

Office of the State Appellate Defender

# Summary of Significant Criminal Issues Pending in the Illinois Supreme Court

*October 23, 2024*

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## APPEAL

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

No. 130286

**People v. Hagededt**, Defense leave to appeal granted 3/27/24 from 2023 IL App (2d) 210715-U

Whether defendant was denied due process where the appellate court majority's opinion was based on an alleged concession by appellate counsel at oral argument but that concession never occurred. (§2-6(a))

Defense counsel: Andrew Thomas Moore, Elgin OSAD

No. 130351

**People v. Harris**, State leave to appeal granted 3/27/24 from 2023 IL App (1st) 221033

Whether the State's appeal was an unauthorized interlocutory appeal from an order granting post-conviction relief, where the appellate court in a prior appeal reversed the denial of defendant's post-conviction petition following a third-stage evidentiary hearing and remanded the matter for a new suppression hearing, and where the circuit court on remand denied defendant's motion to suppress but ordered a new trial. (§§2-4(a), 2-6(e)(2))

Defense counsel: Leonid Feller, Quinn Emanuel Urquhart & Sullivan, LLP, Chicago

No. 130431

**People v. Smollett**, Defense leave to appeal granted 3/27/24 from 2023 IL App (1st) 220322; oral argument held 9/17/2024

Whether a nonprosecution agreement between the State and a defendant is contractually enforceable when the State has received the full benefit of the defendant's complete performance and, if so, whether such an agreement existed here where the State *nolle prossed* charges against defendant, noting his performance of community service and his agreement to forfeit his bond. (§§17-1, 17-3)

Whether, given that the double jeopardy clause protects against multiple punishments for the same offense, defendant's prosecution here violated double jeopardy where he was already punished as part of an agreement with the State that he perform community service and forfeit his bond in exchange for the *nolle prosee* of the originally-filed charges. (§§17-1, 17-3)

Defense counsel: Nnanenyem Eziudo Uche, Uche P.C., Chicago

### ATTEMPT

No. 129795

**People v. Haynes**, State leave to appeal granted 11/29/23 from 2023 IL App (1st) 220048; oral argument held 9/11/2024

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

## BAIL

No. 130618

**People v. Watkins-Romaine**, State leave to appeal granted 6/18/24 from 2024 IL App (1st) 232479; oral argument held 9/10/2024

Whether the trial court committed plain error when it allowed the State to file a petition for pretrial detention of a defendant who, prior to the implementation of the Pretrial Fairness Act, was already granted a monetary bond, but remained in custody due to his inability to pay the bond, because the language of the Act does not provide for a petition under these circumstances and the provisions allowing for petitions would render this petition untimely; or whether no plain error occurred given the split in authority on this issue, and, even if clear error did occur, it did not arise to second-prong plain error because it would be mere trial error subject to harmless error analysis. (§6-5(i))

Defense counsel: James F. DiQuattro, Chicago

No. 130626

**People v. Morgan**, Defense leave to appeal granted 6/11/24 from 2024 IL App (4th) 240103; oral argument held 9/12/2024

Which standard of review applies on appeal from a pretrial detention order that was based on a proffer of evidence: abuse of discretion, manifest weight of the evidence, *de novo*, or some combination thereof? (§6-5(b))

Defense counsel: Ross Allen, Chicago OSAD

No. 130693

**People v. Mikolaitis**, Defense leave to appeal granted 6/12/24 from 2024 IL App (3d) 230791; oral argument held 9/10/2024

Whether the State can meet its burden under 725 ILCS 5/110-6.1(e)(3) to show “by clear and convincing evidence that. . . no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) the real and present threat to the safety of any person or persons or the community . . . or (ii) the defendant's willful flight,” merely by presenting evidence of the factors found in section 110-5, which the court must consider in determining whether to release a defendant with conditions, or whether the State must instead present some argument or discussion as to why the specific possible conditions in section 110-10 would not mitigate the risk posed by defendant’s release. §6-5(g)



Defense counsel: Christina O'Connor, Mt. Vernon OSAD

No. 130866

**People v. Cousins**, Defense leave to appeal granted 8/9/24 from 2024 IL App (4th) 240388-U

Whether, where the reviewing court concludes that the State failed to meet its burden to detain a defendant pretrial, a remand for a second detention hearing is appropriate, or whether the proper remedy is to remand for pretrial release, including a hearing on conditions of release. (§6-5(a))

Defense counsel: Lauren Bauser, Chicago OSAD

No. 130946

**People v. Cooper**, State leave to appeal granted 9/16/24 from 2024 IL App (4th) 240589-U

Whether the requirement that a detention hearing be held within 48 hours of the defendant's initial appearance is mandatory or directory and, if mandatory, whether the appropriate remedy for an untimely hearing is conditional release. (§6-5(i))

Defense counsel: Jonathan Krieger, Chicago OSAD

## COLLATERAL REMEDIES

No. 128073

**People v. Abusharif**, Defense leave to appeal granted 3/27/24 from 2021 IL App (2d) 191031

Whether the two-year deadline for filing a petition for relief for judgment is tolled for victims of domestic violence who are otherwise eligible to seek relief under 735 ILCS 5/2-1401(b-5), but who were sentenced prior to that statute's effective date of January 1, 2016, such that a petition filed before January 1, 2018, should be considered timely. (§9-2(c))

Defense counsel: Rebecca Levy, 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; oral argument held 9/12/2024

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. 130595

**People v. Reed**, Defense leave to appeal granted 5/29/24 from 2024 IL App (1st) 230669.

Whether the certificate of innocence statute, 735 ILCS 5/2-702, requires a petitioner to prove innocence only of the offenses for which he or she was incarcerated or whether the petitioner must prove innocence of every offense charged, including those dismissed by the State by *nolle prosequi* and for which the petitioner was neither convicted nor incarcerated. (§9-6)

Defense counsel: Joel A. Flaxman and Kenneth N. Flaxman, Chicago

## CONFESSIONS

No. 129627

**People v. Ward**, State leave to appeal granted 9/27/23 from 2023 IL App (1st) 190364; oral argument held 5/15/24

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

**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

No. 130470

**People v. Muhammad**, State leave to appeal granted 5/29/24 from 2023 IL App (1st) 220372.

Whether the Special State's Attorney representing the State in a hearing before the Torture Inquiry and Relief Commission should have been disqualified for an actual conflict of interest under 55 ILCS 5/3-9008(a-10), based on his prior service as a high level supervisor in the Cook County State's Attorney's Office. (§10-5(a))

Whether the defendant's claim before the Torture Inquiry and Relief Commission should have been dismissed because the coerced statement was not a "confession" but rather a false alibi. (§10-5(a))

Defense counsel: H. Candace Gorman, Chicago

## CONTROLLED SUBSTANCES

No. 130344

**People v. Hoffman**, State leave to appeal granted 5/29/24 from 2023 IL App (2d) 230067.

Whether section 5–4–1(c-1.5) of the Code of Corrections, 730 ILCS 5/5–4–1(c-1.5), which permits sentencing courts to impose a sentence below the mandatory minimum for certain offenses, including offenses that “involve the use or possession of drugs,” applies to the offense of drug-induced homicide. (§13-7)

Defense counsel: Ann Fick, Elgin OSAD

## COUNSEL

No. 129356

**People v. Ratliff**, Defense leave to appeal granted 3/29/23 from 2022 IL App (3d) 210194-U; oral argument held 3/12/24

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

## DISCOVERY

No. 130431

**People v. Smollett**, Defense leave to appeal granted 3/27/24 from 2023 IL App (1st) 220322; oral argument held 9/17/2024

Whether the appellate court erred in holding harmless the trial court’s failure to conduct an *in camera* review of notes of the special prosecutor’s interviews with its two central witnesses in order to determine what, if anything, from those notes was protected by work product and what was discoverable where the credibility of those two witnesses was crucial to the State’s case. (§15-3, 15-5(a))

Defense counsel: Nnanenyem Eziudo Uche, Uche P.C., Chicago

## EVIDENCE

No. 130110

**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

No. 130127

**People v. Smart**, State leave to appeal granted 3/27/24 from 2023 IL App (1st) 220427

Whether the State may present other-crimes evidence in order to prove intent, where the defense did not dispute intent but instead denied committing the offense altogether. (§19-23(b)(3))

Defense counsel: Kara Kurland, Chicago OSAD

## FITNESS

No. 130932

**People v. Johnson**, Defense leave to appeal granted 9/25/24 from 2024 IL App (5th) 220608

Whether the appellate court violated due process when it: (1) vacated the trial court’s order finding defendant restored to fitness without also vacating the guilty plea that was entered after the erroneous fitness finding; and (2) ordered a retrospective restoration proceeding. (§§21-2, 21-3(f), 21-4)

Defense counsel: Bradley Jarka, Chicago OSAD

## GUILTY PLEAS

129585

**People v. Brown**, Defense leave to appeal granted 9/27/23 from 2023 IL App (4th) 220400; oral argument held 5/14/24

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

No. 130082

**People v. Dyas**, State leave to appeal granted 3/27/24 from 2023 IL App (3d) 220112

Whether defendant's motion to reconsider the denial of his motion to withdraw his guilty plea tolled the 30-day deadline for the filing of a notice of appeal. (§24-8(b)(1))

Whether the sentencing court should re-admonish a *pro se* defendant pursuant to Rule 401(a) after accepting a guilty plea and imposing a sentence, before post-plea proceedings under Rule 604(d). (§24-8(b)(1))

Defense counsel: Stephen Gentry, Chicago OSAD

## HOMICIDE

No. 130110

**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

## 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; oral argument held 9/11/2024

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

No. 130779

**People v. Williams**, Defense leave to appeal granted 9/25/24 from 2024 IL App (2d) 230268-U

Whether IPI Criminal Nos. 11.49 and 11.50 are in conflict, because when a defendant is accused of threatening a sworn law enforcement officer, the State must prove that the threat must “contain specific facts indicative of a unique threat to the person, family or property of the officer and not a generalized threat of harm,” and No. 11.50 includes this element while 11.49 does not. (§32-8(c))

Defense counsel: Drew Wallenstein, Elgin OSAD

No. 130919

**People v. Vesey**, Defense leave to appeal granted 9/25/24 from 2024 IL App (4th) 230401.

Whether the appellate court majority incorrectly affirmed the trial court’s decision to deny a defense request for a self-defense instruction at defendant’s trial for aggravated battery of a peace officer, where the appellate court deferred to the trial court’s decision, finding it “within the bounds of reason,” rather than applying the “some evidence” standard, and where the dissent found clear evidence that the defendant was acting in response to excessive force which, in its view, is alone sufficient to warrant a self-defense instruction. (§32-8(a))

Defense counsel: Elliott Borchardt, Elgin OSAD

## **JUVENILE PROCEEDINGS**

No. 127304

**People v. Williams**, Defense leave to appeal granted 9/27/23 from 2021 IL App (1st) 190535; oral argument held 9/10/2024

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. 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

### PRELIMINARY HEARING

No. 130585

**People v. Chambliss**, State leave to appeal granted 5/29/24 from 2024 IL App (5th) 220492.

Whether the failure to hold a prompt preliminary hearing constitutes second prong plain error, requiring reversal of a conviction without retrial, where defendant does not object until after conviction following an otherwise fair trial. (§38-1)

Defense counsel: Julie Thompson, Mt. Vernon OSAD

## PROSECUTOR

No. 130470

**People v. Muhammad**, State leave to appeal granted 5/29/24 from 2023 IL App (1st) 220372.

Whether the Special State's Attorney representing the State in a hearing before the Torture Inquiry and Relief Commission should have been disqualified for an actual conflict of interest under 55 ILCS 5/3-9008(a-10), based on his prior service as a high level supervisor in the Cook County State's Attorney's Office. (§40-16)

Whether the defendant's claim before the Torture Inquiry and Relief Commission should have been dismissed because the coerced statement was not a "confession" but rather a false alibi. (§40-16)

Defense counsel: H. Candace Gorman, Chicago

No. 130775

**Village of Lincolnshire v. Olvera**, Defense leave to appeal granted 9/25/24 from 2024 IL App (2d) 230255

Whether the second prong of the plain error rule overcomes forfeiture when a municipal attorney acts as prosecutor without written permission from the State's Attorney, as required by 625 ILCS 5/16-102(c). (§40-16)

Defense counsel: Ann Fick, Elgin OSAD

## SEARCH AND SEIZURE

No. 127838

**People v. Clark**, Defense leave to appeal granted 3/29/23 from 2021 IL App (1st) 180523; oral argument held 9/10/2024

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. 129237

**People v. Molina**, Defense leave to appeal granted 3/29/23 from 2022 IL App (4th) 220152; 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

No. 130286

**People v. Hagededt**, Defense leave to appeal granted 3/27/24 from 2023 IL App (2d) 210715-U

Whether a police officer who entered a private home as part of his “community caretaking” function violated the fourth amendment when he used a flashlight to peer into a one-inch gap in a closed and locked kitchen cabinet in that home, allowing him to view contraband contained therein. (§§43-2(b), 43-2(d)(5)(a), 43-7(a))

Whether the contents of a clearly locked cabinet within defendant’s home were not in plain view, despite a one-inch gap in the closure of the cabinet, because defendant’s use of a chain and lock to secure the cabinet were a clear communication of his expressed privacy interest in the contents of that cabinet. (§§43-2(b), 43-2(d)(5)(a), 43-7(a))

Defense counsel: Andrew Thomas Moore, Elgin OSAD

## 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; oral argument held 9/10/2024

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. 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; oral argument held 9/11/2024

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; oral argument held 9/11/2024

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

No. 130344

**People v. Hoffman**, State leave to appeal granted 5/29/24 from 2023 IL App (2d) 230067.

Whether section 5-4-1(c-1.5) of the Code of Corrections, 730 ILCS 5/5-4-1(c-1.5), which permits sentencing courts to impose a sentence below the mandatory minimum for certain offenses, including offenses that "involve the use or possession of drugs," applies to the offense of drug-induced homicide. (§44-1(a))

Defense counsel: Ann Fick, Elgin OSAD

No. 130431

**People v. Smollett**, Defense leave to appeal granted 3/27/24 from 2023 IL App (1st) 220322; oral argument held 9/17/2024

Whether the condition of defendant's probation that he spend the first 150 days in jail was excessive where the offense was not violent, he was rated as a low risk by probation, he had no criminal history, and a custodial setting posed a risk to his safety due to his "unpopularity." (§§44-7(a), 44-14(a))

Whether the restitution order was unauthorized where municipalities and public agencies are not considered "victims" of disorderly conduct under the restitution statute, 730 ILCS 5/5-5-6. (§§44-7(a), 44-14(a))

Defense counsel: Nnanenyem Eziudo Uche, Uche P.C., Chicago

## SPEEDY TRIAL

No. 130207

**People v. Yankaway**, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 220982-U; oral argument held 9/11/2024

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; oral argument held 5/14/24

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

No. 130447

**People v. Johnson**, Defense leave to appeal granted 5/29/24 from 2023 IL App (4th) 221021-U.

Whether 725 ILCS 5/115-4(k) requires the trial court to rule on a motion for directed verdict at the close of the State's evidence, before the defense presents its case, ensuring the defendant's decision as to whether to exercise his right to testify is fully informed. (§47-1(b))

Whether section 115-4(k) requires a defendant to do more than make a timely motion for directed verdict at the close of the State's evidence to trigger the court's duty to rule on that motion before proceeding further; or whether defendant forfeited the issue by failing to object when the court indicated it would reserve its ruling, even though the issue was raised in a post-trial motion; if so, whether "clear error" occurred given contradictory caselaw. (§47-1(b))

Defense counsel: Gilbert Lenz, Chicago OSAD

## TRAFFIC OFFENSES

No. 130775

**Village of Lincolnshire v. Olvera**, Defense leave to appeal granted 9/25/24 from 2024 IL App (2d) 230255

Whether defendant was proven guilty beyond a reasonable doubt of driving under the influence of a drug, where the driving instructor who was observing the 16 year-old defendant drive never suggested he was "incapable of driving safely" under 625 ILCS 5/11-601(a)(4), but instead felt that any deficiencies in his driving could have been caused by nervousness. (§49-2(b))

Defense counsel: Ann Fick, Elgin OSAD

## TRIAL PROCEDURES

No. 130067

**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

No. 130716

**People v. Hietschold**, State leave to appeal granted 9/25/24 from 2024 IL App (2d) 230047

Whether the appellate court correctly reversed and remanded a trial held *in absentia* on the grounds that the circuit court's admonishments failed to substantially comply with 725 ILCS 5/113-4(e), as they neglected to inform defendant that his failure to appear at trial would constitute a waiver of his right to confront witnesses. (§51-2(b))

Defense counsel: Elliott Borchardt, Elgin OSAD

## VENUE & JURISDICTION

No. 130082

**People v. Dyas**, State leave to appeal granted 3/27/24 from 2023 IL App (3d) 220112

Whether defendant's motion to reconsider the denial of his motion to withdraw his guilty plea tolled the 30-day deadline for the filing of a notice of appeal. (§52)

Whether the sentencing court should re-admonish a *pro se* defendant pursuant to Rule 401(a) after accepting a guilty plea and imposing a sentence, before post-plea proceedings under Rule 604(d). (§52)

Defense counsel: Stephen Gentry, Chicago OSAD



## 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

**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. 128805

**People v. Quezada**, State leave to appeal granted 11/30/22 from 2022 IL App (2d) 200195; oral argument held 3/12/24

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; oral argument held 9/11/2024

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

**People v. Johnson**, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 230087-U; oral argument held 9/12/2024

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

No. 130447

**People v. Johnson**, Defense leave to appeal granted 5/29/24 from 2023 IL App (4th) 221021-U.

Whether 725 ILCS 5/115-4(k) requires the trial court to rule on a motion for directed verdict at the close of the State's evidence, before the defense presents its case, ensuring the defendant's decision as to whether to exercise his right to testify is fully informed. (§§54-1(b)(1), 54-2(b))

Whether section 115-4(k) requires a defendant to do more than make a timely motion for directed verdict at the close of the State's evidence to trigger the court's duty to rule on that motion before proceeding further; or whether defendant forfeited the issue by failing to object when the court indicated it would reserve its ruling, even though the issue was raised in a post-trial motion; if so, whether "clear error" occurred given contradictory caselaw. (§§54-1(b)(1), 54-2(b))

Defense counsel: Gilbert Lenz, Chicago OSAD

No. 130775

**Village of Lincolnshire v. Olvera**, Defense leave to appeal granted 9/25/24 from 2024 IL App (2d) 230255

Whether the second prong of the plain error rule overcomes forfeiture when a municipal attorney acts as prosecutor without written permission from the State's Attorney, as required by 625 ILCS 5/16-102(c). (§54-2(d))

Defense counsel: Ann Fick, Elgin OSAD

## WEAPONS

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

No. 130173

**People v. Wallace**, Defense leave to appeal granted 5/29/24 from 2023 IL App (1st) 200917.

Whether the State failed to prove Armed Habitual Criminal beyond a reasonable doubt where defendant was 17 years old at the time he committed one of the alleged predicate felonies, and under the amended version of the Juvenile Court Act in place at the time of the alleged AHC, this predicate felony is no longer automatically tried in adult court. (§55-3)

Defense counsel: Stephanie Puente, Chicago OSAD

## WITNESSES

No. 130447

**People v. Johnson**, Defense leave to appeal granted 5/29/24 from 2023 IL App (4th) 221021-U.

Whether 725 ILCS 5/115-4(k) requires the trial court to rule on a motion for directed verdict at the close of the State's evidence, before the defense presents its case, ensuring the defendant's decision as to whether to exercise his right to testify is fully informed. (§56-5)

Whether section 115-4(k) requires a defendant to do more than make a timely motion for directed verdict at the close of the State's evidence to trigger the court's duty to rule on that motion before proceeding further; or whether defendant forfeited the issue by failing to object when the court indicated it would reserve its ruling, even though the issue was raised in a post-trial motion; if so, whether "clear error" occurred given contradictory caselaw. (§56-5)

Defense counsel: Gilbert Lenz, Chicago OSAD