

Office of the State Appellate Defender

Summary of Significant Criminal Issues Pending in the Illinois Supreme Court

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APPEAL

No. 128676

People v. Jefferson, Defense leave to appeal granted 9/28/2022 from 2022 IL App (5th) 200185; oral argument held 11/14/23

A jury convicted defendant but found via special interrogatory that the State failed to prove defendant personally discharged a firearm causing death. The appellate court remanded for a new trial, and the circuit court granted a defense request to bar the State from arguing or presenting evidence on retrial that the defendant personally discharged a firearm causing death. Did the appellate court have jurisdiction over the State appeal under Rule 604(a)(1), where the defendant argued the order did not actually suppress evidence? If so, does the jury decision on the special interrogatory estop the State from presenting evidence or arguing that defendant personally discharged the firearm? (§§2-4(a), 2-6(e)(4))

Defense counsel: Richard Whitney, Mt. Vernon OSAD

No. 129244

People v. Shunick, Defense leave to appeal granted 3/29/23 from 2022 IL App (4th) 220019

Whether a *pro se* certificate of service which substantially, but not strictly, complies with Illinois Supreme Court Rule 12(b)(6) is sufficient to render a document timely filed where it shows that the document was placed in the prison mail on or before the due date but where that document was not file-stamped by the circuit clerk until after the due date. (§2-2(b))

Whether, where a *pro se* certificate of service does not strictly comply with Illinois Supreme Court Rule 12(b)(6), the appropriate procedure is for the appellate court to order a limited remand to determine whether the document in question was timely filed. (§2-2(b))

Defense counsel: Austin Wright, Springfield OSAD

No. 129695

People v. Class, State leave to appeal granted 11/29/23 from 2023 IL App (1st) 200903 (modified 10/13/23)

Whether the appellate court has the authority under Illinois Supreme Court Rules 366(a)(5) or 615(b)(2) to order the substitution of a new circuit court judge when

remanding a criminal case, and, if so, whether the appellate court must first make a specific finding of bias or actual prejudice before so ordering. (§2-6(a))

Defense counsel: Michael Orenstein, Chicago OSAD

ATTEMPT

No. 129795

People v. Haynes, State leave to appeal granted 11/29/23 from 2023 IL App (1st) 220048

Whether a defendant's disproportionate response during mutual combat bars a sentence reduction under 720 ILCS 5/8-4(c)(1)(E), which provides for a reduction in the class of offense for attempt murder where defendant proves by a preponderance of the evidence that he was acting under sudden and intense passion resulting from serious provocation by the victim and, had the victim died, the cause of death would have been negligent or accidental. (§5)

Defense counsel: Sarah Curry, Chicago OSAD

No. 129967

People v. Guy, State leave to appeal granted 11/29/23 from 2023 IL App (3d) 210423

Whether the jury's finding that defendant acted with unreasonable belief in the need for self-defense, resulting in a verdict of second degree murder as to one victim, is legally inconsistent with the intent required to convict defendant of attempt first degree murder against a separate victim during the same incident. (§5)

Defense counsel: Dimitri Golfis, Ottawa OSAD

COLLATERAL REMEDIES

No. 128492

People v. Huff, Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 201278-U; oral argument held 11/14/23

Whether the circuit court erred when it allowed post-conviction counsel to stand on a petition that counsel deemed frivolous, rather than requiring counsel to withdraw and allowing the defendant to proceed *pro se*. (§9-1(j)(1))

Defense counsel: John Breffeilh, Chicago OSAD

No. 128587

People v. Griffin, State leave to appeal granted 9/28/2022 from 2022 IL App (1st) 191101-B; oral argument held 9/13/23

Whether the appellate court erred by applying the more lenient standard from **People v. Robinson**, 2020 IL 123849 when it reversed the denial of leave to file a successive petition alleging actual innocence after a guilty plea, rather than the higher standard enunciated in **People v. Reed**, 2020 IL 124940. (§9-1(i)(3))

Defense counsel: Rachel Kindstrand, Chicago OSAD

No. 129353

People v. Flournoy, Defense leave to appeal granted 3/29/23 from 2022 IL App (1st) 210587-U

Whether the holding in **People v. Hobley**, 182 Ill.2d 404 (1998), that exculpatory evidence presented in a post-conviction petition cannot be used to support a claim of actual innocence if that evidence also supports other constitutional claims, violates due process, and is no longer good law in light of more recent supreme court holdings such as **People v. Coleman**, 2013 IL 113307. (§§9-1(c)(2), 9-1(i)(3))

Whether the circuit court properly applied the “different light” and “undermined confidence” standards applicable to actual innocence claims, as required by **People v. Robinson**, 2020 IL 123489, in finding two exculpatory affidavits would not have altered the outcome of defendant’s trial. (§§9-1(c)(2), 9-1(i)(3))

Defense counsel: Maria Harrigan, Springfield OSAD

No. 129551

People v. Vidaurri, Defense leave to appeal granted 5/24/23 from 2023 IL App (1st) 200857

1. Whether the appellate court properly applied the standard enunciated in **People v. Jackson**, 2021 IL 124818, for determining whether new “pattern and practice” evidence is sufficiently similar to support a longstanding claim of physical coercion by the police (“the test is not one of exact or perfect identity”), where it affirmed the denial of leave to file a successive post-conviction petition after finding minor differences between defendant’s allegation and the new evidence. (§9-1(i)(2))

2. Whether, in light of **People v. Dorsey**, 2021 IL 123010, and **People v. Clark**, 2023 IL 127273, a petitioner who was over the age of 17 years at the time of the offense, but whose brain was not fully developed, is categorically precluded from challenging his *de facto* life sentence under the Illinois proportionate penalties clause

in a successive post-conviction petition, even if the defendant's pre-**Miller** proportionate penalties claim in his initial petition was rejected on the grounds that youth is not mitigating. (§9-1(i)(2))

Defense counsel: Deepa Punjabi, Chicago OSAD

No. 129718

People v. Williams, State leave to appeal granted 9/27/23 from 2023 IL App (5th) 220185

Whether a defendant must demonstrate prejudice to establish unreasonable assistance of post-conviction counsel, specifically that he had a claim that would have been successful but for counsel's alleged deficient performance. (§§9-1(j)(1), 9-1(j)(2))

Whether, where defendant had been represented by privately-retained counsel on his post-conviction petition, the appellate court erred in ordering that defendant proceed with new counsel on remand because such an order either compels defendant to retain new counsel, potentially interfering with his right to counsel of choice, or improperly requires the appointment of new counsel for a defendant who may not be indigent. (§§9-1(j)(1), 9-1(j)(2))

Defense counsel: Jennifer Lassy, Mt. Vernon OSAD

No. 129753

People v. Harris, Defense leave to appeal granted 9/27/23 from 2022 IL App (1st) 211255-U

Whether a successive post-conviction petition claiming actual innocence based on an affidavit from an exculpatory witness must assert or establish at the leave-to-file stage that the evidence could not have been discovered earlier through exercise of due diligence; and even if this showing is required, whether the evidence here should have been considered "new" where the affiant explained he did not come forward earlier for fear of reprisal, and there was no evidence defendant knew the affiant was an eyewitness until meeting him in prison. (§9-1(i)(3))

Defense counsel: Samuel Steinberg, Chicago OSAD

No. 129784

People v. Joiner, Defense leave to appeal granted 9/27/23 from 2023 Il App (1st) 211553-U

Whether defendant's post-conviction petition was considered docketed, for purposes of the 90-day rule, on the date his attorney filed it, or on the later date when the attorney paid the filing fee. (§§9-1(b)(2), 9-1(e)(1))

Whether defendant's post-conviction petition was frivolous and patently without merit where it alleged trial counsel's ineffectiveness for failing to call exculpatory witnesses. (§§9-1(b)(2), 9-1(e)(1))

Defense counsel: Douglas H. Johnson, Kathleen Zellner & Associates

CONFESSIONS

No. 128373

People v. Fair, Defense leave to appeal granted 9/28/22 from 2022 IL App (1st) 201072-U; oral argument held 9/12/23

Whether the Illinois Torture Inquiry and Relief Commission Act limits the evidence a court may consider to only those acts of torture that triggered the referral under the TIRC Act or whether courts may consider the totality of the circumstances, including additional constitutional violations, in assessing a defendant's suppression claim. (§§10-2, 10-5(a))

Defense counsel: Russell Ainsworth, David Owens, Debra Loevy, The Exoneration Project, Chicago

No. 129054

People v. Logan, Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 210492; oral argument held 1/9/24

Whether defendant was in custody for purposes of **Miranda** when, after a DCFS agent informed her she "needed" to perform a re-enactment of her child's death for purposes of a criminal investigation, and a detective asked her to meet at her apartment for the re-enactment, defendant went to her apartment, and in the presence of five members of law enforcement, submitted to a 30-minute videotaped interrogation. (§10-3(c))

Whether trial counsel was ineffective for failing to argue defendant's statement was a violation of **Miranda** and her constitutional rights. (§10-3(c))

Defense counsel: Gilbert Lenz, Chicago OSAD

No. 129551

People v. Vidaurri, Defense leave to appeal granted 5/24/23 from 2023 IL App (1st) 200857

Whether the appellate court properly applied the standard enunciated in **People v. Jackson**, 2021 IL 124818, for determining whether new “pattern and practice” evidence is sufficiently similar to support a longstanding claim of physical coercion by the police (“the test is not one of exact or perfect identity”), where it affirmed the denial of leave to file a successive post-conviction petition after finding minor differences between defendant’s allegation and the new evidence. (§10-5(a))

Defense counsel: Deepa Punjabi, Chicago OSAD

No. 129627

People v. Ward, State leave to appeal granted 9/27/23 from 2023 IL App (1st) 190364

Whether a reviewing court properly engages in *de novo* review of a ruling on a defendant’s motion to suppress statements where the only evidence presented at the hearing on the suppression motion is a video recording of the defendant’s custodial interrogation. (§10-4(d))

Defense counsel: Stephen Richards, Chicago

No. 130110

(New) People v. Keys, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 210630

Whether defendant’s statement to the police during a custodial interrogation that there “aint’ nothin’ further for us to talk about” was a clear and unequivocal invocation of the right to silence, given that the supreme court has held that questioning must cease when a suspect “indicates in any manner” a desire to remain silent. (§10-4(d))

Defense counsel: Caroline Bourland, Chicago OSAD

COUNSEL

No. 129054

People v. Logan, Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 210492; oral argument held 1/9/24

Whether defendant was in custody for purposes of **Miranda** when, after a DCFS agent informed her she “needed” to perform a re-enactment of her child’s death for purposes of a criminal investigation, and a detective asked her to meet at her apartment for the re-enactment, defendant went to her apartment, and in the presence of five members of law enforcement, submitted to a 30-minute videotaped interrogation. (§14-4(b)(4))

Whether trial counsel was ineffective for failing to argue defendant’s statement was a violation of **Miranda** and her constitutional rights. (§14-4(b)(4))

Defense counsel: Gilbert Lenz, Chicago OSAD

No. 129356

People v. Ratliff, Defense leave to appeal granted 3/29/23 from 2022 IL App (3d) 210194-U

Whether Rule 401(a) admonishments must be provided at the time of the waiver of counsel, such that a waiver occurring three months after defendant was last admonished is invalid. (§14-2)

Defense counsel: Anne Brenner, Ottawa OSAD

No. 129784

People v. Joiner, Defense leave to appeal granted 9/27/23 from 2023 Il App (1st) 211553-U

Whether defendant’s post-conviction petition was considered docketed, for purposes of the 90-day rule, on the date his attorney filed it, or on the later date when the attorney paid the filing fee. (§14-4(b)(3))

Whether defendant’s post-conviction petition was frivolous and patently without merit where it alleged trial counsel’s ineffectiveness for failing to call exculpatory witnesses. (§14-4(b)(3))

Defense counsel: Douglas H. Johnson, Kathleen Zellner & Associates

EVIDENCE

No. 129289

People v. Torres, Defense leave to appeal granted 3/29/23 from 2022 IL App (1st) 210990-U; oral argument held 1/10/24

Whether 735 ILCS 5/8-802(7), which provides an exception to the physician-patient privilege in criminal cases that stem from a report filed under the Abused and Neglected Child Reporting Act, applies broadly to all medical records, even if the medical information sought to be introduced is one other than that which triggered the filing of the DCFS report, or applies more narrowly, only to medical information related to the incident which triggered the report. (§19-26(c))

Whether 735 ILCS 5/8-802(4), which provides an exception to the physician-patient privilege “in all actions brought by or against the patient . . . wherein the patient’s physical or mental condition is an issue,” applies broadly, regardless of how the condition became at issue or which party put it in issue, or whether it must be construed narrowly under **Palm v. Holocker**, 2018 IL 123152, where the supreme court urged the legislature to clarify the statute before holding that only a patient could waive the privilege by putting a medical condition in issue (with a caveat that a criminal case might have a different standard if the condition is an element of the offense). (§19-26(c))

Defense counsel: Deepa Punjabi, Chicago OSAD

No. 130110

(New) People v. Keys, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 210630

Whether police statements made during recorded interrogations are admissible only if necessary to demonstrate the effect of the statement on the defendant and the probative value is not outweighed by its prejudice, or whether, as the appellate court held here, such police statements are admissible if “helpful” or “useful” to the trier-of-fact’s assessment of the defendant’s statements. (§§19-3, 19-10(f))

Defense counsel: Caroline Bourland, Chicago OSAD

GUILTY PLEAS

No. 129402

People v. Wells, Defense leave to appeal granted 5/24/23 from 2023 IL App (4th) 220552-U; oral argument held 1/10/24

Whether a reviewing court can presume that a negotiated plea agreement includes terms that are not explicitly stated as being part of the agreement or otherwise reflected anywhere in the record. (§24-1)

Defense counsel: Gregory Peterson, Springfield OSAD

129585

People v. Brown, Defense leave to appeal granted 9/27/23 from 2023 IL App (4th) 220400

Whether a statutory amendment applies retroactively where the amendment became effective after sentencing but before the defendant's motion to reconsider sentence was denied. (§24-8(a))

Whether post-plea proceedings complied with the requirements of Supreme Court Rule 604(d) where the single issue raised in the written post-plea motion was withdrawn at the post-plea hearing, and the one issue orally argued at that hearing was not included in the written post-plea motion. (§24-8(a))

Defense counsel: Christopher McCoy, Elgin OSAD

No. 129767

People v. White, Defense leave to appeal granted 9/27/23 from 2023 Il App (1st) 210385-U

Whether **People v. Jones**, 2021 IL 126432, which held that a fully negotiated guilty plea precludes a subsequent collateral challenge to the constitutionality of the sentence under **Miller**, extends to defendants who enter into open or blind guilty pleas with no agreement as to the sentence. (§24-9)

Defense counsel: Rachel Kindstrand, Chicago OSAD

HOMICIDE

No. 130110

(New) People v. Keys, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 210630

Whether a defendant may be convicted of multiple counts of concealment of a homicidal death based on a series of actions taken to conceal one homicidal death, and whether a defendant may be convicted of multiple counts of dismemberment based on actions taken to dismember one human body. (26-6)

Defense counsel: Caroline Bourland, Chicago OSAD

INDICTMENTS, INFORMATIONS, COMPLAINTS

No. 129026

People v. Basile, State leave to appeal granted 1/25/23 from 2022 IL App (2d) 210740

Whether a defendant must prove knowing or intentional misconduct on the part of the prosecution during grand jury proceedings in order to establish a due process violation requiring dismissal of an indictment. Alternatively, whether dismissal of an indictment for prosecutorial misconduct should be without prejudice unless defendant proves knowledge or intent. (§29-2)

Defense counsel: Mark Byrd, Rockford

JUDGE

No. 129695

People v. Class, State leave to appeal granted 11/29/23 from 2023 IL App (1st) 200903 (modified 10/13/23)

Whether the appellate court has the authority under Illinois Supreme Court Rules 366(a)(5) or 615(b)(2) to order the substitution of a new circuit court judge when remanding a criminal case, and, if so, whether the appellate court must first make a specific finding of bias or actual prejudice before so ordering. (§31-3(d))

Defense counsel: Michael Orenstein, Chicago OSAD

JURY

No. 129676

People v. Sloan, State leave to appeal granted 9/27/23 from 2023 IL App (5th) 200225

Whether, where a reviewing court concludes that the trial court erred in refusing to instruct the jury on an affirmative defense, the court must go on to consider whether that error is harmless in light of the trial evidence or whether the error in failing to instruct on an affirmative defense is such a grave and fundamental error that it denies a defendant due process and requires a new trial regardless of the strength of the evidence. (§32-8(e))

Defense counsel: Gilbert Lenz, Chicago OSAD

JUVENILE PROCEEDINGS

No. 127304

People v. Williams, Defense leave to appeal granted 9/27/23 from 2021 IL App (1st) 190535

Whether a young adult offender must provide specific factual support for his claim that his *de facto* life sentence is unconstitutional as applied in order for his *pro se* post-conviction petition to advance beyond the first stage of post-conviction proceedings or whether it is sufficient that the petition cite scientific studies on brain development in young adults, as well as the evolution of **Miller v. Alabama**, 567 U.S. 460 (2012), and its progeny. (§33-6(g)(4))

Defense counsel: Ashlee Johnson, Chicago OSAD

No. 129551

People v. Vidaurri, Defense leave to appeal granted 5/24/23 from 2023 IL App (1st) 200857

Whether, in light of **People v. Dorsey**, 2021 IL 123010, and **People v. Clark**, 2023 IL 127273, a petitioner who was over the age of 17 years at the time of the offense, but whose brain was not fully developed, is categorically precluded from challenging his *de facto* life sentence under the Illinois proportionate penalties clause in a successive post-conviction petition, even if the defendant's pre-**Miller** proportionate penalties claim in his initial petition was rejected on the grounds that youth is not mitigating. (§33-6(g)(4))

Defense counsel: Deepa Punjabi, Chicago OSAD

No. 129767

People v. White, Defense leave to appeal granted 9/27/23 from 2023 Il App (1st) 210385-U

Whether **People v. Jones**, 2021 IL 126432, which held that a fully negotiated guilty plea precludes a subsequent collateral challenge to the constitutionality of the sentence under **Miller**, extends to defendants who enter into open or blind guilty pleas with no agreement as to the sentence. (§33-6(g)(4))

Defense counsel: Rachel Kindstrand, Chicago OSAD

No. 130015

People v. Spencer, Defense leave to appeal granted 11/29/23 from 2023 IL App (1st) 200646-U

Whether emerging adults under the age of 21 sentenced to *de facto* life in prison can challenge the constitutionality of the sentence under the Illinois Constitution's proportionate penalties clause, despite being eligible for parole after serving 20 years. (§§33-6(g)(4), 33-6(g)(5))

Defense counsel: Chan Yoon, Chicago OSAD

SEARCH AND SEIZURE

No. 127838

People v. Clark, Defense leave to appeal granted 3/29/23 from 2021 IL App (1st) 180523

Whether the Chicago Police Department's use of investigative alerts, whereby officers conduct warrantless arrests based on the department's internal determination of probable cause, violates the warrant clause of the Illinois Constitution. And, if this Court agrees that arrests on investigative alerts are unconstitutional, whether the good faith exception applies. (§43-5(a)(1))

Defense counsel: Todd McHenry, Chicago OSAD

No. 129201

People v. Redmond, State leave to appeal granted 3/29/23 from 2022 IL App (3d) 210524, consolidated with **People v. Molina**, No.129237; oral argument held 1/10/24

Whether, following the legalization of recreational use of marijuana in Illinois, the odor of burnt cannabis emanating from a vehicle is sufficient to support a finding of probable cause to search the vehicle. (§§43-4(a), 43-6(c))

Defense counsel: Bruce Carmen, Cambridge, IL

No. 129208

People v. Turner, Defense leave to appeal granted 5/24/23 from 2022 IL App (5th) 190329

Whether an individual has a reasonable expectation of privacy while he is a patient receiving treatment in an enclosed trauma room of a hospital emergency department. (§43-2(b))

Defense counsel: Jennifer Lassy, Mt. Vernon OSAD

No. 129237

People v. Molina, Defense leave to appeal granted 3/29/23 from 2022 IL App (4th) 220152, consolidated with **People v. Redmond**, No. 129201; oral argument held 1/10/24

Whether, following the legalization of recreational use of marijuana in Illinois, the odor of raw cannabis emanating from a vehicle is sufficient to support a finding of probable cause to search the vehicle. (§§43-4(a), 43-6(c))

Defense counsel: James W. Mertes and Mitchell R. Johnston, Sterling, IL

SENTENCING

No. 127304

People v. Williams, Defense leave to appeal granted 9/27/23 from 2021 IL App (1st) 190535

Whether a young adult offender must provide specific factual support for his claim that his *de facto* life sentence is unconstitutional as applied in order for his *pro se* post-conviction petition to advance beyond the first stage of post-conviction proceedings or whether it is sufficient that the petition cite scientific studies on brain development in young adults, as well as the evolution of **Miller v. Alabama**, 567 U.S. 460 (2012), and its progeny. (§44-1(c)(4))

Defense counsel: Ashlee Johnson, Chicago OSAD

No. 127838

People v. Clark, Defense leave to appeal granted 3/29/23 from 2021 IL App (1st) 180523

Whether a defendant who committed his offense prior to the enactment of 730 ILCS 5/5-4.5-105, but who is resentenced after Section 5-4.5-105's effective date, is entitled to the protections of Section 5-4.5-105, specifically consideration of the **Miller** factors at resentencing. (§44-2)

Defense counsel: Todd McHenry, Chicago OSAD

No. 129425

People v. Johanson, Defense leave to appeal granted 5/24/23 from 2023 IL App (2d) 210690; oral argument held 1/10/24

Whether the offenses of predatory criminal sexual assault of a child and aggravated criminal sexual abuse have identical elements but yield disparate penalties, such that the Class X felony penalty for predatory criminal sexual assault of a child violates the proportionate penalties clause of the Illinois Constitution. (§44-1(b)(2))

Defense counsel: Anthony Santella, Elgin OSAD

No. 129551

People v. Vidaurri, Defense leave to appeal granted 5/24/23 from 2023 IL App (1st) 200857

Whether, in light of **People v. Dorsey**, 2021 IL 123010, and **People v. Clark**, 2023 IL 127273, a petitioner who was over the age of 17 years at the time of the offense, but whose brain was not fully developed, is categorically precluded from challenging his *de facto* life sentence under the Illinois proportionate penalties clause in a successive post-conviction petition, even if the defendant's pre-**Miller** proportionate penalties claim in his initial petition was rejected on the grounds that youth is not mitigating. (§44-1(c)(4))

Defense counsel: Deepa Punjabi, Chicago OSAD

No. 129767

People v. White, Defense leave to appeal granted 9/27/23 from 2023 Il App (1st) 210385-U

Whether **People v. Jones**, 2021 IL 126432, which held that a fully negotiated guilty plea precludes a subsequent collateral challenge to the constitutionality of the sentence under **Miller**, extends to defendants who enter into open or blind guilty pleas with no agreement as to the sentence. (§44-1(c)(4))

Defense counsel: Rachel Kindstrand, Chicago OSAD

No. 129795

People v. Haynes, State leave to appeal granted 11/29/23 from 2023 IL App (1st) 220048

Whether a defendant's disproportionate response during mutual combat bars a sentence reduction under 720 ILCS 5/8-4(c)(1)(E), which provides for a reduction in the class of offense for attempt murder where defendant proves by a preponderance of the evidence that he was acting under sudden and intense passion resulting from serious provocation by the victim and, had the victim died, the cause of death would have been negligent or accidental. (§44-4(k))

Defense counsel: Sarah Curry, Chicago OSAD

No. 129906

People v. Rothe, Defense leave to appeal granted 9/27/23 from 2023 IL App (5th) 220048-U

Whether defendant's Class X sentence for armed robbery was constitutionally disproportionate, under the identical elements test, to the Class 2 sentence for armed violence with a category III weapon, where defendant carried a large wrench that resembled a category III weapon like a bludgeon or "other dangerous weapon of like character." (§44-1(b)(2))

Defense counsel: *Pro se*

No. 130015

People v. Spencer, Defense leave to appeal granted 11/29/23 from 2023 IL App (1st) 200646-U

Whether emerging adults under the age of 21 sentenced to *de facto* life in prison can challenge the constitutionality of the sentence under the Illinois

Constitution's proportionate penalties clause, despite being eligible for parole after serving 20 years. (§§44-1(c)(4), 44-1(c)(5))

Defense counsel: Chan Yoon, Chicago OSAD

SEX OFFENSES

No. 129425

People v. Johanson, Defense leave to appeal granted 5/24/23 from 2023 IL App (2d) 210690; oral argument held 1/10/24

Whether the offenses of predatory criminal sexual assault of a child and aggravated criminal sexual abuse have identical elements but yield disparate penalties, such that the Class X felony penalty for predatory criminal sexual assault of a child violates the proportionate penalties clause of the Illinois Constitution. (§45-2(b))

Defense counsel: Anthony Santella, Elgin OSAD

SPEEDY TRIAL

No. 128687

People v. Marcum, Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 200656-U; oral argument held 1/9/24

Whether a statutory violation of a criminal defendant's right to a speedy trial may be reviewed for second-prong plain error under Illinois Supreme Court Rule 615(a). (§46-1(b)(1))

Defense counsel: Edward Wittrig, Springfield OSAD

No. 130207

(New) People v. Yankaway, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 220982-U

Whether the appellate court erred when it held that, while counsel performed deficiently by failing to properly demand trial in order to trigger the speedy trial term, defendant could not show prejudice even though the trial began after 160 days, as the court presumed the State would have tried him earlier if counsel made the demand. (§46-1(b)(2))

Defense counsel: Anthony Santella, Elgin OSAD

STATUTES

No. 129585

People v. Brown, Defense leave to appeal granted 9/27/23 from 2023 IL App (4th) 220400

Whether a statutory amendment applies retroactively where the amendment became effective after sentencing but before the defendant's motion to reconsider sentence was denied. (§§47-2(a), 47-2(c))

Whether post-plea proceedings complied with the requirements of Supreme Court Rule 604(d) where the single issue raised in the written post-plea motion was withdrawn at the post-plea hearing, and the one issue orally argued at that hearing was not included in the written post-plea motion. (§§47-2(a), 47-2(c))

Defense counsel: Christopher McCoy, Elgin OSAD

No. 129965

People v. Thompson, Defense leave to appeal granted 11/29/23 from 2023 IL App (1st) 220429-U

Whether section (3)(A-5) of the aggravated unlawful use of a weapon statute, which criminalizes possession of a firearm in a vehicle without having a Concealed Carry License, even if the defendant owns a valid Firearm Owner's Identification Card, is unconstitutional under **Bruen**, where there is no historical tradition of requiring two licenses for open carry. (§47-3(b)(2)(b))

Whether a defendant who is convicted under section (3)(A-5) has standing to attack the constitutionality of the Concealed Carry License Act, or whether standing extends only to those who applied for and were denied a license. (§47-3(b)(2)(b))

Defense counsel: Eric Castañeda, Chicago OSAD

TRIAL PROCEDURES

No. 130067

(New) People v. Smith, State leave to appeal granted 1/24/24 from 2023 IL App (1st) 181070

Whether the trial court's exclusion of defendant's mother from the courtroom, based on the State's representation that it might call her as an impeachment witness, infringed on defendant's right to a public trial. (§51-1)

Defense counsel: Steven Greenberg, Chicago

VERDICTS

No. 129967

People v. Guy, State leave to appeal granted 11/29/23 from 2023 IL App (3d) 210423

Whether the jury's finding that defendant acted with unreasonable belief in the need for self-defense, resulting in a verdict of second degree murder as to one victim, is legally inconsistent with the intent required to convict defendant of attempt first degree murder against a separate victim during the same incident. (§53-2)

Defense counsel: Dimitri Golfis, Ottawa OSAD

No. 130110

(New) People v. Keys, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 210630

Whether a defendant may be convicted of multiple counts of concealment of a homicidal death based on a series of actions taken to conceal one homicidal death, and whether a defendant may be convicted of multiple counts of dismemberment based on actions taken to dismember one human body. (§53-3(a))

Defense counsel: Caroline Bourland, Chicago OSAD

WAIVER - PLAIN ERROR - HARMLESS ERROR

No. 128687

People v. Marcum, Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 200656-U; oral argument held 1/9/24

Whether a statutory violation of a criminal defendant's right to a speedy trial may be reviewed for second-prong plain error under Illinois Supreme Court Rule 615(a). (§§54-2(d), 54-2(e)(7)(a))

Defense counsel: Edward Wittrig, Springfield OSAD

No. 128805

People v. Quezada, State leave to appeal granted 11/30/22 from 2022 IL App (2d) 200195

Whether two evidentiary errors – improper gang evidence and hearsay statements from a witness interrogation video – amounted to cumulative, reversible error, where both errors were forfeited, and neither of the claims were individually reversible as plain error or ineffective assistance of counsel. (§54-3(d)(8)(b))

Defense counsel: Andrew Moore, Elgin OSAD

No. 129676

People v. Sloan, State leave to appeal granted 9/27/23 from 2023 IL App (5th) 200225

Whether, where a reviewing court concludes that the trial court erred in refusing to instruct the jury on an affirmative defense, the court must go on to consider whether that error is harmless in light of the trial evidence or whether the error in failing to instruct on an affirmative defense is such a grave and fundamental error that it denies a defendant due process and requires a new trial regardless of the strength of the evidence. (§54-3(a))

Defense counsel: Gilbert Lenz, Chicago OSAD

No. 130191

(New) People v. Johnson, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 230087-U

Whether the Fourth District Appellate Court erred when it refused to invoke the second prong of the plain error rule to review a forfeited claim that the sentencing court considered improper factors in aggravation, where the supreme court and all four of Illinois' other appellate court districts have repeatedly held that review of this issue is cognizable as second-prong plain error because it affects the defendant's fundamental right to liberty. (§54-2(d); 54-2(e)(6)(a))

Defense counsel: Zachary Wallace, Elgin OSAD

WEAPONS

No. 127815

People v. Gray, State leave to appeal granted 11/30/22 from 2021 IL App (1st) 191086; oral argument held 1/9/24

Whether the State failed to prove Armed Habitual Criminal beyond a reasonable doubt because one of the predicate felonies was committed at age 17, and under the amended version of the Juvenile Court Act in place at the time of the alleged AHC, the predicate felony would have been resolved in juvenile court. (§55-3)

Defense counsel: Anna Carlozzi, Chicago OSAD

No. 129357

People v. Harvey, Defense leave to appeal granted 3/29/23 from 2022 IL App (1st) 211242-U

Whether, in an aggravated UUV prosecution, the State may satisfy its burden of proving defendant "has not been issued a currently valid" FOID card or CCL, merely by introducing defendant's failure to produce one, or whether the State must actually present affirmative evidence to show that no FOID or CCL has been issued. (§55-1(d))

Defense counsel: Philip Payne, Chicago OSAD

No. 129965

People v. Thompson, Defense leave to appeal granted 11/29/23 from 2023 IL App (1st) 220429-U

Whether section (3)(A-5) of the aggravated unlawful use of a weapon statute, which criminalizes possession of a firearm in a vehicle without having a Concealed Carry License, even if the defendant owns a valid Firearm Owner's Identification Card, is unconstitutional under **Bruen**, where there is no historical tradition of requiring two licenses for open carry. (§55-1(b))

Whether a defendant who is convicted under section (3)(A-5) has standing to attack the constitutionality of the Concealed Carry License Act, or whether standing extends only to those who applied for and were denied a license. (§55-1(b))

Defense counsel: Eric Castañeda, Chicago OSAD