply to negotiated guilty pleas. Therefore, neither party can unilaterally abrogate obligations which it holds under the plea agreement.

A probationer who enters a fully negotiated plea and freely accepts a broad probation condition permitting searches has a significantly reduced expectation of privacy. Furthermore, the probationer may waive his Fourth Amendment rights concerning such searches so long as the waiver is knowing and intelligent.

The court acknowledged, however, that the waiver of Fourth Amendment rights would not extend to searches that had no possible law enforcement objective or which so far exceeded any legitimate objective as to justify an inference that the officers' purpose was mere harassment.

By entering a fully negotiated guilty plea by which he avoided imprisonment by agreeing to intensive probation including submission to searches, defendant accepted a diminished expectation of privacy in his home. In addition, by agreeing that evidence discovered in such searches would be admissible at court proceedings, defendant knowingly and voluntarily waived any Fourth Amendment protections concerning such evidence.

The court distinguished **People v. Lampitok**, 207 Ill.2d 231, 798 N.E.2d 91 (2003), which held that a search of a probationer's residence must be supported by reasonable suspicion. In **Lampitok**, the defendant merely shared premises with a probationer to whom

a search condition applied. More important, the search condition in that case was much less expansive because it authorized only searches to verify compliance with the probation conditions. The court concluded that the condition in **Lampitok** required the probationer to either consent to a search when directed or run the risk that her probation would be revoked.

Here, by contrast, the language of the probation order required the defendant to submit to any search requested by the probation department and to consent to the admission of any evidence that was seized. By agreeing to such an extensive order, defendant gave his prospective consent to any search and to the use of any evidence recovered.

The court stressed that its opinion was limited to the facts of this case. The court expressed no opinion concerning the validity of such a search condition where the defendant enters an open plea or is involuntarily placed on probation.

In re Lakisha M., 227 Ill.2d 259, 882 N.E.2d 570 (2008) 730 ILCS 5/5-4-3, which requires juveniles who are found guilty of or given supervision for felony conduct to submit DNA samples for use in a state DNA database, is constitutional as it applies to delinquent minors. In **People v. Garvin**, 219 Ill.2d 104, 847 N.E.2d 82 (2006), the court upheld the constitutionality of §5-4-3 as it applies to adult felons, finding that the statutory procedure satisfies constitutional concerns both under the "special needs" test (because the creation of a DNA database used to absolve innocents, identify the guilty, deter recidivism, and bring closure to victims is a "special need" beyond that of traditional law enforcement) and the Fourth Amendment "balancing test" (because the State's compelling interest in creating such a database outweighs the reduced expectation of privacy on the part of a convicted felon, especially where the intrusion is minor and access to the information is limited to peace officers).

The court concluded that the Illinois Constitution's search and seizure provision does not provide broader protection in this context than does the federal constitution, and does not provide a basis on which to find that the DNA collection and indexing statute is unconstitutional. Although the Illinois Constitution does expressly recognize a "zone of personal privacy," the extraction of DNA involves a reasonable invasion of privacy in view of the minimally intrusive nature of acquiring a DNA sample, the diminished expectation of privacy on the part of a person who has been adjudicated delinquent for a felony, and the fact that dissemination of DNA information is limited to law enforcement officials.

People v. Adams, 149 Ill.2d 331, 597 N.E.2d 574 (1992) State statute which requires HIV testing upon conviction of certain sex-related offenses, including prostitution, constitutes a "search." However, the search is reasonable under the Fourth Amendment and the Illinois Constitution despite the absence of a warrant or individualized suspicion.

Illinois Appellate Court

People v. Johnson, 2020 IL App (1st) 172987 Police do not need a search warrant, consent, exigent circumstances, or even suspicion of wrongdoing in order to conduct a reasonable search of a parolee's residence under either the Fourth Amendment or the search and seizure clause of the Illinois Constitution. Although said to be in "limited lockstep," the Illinois Constitution does not provide greater protections than the Fourth Amendment.

Here, the trial court erred when it cited "lack of standing" in denying defendant's motion to suppress the drugs and weapon found in a room he claimed was not his (standing is not a requirement of the fourth amendment), but it was correct to deny the motion to suppress based on defendant's diminished expectation of privacy. Defendant signed an MSR

agreement to allow searches of his residence, and while police broke a lock to enter the bedroom containing the contraband and several items belonging to defendant, this was a reasonable step after defendant's uncle told police the room belonged to defendant, while defendant claimed ownership of a different room containing only women's clothes.

People v. Lobdell, 2019 IL App (3d) 180385 At a *Krankel* hearing, defendant failed to show possible neglect from trial counsel's failure to file a motion to suppress statements obtained following defendant's warrantless arrest. The police had probable cause to arrest defendant where the complaining witness identified him in a photo array and said she had used defendant's phone to call her grandmother, a detail which was corroborated by telephone records. That fact that the police entered defendant's fenced-in backyard to arrest him, without a search warrant or consent, did not invalidate the arrest. Defendant was on parole and therefore had a diminished expectation of privacy in his home.

People v. Calvert, 326 Ill.App.3d 414, 760 N.E.2d 1024 (4th Dist. 2001) A strip search of an arrestee who is to be placed in a jail's general population does not violate the Fourth Amendment, even where there is no reason to believe the arrestee is concealing contraband or weapons. The constitutionality of the search was not affected by the fact that correctional officers failed to comply with 725 ILCS 5/103-1(e), which requires that a strip search be conducted by an officer of the same gender as the person who is being searched, and 725 ILCS 5/103-1(f), which requires an officer to obtain written permission from a commander before conducting a strip search and to prepare a written report following the search.

§43-7(d)
School, Workplace, and Other "Special Needs" Searches

United States Supreme Court

City of Ontario v. Quon, 560 U.S. 746, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010) The 4th Amendment was not violated by a police department's examination of transcripts of text messages sent by an officer on a department-owned pager, for the purpose of determining why the officer regularly exceeded the number of messages allowed by the wireless contract. Although the officer paid the overage fee from his personal funds for several months, the employer wanted to determine whether the contractual limit was too low.

In **O'Connor v. Ortega**, 480 U.S. 709 (1987), the Supreme Court was unable to agree on the appropriate analysis when evaluating the constitutionality of searches of the workplaces of government employees. The **O'Connor** plurality concluded that such searches should be evaluated under a two-step process: (1) whether there was a reasonable expectation of privacy in view of the "operational realities of the workplace," and (2) whether a search conducted for non-investigatory, work-related purposes was "reasonable" under the circumstances. Under the plurality's approach, a search conducted for work-related purposes, or to investigate work-related misconduct, satisfies the 4th Amendment if it was justified at its inception and reasonable in its scope.

In his concurring opinion in **O'Connor**, Justice Scalia would have assumed that the 4th Amendment applies to searches of governmental offices. However, Justice Scalia held that a search to retrieve work-related materials or to investigate work-place misconduct by a public employee satisfies the 4th Amendment if the same search would be considered "reasonable" and normal if conducted by a private employer.

The court concluded that it need not resolve the conflict, because the search in this

case was reasonable under both standards. Under the plurality approach, the search was justified at its inception because the employer had a legitimate interest in determining whether officers were being required to pay for work-related messages that should have been an employer expense or whether the employer was paying for extensive personal communications by its employees. The search was reasonable in scope because reviewing the transcripts was an efficient and expedient way to determine whether the overages were work-related. The court found that the search was not excessively intrusive; the employer chose to examine transcripts for only two months although the officer had exceeded the contractual allowance several times, and the department attempted to reduce any intrusion into private messages by redacting transcripts of messages sent while the officer was off-duty.

The court also noted that even if the employee had a reasonable expectation of privacy, the extent of that expectation was relevant in determining whether the search was overly intrusive. Here, the employee's expectation of privacy was limited because he was a law enforcement officer and SWAT team member who had been told that his messages would be subject to audit, and because a police officer should know that any of his work-related actions may come under legal scrutiny.

The court rejected the Court of Appeals holding that a government employer is required to exercise the least intrusive search possible when investigating work-related matters; "[we] have repeatedly refused to declare that only the 'least intrusive' search practicable can be reasonable under the Fourth Amendment."

For many of the same reasons, Justice Scalia's concurring approach in **O'Connor** would have been satisfied. The employer had a legitimate reason for conducting the search, which would be considered reasonable and normal if performed by a private employer.

The court left open several questions, including: (1) whether there is a reasonable expectation of privacy in text messages transmitted on a pager provided by an employer at the employer's expense, (2) whether the employer conducted a "search" by reviewing the transcripts, and (3) whether the constitutional principles applicable to a search of an employee's office apply equally to a search of an electronic device provided by the employer.

Safford Unified School District No. 1 v. Redding, 567 U.S.364_, 129 S.Ct. 2633, 174 L.Ed.2d 354 (2009) Certain searches, including those by school officials, require only a reasonable suspicion rather than probable cause. A school official has reasonable suspicion to search a student where there is a moderate chance of finding evidence of wrongdoing.

A school search is permissible in scope when it is reasonably related to the objectives of the search and is not excessively intrusive in light of the age and gender of the student and the nature of the infraction. (See **New Jersey v. T.L.O.**, 469 U.S. 325 (1985)).

School officials had a reasonable suspicion that a 13-year-old middle school student was violating school policy by distributing prescription and non-prescription medication. (The student had been accused by another student of distributing prescription strength ibuprofen, and officials knew that a day planner containing contraband belonging to the student, that the student had been part of a "rowdy group" of girls attending a school dance at which alcohol and cigarettes were found in a girls bathroom, and that other students had reported that alcohol had been served at a party at the student's house before the dance.) Thus, a search of the student's backpack and outer clothing was clearly justified.

When the search of the backpack and clothing revealed no contraband, however, school officials exceeded the scope of a permissible search by conducting a strip search in which the student was required to remove her clothing and pull her bra and underwear away from her body. Because the strip search of an adolescent by a school official is patently offensive, there was no reason to believe that large qualities of prescription ibuprofen or other

medication were being distributed at school, and no basis to believe that the student was hiding drugs in her underwear, the search exceeded the scope of the reasonable school search:

> [T]he **T.L.O.** concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions.

However, because lower courts had reached divergent conclusions concerning whether a school strip search is justified under similar circumstances, the school officials involved were entitled to qualified immunity from civil suit. The court did not consider whether the school district itself enjoyed qualified immunity, but remanded the cause to the Ninth Circuit Court of Appeals to determine that issue.

City of Indianapolis v. Edmond, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000) 1. Generally, the Fourth Amendment is violated by a search or seizure that is not supported by individualized suspicion of wrongdoing. Courts have adopted exceptions to the requirement of individualized suspicion, however, where necessary to serve "special needs . . . beyond the normal need for law enforcement."

Due to the need to protect the integrity of the nation's borders, the Supreme Court has approved brief, suspicionless seizures of motorists at fixed border patrol checkpoints designed to intercept illegal aliens. The court has also approved checkpoints designed to remove the immediate threat to highway safety caused by drunk drivers, and have suggested that checkpoints designed to ensure public safety by verifying driver's licenses and vehicle registrations would be acceptable. In all of these cases, the purpose of the checkpoint is to further some legitimate interest other than the mere detection of criminal behavior.

Where the primary purpose of a checkpoint is to detect evidence of ordinary criminal wrongdoing, there is no "special need" justifying an exception to the "particularized suspicion" requirement. Thus, where the parties stipulated that the primary purpose of a vehicle checkpoint program conducted by the Indianapolis Police Department was to interdict unlawful drug possession and trafficking, individualized suspicion of wrongdoing was required.

Roadblocks established to "thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route" are permissible under the Fourth Amendment. However, the exigencies created by such circumstances "are far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction."

In view of the parties' stipulation that the primary purpose of the checkpoints was to detect narcotic violations, the court was not required to decide whether a checkpoint program primarily intended to check licenses or sobriety, with a secondary purpose of interdicting narcotic trafficking, would satisfy the Fourth Amendment. The court also declined to decide whether police may "expand the scope of a license or sobriety checkpoint seizure in order to detect the presence of drugs in a stopped car." See also, **People v. Ray**, 327 Ill.App.3d 904, 764 N.E.2d 173 (5th Dist. 2002) (Fourth Amendment was violated by narcotics checkpoint at last exit before non-existent "drug checkpoint"; primary purpose was to interdict drug traffic, and the fact that drivers left interstate after passing signs warning of checkpoint did not create a reasonable suspicion of wrongdoing); **People v. Fullwiley**, 304 Ill.App.3d 44, 710

N.E.2d 491 (2d Dist. 1999) (a roadblock was not justified by the public's interest in insuring compliance with license, insurance and registration requirements; although the State has a valid interest in determining compliance with such requirements, that interest is not as compelling as that served when a roadblock is conducted to apprehend intoxicated motorists; program was not "reasonable" given its "subjectively intrusive nature"). Compare, **Illinois v. Lidster**, 540 U.S. 419, 124 S.Ct. 885, 157 L.Ed.2d 843 (2004) (checkpoint seeking information about fatal hit-and-run accident not improper where purpose was to ask members of the public for help in solving a crime and not to determine whether the occupants of the stopped vehicles were committing crimes; **Edmond** does not prohibit checkpoint seeking evidence about crime committed by an unknown person; constitutionality of information-seeking checkpoints is determined on case-by-case basis).

Board of Education . . . of Pottawatomie County et al. v. Earls et al., 536 U.S. 822, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002) 1. Although the Fourth Amendment normally requires both a warrant and probable cause, neither is necessary where special needs, beyond the normal needs of law enforcement, make such requirements impractical. Under **Vernonia School District 47J v. Acton**, 550 U.S. 646 (1995), whether such a "special need" exists in a school depends on a fact-specific balancing of the intrusion on students' Fourth Amendment rights and the legitimate governmental interest being promoted.

The Fourth Amendment was not violated by a school district's mandatory drug testing program for all participants in extracurricular activities, because the policy was reasonable to advance the school district's interest in detecting and preventing drug use among students. The privacy interest at stake was limited because, due to the need to maintain a healthy and safe environment, students are subject to greater control than is appropriate for adults. In addition, students who choose to participate in "competitive extracurricular activities" voluntarily subject themselves to greater regulation.

Second, the testing program posed only a minimal intrusion on students' privacy rights. Although urination is a bodily function that is "traditionally shielded by great privacy," the method of collection used here - production of a urine sample in a closed restroom stall while a faculty member stood outside and listened "for the normal sounds of urination" - made any intrusion of privacy "negligible." In addition, the drug test policy required that test results be released only to school personnel with a "need to know."

Finally, test results were not turned over to law enforcement authorities and did not trigger disciplinary or academic proceedings, but were used only to determine eligibility for extra-curricular activities.

In addition, the school district's interest in detecting and preventing drug use by school children was legitimate and important. Although the district produced some evidence of drug use by its students, the legitimacy of a drug testing program does not depend on a showing that a drug problem exists in the targeted group or even in the school as a whole. Instead, because drug abuse is one of the most serious problems confronting society and schools must "prevent and deter the substantial harm of childhood drug use," it would "make little sense to require a school district to wait for a substantial portion of its students to begin using drugs before it was allowed to institute a drug testing program designed to deter drug use."

The court rejected the argument that even if the "probable cause" standard is inappropriate for school drug testing programs, the Fourth Amendment requires a finding of some individualized suspicion of drug use by the test subjects. A testing program based on individualized suspicion might not be any less intrusive, but would impose additional burdens on teachers, unfairly target members of unpopular groups, and create a fear of

litigation that would hamper the school's ability to discourage drug use. See also, **Veronia School District v. Acton**, 515 U.S. 646, 132 L.Ed.2d 564, 115 S.Ct. 2386 (1995) (upholding program of random drug testing for student athletes). Compare, **Safford Unified School District No. 1 v. Redding**, ___ U.S. ___, 129 S.Ct. 2633, 174 L.Ed.2d 354 (2009) (strip search of middle school student accused of bringing prescription ibuprofen to school was unreasonable).

Ferguson v. Charleston, 532 U.S. 67, 121 S.Ct. 1281, 149 L.Ed.2d 205 (2001) The Fourth Amendment was violated by a program of drug testing of urine samples of pregnant women who received prenatal care at a public hospital, where patients who tested positive and refused to enter treatment programs were reported to law enforcement.

Because the hospital was run by the State, staff members who developed and participated in the program were "government actors" who were subject to the Fourth Amendment. Under existing precedent, urine testing conducted by a government actor is a "search" within the Fourth Amendment.

Under the "special needs" exception to the warrant and probable cause requirements, the constitutionality of a search which involves a "special need" other than the "normal" need to enforce State laws is evaluated by balancing the intrusion of the individual's privacy and the special need in question. The crime tests here were conducted without the patient's knowledge or consent, the results were given to law enforcement officers, and the threat of prosecution was used to encourage enrollment in drug treatment programs.

The court found that a hospital patient has a reasonable expectation that the results of diagnostic testing "will not be shared with non-medical personnel without her consent," and that a "central and indispensable feature" of the program "was the use of law enforcement to coerce the patients into substance abuse treatment." Because the immediate objective of the search was to generate evidence for law enforcement, a purpose indistinguishable from the State's general interest in controlling crime, the "special needs" exception was inapplicable.

Even where the purpose of a program is "benign rather than punitive," the Fourth Amendment precludes nonconsensual, warrantless and suspicionless searches intended to generate evidence of criminal activity for the purpose of prosecuting the offender.

New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) Although the Fourth Amendment applies to searches conducted by school officials, such officials need not strictly adhere to the probable cause requirement and need not obtain a warrant. See also, **People v. Dilworth**, 169 Ill.2d 195, 661 N.E.2d 310 (1996) (seizure of flashlight by detective assigned to a public school could not be based on school policy prohibiting the possession of "any object that can be construed to be a weapon," because allowing the seizure of any object that could be construed as a weapon would result in "arbitrary invasions" by government officials; State cannot compel attendance at public schools and then subject students to unreasonable searches of the legitimate, noncontraband items that they carry onto school grounds; however, the search was reasonable under **T.L.O.** because the "totality of the circumstances" provided reasonable grounds to believe that the flashlight contained drugs); **People v. Pruitt, Brooks & Cheatham**, 278 Ill.App.3d 194, 662 N.E.2d 540 (1st Dist. 1996) (approving use of metal detectors at public schools under specified circumstances, but holding that a school administrator acted improperly by ordering defendant to empty his pockets based on a "hunch" that he might be armed); **People v. Parker**, 284 Ill.App.3d 860, 672 N.E.2d 813 (1st Dist. 1996) (search by school administrator cannot be based on hunch).

Skinner v. Railway, 489 U.S. 602, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989) The taking of blood, breath or urine samples constitutes a search under the Fourth Amendment. Because of a "special need" to insure the safety of rail travel, however, compulsory drug testing of railroad employees is reasonable without probable cause, particularized suspicion, or a warrant. See also, **National Treasury Employees Union v. Von Raab**, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989) (upholding compulsory drug tests for customs agents involved in the interdiction of drugs or who carry firearms). Compare, **Chandler v. Miller**, 520 U.S. 305, 117 S.Ct. 1295, 137 L.Ed.2d 513 (1997) (invalidating mandatory drug testing for candidates for specified state offices).

U.S. v. Flores-Montano, 541 U.S. 149, 124 S.Ct. 1582, 158 L.Ed.2d 311 (2004) 1. The Fourth Amendment permits border authorities to search a vehicle entering the United States even where there is no suspicion of wrongdoing. In addition, border authorities need not suspect that contraband is being smuggled before they remove, disassemble, and reassemble the vehicle's tank. Thus, border authorities who removed and disassembled defendant's fuel tank did not act improperly, although they had no basis to suspect that defendant was driving a car in which the fuel tank had been modified to carry contraband.

2. The court rejected defendant's argument that the suspicionless disassembling of his vehicle's fuel tank violated his right to privacy and his possessory interest in his vehicle. First, one's reasonable expectation of privacy is lessened in a border search. Second, because there is no indication that even a single accident has resulted from the thousands of border searches in which fuel tanks have been disassembled, it cannot be said that such searches create a serious risk of damage.

Illinois Supreme Court

McElwain v. Secretary of State, 2015 IL 117170 625 ILCS 5/11-501.6(a) provides that a driver who is arrested or ticketed relating to an accident in which a serious injury occurred consents to blood, breath or urine testing to detect the presence of alcohol or drugs. Refusal to submit to testing results in the automatic suspension of the person's drivers license.

The court concluded that application of §11-501.6(a) violated the Fourth Amendment where defendant was not ticketed or asked to submit to any chemical tests at the scene of an accident, but was ticketed for failure to yield and asked to take a chemical test two days later when he came to the police station at the request of the investigating officers. The court noted that in **Fink v. Ryan**, 174 Ill.2d 302, 673 N.E.2d 281 (1996), §11-501.6(a) was found to satisfy the "special needs" exception to the Fourth Amendment because a driver who is involved in a serious accident and who is required by statute to remain at the scene has a lesser expectation of privacy, and because a chemical test performed at the scene is less intrusive than the same search performed under other circumstances.

The court concluded that where the driver is no longer at the scene of the accident, he or she no longer has a reduced expectation of privacy. Furthermore, the intrusiveness of the search is no longer minimized when it occurs at some place other than the accident scene. In addition, a chemical test performed days after the accident is not only less probative concerning whether defendant was impaired at the time of the accident, but also carries a serious risk of prejudice by possibly indicating impairment at a time that is irrelevant to the accident.

The court affirmed the trial court's order declaring §11-501.6(a) unconstitutional where the demand for testing occurred after defendant left the accident scene.

People v. Timmsen, 2016 IL 118181 At 1:15 a.m. on a Saturday, defendant made a legal U-turn some 50 feet before reaching a State Police safety roadblock. The roadblock was placed on a four-lane highway just across the border between Illinois and Iowa. Defendant made the U-turn at a railroad crossing which was the only place to turn around before reaching the roadblock.

The court concluded that making a U-turn just before reaching a roadblock is a legitimate factor to consider in determining whether there is a reasonable suspicion of criminal activity. The court rejected the argument that making a U-turn near a roadblock is no more than the driver's decision to simply go about his business:

> Defendant's U-turn upon encountering the police roadblock was the opposite of defendant going about his business. Continuing eastbound on the highway would have been going about his business. We cannot view defendant's evasive behavior under these circumstances as simply a refusal to cooperate.

The court rejected the State's argument that the act of avoiding a roadblock is in and of itself sufficient to create a reasonable inference of criminal activity. Whether there is a reasonable suspicion of criminal activity is based on the totality of the circumstances and not on any factor in isolation.

The court also found that the totality of the circumstances justified a reasonable inference that criminal activity was afoot. The encunter occurred in the early morning hours, the roadblock was well marked and could not have been confused with an accident, and the roadblock was not busy and would not have caused a significant delay.

People v. Jung, 192 Ill.2d 1, 733 N.E.2d 1256 (2000) The constitutional right to privacy is not violated by 625 ILCS 5/11-501.4-1, which allows medical personnel to release to law enforcement officials the results of physician-ordered blood or urine tests conducted during emergency treatment for injuries resulting from a motor vehicle accident. The court concluded that given the compelling public interest in highway safety, a citizen's reduced privacy interest in a driver's license, and the threats to "life, limb and property" which drunken driving poses, "waiver of a driver's privacy interest in his blood or urine test results . . . is reasonable."

King v. Ryan, 153 Ill.2d 449, 607 N.E.2d 154 (1992) Both the Fourth Amendment and the Illinois Constitution are violated by a State statute holding that a person driving a motor vehicle is deemed to have consented to a breath or blood test if there is probable cause to believe that he "was the driver at fault, in whole or part, for a motor vehicle accident which resulted in the death or personal injury of any person."

Basing implied consent on the fact that a driver is at fault in an accident, without requiring any suspicion that he has been drinking, violates the probable cause requirement of the Fourth Amendment. Although the State regulates the operation of motor vehicles within its borders, drivers do not have a lesser expectation of privacy similar to that of workers in a "pervasively" regulated industry. In addition, the search in question is much more intrusive than a roadblock or giving a urine sample, the purpose of the test is to obtain evidence for use in a criminal trial, and requiring probable cause to believe that a motorist has been drinking will not hamper the State's ability to detect drunk drivers.

The "zone of privacy" recognized by Article I, §6 of the Illinois Constitution is violated where a driver is required to take a breath or blood test in the absence of probable cause to believe he has been drinking. See also, **Fink v. Ryan**, 174 Ill.2d 302, 673 N.E.2d 281 (1996)

(successor statute upheld).

People v. Watson, 214 Ill.2d 271, 825 N.E.2d 257 (2005) Under Illinois law, some showing of individualized suspicion and relevance must be made before a grand jury may issue a subpoena to obtain evidence of a non-invasive nature (*i.e.*, appearance in lineup, fingerprinting, handwriting or voice exemplaries). A grand jury subpoena to obtain evidence of a more invasive nature (*i.e.*, blood, head hair, facial hair or pubic hair) may be issued only upon probable cause.

The court rejected defendant's argument that even where there is probable cause, a grand jury subpoena may be issued only if a neutral magistrate issues a search warrant. The court concluded that such a requirement would limit the grand jury's power to investigate and infringe on its purpose.

Illinois Appellate Court

People v. Butorac, 2013 IL App (2d) 110953 The Fourth Amendment was not violated where Illinois Conservation Police conducted a "safety check" of defendant's boat pursuant to 625 ILCS 45/2-2(a), which authorizes officers to "board and inspect any boat at any time" to determine compliance with the Boat Registration and Safety Act. Thus, plain-view observations by the officers were admissible at defendant's trial for operating a watercraft while under the influence.

The Fourth Amendment protects citizens against unreasonable searches and seizures. Warrantless searches and seizures are *per se* unreasonable unless one of several well-defined exceptions apply. A defendant who raises an "as-applied" challenge to a search conducted pursuant to a statute asserts that under the circumstances of the case, the search in question violated the Fourth Amendment. By contrast, a facial challenge asserts that the statute is unconstitutional in all situations.

At the hearing on a motion to suppress, defendant bears the burden of showing that the search or seizure was unconstitutional. A *prima facie* case of unreasonableness is proven where defendant shows that he was doing nothing unusual to justify the intrusion. At that point, the burden of production shifts to the State to counter the *prima facie* case. Although the burden of production shifts to the State, the ultimate burden of proof remains with the defendant.

In the context of motor vehicles, the U.S. Supreme Court has recognized that under certain circumstances, a fixed checkpoint or roadblock may constitute an exception to the general prohibition against suspicionless, warrantless seizures. Generally, whether a checkpoint is constitutional is determined by balancing the State interests served by the checkpoint with the objective and subjective intrusions resulting from the stop. Suspicionless stops at fixed checkpoints are generally preferred over suspicionless stops by roving patrols, because the intrusion created by the seizure is minimized. Even for fixed checkpoints, however, the State interest being served must be something more than merely "the general interest in crime control."

The "objective intrusion" of a stop refers to the level of physical intrusion that is created, and is measured by factors such as the length of the stop, the nature of the questioning, and whether a search was conducted. The "subjective intrusion" concerns the level of psychological intrusion such as generating fright or annoyance on the part of citizens. There is no "ironclad formula" for measuring the extent of the subjective intrusion created by a roadblock, but factors considered in this regard include whether: (1) the officers were acting with unbridled discretion, (2) the decisions to establish the roadblock and to locate it in a

particular place were made by supervisory personnel, (3) vehicles were stopped in a preestablished and systematic fashion, (4) written guidelines for conducting the operation were in place, (5) the official nature of the checkpoint was apparent to motorists, (6) it was obvious that the roadblock was not unsafe, and (7) the checkpoint was publicized in advance. A court need not have evidence on all these factors in order to determine the extent of the subjective intrusion created by a checkpoint.

Because there are crucial differences between stops of watercraft and automobiles, the law governing motor vehicle checkpoints does not necessarily resolve the constitutionality of a "safety stop" of a boat. Because vessels can move in any direction at any time and potentially have access to the open seas, using fixed checkpoints may not be practical. In addition, the documentation system for vessels is significantly different from the vehicle licensing system because more detailed documentation is required for vehicles and the outward markings of watercraft do not indicate whether the vessel is in compliance with State law. Finally, different public interests are at stake concerning boat safety checks because the State has an interest in collecting duties, combating smuggling, and preventing illegal immigration.

The court concluded that it would have been impractical for police to conduct a fixed checkpoint on a river that was 200 yards wide and bordered by two dams that were 6½ miles apart. There were no lane lines or buoy markers, and boat traffic could originate from a number of docks and launches, including some that were private and some which were public. Under these circumstances, it was reasonable to conduct a moving safety check under which the officers attempted to stop every boat on the river to check safety equipment and registration documentation.

The court concluded that the State's interest in boating safety justified the safety check and outweighed the objective and subjective intrusions resulting from the safety check. Concerning the objective intrusion, the stop was brief and involved straightforward questioning. The officers did not board or search defendant's boat, but merely pulled their boat alongside defendant's craft, requested that he put his boat in neutral, and asked to see the boat's safety equipment and registration.

Concerning the subjective intrusion, the officers had stopped some 20-25 boats that evening and were attempting to stop every boat on the river. Thus, the operation was systematic and did not involve unlimited discretion on the part of the officers.

Furthermore, it was obvious to boaters that the officers were conducting an official operation where the officers were in uniform and immediately identified themselves to defendant as conservation officers. The stop occurred during daylight hours, and the record reflects a "fairly mundane and friendly interaction" which did not involve concern or alarm on defendant's part.

The court acknowledged that there was no evidence concerning whether supervisors ordered the safety check, whether there were written guidelines, or whether there was advance publicity of the operation. Because there is no "ironclad formula" for determining the subjective intrusion of a stop, however, the absence of such evidence does not mandate a finding that the operation was unconstitutional.

Because the safety check operation did not violate the Fourth Amendment, it was proper to admit the officers' plain-view observations of numerous empty alcohol bottles in the boat and that defendant had glassy, bloodshot eyes and slurred speech. Defendant's conviction for operating a watercraft under the influence of alcohol was affirmed.

People v. Coleman, 2013 IL App (1st) 130030 Both the Fourth Amendment and the Illinois Constitution guarantee the right to be free from unreasonable searches and seizures.

Generally, a search is considered "reasonable" when it is based on a warrant that is supported by probable cause. However, because a probationer or parolee has a decreased expectation of privacy and there is a reasonable State interest in deterring recidivism, a search of a probationer or parolee may be reasonable without a warrant or individualized suspicion. See **Samson v. California**, 547 U.S. 843 (2006), and **People v. Wilson**, 228 Ill. 2d 35, 885 N.E.2d 1033 (2008).

Here, the court concluded that for **Samson** and **Wilson** to apply, the officer must be aware before the search occurs that the subject of the search is a parolee or probationer. The court concluded that the State's substantial interest in reducing recidivism is not triggered when the officer has no knowledge that the subject of the search is a parolee or probationer.

Where police officers were investigating an anonymous tip when they stopped defendant while he was on the street, took his car keys, and searched his car, and they did not know that defendant was on parole until after the search of the car revealed heroin, the **Samson/Wilson** exception did not apply.

2. The State argued in the alternative that: (1) defendant was lawfully arrested before the search because he was in possession of car keys but admitted that he did not have a driver's license or proof of insurance on his person, and (2) the heroin would have been inevitably discovered through an inventory search of the car. The court found that the State forfeited this argument by failing to raise it in the trial court and by expressly stating a more limited position - that the search satisfied the Fourth Amendment because defendant was a parolee.

The trial court's order granting defendant's motion to suppress was affirmed.

§43-8
Suppression Motions and Hearings

§43-8(a)
Timeliness – Subsequent Motions

Illinois Supreme Court

People v. Braden, 34 Ill.2d 516, 216 N.E.2d 808 (1966) The requirement that a defendant move to suppress illegal evidence before trial is one of convenience to eliminate collateral inquiries during trial. The court's ruling on such a motion is not final and may be changed or reversed at any time prior to final judgment. Thus, where the evidence at trial establishes the legality of the search, defendant cannot avail himself of any error on the motion to suppress.

People v. Flatt, 82 Ill.2d 250, 412 N.E.2d 509 (1980) The trial court may, in its discretion, conduct a hearing on a motion to suppress illegally seized evidence though the motion was filed after the start of trial.

People v. Moridican, 64 Ill.2d 257, 256 N.E.2d 71 (1976) Where defendant was acquitted at his trial for armed robbery after his motion to suppress a firearm was denied, he was not barred from bringing a second motion to suppress at a trial for unlawful use of a weapon involving the same weapon. In light of the acquittal, defendant had not had an opportunity to obtain review of the correctness of the earlier ruling as to the validity of the search. See also, **People v. Stiles**, 95 Ill.App.3d 959, 420 N.E.2d 1204 (2d Dist. 1981) (defendant entitled to another hearing when she pleaded guilty after denial of motion in another case).

People v. Holland, 56 Ill.2d 318, 307 N.E.2d 380 (1974) The trial court has jurisdiction to consider motions to suppress that were denied at the preliminary hearing. However, the trial court need not permit a new hearing unless the defendant shows exceptional circumstances or additional evidence.

People v. Taylor, 50 Ill.2d 136, 277 N.E.2d 878 (1972) An order of suppression at a preliminary hearing is an appealable order; by electing not to appeal, the State cannot have the order reviewed by another trial judge.

People v. Hopkins, 52 Ill.2d 1, 284 N.E.2d 283 (1972) The fact that evidence may be relevant in several trials does not, without more, entitle a defendant to repeated hearings as to the validity of the arrest and search. It was not error to deny defendant a second hearing where there was no suggestion that additional evidence was available or that defendant could not appeal from the prior hearing.

Illinois Appellate Court

People v. Hill, 2012 IL App (1st) 102028 The police stopped a vehicle being driven by defendant because it matched the description of a subject's vehicle and plates named in a search warrant. The warrant authorized the search of the subject and an apartment on West Flournoy. A pat-down search of defendant resulted in the discovery of keys, which defendant admitted were for the apartment on Flournoy. Defendant was taken into custody.

The police used the keys to enter the apartment and conduct a search. The complaint for a warrant indicated that ecstacy would be found in the front bedroom. The police found no drugs in that bedroom but did recover a loaded shotgun inside a bag in a box under the bed in the middle bedroom. When questioned by the police, defendant admitted that the shotgun was his and that he had been living in the apartment with his girlfriend.

At trial, the defense presented evidence that defendant did not live in the apartment although he slept there on occasion. Defendant had been given a key to allow him to let his girlfriend's daughter and brother into the apartment when she was absent. Defendant denied knowledge of the shotgun and making a statement admitting to possession of the shotgun.

Addressing whether counsel was ineffective in failing to move to suppress defendant's post-arrest statement as the fruit of his continued unlawful detention, the Appellate Court concluded that even though the initial stop and search of defendant was lawful, a motion to suppress defendant's statement would have had a reasonable probability of success.

The continued detention of defendant was not supported by probable cause or reasonable suspicion. The police recovered no contraband from defendant, only keys. No contraband had yet been recovered from the apartment.

Probable cause to support the warrant to search the apartment did not allow the court to assume that there was probable cause or reasonable suspicion to justify the continued detention of the defendant. These are related, but different inquiries: in the case of the detention of the defendant, the inquiry concerns the guilt of defendant, whereas in the case of the search warrant, the inquiry relates to "the connection of the items sought with the crime and to their present location." Where the police found no drugs on defendant and had not yet found any contraband at the apartment, the mere expectation that the police would find drugs in the apartment, without more, could not justify the continued detention of defendant. The State had not argued that the facts alleged in the complaint for search warrant supported an independent finding of probable cause or reasonable suspicion to

justify the detention.

The continued detention of defendant was not a valid seizure incident to execution of the warrant. **Michigan v. Summers**, 452 U.S. 692 (1981), authorized the detention of occupants of the premises while a search warrant is executed in order to: (1) prevent flight in the event that incriminating evidence is found, (2) minimize the risk of harm to officers, and (3) facilitate the orderly completion of the search. Courts disagree whether this rule can be extended to an occupant who leaves the premises immediately before execution of the warrant who is detained soon as practicable after leaving. The court found it unnecessary to decide whether Illinois should adopt the expansive interpretation of **Summers** where there was no evidence defendant had come from the Flournoy apartment just before his detention.

The court declined to determine whether the statement was attenuated from the detention by the presence of independent, intervening probable cause – the recovery of the shotgun. That was a fact question related to defendant's constructive possession of a weapon found hidden under a bed in a three-bedroom apartment. The parties would have an opportunity to address the question on remand, if necessary.

There is a reasonable probability that the outcome of the trial would have been different had defendant's statement been suppressed. To establish defendant's constructive possession of the weapon, the State had to prove defendant's knowledge of the presence of the weapon and that he had immediate and exclusive control of the area where it was found. The crucial piece of evidence establishing these facts was the defendant's statement, as demonstrated by the trial court's finding that the statement was the most damning evidence against him.

No reasonable strategy explains counsel's failure to file the motion where a successful motion would have removed the most damaging evidence connecting defendant to the weapon. Even if counsel only became aware of the basis of the motion during trial, by statute, defendant may make a motion to suppress once trial has started if he was not previously aware of the grounds for the motion. 725 ILCS 5/114-12(c).

Because counsel's failure to move to suppress denied defendant the effective assistance of counsel, the court reversed defendant's conviction and remanded for a new trial.**People v. Lawson**, 327 Ill.App.3d 60, 762 N.E.2d 633 (1st Dist. 2001) Where the trial judge suppressed physical evidence, statements and identifications because defendant had been arrested without probable cause, and a State appeal challenged only the standard applied by the trial judge in finding a lack of probable cause, a second trial judge erred on remand by granting the State's request to hold a hearing to determine whether there was an independent basis for in-court identification testimony that had been suppressed. Under **People v. Williams**, 138 Ill.2d 377, 563 N.E.2d 385 (1990), a suppression order may be appealed or reconsidered by the same trial judge, but is not subject to a second hearing on the merits.

People v. Long, 316 Ill. App. 3d 919, 738 N.E.2d 216, (1st Dist. 2000) Under **Simmons v. United States,** 390 U.S. 377 (1968), a defendant does not waive Fifth Amendment protections by testifying at a pre-trial motion. Where a defendant who testified at a hearing on a motion to suppress later chooses to testify at trial, her testimony at the pretrial motion may be used as impeachment. However, the State may not introduce such evidence in its case in chief.

People v. Jose, 241 Ill.App.3d 104, 608 N.E.2d 667 (5th Dist. 1993) "We do not think the State can, through neglect or lack of diligence, fail to produce evidence which it contends

supports its case and then, after receiving an adverse ruling, seek to introduce that evidence and have the court reconsider its ruling."

People v. Mertens, 77 Ill.App.3d 791, 396 N.E.2d 595 (2d Dist. 1979) The defendant filed a motion to suppress that challenged the particularity of the warrants. Following a hearing, the trial judge denied the motion. However, the judge noted that he did not reach the question whether the searches exceeded the scope of the warrants.

On the day set for trial the defendant filed a second motion to suppress, which included an issue concerning the scope of the search. The trial judge denied the second motion, without a hearing, on the ground that the issues had been previously litigated. The judge did not find the motion to be untimely.

The Appellate Court held that it was error to deny the portion of the motion regarding the scope of the search. This issue had not been previously litigated, and no evidence had been presented thereon. Therefore, defendants were for the first time seeking an evidentiary hearing on the scope of the search.

§43-8(b)
Burden of Proof – Evidence

United States Supreme Court

Simmons v. U.S., 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968) Where a defendant testifies at a suppression hearing, his testimony cannot be admitted against him at trial on the issue of guilt.

Illinois Supreme Court

People v. Patterson, 192 Ill.2d 93, 735 N.E.2d 616 (2000) The court acknowledged federal law and Appellate Court precedent providing that hearsay is admissible at a hearing on a motion to suppress, but concluded that counsel was not ineffective for failing to introduce hearsay where there was no reasonable probability that the result of the proceeding would have been different.

Illinois Appellate Court

People v. Montes, 2020 IL App (2d) 180565 Defendant established a *prima facie* case that his warrantless arrest was improper where he was not doing anything unusual at the time officers approached him as he was exiting a Walgreens's store and walking to his vehicle. At the hearing on defendant's motion to suppress, however, defense counsel conceded that defendant was in the country illegally and did not argue that his illegal status could not form the basis for arrest, so the State did not have an opportunity to address that issue below. Instead, trial counsel focused his challenge on the validity of defendant's consent to search his home. Accordingly, the doctrine of invited error prevented defendant from challenging the validity of his arrest on appeal.

The Appellate Court declined to find that defense counsel was ineffective for failing to pursue a challenge to the arrest based on defendant's immigration status. The record was inadequate for the Appellate Court to evaluate defendant's claim on its merits, and defendant's ineffective assistance claim is better suited for collateral proceedings.

People v. Deroo, 2020 IL App (3d) 170163 The trial court did not abuse its discretion when it granted the State's motion for a directed finding at the hearing on the defense motion to

suppress blood test results. Upon filing a motion to suppress evidence, the defense as moving party has the burden of making a prima facie case of an illegal search. Part of that burden is establishing that the blood was drawn by the State actor, including agents and instrumentalities of the State.

Here, the evidence made clear that hospital personnel, working as private citizens, drew and tested defendant's blood. Although police officers were present at the hospital at the time, there was no evidence that the blood was drawn at their behest. Thus, the defense did not show a state actor drew defendant's blood, and the defense could not make a *prima facie* case of an illegal search.

People v. Horton, 2019 IL App (1st) 142019-B As two officers were driving down the street one of the officers saw defendant in front of a house with a "metallic object" that may have been a gun in his waistband. The officers stopped the car and got out. Defendant ran inside the house and locked the door. The officers found keys on the front porch and unlocked the door. They entered the house and went upstairs where they found defendant in a bedroom crouched by the side of a bed. One officer entered the bedroom with his gun drawn. He told defendant to raise his hands and come out. When defendant complied, the officer took defendant downstairs while the other officer searched the bedroom, saw a bulge in the mattress, and found a gun underneath the mattress.

The Appellate Court held that the officers did not have probable cause to arrest defendant. First, defendant had standing to challenge the arrest despite the fact that it occurred in a home in which he had no possessory interest. Defendant challenged the reasonableness of his arrest, which does not depend on his location but rather on the existence of probable cause.

While the officer testified that he saw defendant with a gun, he conceded under questioning from defense counsel that he saw only a metallic object that may or may not have been a gun. The Appellate Court found this language suggested the officer had a "mere hunch" that defendant had a gun, and therefore did not have enough information to make an arrest based on probable cause. Although this evidence was elicited at trial and not the suppression hearing, the Appellate Court could consider the evidence when reviewing the ruling on the motion to suppress because defendant re-raised the issue in a post-trial motion.

Moreover, defendant was near a house, and the officers would not have known whether he was on his own land, an exception under the AUUW statute. Finally, defendant's flight may have been relevant to a finding of reasonable suspicion, but no **Terry** stop occurred here because defendant fled prior to being seized. Flight plus possession of a metallic object does not equate to probable cause to arrest. Nor could the doctrine of "hot pursuit" save the arrest, as the officers must have probable cause before the pursuit begins.

People v. Brown, 2019 IL App (1st) 161204 Officers on routine patrol saw Brown take a sip from a beer while standing in a parking lot outside a 24-hour gas station. The officers arrested Brown for drinking alcohol "on the public way" in violation of the city code. They searched Brown and found a plastic bag containing a controlled substance.

The trial court improperly denied Brown's motion to quash his arrest and suppress the evidence because the police officers had no reasonable basis to believe that he violated the Municipal Code prohibiting consumption of alcohol on a "public way." The State conceded that the gas station parking lot, by definition, was not a "public way" as contemplated by the Municipal Code, but argued the mistake was reasonable. After a thorough review of the language of the code, Chicago PD directives giving examples of public ways, and caselaw, the Appellate Court disagreed, finding only an unreasonable interpretation of the code would

cause officers to believe Brown violated the ordinance. The trial court erred in failing to grant the motion to quash and suppress.

The dissent would have affirmed, noting that the burden was on Brown at the motion to establish he was *not* on the public way, and he failed to present any evidence at the hearing. The dissent also would not have taken judicial notice of the directives because defendant had a duty to present such evidence to the trial court.

People v. Brooks, 2017 IL 121413 At a suppression hearing, the defendant bears the burden of making an initial *prima facie* showing that: (1) a search occurred, and (2) it violated the fourth amendment. The burden then shifts to the State to present evidence to counter defendant's *prima facie* case.

Here, defendant, who was charged with driving under the influence, filed a motion to suppress the results of a blood draw taken at a hospital following his motorcycle accident. The evidence at the suppression hearing, however, never established that a blood draw occurred. Defendant testified only that the police seized him and forced him to go to the hospital, and that he never consented to a blood draw. No witnesses testified to participating in a blood draw. While the court received an envelope from the hospital that the parties and court assumed contained the results of defendant's blood work, it was never opened and the parties did not stipulate to its contents.

Even assuming a blood draw did take place, defendant failed to establish that it was conducted by State actors. The officer who brought defendant to the hospital did not order, seek, or participate in a blood draw. Even though the officer seized him in order to bring him to the hospital, defendant challenged only the search, not the seizure. To determine whether the private hospital employees who would have conducted the search acted as agents of the State, courts consider all of the circumstances of the case. While defendant argued that any draw would have been at the behest of the police, defendant failed to call any witnesses from the hospital to testify, and thus offered no evidence that any private individual who may have drawn defendant's blood acted as a State agent under these circumstances.

People v. Liekis, 2010 IL App (2d) 100774 A defendant moving to quash arrest and suppress evidence bears the burden of establishing a *prima facie* case that she was doing nothing unusual to justify the intrusion of a warrantless search or seizure. If the defendant makes the required showing, the burden shifts to the State to present evidence to justify the search or seizure.

Defendant failed to satisfy this burden where she testified that she was stopped by the police without a warrant, but did not testify that she was doing nothing unusual to justify the stop.

People v. Kveton, 362 Ill.App.3d 822, 840 N.E.2d 714 (2d Dist. 2005) Noting a conflict in Illinois Supreme Court authority, the Appellate Court held that once the defendant shows that a warrantless search occurred and the State introduces evidence that the defendant consented to the search, the State has the burden to prove by a preponderance of the evidence that the consent was voluntary. The court acknowledged that some Supreme Court precedent could be interpreted as stating that the ultimate burden of proof rests with the defendant, but found that other cases place the burden on the State.

People v. Centeno, 333 Ill.App.3d 604, 777 N.E.2d 529 (1st Dist. 2002) A reviewing court may consider evidence introduced at trial and at the suppression hearing when it upholds a trial court's denial of a motion to suppress. A defendant whose motion to suppress was denied

may rely on evidence presented at trial, however, only if he renewed the suppression motion at trial and asked the trial judge to reconsider the earlier ruling. Because defendant did not make such a request here, he could not rely on the trial evidence in seeking reversal of the order denying his motion to suppress.

People v. Nestrock, 316 Ill.App.3d 1, 735 N.E.2d 1101 (2d Dist. 2000) The trial court did not err by denying a hearing on a motion to suppress where the defense admitted that it had no evidence in support of the motion.

People v. Logan, 78 Ill.App.3d 646, 397 N.E.2d 504 (1st Dist. 1979) In motions to quash an arrest for lack of probable cause, the burden of proof is on the moving party. Probable cause may be found based on inadmissible evidence, and the facts which lead to a finding of probable cause need not be sufficient to establish guilt beyond a reasonable doubt.

People v. Clark, 55 Ill.App.3d 379, 370 N.E.2d 1111 (1st Dist. 1977) Defendant was arrested at his home and taken to the police station. The police then returned to the home, made a warrantless search, and seized items of clothing. The trial court denied the defendant's motion to suppress, agreeing with the State's contention that because there was no evidence that the search was conducted without consent, defendant failed to sustain his burden of proving the search illegal.

The Appellate Court held that the motion to suppress should have been granted. The defendant presented a *prima facie* case that the search was unlawful (i.e., the police had no warrant, defendant was in custody at the police station, and defendant was doing nothing unusual at the time of the arrest). The burden then shifted to the State to prove justification for the search, which it failed to do.

People v. Talley, 34 Ill.App.3d 506, 340 N.E.2d 167 (1st Dist. 1975) While the burden is on the defendant to prove that a search was unlawful, he meets his burden by establishing a *prima facie* case showing that the officer conducting the search did not have an arrest or search warrant and did not observe defendant doing anything unusual. The burden then shifts to the State to show that the officer had reasonable grounds for the search.

§43-8(c)
Findings at Hearing

United States Supreme Court

Ornelas v. U.S., 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996) Though reviewing courts must defer to the trial court's findings of *historical fact*, whether such historical facts amount to "reasonable suspicion" or "probable cause" is a "mixed" question of law and fact. Generally, such "mixed" questions are to be reviewed *de novo*. Because the Court of Appeals inappropriately gave deference to the trial court's finding as to whether reasonable suspicion and probable cause existed, the cause was remanded with instructions to review the trial court's determination *de novo*. (See also, **APPEAL,** §2-7(a)).

Illinois Supreme Court

People v. Dilworth, 169 Ill.2d 195, 661 N.E.2d 310 (1996) Generally, the ruling on a motion to suppress evidence is subject to reversal only if it is manifestly erroneous. However, where neither the facts nor the credibility of witnesses are at issue, the case should be reviewed *de*

novo. Because this case presented only an issue of law, the *de novo* standard of review applied. See also, **People v. Perez**, 288 Ill.App.3d 1037, 681 N.E.2d 173 (3d Dist. 1997) (while factual determinations of the trial court are entitled to deference, ultimate conclusion as to the reasonableness of a warrantless search is a legal question to which *de novo* review applies).

People v. James, 163 Ill.2d 302, 645 N.E.2d 195 (1994) The trial court's determination of a motion to suppress is usually subject to the "manifestly erroneous" test; however, where only legal questions are raised, *de novo* review is appropriate. The Court concluded that because the testimony "was not wholly consistent" in this case, the "manifestly erroneous" standard applied.

Illinois Appellate Court

People v. Gill, 2018 IL App (3d) 150594 As a matter of first impression, the Appellate Court concluded that defendant had a reasonable expectation of privacy in his seventh-floor, single occupancy hospital room, relying on the factors set out in **People v. Pitman**, 211 Ill. 2d 502 (2004). Although defendant only occupied the room for a matter of hours, it was of the type often used for longer stays. Defendant had a subjective expectation of privacy, and "concepts of privacy and confidentiality are tantamount concerns in a hospital."

The Fourth Amendment was triggered by a nurse's entry to defendant's hospital room to retrieve defendant's clothing for the police. While the nurse testified at the suppression hearing that he had retrieved the clothing from a nurse's station in a common area, he corrected that testimony at trial to explain he had obtained the clothing from defendant's room and had confused defendant's case with another at the motion hearing. The nurse's trial testimony was clear and unbiased, and the trial court's factual finding that defendant's clothing had been at the nurse's station was "severely undermined" and no longer supported by the manifest weight of the evidence given the trial testimony. Because defendant renewed his motion to suppress in his post-trial motion, the trial evidence was properly considered on review.

Where there had been a suspicious residential fire, the scene smelled of gasoline, defendant had argued with a resident of the home just prior to the fire, and a nurse had informed police that defendant's clothing smelled of gasoline, the police had probable cause to search for defendant's clothing as part of there arson investigation but should have obtained a warrant. The Appellate Court reversed the denial of defendant's motion to suppress his clothing, as well as a canine-alert to that clothing after its seizure.

The Appellate Court went on to consider and reject a challenge to the warrantless seizure of defendant's truck which had been left in a Denny's parking lot when defendant was taken to the hospital. There was a gas can and rag in the bed of defendant's truck. Coupled with the suspicious residential fire and defendant's argument with the resident of the home, there was probable cause to seize the truck. The absence of a warrant was not fatal because of the inherent mobility of automobiles and the potential for weather to degrade evidence in the bed of the truck.

Finally, the Appellate Court concluded that an East Peoria police officer did not act without authority when he seized defendant's truck in North Pekin. The extra-judicial arrest statute [65 ILCS 5/7-4-8] allows an officer to conduct an investigation outside of his jurisdiction, and the Court determined that by implication, an officer may collect evidence as part of such an investigation.

People v. Litwin, 2015 IL App (3d) 140429 The Appellate Court concluded that in this case,

the duration of the traffic stop was unreasonably prolonged.

The stop lasted between 45 and 90 minutes, but the officer issued only a warning ticket for improper lane usage. The court noted that there were significant discrepancies in the testimony concerning the time of the stop and the length of its duration. The squad car video did not help in determining this question, because it contained only part of the encounter and, according to a defense expert, did not appear to be the original tape.

The court concluded that even if the arresting officer's testimony was believed, the officer took at least 10 minutes and possibly as much as 45 minutes to run defendant's driving information and issue a warning ticket. Although there is no bright line rule for determining when a traffic stop is unreasonably prolonged, the court found that the totality of the circumstances indicate that there was unreasonable delay here.

Because the stop was unreasonably prolonged, the Fourth Amendment was violated unless there was an independent justification for the delay. The court concluded that the dispositive question was whether the officer was credible in his claim that he detected the odor of marijuana as soon as he approached defendant's vehicle.

The court found that even if defendant's version of the events was disbelieved, the officer's testimony was not credible. Although the officer testified that he smelled cannabis as soon as he began talking to defendant, he asked for consent to search instead of acting on the reasonable suspicion provided by the alleged odor. The complete stop was not recorded by the squad car camera, and the officer gave conflicting answers about the reliability of the recording equipment by stating at one hearing that the camera malfunctioned half the time and at a different hearing that the camera had malfunctioned "maybe" twice in 10 or 11 years.

The court also noted other inconsistences in the officer's testimony between the two suppression hearings, and that a drug dog which arrived with a second officer failed to alert when walked around defendant's car. Although the second officer stated that his dog was distracted by the dog that was in the car of the officer who made the stop, the court found the testimony of the "simultaneous misbehaving of two highly trained dogs and the inability of their handlers to control them [to be] extremely suspect."

The court concluded that in light of all the evidence, the manifest weight of the evidence contradicted the trial court's finding that the officer who conducted the stop was credible in his assertion that he smelled cannabis. The trial court's denial of the motion to suppress evidence was reversed.

People v. Byrd, 408 Ill.App.3d 71, 951 N.E.2d 194 (1st Dist. 2011) The trial court found that the police had reasonable suspicion to support a **Terry** stop of defendant and his car triggered by their observation of a suspicious transaction from the defendant's car between defendant and a woman on the street. The police had probable cause to arrest defendant when he admitted he did not have a valid driver's license.

The judge's ruling that the recovery of a magnetic box containing drugs from under the chassis of defendant's car was a lawful search incident to arrest was incorrect under **Arizona v. Gant**, 556 U.S. __, 129 S.Ct. 1710, ___ L.Ed.2d ___ (2009), where defendant was in handcuffs near the front of the car when the box was recovered. **Gant** held that the search of a vehicle could not be upheld as a search incident to an arrest where the defendant had been removed from the vehicle and secured in a location from which there was no possibility that he would gain access to the vehicle.

Because the motion to suppress was litigated prior to the decision in **Gant**, the court remanded for a "new suppression hearing to allow the parties to develop the facts in light of **Gant** and to allow the circuit court to make express findings of fact and conclusions of law

pursuant to" 725 ILCS 5/114-12(e).

The Appellate Court upheld the trial judge's finding that the police did not have probable cause to believe that defendant had engaged in a drug deal when they stopped defendant's car.

The trial court's determination concerning factual matters at a hearing on a motion to suppress, including reasonable inferences to be drawn from the testimony, is entitled to deference and will not be disturbed on review unless manifestly erroneous. The trial court's finding that probable cause did not exist to arrest defendant for drug dealing was not manifestly erroneous.

The police district had received an anonymous phone call claiming that narcotics transactions involving a Chevrolet Cavalier were occurring in the 7200 block of South Spaulding. The officers then observed defendant engaging in what to the officers appeared to be a drug transaction. Defendant, driving a Chevrolet Cavalier, was flagged down by a woman in the 7200 block of South Spaulding, defendant and the woman engaged in a conversation, and defendant retrieved a small black box from underneath the car and handed the woman shiny objects from the box in exchange for money.

The trial court properly gave little weight to the phone call because such anonymous calls are often unreliable. The phone call was not mentioned in either of the reports prepared by the arresting officers.

The judge also properly discounted the officer's claim that his 14 years as a narcotics officer enabled him to know a drug transaction when he sees one. The judge was free to disregard the officer's claims as subjective impressions of his observations. As a matter of law, a single hand-to-hand street exchange between the defendant and a person who is never questioned regarding what he or she received does not establish probable cause to believe that a drug exchange occurred, where the trier of fact found otherwise.

The dissent (Robert Gordon, J.) concluded no remand was necessary. Although the trial court incorrectly ruled that the search was valid as incident to the arrest, the search could be upheld on other grounds. First, the defendant had no reasonable expectation of privacy in an unlocked box attached by a magnet to the outside of his vehicle. Second, the police had probable cause to search the box "under the automobile exception to the fourth amendment, based on: 1. an anonymous and corroborated tip; 2. the observation by the police officers of a single sale of drugs from the box; and 3. a police officer's extensive prior experience in observing drug transactions."

People v. Bower, 291 Ill.App.3d 1077, 685 N.E.2d 393 (3d Dist. 1997) Whether a defendant has standing to challenge a search is a legal question to which *de novo* review applies.

People v. Anaya, 279 Ill.App.3d 940, 665 N.E.2d 525 (1st Dist. 1996) Because the facts and credibility of the State's witness were undisputed, the Appellate Court applied a *de novo* standard of review.

People v. Besser, 273 Ill.App.3d 164, 652 N.E.2d 454 (4th Dist. 1995) The Appellate Court rejected the argument that the trial judge failed to make factual findings and suppressed the search merely because it found "random police work . . . a little offensive." Because the controlling caselaw had been argued to the trial court and the State had not asked for amplification of the judge's ruling, "all reasonable presumptions" in favor of the suppression order should be inferred.

People v. Eden & Jenkins, 246 Ill.App.3d 277, 615 N.E.2d 1224 (4th Dist. 1993) Whether there are exigent circumstances to justify a warrantless entry to a home is a legal question to which the *de novo* standard of review applies.

People v. McVey, 185 Ill.App.3d 536, 541 N.E.2d 835 (3d Dist. 1989) The question before the reviewing court is the correctness of the result reached by the trial judge, not the correctness of the reasoning used in reaching that result.

People v. Bradney, 170 Ill.App.3d 839, 525 N.E.2d 112 (4th Dist. 1988) In reviewing a ruling on a motion to suppress, the Appellate Court may consider the evidence presented at trial.

People v. Smith, 67 Ill.App.3d 952, 385 N.E.2d 707 (5th Dist. 1978) The trial court erred by denying a motion to suppress as a penalty for defendant's refusal to answer a question on cross-examination.

People v. Drury, 130 Ill.App.2d 798, 268 N.E.2d 460 (4th Dist. 1971) It is preferable that there be findings of fact and conclusions of law, but the absence of such does not require reversal if the record as a whole sustains the trial court's ruling on the motion to suppress. See also, **People v. Andreat**, 76 Ill.App.3d 948, 395 N.E.2d 728 (5th Dist. 1979) (in ruling upon a motion to suppress, the trial court has a duty to make findings of fact and conclusions of law; though the failure to do so was not reversible error here, the Appellate Court emphasized the "importance of complying" with the above requirement).

§43-9
Pretextual Stops and Searches

United States Supreme Court

Whren v. U.S., 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) The Supreme Court rejected the argument that a "pretextual" stop (one ostensibly made for a traffic violation but actually intended to allow officers to investigate suspected criminal activity for which there is no probable cause) is "unreasonable" under the Fourth Amendment.

An officer's subjective motive for conducting a stop is irrelevant to the "reasonableness" of the stop; the appropriate standard is whether there was probable cause to believe a crime or traffic offense was being committed. Generally, a stop supported by probable cause is deemed to be "reasonable," no matter what subjective intentions may have been in the minds of the officers.

The Court rejected the defendant's argument that the "balancing inherent in any Fourth Amendment inquiry" precludes the investigation of minor traffic infractions by plainclothes officers in unmarked vehicles. The "balancing test" for Fourth Amendment questions applies only to searches for which there was no probable cause. Where a search was supported by probable cause, additional "balancing" is appropriate only where the searches or seizures are "conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests - such as . . . seizure by means of deadly force, unannounced entry into a home, entry into a home without a warrant, or physical penetration of the body." A traffic stop by a plainclothes officer does not even remotely qualify as such an "extreme practice."

Illinois Appellate Court

People v. Rice, 2021 IL App (3d) 180549 The Appellate Court vacated defendant's convictions for aggravated DUI and aggravated driving while license suspended, because the officer lacked reasonable suspicion to stop the car. The officer testified that she saw defendant change lanes in an intersection, which she believed was a violation of section 11-709 of the Vehicle Code. But while his statute regulates lane and signal usage, it does not prohibit changing lanes in an intersection.

The State argued that the officer's mistake of law did not invalidate the stop because it was made in good faith. But a mistake of law must be reasonable to avoid suppression. When the officer misinterprets an unambiguous statute, as this officer did, the mistake was not reasonable.

People v. Lee, 2014 IL App (1st) 130507 Administrative searches as well as searches for evidence of crime are included within the scope of the Fourth Amendment's protection against unreasonable searches and seizures. Warrantless searches of commercial premises are generally unreasonable whether they are traditional searches seeking evidence of crimes or administrative inspections designed to enforce regulatory statutes. However, a statutory warrantless administrative inspection scheme may satisfy the Fourth Amendment where: (1) a substantial government interest informs the regulatory scheme pursuant to which the inspection is made; (2) the warrantless inspection is necessary to further the regulatory scheme; and (3) the statute's inspection program provides a constitutionally adequate substitute for a warrant in that it limits the discretion of the inspecting officers and provides that the search is being performed under the law and is properly defined in scope. (**New York v. Burger**, 482 U.S. 691 (1987)).

An administrative inspection scheme may not be used as a subterfuge to search for evidence of criminal violations. If the primary object of the search is to gather evidence of criminal activity, a criminal search warrant must be obtained based on a showing of probable cause. By contrast, evidence of criminal activity which is discovered during the course of a valid administrative search may be seized under the plain view doctrine. Whether a purported administrative search is merely a pretext for a criminal investigation is a factual question.

Here, the court affirmed the trial court's finding that an administrative search of defendant's pain clinic, purportedly for the purpose of investigating Medicare billing, was a pretext to search for evidence of crimes. Although defendant was told that the audit concerned Medicare billing, the company that contracted to do the audit knew that the procedure was requested by law enforcement and was for the purposes of "investigation and development." The audit company also knew that a criminal investigation of defendant was being conducted by the FBI and Office of the Inspector General of the Department of Health and Human Services, and the chief investigator for the audit company discussed the case several times with FBI agents. Furthermore, the company complied with the FBI's request to delay the on-site audit because the FBI believed that its investigation would be "more fruitful if [defendant] is unaware of any type of investigation. . . ."

In addition, the audit company agreed with the FBI's request to have undercover agents present during the audit, although that request was subsequently denied by the U.S. Attorney's office. The auditors briefed law enforcement agents every day concerning the progress of the audit, and agreed to the agents' requests for documents which the auditors had obtained.

The court found that the record supported the trial court's finding that there was a

"tightly interwoven relationship" between the FBI, the Office of the Inspector General, and the company which performed the on-site audit. The court also found that the audit was controlled and influenced by law enforcement agents, that the person in charge of the on-site audit admitted that the objective was to substantiate allegations against defendant, and that the intent of the auditors was to refer their findings to law enforcement agencies.

In addition, the audit went far beyond the medical and billing records that would have been involved in the stated purpose of the search, and included copies of personnel files, payroll records, and appointment books. Under these circumstances, the purpose of the audit was to aid law enforcement and not merely to gather evidence of improper billing practices.

The court rejected the State's argument that an administrative search is proper so long as the primary purpose is to enforce the regulatory scheme and assistance to law enforcement is at most a secondary purpose.

The court also rejected the State's argument that the defendant consented to the audit. The State failed to satisfy its burden to show that defendant consented to the search where the only evidence of consent was the auditor's testimony that defendant "gave authorization" for the audit and responded "ok" when told what the audit would entail. The court found that defendant's response was ambiguous and did not demonstrate consent, especially since the auditor did not testify that he explicitly asked for consent. In addition, when asked if he told defendant's employees that they could refuse to cooperate, the auditor responded that the question was not asked and he did not volunteer information.

People v. Mason, 403 Ill.App.3d 1048, 935 N.E.2d 130 (3d Dist. 2010) A vehicle may be searched incident to arrest only if: (1) there is reason to believe that the defendant might return and obtain weapons or destroy evidence, or (2) it is reasonable to believe that the vehicle contains evidence of the crime for which the arrest was made. **U.S. v. Gant**, 556 U.S. ___, 129 S.Ct. 1710, ___ L.Ed.2d ___ (2009).

A car could not be searched incident to an arrest for DUI where: (1) the driver was secured in a squad car and did not have access to the car, and (2) the trial court found that the officers lacked a reasonable belief that the car contained evidence of DUI, and that finding is entitled to deference.

However, the court rejected the trial court's holding that **Gant** precludes an inventory search of a car that is to be impounded after the driver is arrested.

An inventory search is proper where: (1) impoundment of the vehicle is reasonable under the circumstances, and (2) the purposes of the search are to protect the defendant's property, prevent false claims of lost or stolen property, and protect police from dangerous items. An inventory search must be conducted in good faith and not as a pretext.

The fact that a legally parked vehicle will be left unattended upon the driver's arrest does not, in and of itself, justify impoundment. However, as part of its community caretaking function, law enforcement has authority to impound vehicles which impede traffic or threaten public safety. Although the decision to impound a vehicle must be based on reasonable procedures, such procedures need not be written.

The arresting officer acted reasonably by deciding to impound and inventory defendant's car. The officer testified that police are required to tow an uninsured vehicle upon the arrest of the driver for DUI, although he was uncertain whether that policy was based on state law or local regulation. In addition, because state law prohibits operation of an uninsured vehicle on a public highway, impounding the car was a reasonable exercise of the officer's community caretaking function. Finally, the officer gave detailed testimony about the procedure used to conduct an inventory search.

The trial court's order, which suppressed cocaine found during the inventory search of defendant's car, was reversed. The cause was remanded for further proceedings.

People v. Clark, 394 Ill.App.3d 344, 914 N.E.2d 734 (1st Dist. 2009). Where defendant had been placed in the backseat of a police car by the time his car was searched, and there was no reason to believe that evidence of failing to come to a complete stop would be found by searching the vehicle, a search of the rear seat and ashtray was not valid incident to the arrest.

The court rejected the State's argument that the search was valid as an inventory search. A valid warrantless inventory search must satisfy three criteria: (1) the original impoundment of the vehicle must have been lawful; (2) the purpose of the inventory search must be either to protect the owner's property, protect the police against false claims of lost, stolen or vandalized property, or protect the police from dangerous items in the car; and (3) the inventory search must be conducted in good faith pursuant to reasonable, standarized police procedures and not as a pretext. Standarized police procedures need not be in writing; however, there must be evidence that the police in fact acted according to standarized department procedures.

An inventory search is not justified merely because a car will be left unattended after the arrest of the sole occupant for a traffic offense. An inventory stop was not justified where the record showed only that the vehicle was stopped on a residential street, but no evidence of its exact location, that it was illegally parked, or that it would be a threat to public safety or convenience if left alone. The court also noted that the arresting officer testified only that he searched the car because there was no passenger available to drive and the car was going to be towed. Although police department regulations required an inventory search of a vehicle which was to be towed, the officer did not testify that standard police procedure required him to tow a vehicle that would be left unattended when the driver was arrested. Thus, there was insufficient evidence to show that the search was in accordance with standardized police procedures or that the decision to impound was lawful.

The trial court's order denying defendant's motion to quash arrest and suppress evidence was reversed. Because the State would be unable to prove beyond a reasonable doubt that defendant unlawfully possessed a controlled substance where the substance in question had been suppressed, the conviction and sentence were reversed outright.

People v. Smith, 232 Ill.App.3d 121, 596 N.E.2d 789 (1st Dist. 1992) Lineup identifications were fruits of an illegal arrest where only three to six hours elapsed between the arrest and the lineups, police arrested defendant as a pretext to place him in a lineup, and there were no intervening circumstances sufficient to dissipate the effect of the illegal arrest.

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