

Office of the State Appellate Defender

Summary of Significant Criminal Issues Pending in the Illinois Supreme Court

May 26, 2023

JAMES E. CHADD

State Appellate Defender

KERRY J. BRYSON

SHAWN O'TOOLE

Deputy State Appellate Defenders, Editors

TABLE OF CONTENTS

APPEAL	1
People v. Sneed , Defense leave to appeal allowed 3/30/22 from 2021 IL App (4th) 210180; oral argument held 3/16/23.....	1
People v. English , Defense leave to appeal allowed 3/30/22 from 2021 IL App (1st) 201016; oral argument held 3/16/23.....	1
People v. Jefferson , Defense leave to appeal granted 9/28/2022 from 2022 IL App (5th) 200185	1
People v. Shunick , Defense leave to appeal granted 3/29/23 from 2022 IL App (4th) 220019	2
COLLATERAL REMEDIES	2
People v. Wells , State leave to appeal granted 9/29/21 from 2021 IL App (3d) 180344; oral argument held 11/16/22	2
People v. Urzua , State leave to appeal granted 1/26/22 from 2021 IL App (2d) 200231; oral argument held 1/10/23	2
People v. Washington , Defense leave to appeal allowed 3/30/22 from 2021 IL App (1st) 163024; oral argument held 1/12/23.....	3
People v. Hilliard , Defense leave to appeal granted 5/25/22 from 2021 IL App (1st) 200112	3
People v. Lighthart , Defense leave to appeal granted 9/28/22 from 2022 IL App (2d) 210197; oral argument held 5/9/23.....	3
People v. Agee , Defense leave to appeal granted 9/28/22 from 2022 IL App (2d) 200748-U.....	4
People v. Huff , Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 201278-U	4
People v. Griffin , State leave to appeal granted 9/28/2022 from 2022 IL App (1st) 191101-B.....	4
People v. Frey , State leave to appeal granted 11/30/22 from 2022 IL App (2d) 210044-U.....	4
People v. Montanez , Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 191930	5
People v. Racanelli , State leave to appeal granted 1/25/23 from 2022 IL App (2d) 210637-U (summary order).	5
People v. Flournoy , Defense leave to appeal granted 3/29/23 from 2022 IL App (3d) 210194-U	5
People v. Vidaurri , Defense leave to appeal granted 5/24/23 from 2023 IL App (1st) 200857	6
CONFESSIONS	6
People v. Pinkett , State leave to appeal granted 9/29/21 from 2020 IL App (4th) 190172-U; oral argument held 3/15/23.....	6
People v. Washington , Defense leave to appeal allowed 3/30/22 from 2021 IL App (1st) 163024; oral argument held 1/12/23.....	7
People v. Fair , Defense leave to appeal granted 9/28/22 from 2022 IL App (1st) 201072-U	7
People v. Lozano , Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 182170; oral argument held 5/11/23.....	7

People v. Logan , Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 210492	7
People v. Vidaurri , Defense leave to appeal granted 5/24/23 from 2023 IL App (1st) 200857	8
COUNSEL	8
People v. Logan , Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 210492	8
People v. Ratliff , Defense leave to appeal granted 3/29/23 from 2022 IL App (3d) 210194-U.....	9
DISCOVERY	9
People v. Montanez , Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 191930	9
EVIDENCE	9
People v. Bush , Defense leave to appeal granted 9/28/2022 from 2022 IL App (3d) 190283	9
People v. Torres , Defense leave to appeal granted 3/29/23 from 2022 IL App (1st) 210990-U.....	10
GUILTY PLEAS	10
People v. Wells , Defense leave to appeal granted 5/24/23 from 2023 IL App (4th) 220552-U	10
HOMICIDE	11
People v. Roland , State leave to appeal granted 9/28/22 from 2022 IL App (1st) 173013	11
People v. Bush , Defense leave to appeal granted 9/28/2022 from 2022 IL App (3d) 190283	11
INDICTMENTS, INFORMATIONS, COMPLAINTS	11
People v. Basile , State leave to appeal granted 1/25/23 from 2022 IL App (2d) 210740.....	11
JUDGE	12
People v. Brusaw , State leave to appeal granted 9/28/2022 from 2022 IL App (3d) 190154-U	12
JURY	12
People v. Bush , Defense leave to appeal granted 9/28/2022 from 2022 IL App (3d) 190283	12
JUVENILE PROCEEDINGS	13
People v. Hilliard , Defense leave to appeal granted 5/25/22 from 2021 IL App (1st) 200112	13
People v. Webster , State leave to appeal granted 9/28/22 from 2022 IL App (1st) 182305-U.....	13
People v. Vidaurri , Defense leave to appeal granted 5/24/23 from 2023 IL App (1st) 200857	13
PAROLE, PARDONS & PRISONER’S RIGHTS	14
People v. Fukama-Kabika , Defense leave to appeal granted 11/30/2022 from 2022 IL App (4th) 200371-U.....	14
REASONABLE DOUBT	14
People v. Grayer , Defense leave to appeal granted 11/30/2022 from 2022 IL App (1st) 210808.....	14
SEARCH AND SEIZURE	14
People v. Clark , Defense leave to appeal granted 3/29/23 from 2021 IL App (1st) 180523	14

People v. Sneed , Defense leave to appeal allowed 3/30/22 from 2021 IL App (4th) 210180; oral argument held 3/16/23.....	15
People v. Lozano , Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 182170; oral argument held 5/11/23.....	15
People v. Webb , Defense leave to appeal granted 11/30/2022 from 2022 IL App (4th) 210726	15
People v. Redmond , State leave to appeal granted 3/29/23 from 2022 IL App (3d) 210524, consolidated with People v. Molina , No.129237	16
People v. Turner , Defense leave to appeal granted 5/24/23 from 2022 IL App (5th) 190329	16
People v. Molina , Defense leave to appeal granted 3/29/23 from 2022 IL App (4th) 220152, consolidated with People v. Redmond , No. 129201	16
SENTENCING	16
People v. Clark , Defense leave to appeal granted 3/29/23 from 2021 IL App (1st) 180523	16
People v. Hilliard , Defense leave to appeal granted 5/25/22 from 2021 IL App (1st) 200112	17
People v. Lane , Defense leave to appeal granted 5/25/2022 from 2021 IL App (1st) 182672; oral argument held 5/11/23.....	17
People v. Webster , State leave to appeal granted 9/28/22 from 2022 IL App (1st) 182305-U	17
People v. Reyes , Defense leave to appeal granted 9/28/22 from 2022 IL App (2d) 190474; oral argument held 5/9/23.....	18
People v. Johanson , Defense leave to appeal granted 5/24/23 from 2023 IL App (2d) 210690	18
People v. Vidaurri , Defense leave to appeal granted 5/24/23 from 2023 IL App (1st) 200857	18
SEX OFFENSES	19
People v. Devine , State leave to appeal granted 9/28/22 from 2022 IL App (2d) 210162	19
People v. Johanson , Defense leave to appeal granted 5/24/23 from 2023 IL App (2d) 210690	19
SPEEDY TRIAL	20
People v. Marcum , Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 200656-U.....	20
WAIVER - PLAIN ERROR - HARMLESS ERROR	20
People v. Marcum , Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 200656-U.....	20
People v. Quezada , State leave to appeal granted 11/30/22 from 2022 IL App (2d) 200195	20
WEAPONS	21
People v. Gray , State leave to appeal granted 11/30/22 from 2021 IL App (1st) 191086.....	21
People v. Harvey , Defense leave to appeal granted 3/29/23 from 2022 IL App (1st) 211242-U	21
WITNESSES	21
People v. Pacheco , State leave to appeal granted 9/29/21 from 2021 IL App (3d) 150880; oral argument held 3/14/23.....	21

People v. Chatman, Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 210716 22

APPEAL

No. 127968

People v. Sneed, Defense leave to appeal allowed 3/30/22 from 2021 IL App (4th) 210180; oral argument held 3/16/23

Whether the Appellate Court must determine independently whether a trial court ruling is subject to interlocutory appeal under Illinois Supreme Court Rule 604(a)(1) on the ground that it has the effect of suppressing evidence or whether that question is resolved simply by looking to the State's representations in its certificate of impairment. (§2-4(a))

Defense counsel: Joshua Scanlon, Springfield OSAD

No. 128077

People v. English, Defense leave to appeal allowed 3/30/22 from 2021 IL App (1st) 201016; oral argument held 3/16/23

Whether a legible postmark on an envelope containing a notice of appeal is adequate proof of the date of mailing to show that the notice of appeal was timely filed. (§2-2(b))

Defense counsel: Therese Bissell, Chicago OSAD

No. 128676

People v. Jefferson, Defense leave to appeal granted 9/28/2022 from 2022 IL App (5th) 200185

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

COLLATERAL REMEDIES

No. 127169

People v. Wells, State leave to appeal granted 9/29/21 from 2021 IL App (3d) 180344; oral argument held 11/16/22

Whether the trial court violated defendant's due process rights when it granted the State's motion to dismiss her 2-1401 petition without providing an opportunity to respond, and if so, whether the error can be harmless. (§9-2(c))

Defense counsel: Jonathan Krieger, Chicago OSAD

No. 127789

People v. Urzua, State leave to appeal granted 1/26/22 from 2021 IL App (2d) 200231; oral argument held 1/10/23

Whether a defendant is entitled to hire a private attorney for post-conviction proceedings after appointed counsel deems the petition frivolous and is granted leave to withdraw. (§9-1(j)(1))

Defense counsel: David Holland, Chicago OSAD

No. 127952

People v. Washington, Defense leave to appeal allowed 3/30/22 from 2021 IL App (1st) 163024; oral argument held 1/12/23

Whether a guilty plea automatically precludes issuance of a certificate of innocence under 735 ILCS 5/2-702. (§9-6)

Defense counsel: David M. Shapiro, MacArthur Justice Center, Northwestern Pritzker School of Law, and Steven Greenberg, Chicago

No. 128186

People v. Hilliard, Defense leave to appeal granted 5/25/22 from 2021 IL App (1st) 200112

Whether the circuit court erred when it summarily dismissed defendant's proportionate penalties challenge to a 40-year sentence imposed for a crime committed at age 18, where the court based its decision on: (1) the fact that defendant did not receive a *de facto* life sentence, even though no prior authority has limited proportionate penalties violations to life sentences; and (2) its belief that it is not "bound by" case law from other appellate districts supporting defendant's position. (§9-1(e)(2))

Defense counsel: Caroline Bourland, Chicago OSAD

No. 128398

People v. Lighthart, Defense leave to appeal granted 9/28/22 from 2022 IL App (2d) 210197; oral argument held 5/9/23

Whether, where a defendant enters into a negotiated guilty plea but fails to file a timely motion to withdraw plea thereby precluding a direct appeal, the deadline for filing a post-conviction petition pursuant to 725 ILCS 5/122-1(c), is within six months from the date for filing a petition for writ of *certiorari* or within three years from the date of conviction. (§9-1(b)(2))

Defense counsel: Steven Becker, Chicago

No. 128413

People v. Agee, Defense leave to appeal granted 9/28/22 from 2022 IL App (2d) 200748-U

Whether post-conviction counsel's failure to plead an essential element of a claim that counsel added in amending defendant's *pro se* post-conviction petition constitutes unreasonable assistance of counsel and violates Supreme Court Rule 651(c). (§9-1(j)(2))

Defense counsel: Sean Collins-Stapleton, Chicago OSAD

No. 128492

People v. Huff, Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 201278-U

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

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. 128644

People v. Frey, State leave to appeal granted 11/30/22 from 2022 IL App (2d) 210044-U

Whether pursuant to **People v. Greer**, 212 Ill. 2d 192 (2004), and **People v. Kuehner**, 2015 IL 117695, a post-conviction attorney who moves to withdraw must first explain why each claim in the *pro se* petition is frivolous, even if the petition advanced to the second-stage through inaction and operation of the 90-day rule, rather than a first-stage finding of arguable merit. (§9-1(j)(1))

Defense counsel: Christina Solomon, Chicago OSAD

No. 128740

People v. Montanez, Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 191930

Whether a post-conviction claim alleging the State violated **Brady** by concealing “street files,” can be dismissed for failure to show prejudice where the files have yet to be turned over to defendant, and alternatively, whether the system that was put in place upon discovery of the street files, whereby the State maintains control of the file and is trusted to turn over all exculpatory evidence to the defendant, violates due process and the Post-Conviction Hearing Act’s bar against State involvement prior to the second stage. §9-1(i)(2)

Defense counsel: Adrienne Sloane, Chicago OSAD

No. 128904

People v. Racanelli, State leave to appeal granted 1/25/23 from 2022 IL App (2d) 210637-U (summary order).

Whether, when allowing appointed post-conviction counsel to withdraw from representation on the ground that the defendant’s post-conviction petition is frivolous and patently without merit, a circuit court may simultaneously dismiss the defendant’s petition even if the State has not filed a motion to dismiss. (§§9-1(f), 9-1(j)(1))

Defense counsel: Christopher McCoy, Elgin OSAD

No. 129353

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

CONFESSIONS

No. 127223

People v. Pinkett, State leave to appeal granted 9/29/21 from 2020 IL App (4th) 190172-U; oral argument held 3/15/23

Whether the categorical ban on the State’s use of defendant’s post-arrest silence applies to silence occurring before defendant has been Mirandized. (§10-8(a))

Defense counsel: Simone Patras, Springfield OSAD

No. 127952

People v. Washington, Defense leave to appeal allowed 3/30/22 from 2021 IL App (1st) 163024; oral argument held 1/12/23

Whether the Appellate Court erred when it found that defendant's confession was voluntary where it was the product of interrogation by former subordinates of Lt. Jon Burge. (§10-5(a))

Defense counsel: David M. Shapiro, MacArthur Justice Center, Northwestern Pritzker School of Law, and Steven Greenberg, Chicago

No. 128373

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

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. 128609

People v. Lozano, Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 182170; oral argument held 5/11/23

Whether police can seize a citizen for the sole reason that he was running in the rain with his hands in his pocket, and whether **Miranda v. Arizona** prohibits the State from introducing at trial defendant's responses to investigatory questions posed without **Miranda** warnings during an arrest. (§10-3(a))

Defense counsel: Pamela Rubeo, Chicago OSAD

No. 129054

People v. Logan, Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 210492

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

COUNSEL

No. 129054

People v. Logan, Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 210492

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: Jay Wiegman, Ottawa OSAD

DISCOVERY

No. 128740

People v. Montanez, Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 191930

Whether a post-conviction claim alleging the State violated **Brady** by concealing “street files,” can be dismissed for failure to show prejudice where the files have yet to be turned over to defendant, and alternatively, whether the system that was put in place upon discovery of the street files, whereby the State maintains control of the file and is trusted to turn over all exculpatory evidence to the defendant, violates due process and the Post-Conviction Hearing Act’s bar against State involvement prior to the second stage. (§15-1)

Defense counsel: Adrienne Sloane, Chicago OSAD

EVIDENCE

No. 128747

People v. Bush, Defense leave to appeal granted 9/28/2022 from 2022 IL App (3d) 190283

Whether a rap video, with lyrics that meet the requirements of 725 ILCS 5/115-10.1, can be excluded on the grounds that it’s a “work of art.” (§19-15(b))

Whether a juror who had a close relationship to the mother of the victim and a State witness, but who attested she could be fair, should have been disqualified for “implied bias” due to the closeness of the relationship. (§19-15(b))

Whether defendant’s conviction for felony murder predicated on mob action violated **People v. Morgan**, 197 Ill. 2d 404 (2001), where the act constituting mob

action – entering a melee and firing a weapon – was inherent in the killing and lacked an independent felonious purpose. (§19-15(b))

Defense counsel: Amber Hopkins, Ottawa OSAD

No. 129289

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

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

GUILTY PLEAS

No. 129402

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

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: Mariah Shaver, Chicago OSAD

HOMICIDE

No. 128366

People v. Roland, State leave to appeal granted 9/28/22 from 2022 IL App (1st) 173013

Whether defendant made a substantial showing of ineffective assistance of trial counsel based upon counsel's failure to introduce evidence of defendant's suicide attempts at defendant's trial on a charge of attempt murder of a police officer, or whether such evidence is inadmissible because Illinois law does not recognize diminished capacity as a defense to criminal charges. (§26-3)

Defense counsel: Gilbert Lenz, Chicago OSAD

No. 128747

People v. Bush, Defense leave to appeal granted 9/28/2022 from 2022 IL App (3d) 190283

Whether a rap video, with lyrics that meet the requirements of 725 ILCS 5/115-10.1, can be excluded on the grounds that it's a "work of art." (§26-2)

Whether a juror who had a close relationship to the mother of the victim and a State witness, but who attested she could be fair, should have been disqualified for "implied bias" due to the closeness of the relationship. (§26-2)

Whether defendant's conviction for felony murder predicated on mob action violated **People v. Morgan**, 197 Ill. 2d 404 (2001), where the act constituting mob action – entering a melee and firing a weapon – was inherent in the killing and lacked an independent felonious purpose. (§26-2)

Defense counsel: Amber Hopkins, Ottawa 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. 128474

People v. Brusaw, State leave to appeal granted 9/28/2022 from 2022 IL App (3d) 190154-U

Whether the trial court committed reversible error when it failed to rule on a *pro se* motion for substitution of judge as of right pursuant to 725 ILCS 5/114-5(a), or whether the motion should have been considered abandoned where it was not adopted by defense counsel, and defendant agreed to proceed to trial without obtaining a ruling on the motion. (§§31-3(a), 31-3(c))

Defense counsel: Sean Conley, Ottawa OSAD

JURY

No. 128747

People v. Bush, Defense leave to appeal granted 9/28/2022 from 2022 IL App (3d) 190283

Whether a rap video, with lyrics that meet the requirements of 725 ILCS 5/115-10.1, can be excluded on the grounds that it's a "work of art." (§32-5(a))

Whether a juror who had a close relationship to the mother of the victim and a State witness, but who attested she could be fair, should have been disqualified for "implied bias" due to the closeness of the relationship. (§32-5(a))

Whether defendant's conviction for felony murder predicated on mob action violated **People v. Morgan**, 197 Ill. 2d 404 (2001), where the act constituting mob action – entering a melee and firing a weapon – was inherent in the killing and lacked an independent felonious purpose. (§32-5(a))

Defense counsel: Amber Hopkins, Ottawa OSAD

JUVENILE PROCEEDINGS

No. 128186

People v. Hilliard, Defense leave to appeal granted 5/25/22 from 2021 IL App (1st) 200112

Whether the circuit court erred when it summarily dismissed defendant's proportionate penalties challenge to a 40-year sentence imposed for a crime committed at age 18, where the court based its decision on: (1) the fact that defendant did not receive a *de facto* life sentence, even though no prior authority has limited proportionate penalties violations to life sentences; and (2) its belief that it is not "bound by" case law from other appellate districts supporting defendant's position. (§33-6(g)(5))

Defense counsel: Caroline Bourland, Chicago OSAD

No. 128428

People v. Webster, State leave to appeal granted 9/28/22 from 2022 IL App (1st) 182305-U

Whether, and to what extent, a reviewing court may invoke Rule 366(a), which governs the powers of a reviewing court in civil appeals, to reverse a trial court's judgment and remand for further proceedings when Rule 615(a), which governs the court's authority in criminal appeals, would not authorize that action. (§33-6(g)(2))

Whether **People v. Holman**, 2017 IL 120655, remains valid in light of the United States Supreme Court's decision in **Jones v. Mississippi**, 141 S. Ct. 1307 (2021). (§33-6(g)(2))

Whether the appellate court's decision remanding for resentencing where defendant had received a 40-year sentence for first degree murder was in conflict with other post-**Buffer** appellate court decisions affirming 40-year sentences for juvenile offenders. (§33-6(g)(2))

Defense counsel: Jennifer Bontrager, 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

PAROLE, PARDONS & PRISONER'S RIGHTS

No. 128824

People v. Fukama-Kabika, Defense leave to appeal granted 11/30/2022 from 2022 IL App (4th) 200371-U

Whether Illinois Supreme Court Rule 472 gives a circuit court jurisdiction to change a mandatory supervised release term over 30 days after it entered final judgment. (§36-1(a))

Defense counsel: Kathryn Oberer, Chicago OSAD

REASONABLE DOUBT

No. 128871

People v. Grayer, Defense leave to appeal granted 11/30/2022 from 2022 IL App (1st) 210808

Whether voluntary intoxication can negate the *mens rea* for a specific intent crime, notwithstanding the 2002 statutory amendment eliminating voluntary intoxication as an affirmative defense. (§41-10)

Defense counsel: Cristina Merriman, 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. 127968

People v. Sneed, Defense leave to appeal allowed 3/30/22 from 2021 IL App (4th) 210180; oral argument held 3/16/23

Whether an individual's compelled disclosure of a cell phone passcode is testimonial and therefore subject to the privilege against self-incrimination and whether the foregone exclusion exception to the protection against self-incrimination focuses on the passcode or on the evidence the State seeks to obtain through production of the passcode. (§43-2(c)(4)(a))

Defense counsel: Joshua Scanlon, Springfield OSAD

No. 128609

People v. Lozano, Defense leave to appeal granted 9/28/2022 from 2022 IL App (1st) 182170; oral argument held 5/11/23

Whether police can seize a citizen for the sole reason that he was running in the rain with his hands in his pocket, and whether **Miranda v. Arizona** prohibits the State from introducing at trial defendant's responses to investigatory questions posed without **Miranda** warnings during an arrest. (§43-3(b)(2))

Defense counsel: Pamela Rubeo, Chicago OSAD

No. 128957

People v. Webb, Defense leave to appeal granted 11/30/2022 from 2022 IL App (4th) 210726

Whether a canine alert for cannabis provides probable cause to search a vehicle where, at the time of the alert, Illinois law permitted possession of cannabis for medical use. (§§43-2(c)(2), 43-4(a), 43-6(b))

Defense counsel: Miriam Sierig, 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

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

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. 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. 128186

People v. Hilliard, Defense leave to appeal granted 5/25/22 from 2021 IL App (1st) 200112

Whether the circuit court erred when it summarily dismissed defendant's proportionate penalties challenge to a 40-year sentence imposed for a crime committed at age 18, where the court based its decision on: (1) the fact that defendant did not receive a *de facto* life sentence, even though no prior authority has limited proportionate penalties violations to life sentences; and (2) its belief that it is not "bound by" case law from other appellate districts supporting defendant's position. (§44-1(c)(5))

Defense counsel: Caroline Bourland, Chicago OSAD

No. 128269

People v. Lane, Defense leave to appeal granted 5/25/2022 from 2021 IL App (1st) 182672; oral argument held 5/11/23

Whether a conviction of intentional homicide of an unborn child constitutes "murder" of a "victim" sufficient to trigger the double-murder sentencing enhancement of 730 ILCS 5/5-8-1(a)(1)(c)(ii), requiring a natural life sentence for defendants "found guilty of murdering more than one victim." (§44-10(f))

Defense counsel: Talon Nouri, Chicago OSAD

No. 128428

People v. Webster, State leave to appeal granted 9/28/22 from 2022 IL App (1st) 182305-U

Whether, and to what extent, a reviewing court may invoke Rule 366(a), which governs the powers of a reviewing court in civil appeals, to reverse a trial court's judgment and remand for further proceedings when Rule 615(a), which governs the court's authority in criminal appeals, would not authorize that action. (§44-1(c)(2))

Whether **People v. Holman**, 2017 IL 120655, remains valid in light of the United States Supreme Court's decision in **Jones v. Mississippi**, 141 S. Ct. 1307 (2021). (§44-1(c)(2))

Whether the appellate court's decision remanding for resentencing where defendant had received a 40-year sentence for first degree murder was in conflict with other post-**Buffer** appellate court decisions affirming 40-year sentences for juvenile offenders. (§44-1(c)(2))

Defense counsel: Jennifer Bontrager, Chicago OSAD

No. 128461

People v. Reyes, Defense leave to appeal granted 9/28/22 from 2022 IL App (2d) 190474; oral argument held 5/9/23

Whether a petition to revoke a fine under 730 ILCS 5/5-9-2, like a petition for relief from judgment under 735 ILCS 5/2-1401, is not ripe for adjudication until 30 days pass from the date the petition is filed and served on the State. (§44-7(b))

Whether a petition to revoke a fine under 730 ILCS 5/5-9-2 is applicable only to discretionary fines under the Unified Code of Corrections or whether such a petition applies to all fines, whether mandatory or discretionary. (§44-7(b))

Defense counsel: Andrew Moore, Elgin OSAD

No. 129425

People v. Johanson, Defense leave to appeal granted 5/24/23 from 2023 IL App (2d) 210690

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

SEX OFFENSES

No. 128438

People v. Devine, State leave to appeal granted 9/28/22 from 2022 IL App (2d) 210162

Whether the offense of nonconsensual dissemination of private sexual images under 720 ILCS 5/11-23.5(b) is established by evidence that the defendant, a Verizon store employee, sent himself private sexual images from a Verizon customer's cell phone without her permission or whether the offense requires proof of dissemination by defendant to a third party. (§45-4)

Whether the "identifiability" requirement of 720 ILCS 5/11-23.5(b) is satisfied by evidence that the individual in the image can be identified by anyone from either the image itself or from the information displayed in connection with the image, such as a cell phone number or text message. Or, whether the individual must be identifiable to everyone who views the image from only the image itself. (§45-4)

Defense counsel: John Gaffney, Harvard

No. 129425

People v. Johanson, Defense leave to appeal granted 5/24/23 from 2023 IL App (2d) 210690

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.

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

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.

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: Steven Greenberg, Chicago

WEAPONS

No. 127815

People v. Gray, State leave to appeal granted 11/30/22 from 2021 IL App (1st) 191086

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 UUI 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

WITNESSES

No. 127535

People v. Pacheco, State leave to appeal granted 9/29/21 from 2021 IL App (3d) 150880; oral argument held 3/14/23

Whether defendant’s right to confront witnesses was violated when the trial court barred questions to a police officer regarding his motive to lie in order to protect his job. (§§56-6(b)(3), 56-6(b)(4)(b))

Whether the trial court abused its discretion by barring defense counsel from questioning officers about their failure to write police reports where there was evidence that police department policy precluded them from writing reports because they were involved in shooting at defendant. (§§56-6(b)(3), 56-6(b)(4)(b))

Defense counsel: Drew Parsons, Ottawa OSAD

No. 129133

People v. Chatman, Defense leave to appeal granted 1/25/23 from 2022 IL App (4th) 210716

Whether the party seeking to use the forfeiture-by-wrongdoing doctrine to admit the out-of-court statements of a witness made unavailable by the opposing party's wrongdoing, must first show that it made good-faith efforts to secure the witness's attendance at trial. (§56-6(b)(1)(c))

Defense counsel: Christofer Bendik, Chicago OSAD