**Office of the State Appellate Defender**

# Illinois Criminal Law Digest

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## BAIL

**§§6-5(a), 6-5(i)**

**People v. Andres**, 2024 IL App (4th) 240250 (4/25/24)

The State charged defendant with violating an order of protection, then moved to deny pretrial release. Its written petition checked a box next to pre-printed allegations that he committed a detainable offense and posed a threat to safety, without further written explanation. At a hearing on the petition, the State proffered that defendant contacted the complainant via Facebook, that he had several prior convictions, and that the complainant feared for her life. The trial court granted the State's request for pretrial detention. On appeal, defendant argued the State's petition to deny pretrial release was insufficient.

The appellate court found the claim forfeited. Although defendant argued that he was never admonished that his failure to include the claim in the notice of appeal would result in forfeiture, the appellate court held that both Rule 604(h) and the notice of appeal form itself inform defendants of the need to include all grounds for relief in the notice of appeal. Regardless, defendant also has a duty to object during the proceedings in order to preserve claims for appeal, and he failed to do so here.

Nor did the plain error doctrine apply, as the appellate court found no clear error. Pursuant to 725 ILCS 5/110-6.1(d)(1), the State's petition to deny pretrial release must "state the grounds upon which it contends the defendant should be denied pretrial release, including the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts or flight risk, as appropriate." Defendant alleged that the State's petition lacked articulable facts. The appellate court found "no explicit requirement" that the State's petition include a factual basis or written proffer.

Defendant pointed out that appellate courts often dismiss appeals from pretrial detention orders when the notice of appeal lacks detail as required by Rule 604(h). The appellate court disagreed with this comparison because in the context of the State's petition, the parties present evidence and provide argument before the court. When a blank notice of appeal form is filed, with no memorandum on appeal, the case lacks reasoned argument on which to decide the appeal.

Finally, the court held it would not review other claims defendant included in the notice of appeal but did not raise in his appellate memorandum. The memorandum, if filed, becomes the "controlling document for identifying the issues or claims on appeal," and any claims not raised therein are considered abandoned.

(Defendant was represented by Assistant Defender Jonathan Krieger, Chicago.)

**§6-5(a)**

**People v. Boose**, 2024 IL App (1st) 240031 (4/10/24)

The appellate court concluded that it lacked jurisdiction to consider defendant's challenge to the trial court's denial of her request for day-for-day credit against the 30-day jail term imposed as a sanction for a violation of a condition of release. Specifically, the court noted that under Rule 604(h), sanctions orders are not listed as a type of appealable interlocutory order. And, the court found no statutory basis under the County Jail Good Behavior Allowance Act for the appeal, either. Accordingly, the appeal was dismissed.

**§§6-5(b), 6-5(g)**

**People v. Morgan**, 2024 IL App (4th) 240103 (4/12/24)

Defendant appealed the order that he be detained pretrial, asserting that the trial court's ruling should be reviewed *de novo* and that the court erred in denying release because the State failed to establish by clear and convincing evidence that no conditions of release would mitigate the real and present threat he posed to the community.

Regarding the standard of review, the court held that the abuse-of-discretion standard applies to detention decisions under the act. While many cases have applied the manifest-weight standard, that standard is typically reserved for findings based on evidence. In pretrial detention proceedings, however, the evidence consists primarily, if not wholly, of proffers, making it difficult if not impossible to determine the "weight" to be accorded to them. Because the circuit court judge reviews the proffered information and makes a judgment on the question of detention, the abuse-of-discretion standard is the better fit. With regard to *de novo* review, the appellate court found that it would diminish the significance of the circuit court's decision-making authority and would be unworkable in practice, essentially allowing a second bite at the apple for every aspect of every detention decision.

On the question of conditions of release, defendant argued that the State failed to present evidence that his proposed condition ordering treatment for a recent bipolar diagnosis would not mitigate defendant's dangerousness. But, the State's proffer was made before defendant even suggested his bipolar diagnosis, making it unreasonable to expect the State to present such evidence. The State is not required to raise and argue against every possible condition of release in every single case. Instead, the State may meet its burden by addressing conditions related to the charged conduct, defendant's criminal history and risk assessment scores, and other relevant considerations about the defendant that are known to the State at the hearing. Here, at the detention hearing, the State focused on defendant's history of misconduct, and defendant focused on his recent mental health diagnosis. And, the

court acted within its discretion in finding that defendant's history of non-compliance with conditions was more probative on the issue of conditions of release.

(Defendant was represented by Assistant Defender Ross Allen, Chicago.)

**§§6-5(c), 6-5(e)**

**People v. Brown**, 2024 IL App (2d) 230489 (4/22/24)

The trial court's detention order was sufficient where it checked a box indicating defendant committed a detainable offense – aggravated DUI involving death – and that defendant was a threat to the safety of the community, even though it contained no written findings.

Defendant alleged the order lacked the individual details and findings required by the Act. The appellate court disagreed, holding that while section 110-6.1(h)(1) requires a written summary of the reasons for denying release, courts have held that the order can be supplemented with oral findings. Here, the order, with its pre-printed findings, plus the oral findings, provided an adequate basis for pretrial detention. Defendant drove 79 mph in a residential area, ramming another car and killing two people. He was ticketed and released pending further investigation and, despite being told there would be additional charges, was arrested in Wisconsin shortly thereafter for cocaine possession. The trial court found defendant's conduct during the offense, his subsequent substance-abusing behavior, and the lack of effective conditions (the court noted that GPS would only allow the authorities to monitor his past movements), required detention. The appellate court found no abuse of discretion in this finding.

The appellate court also pointed out that the lack of statewide forms has resulted in variance among the different counties' pretrial release or detention orders. Some forms lack the necessary blank space with lines for individualized findings. The court encouraged counties to adopt forms with space for specific findings, preferably with pre-printed lines allowing for typed text.

(Defendant was represented by Assistant Defender Elizabeth Crotty, Mt. Vernon.)

**§§6-5(c), 6-5(g)**

**People v. Thomas**, 2024 IL App (4th) 240248 (4/29/24)

Defendant was charged with unlawful possession of a weapon by a felon after he broke into his mother's house, broke into a safe containing a rifle, and fired several rounds in the house. The trial court ordered pretrial detention after finding no

conditions of release could mitigate defendant's dangerousness. Defendant alleged on appeal that the court's written findings lacked sufficient explanation as required by 725 ILCS 5/110-6.1(h)(1). The appellate court held that the requirements of section 110-6.1(h)(1) can be met by looking at the court's oral pronouncements in conjunction with the written findings, and here, those findings together showed adequate consideration of relevant factors.

Defendant also argued that the court failed to consider certain potential conditions of release, such as electronic monitoring. Section 110-6.1(h) does not require courts to specifically address each potential condition of release. In this case, there was no abuse of discretion for failing to address electronic monitoring. The offense suggested a strong threat of violence coupled with possible mental health issues. Electronic monitoring cannot address every defendant's potential dangerousness, because it merely provides defendant's location. If coupled with home confinement, E.M. might alert police to a potential violation of that confinement. But "[k]nowing that electronic monitoring might detect a failure to comply with conditions of release does not diminish concerns that a particular defendant appears to present a greater risk of noncompliance, especially if the consequences of noncompliance may be grave."

**§6-5(c)**

**People v. Wright**, 2024 IL App (4th) 240187 (4/24/24)

Defendant was charged with attempted murder in connection with a shooting. The State moved for pretrial detention, proffering that defendant's girlfriend would testify that she was involved in an altercation with the victim, and that she called defendant, who came and shot the victim. The defense countered that defendant and the witness were married at the time, and therefore much of the State's proffer would be barred by the marital privilege doctrine. The trial court ordered detention, finding the State proved defendant committed a detainable offense and, given the nature of the offense and defendant's criminal history, he posed a danger to the community.

On appeal, defendant argued the trial court erred in considering evidence that was inadmissible due to marital privilege. The appellate court rejected this argument, because section 110-6.1(f) explicitly states that "[t]he rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the [pretrial detention] hearing." Furthermore, as a practical matter, determining whether and which evidence would be inadmissible pursuant to nuanced rules of evidence like the marital privilege doctrine is ill-suited for pretrial detention hearings.

(Defendant was represented by Assistant Defender Benjamin Wimmer, Chicago.)

**§§6-5(d), 6-5(e)**

**People v. Rodriguez**, 2024 IL App (2d) 240077 (4/30/24)

Charges of Class 4 aggravated unlawful use of a weapon qualified as detainable offenses. While they were not specifically enumerated in 725 ILCS 5/110-6.1(a)(1.5), as charged they fit within Section 110-6.1(a)(6) because the charges were non-probationable. The fact that defendant was eligible for the first time weapons offense program under 730 ILCS 5/5-6-3.6 did not render those charges "probationable" because that program is more akin to supervision.

Further, the State met its burden to show by clear and convincing evidence that defendant posed a real and present threat to the community that could not be mitigated by conditions of release. During the charged incident here, defendant shot and killed someone. While there was evidence that the shooting was in defense of another, the evidence remained that defendant was in possession of firearms and ammunition and committed the instant offense while on supervision for a prior offense. That evidence was sufficient to sustain the State's burden.

**§§6-5(d), 6-5(i)**

**People v. Samuels**, 2024 IL App (3d) 230782 (4/17/24)

The State filed petitions for pretrial detention in three different cases, and the circuit court granted all three petitions, finding in the first case that defendant posed a flight risk, while in the latter two cases he posed a threat to safety.

Defendant argued as to the first case – a violation of probation – the pretrial detention order should be vacated because defendant had already pled guilty to the offense and received a sentence of probation. The State argued forfeiture, noting the issue was not raised below. The appellate court agreed.

The majority went on to find that the claim lacked merit. When the State files a petition to revoke probation, and the court has not held a hearing on the petition, a defendant is entitled to pretrial release "unless the alleged violation is itself a criminal offense in which case the offender shall be admitted to pretrial release on such terms as are provided in the Code...." 730 ILCS 5/5-6-4(b). Here, the VOP was based on the criminal charge which formed the basis for the State's petition for detention in Case 3 (armed habitual criminal). Defendant admitted the State proffered specific articulable facts as to that charge and did not challenge this proof on appeal. Thus, defendant effectively conceded the charge was a qualifying detainable offense.

The dissent disagreed, noting a VOP is not a criminal charge in and of itself, and that section 5-6-4(b) states a defendant "shall be admitted to pretrial release on

such terms as are provided in the Code." The statute does not, as it does in other sections, merely state that such defendants are eligible for release.

While defendant also argued that the detention order in Case 2 should be vacated because the drug charges in that case were probationable and non-detainable, the appellate court disagreed. Defendant was charged with two counts of Class-1-felony delivery of a controlled substance, which is non-probationable if defendant had been convicted of a Class 1 or greater felony within 10 years. The State proffered that defendant had been convicted of the same offense in 2017. This information was also included in his criminal history as listed in the pretrial risk assessment. Accordingly, the two offenses with which defendant was charged in Case 2 were not probationable.

(Defendant was represented by Assistant Defender Ann McLennan, Chicago.)

**§6-5(d)**

**People v. Woods**, 2024 IL App (4th) 240190 (4/25/24)

The State proved defendant committed a detainable offense under 725 ILCS 5/110-6.1(a), (e)(1).

The State alleged that defendant committed Class X possession of a controlled substance with intent to deliver, a detainable offense under the Act. The State's burden was to prove by clear and convincing evidence that the proof is evident or the presumption great that he committed the offense. The State's proffer showed police found the cocaine when they executed a search warrant at defendant's parents' house. Personal documents belonging to defendant were found in the same room as the drugs. Based on this evidence, the trial court did not abuse its discretion in finding the State proved commission of the offense.

(Defendant was represented by Assistant Defender Bryon Reina, Chicago.)

**§6-5(e)**

**People v. Woods**, 2024 IL App (4th) 240190 (4/25/24)

The trial court did not err when it ordered pretrial detention after finding defendant posed a real and present threat to the community. Defendant argued that the trial court's finding of dangerousness was exclusively and improperly based on the general notion that drug offenses harm society, and not on any particular facts showing defendant posed a threat. The appellate court disagreed. The decisions cited by defendant which held that generalized concern over the danger of drug-dealing is insufficient to meet the State's burden under the statute, **People v. Norris**, 2024 IL

App (2d) 230338-U and **People v. Drew**, 2024 IL App (2d) 230606-U, failed to consider that the legislature has already found drug-dealing threatens the safety of the community, and neither case adequately considered those defendants' criminal history. The court here found that the Class X drug offense, plus defendant's multiple prior convictions for drug-dealing, warranted a finding of dangerousness and pretrial detention.

(Defendant was represented by Assistant Defender Bryon Reina, Chicago.)

**§6-5(g)**

**People v. Green**, 2024 IL App (1st) 240211 (4/11/24)

While on pretrial release for a charge of child endangerment, defendant was arrested for armed violence. The State argued defendant's release should be revoked because no condition or combination of conditions would reasonably prevent him from being charged with a subsequent felony or Class A misdemeanor. See 725 ILCS 5/110-6(a). Defendant argued that he should not be detained because "less restrictive means" such as electronic monitoring would reasonably prevent him from committing subsequent offenses. The court granted the State's motion to revoke pretrial release, finding no condition or combination of conditions of release would reasonably prevent the defendant from being charged with a subsequent felony or misdemeanor. The court stated that it based this finding in part on the fact that both cases involved firearms, reasoning that "[e]ven if I were to give [defendant] electronic monitoring that would not prevent him from getting another gun."

The appellate court affirmed the decision to revoke pretrial release, finding the circuit court's assessment was reasonable under any standard of review. Defendant's original offense occurred when he passed out and left his gun in reach of his young child, who shot himself, and his second offense involved a domestic disturbance in a motel room during which police found him in possession of a gun and drugs. No conditions could prevent him from obtaining another firearm or endangering others with his predilection for mixing firearms and illegal substances, as these offenses could easily re-occur inside his home.

**§6-5(g)**

**People v. Mikolaitis**, 2024 IL App (3d) 230791 (4/11/24)

Defendant had a history of mental health issues, and he refused to cooperate in the preparation of the pretrial risk assessment. At the hearing on the State's petition to detain, the court learned that defendant not been taking the medication prescribed for his mental health issues. On those bases, the appellate court concluded that the circuit court did not err in finding that defendant's failure to abide by his

doctor's directives indicated that he would not follow any conditions placed upon him by the court. Thus, the court did not err in granting the State's petition to detain.

(Defendant was represented by Assistant Defender Christina O'Connor, Mt. Vernon.)

**§6-5(g)**

**People v. Young**, 2024 IL App (3d) 240046 (4/29/24)

The trial court did not abuse its discretion in finding that no conditions could mitigate the threat of harm posed by defendant's pre-trial release and ordering defendant detained. Defendant was charged with aggravated battery and armed robbery. He had a prior conviction for attempt armed robbery and had committed another offense while on MSR for that prior conviction. The court considered GPS monitoring and other conditions and reviewed the statutory factors on the record before ordering defendant detained.

The dissenting justice would have found that the State failed to meet its burden to prove that defendant should be detained. Specifically, the State failed to explain at the detention hearing why no conditions could mitigate the safety threat posed by release. In fact, the State "never even uttered the word 'condition'" at that hearing. The State cannot meet its burden of proving that no conditions could mitigate release under 725 ILCS 5/110-6.1(e) by instead presenting evidence related to factors the court must consider when imposing conditions of release under Section 110-5.

(Defendant was represented by Assistant Defender James Wozniak, Chicago.)

**§6-5(h)**

**People v. Green**, 2024 IL App (1st) 240211 (4/11/24)

Defendant argued that he was denied a timely hearing on the State's petition to revoke his previously granted pretrial release. The petition was filed 1/12/24, and hearing was scheduled for 1/16/24, but not held until 1/17/24. Defendant alleged this violated the 72-hour hearing deadline of 725 ILCS 5/110-6(a).

The appellate court agreed. However, the court disagreed with defendant's argument that the remedy for this violation is release from custody. Defendant failed to provide a sufficient legal basis in support of that remedy. A remedy is required only if a statutory requirement is mandatory, rather than merely directory. The 72-hour deadline was directory rather than mandatory, as it lacked negative language prohibiting further action in the event of a violation, or any specific consequences for

a failure to act within that time frame. Moreover, a strict mandatory construction of the 72-hour deadline would not achieve the purpose of the statute to determine whether revocation of previously granted release is warranted, particularly where, for purposes of efficiency, the hearing must be before the same judge who ordered release, which may make it difficult to comply with the deadline.

**6-5(h)**

**People v. Mansoori**, 2024 IL App (1st) 232351 (4/25/24)

Where a defendant is in custody with a set bond, or, having posted bond is in custody due to revocation of bond, the SAFE-T Act does not permit the State to file a petition for detention if more than 21 days have passed since the original bond hearing. See 725 ILCS 5/110-6.1(c). Rather, at defendant's next court date, the trial court is to determine whether "continued detention is necessary to avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or to prevent the defendant's willful flight from prosecution." 725 ILCS 5/110-6.1(i-5). Unlike original petitions for pretrial detention under section 110-6.1(a)(1), which are governed by the "clear and convincing" standard, section 110-6.1(i-5) does not impose a standard.

Here, the trial court granted the State's section 110-6.1(a)(1) petition for pretrial detention, despite the fact that defendant had been in custody for years on a revoked bond. The appellate court majority found error because the State's petition was untimely. The trial court should have considered defendant's detention under section 110-6.1(i-5). The appellate court remanded for a new hearing.

The dissent, pointing to section 110-7.5(b), argued that defendants who are previously released on bond are entitled to hearings pursuant to subsection 110-5(e), which the dissent interpreted as a 110-6.1 hearing. But the majority noted that 110-5(e) does not specify the type of hearing, and a common sense reading makes it more likely that the intent was to order a continued detention hearing under 110-6.1(i-5). The dissent also noted that remand is unnecessary because the State's burden under section 110-6.1(c) is higher than under section 110-6.1(i-5). The majority didn't disagree, but concluded that the use of an improper procedure still required a remand, particularly where no judicial economy concerns were present, as the trial court would be required to hold a section 110-6.1(i-5) hearing at the next court date regardless.

(Defendant was represented by Assistant Defender Benjamin Wimmer, Chicago.)

**§6-5(j)**

**People v. Davis**, 2024 IL App (5th) 240120 (4/9/24)

The defendant appealed an order revoking pretrial release after he was charged with additional offenses. His notice of appeal checked the box next to the pre-printed ground for relief stating that the court erred in its determination that no condition, or combination of conditions, would reasonably ensure defendant's appearance at later hearings or prevent defendant from being charged with a subsequent felony or Class A misdemeanor. The lines under the box quoted from section 110-2(e). Defendant did not check any other grounds for relief, though he did supplement some of these grounds with references to "black letter law."

Appellate counsel informed the court that she conducted a thorough review of the record and arguments contained in the NOA, and concluded that the optional appellate memorandum authorized under Rule 604(h) was "not necessary" in this case.

The appellate court found it a "gross misrepresentation" to characterize the statements in the NOA as "argument." Rather, the NOA contained irrelevant and inappropriate statements, which the court concluded were frivolous and patently without merit. The court held that it would not consider any of the statements written under the pre-printed issues whose boxes were not checked. As for the checked issue, the supporting statements failed to address any of the relevant facts, namely, that defendant was on pretrial release when he committed additional offenses, and had previously violated release conditions multiple times within a matter of days of receiving them.

The court reminded trial and appellate counsel of its professional obligation to not bring frivolous arguments before the court, citing Illinois Rule of Professional Conduct 3.1 and Illinois Supreme Court Rule 137(a), though it did not address a quoted portion of 3.1 which contains a separate rule for defense attorneys in criminal proceedings, who "may nevertheless so defend the proceeding as to require that every element of the case be established." The court suggested, citing **People v. Mancilla**, 2024 IL App (2d) 230505, that appellate attorneys should withdraw claims they find to be frivolous. It further suggested, citing **Anders v. California**, 386 U.S. 738 (1967), that if a client wants to pursue a frivolous appeal from a pretrial detention order, trial or appellate counsel should move to withdraw.

A concurring justice would have reached all of the claims that were supplemented with writing, whether the boxes were checked or not, though the justice agreed all of the claims lacked merit.

(Defendant was represented by Assistant Defender Ann McLennan, Chicago.)

## COUNSEL

### §14-2

**People v. Brooks**, 2024 IL App (3d) 220407 (4/8/24)

Defendant did not enter a valid waiver of counsel where, at the time of the waiver, the court failed to inform defendant of the nature of the charge, the minimum and maximum sentence, and the right to be represented by counsel. The only time defendant was informed of the nature of the charge or the sentencing range was at his initial appearance, nearly three years prior. At the time of the waiver, the court made significant efforts to convince defendant that it was in his best interest to have counsel, but such admonishments are not a substitute for those required by Rule 401(a).

And while counsel was re-appointed at defendant's request prior to trial, he had been unrepresented at critical pre-trial stages of the proceedings, including a discovery hearing. This was second-prong plain error, requiring reversal and remand for a new trial.

(Defendant was represented by Assistant Defender Sean Conley, Ottawa.)

## SENTENCING

### §44-1(b)(2)

**People v. Johanson**, 2024 IL 129425 (4/4/24)

Defendant was convicted of predatory criminal sexual assault of a child based on an allegation of contact between defendant's penis and the minor's hand. At issue before the Supreme Court was whether section (a)(1) of the predatory criminal sexual assault statute and section (c)(1) of the aggravated criminal sexual abuse statute have identical elements but are subject to different penalties such that a proportionate penalties clause violation must be found.

Under 720 ILCS 5/11-1.40(a)(1), a person commits predatory criminal sexual assault of a child if that person is at least 17 years old and "commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration" and the victim is less than 13 years old. Predatory criminal sexual assault of a child under section (a)(1) is a Class X felony.

Under 720 ILCS 5/11-1.60(c)(1)(i), a person commits aggravated criminal sexual abuse if that person is at least 17 years old and commits an act of sexual conduct with a victim who less than 13 years old. "Sexual conduct" is defined as:

> any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused.

720 ILCS 5/11-0.1. Aggravated criminal sexual abuse under section (c)(1) is a Class 2 felony.

Pursuant to the proportionate penalties clause of the Illinois constitution (Ill. Const., art. I, §11), where different offenses contain identical elements but different penalties, the penalties are unconstitutionally disproportionate. Determining whether different offenses have identical elements is an objective test and is not concerned with the offenses as applied to an individual defendant.

Employing that objective test here, the Court found a clear difference between the statutory elements. Specifically, predatory criminal sexual assault of a child requires contact with the sex organ or anus of either the defendant or victim, while aggravated criminal sexual abuse may be committed by "any touching or fondling," including over the clothing and including any part of the body of a victim under 13, for purposes of sexual gratification or arousal. Because the legislature could have reasonably believed that sex organ/anus contact required a more severe penalty than any touching or fondling, the more severe penalty for predatory criminal sexual assault was not constitutionally disproportionate.

The Court rejected defendant's argument that there was a proportionate penalties violation here because his alleged conduct satisfied the elements of both offenses. Citing **People v. Williams**, 2015 IL 117470, the Court reaffirmed that an as-applied challenge cannot be brought under the identical elements test because that test simply compares the statutory elements of two offenses and does not consider the specific acts at issue. That is, while defendant's conduct may have satisfied both statutes, the statutory elements of "contact" for predatory criminal sexual assault and "sexual conduct" for aggravated criminal sexual abuse, are not themselves identical.

(Defendant was represented by Assistant Defender Anthony Santella, Elgin.)

## SEX OFFENSES

### §45-2(b)

**People v. Johanson**, 2024 IL 129425 (4/4/24)

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(Defendant was represented by Assistant Defender Anthony Santella, Elgin.)

## STATUTES

### §47-3(b)(2)(b)

**People v. Travis**, 2024 IL App (3d) 230113 (4/19/24)

The armed habitual criminal and UUW/felon statutes are constitutional. Defendant argued they're facially unconstitutional because they amount to a "permanent, status-based revocation of the right to keep and bear arms," and unconstitutional as applied to him because the predicate offenses were nonviolent offenses.

To find the statutes constitutional, the court must determine: (1) whether defendant's conduct falls within the plain text of the second amendment; and, if so, (2) whether there is a justification for the regulation rooted in history and tradition. **New York State Rifle & Pistol Ass'n, Inc., v. Bruen**, 597 U.S. 1, 24 (2022). Recognizing a split in authority, the court here held that defendant's conduct falls within the plain text of the second amendment even though he's a felon. **Cf. People v. Baker**, 2023 IL App (1st) 220328. As for step 2, the court found a long tradition of disarming felons. Although current felon-in-possession laws are generally products of the 20th century, these laws evolved from pre-existing prohibitions. The court cited colonial "attainder" laws and other status-based limitations on firearm possession at the time of the founding.

The court also found no merit to the as-applied challenge, seeing "no coherent argument as to why his nonviolence at the time of the offense should affect whether the State can disarm him for being a felon." Finally, the court held that the right to

bear arms contained in the Illinois constitution is no broader than the federal right, given that the right was made "subject to police power," which the supreme court has viewed as granting the state "an extraordinary degree of control" over firearms.

(Defendant was represented by Assistant Defender Mark Fisher, Ottawa.)

## TRIAL PROCEDURES

### §51-2(b)

**People v. Hietschold**, 2024 IL App (2d) 230047 (4/2/24)

Defendant was charged with aggravated battery. He was never arraigned. At his initial appearances, he was advised that he would be required to appear at trial and that if he did not appear, the trial and sentencing could be conducted without him. In his final appearance before trial, the court informed defendant that a failure to appear at trial would constitute a waiver of his right to be present.

Defendant did not appear at trial. His attorney objected to proceeding *in absentia*, because he was never arraigned. Counsel argued that section 113-4(e) admonishments are supposed to be provided at arraignment. The court overruled the objection, finding no prejudice from the lack of an arraignment, and that the warnings defendant received about his failure to appear substantially complied with section 113-4(e). Defendant was tried *in absentia*, found guilty, and sentenced to 42 months' imprisonment.

On appeal, defendant argued he should not have been tried *in absentia* because he had not been arraigned, and the admonishments did not substantially comply with section 113-4(e) because the court failed to inform him that if he does not appear at trial, he would waive his right to confront witnesses and the trial could proceed without him. The appellate court majority reversed.

Before conducting a trial *in absentia*, the defendant has a statutory right to be orally admonished regarding the possible consequences of failing to appear for trial, including both (1) that the trial could proceed in his absence, and (2) that absence from court would waive the right to confront witnesses. Here, the trial court never mentioned the right to confront witnesses. Omission of one of the two components of the statute does not equate to substantial compliance. In so finding, the majority declined to follow **People v. Broyld**, 146 Ill. App. 3d 693, 697 (1986).

The dissent would have followed **Broyld** and other appellate court decisions which suggest that a trial court substantially complies with section 113-4(e) as long as the record shows defendant knew the trial could proceed in his absence.

(Defendant was represented by Assistant Defender Elliot Borchardt, Elgin.)

## WEAPONS

### §55-7

**People v. Travis**, 2024 IL App (3d) 230113 (4/19/24)

The State presented sufficient evidence to prove defendant possessed an actual firearm and therefore committed armed habitual criminal. The evidence consisted of the testimony of a police officer who reviewed a video of defendant and his cousins holding what appeared to be handguns. The officer testified he was well-acquainted with firearms, including the specific model held by defendant, which he identified as a Taurus PT111 9-millimeter. That same model of firearm was later found in defendant's cousin's apartment. Thus, the unrebutted evidence established defendant's possession of a firearm.

(Defendant was represented by Assistant Defender Mark Fisher, Ottawa.)