

Office of the State Appellate Defender

Illinois Criminal Law Digest

April 2026

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BAIL – PRETRIAL RELEASE & DETENTION

§6-5(d)

People v. Bagby, 2026 IL App (1st) 252636 (4/7/26)

Defendant argued that the trial court could not detain him pending a probation violation hearing because the violation of probation petition was based on a retail theft charge, which is not a detainable offense under section 110-6.1 of the Pretrial Fairness Act (PFA). The court agreed.

Under [730 ILCS 5/5-6-4\(b\)](#), the court shall admit a defendant to pretrial release pending a violation of probation hearing 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 of Criminal Procedure. Thus, the PFA governs whether a defendant can be detained pending the violation hearing.

Retail theft is not an enumerated detainable offense. Under [725 ILCS 5/110-6.1\(a\)\(1\)](#), a court can detain a defendant charged with a nonforcible felony when a sentence of imprisonment is mandatory if the defendant is convicted. Retail theft is a nonforcible felony as charged in this case. But, while imprisonment can be mandatory for retail theft in some circumstances, none of those circumstances were present here. The court's order detaining defendant was reversed and the matter remanded for further proceedings.

§6-5(e)

People v. Johnson, 2026 IL App (1st) 260116 (4/20/26)

Defendant, who was charged with first degree murder, challenged the court's order granting the State's petition to detain her prior to trial. The appellate court agreed that the State failed to carry its burden of showing that her release posed such a significant threat that she could not be released pending trial, with conditions.

The State's version of the offense was that the shooting occurred during an on-street confrontation between Romeca Blackmon, defendant, and Carlos Smith, who was the father of a child with both Blackmon and defendant. There was a dispute as to who was the aggressor, and defense counsel indicated defendant acted in self-defense when she shot and killed Blackmon.

Even in a murder case, a defendant is to be released pending trial unless the State has shown that the defendant poses a real and present threat to the safety of any person or the community such that no condition could mitigate the safety risk. Here, the charged offense was “the culmination of a very personal and specific controversy,” and there was undisputed evidence undermining the claim that defendant presented a danger to the community. Specifically, defendant did not seek out the confrontation, and indeed had obtained a no-contact order against the decedent prior to this incident. Defendant remained at the scene of the shooting, cooperated with the police, and had the necessary FOID card and concealed carry license. Her compliance with FOID and CCL requirements indicated she would be likely to adhere to court conditions. Defendant had a single, non-violent misdemeanor conviction in her background, and she remained out-of-custody and cooperative while the police investigated the instant offense for several months before she was arrested and charged. Finally, defendant was pregnant, and holding her in custody could mean she would have to give birth while in jail, a circumstance which the law seeks to avoid. [725 ILCS 5/110-5.2](#).

The appellate court reversed the detention order and remanded with directions for the circuit court to determine the appropriate conditions of release.

§§6-5(g), 6-5(I)

[People v. Kelly, 2026 IL App \(4th\) 260002 \(4/29/26\)](#)

Defendant was charged with three counts of delivery of methamphetamine and other drug-related offenses after officers conducted three controlled buys totaling nearly 200 grams of methamphetamine. The State filed a petition to detain defendant. The circuit court found detention warranted, concluding that the amounts sold were “insane” and “unheard of,” and that no conditions could mitigate the threat defendant posed.

Defendant filed a motion for relief. At the hearing on that motion, defense counsel asserted that a bed had become available at an inpatient treatment facility, and asked the court to release defendant on condition that she enter inpatient care. The circuit court declined to consider this new information, concluding it was limited to the evidence presented at the original hearing, relying on [People v. Williams, 2024 IL App \(1st\) 241013](#). The court denied the motion.

The appellate court reversed. The court first addressed waiver, finding defendant waived her argument that the State failed to prove she posed a threat where the motion contained no specific assertion of error on that ground. Defendant did adequately preserve her second argument regarding conditions, by alleging the availability of conditions in the motion and supporting this contention through argument, record citations, and case law.

Because there was no live testimony and the circuit court considered only proffered evidence, the appellate court applied *de novo* review. The Appellate Court concluded that the State failed to prove by clear and convincing evidence that no condition or combination of conditions could mitigate the real and present threat posed. While defendant sold dangerous drugs into the community, there was no evidence of noncompliance with court orders, violent behavior, access to weapons, or drug transactions conducted from her home. Three of defendant's children had been adopted by family members, but the State offered no facts regarding the circumstances of those adoptions, such as whether DCFS was involved or whether defendant failed to comply with court orders. Home confinement and GPS monitoring were available conditions that the State had not shown would be insufficient.

The Appellate Court also considered the fact that a bed was available at an inpatient treatment facility. Even though the circuit court refused to consider this factor in light of **Williams**, the appellate court here found that **Williams** was wrongly decided. Examining the history of the Rule 604(h) motion for relief, the court observed that the motion is designed to follow the same process as bond appeals under former Rule 604(c), and there is no historical practice of prohibiting courts from considering new information at such hearings. And Rule 604(h)(2)'s recognition that new errors may arise "for the first time at the hearing on the motion for relief" implicitly permits new information to be considered there. Finally, section 110-6.1(i-5) requires the circuit court to find the necessity of continued detention at "each subsequent appearance of the defendant before the court," and it is well understood that new information may be received at detention review hearings. A hearing on a motion for relief is a subsequent appearance, and the circuit court should have considered the availability of an inpatient treatment option as an additional factor weighing in favor of release. The court remanded for determination of appropriate conditions.

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

COLLATERAL REMEDIES

§9-1(i)(2)

People v. Valladares, 2026 IL App (1st) 240576 (4/10/26)

After successfully vacating a prior conviction for aggravated unlawful use of a weapon as void under **People v. Aguilar**, 2013 IL 112116, defendant sought leave to file a successive post-conviction petition in the instant case arguing that the use of that void prior conviction at his sentencing in this case violated due process. The circuit court denied leave to file, concluding that the void conviction played little role in the sentencing court's decision and that defendant could not establish cause because he could have raised the issue in any of his prior post-conviction petitions.

The appellate court disagreed. Defendant established cause because, at the time he filed his initial post-conviction petition in 2014, he had not yet been able to obtain an order vacating his void AUUW conviction, and case law did not yet allow for defendant to seek to have that conviction vacated through the instant case. That only became possible after **In re N.G.**, 2018 IL 121939, was decided. Thus, defendant's prior AUUW conviction was "void but not vacated" when he filed his first post-conviction petition in this case, establishing cause for his failure to raise this claim in 2014.

Defendant also established prejudice where the record raised the possibility that the trial court relied on his void conviction when imposing sentence. The trial judge specifically commented at sentencing that defendant was a danger because of his prior history "with guns and violence" and noted that his "prior conviction was for a weapons offense." While the court cited other factors at sentencing, as well, the reliance on a void prior conviction as an aggravating factor demonstrates prejudice. And, here, both the State and the court highlighted the void conviction, impacting the sentence defendant received and thus demonstrating prejudice.

Because defendant's claim was fully established on the face of the record, the appellate court found no need to remand for further post-conviction proceedings. Rather, the court reversed the denial of leave to file, granted defendant's petition, and remanded for a new sentencing hearing.

(Defendant was represented by Assistant Defender Daniel Regenscheit, Chicago.)

§9-1(i)(3)

People v. Aaron, 2026 IL App (1st) 240126 (4/10/26)

Defendant was granted leave to file a successive post-conviction petition presenting a claim of actual innocence based on newly discovered evidence, specifically the fact that at his co-defendant's trial, the State's key witness had recanted his identification of defendant as the killer. Following an evidentiary hearing, that petition was denied, leading to the instant appeal.

Evaluating the merits of defendant's claim, the appellate court first noted that the evidence at his original trial was "far from overwhelming." In reaching that conclusion, the court acknowledged that it had rejected defendant's contention on direct appeal that the evidence was closely balanced. But, that holding was made in the context of finding that there was sufficient evidence to establish defendant's guilt, which assumed the jury would believe the testimony of the witness who had since recanted, as well as the testimony of a second witness who had her own credibility issues and did not actually see the shooting.

The appellate court found that the trial court's denial of defendant's petition was against the manifest weight of the evidence. In addition to the witness's recantation testimony at the co-defendant's trial, the witness provided a recantation affidavit to defense counsel, and affirmed his recantation when interviewed by the State's investigators. While the witness could not be located for the evidentiary hearing, the State did not argue, and the court did not find, that his potential unavailability at a retrial precluded reversal and remand. And, while recantation evidence is typically entitled to "scant weight," this was not a typical recantation given that the witness's recantation testimony had been subject to cross-examination at the co-defendant's trial and that he had maintained the same version of events in his recantation statements, whether at that trial, to defense counsel, or to the State's investigators. Thus, the denial of defendant's petition was reversed, and the matter was remanded for a new trial.

(Defendant was represented by Expungement Director Tiffany Green, Chicago.)

§9-1(i)(3)

People v. Navarro, 2026 IL App (1st) 211543-B (4/27/26)

Defendant's successive petition raised a sufficient claim of actual innocence to merit leave to file and second-stage proceedings. Defendant's primary piece of new evidence was recently acquired records showing "professional complaints" against his arresting officer, John Meer. Meer testified at trial that he responded to reports of shots fired, that he saw defendant running in the vicinity, wearing a white shirt, and that defendant pulled out a gun during the chase. He then apprehended defendant, who was now wearing a black-hooded sweatshirt, and took him to a show-up, where three witnesses identified defendant as the shooter.

The appellate court found that the weaknesses in the State's case both related to Officer Meer – the discrepancy in the clothing description, and the suggestiveness of the show-up procedure. Meer also claimed to see defendant carrying a gun, a critical piece of evidence. Because the new evidence affected the credibility of this key witness, the appellate court found it "compelling," and because it would add to the information that the fact-finder heard at trial, it was non-cumulative and material.

(Defendant was represented by Assistant Defender Robert Hirschhorn, Chicago.)

§§9-1(g), 9-1(j)(1)

People v. Watts, 2026 IL App (4th) 250533 (4/17/26)

The trial court did not err in denying defendant's post-conviction petition. The appellate court first acknowledged that there was some confusion whether the appeal was from a second-stage dismissal or third-stage denial, and concluded that it was from denial following an evidentiary hearing. While the State had filed a motion to dismiss the petition, it essentially abandoned that motion after counsel filed an amended petition. At the proceeding which resulted in denial of the petition, defendant presented the testimony of a witness and argued the petition should be granted. Viewing the circumstances as a whole, the hearing was a third-stage evidentiary hearing, not a second-stage hearing on the motion to dismiss.

The appellate court went on to conclude that the denial was not against the manifest weight of the evidence. Defendant's actual innocence claim was supported only by an unsworn affidavit, which the trial court properly refused to admit at the third stage. Further, defendant made no substantive argument that the affidavit would have been sufficient to carry his burden at the third stage even if it had been notarized and considered. And, as to his claim of ineffective assistance of trial counsel, defendant's evidence did not overcome the presumption that the failure to call a witness at trial was a matter of sound trial strategy where the witness's testimony would have been partially contradicted by surveillance video evidence.

Finally, defendant argued that post-conviction counsel provided unreasonable assistance at the second stage by failing to shape defendant's claims into proper legal form. The appellate court concluded, however, that once a claim has advanced to the third stage of post-conviction proceedings, challenges to the manner in which it was presented at the second stage are no longer relevant. At the third stage, counsel can present any relevant evidence to support the claims, regardless of any pleading deficiencies at the second stage. There is no reason to remand for further second-stage proceedings once the claims have been adjudicated at a third-stage hearing.

(Defendant was represented by Assistant Defender Daniel Arkes, Springfield.)

CONFESSIONS

§10-5(a)

People v. Andrews, 2026 IL App (5th) 250290 (4/20/26)

On appeal, defendant argued that the trial court erred in ordering him to submit to a psychological exam for the purpose of a hearing on his motion to suppress statements. The appellate court affirmed.

In his motion to suppress, defendant argued that based on his "psychiatric state" at the time, he was unable to knowingly, intelligently, and voluntarily waive his rights and speak to police. In support of his motion, defendant relied on a report from a mental health expert. At the State's request, and over defendant's objection, the court ordered that defendant be examined by a clinical psychologist chosen by the State.

Under [725 ILCS 5/115-6](#), a court can order a defendant to submit to an examination by a clinical psychologist or psychiatrist where the defendant has given notice that he intends to assert either the defense of insanity or intoxicated or drugged condition, that he intends to plead guilty but mentally ill, or where the facts and circumstances of the case justify a reasonable belief that the aforesaid defenses may be raised. Defendant argued that Section 115-6 did not cover the situation here. The appellate court disagreed.

Defendant's challenge to the voluntariness of his statement due to his "psychiatric state" raised the issue of his mental health. And Section 115-6, by its plain language, suggests an expansive reading given that it can be triggered not only by defendant's stated intent to assert insanity but also by a reasonable belief, based on facts and circumstances of the case, that a defendant may assert an insanity defense. And here, where defendant put his mental status at issue in his motion to suppress, and where defendant told his sister in a recorded jail call that he intended to raise an insanity defense, such reasonable belief existed. Accordingly, the court did not err in ordering that defendant undergo a psychological examination, even though the order was entered in relation to a motion to suppress rather than the trial itself.

(Defendant was represented by Assistant Defender Dimitri Golfis, Ottawa.)

DISCOVERY

§§15-1, 15-8

[People v. Southall, 2026 IL App \(3d\) 250264 \(4/8/26\)](#)

The Will County Sheriff's Office policy of clearing and destroying flammable evidence retrieved from a crime scene did not violate defendant's right to due process or [Illinois Supreme Court Rule 412](#).

Defendant first argued that his right to due process under [Brady v. Maryland, 373 U.S. 83 \(1963\)](#), was violated by the destruction of a container of a substance purporting to be charcoal lighter fluid because it was potentially exculpatory. To succeed on a **Brady** claim, a defendant must demonstrate that (1) the undisclosed evidence is favorable because it is either exculpatory or impeaching, (2) the evidence was either inadvertently or willfully suppressed by the State, and (3) the defendant was prejudiced by the non-disclosure. In support of his position, defendant argued that where evidence is intentionally destroyed before the defense has an opportunity to inspect it, courts must consider the evidence favorable to the accused.

The appellate court disagreed. Presuming the evidence to be favorable would essentially do away with the first element of the **Brady** test. And, here, without presuming the evidence was favorable, the court could not find a reasonable probability the result would have been different had the lighter fluid been preserved and made available to defendant. There was testimony at trial that defendant threatened to burn down the home, left for a short time, and returned with the liquid in question and sprayed it on the home. The liquid was in a Kingsford Charcoal Lighter container. Defendant also sprayed the liquid on an individual, who testified it tasted like lighter fluid, made her sinuses burn, and made her eyes water. In light of all of these facts, the court could not find that the destroyed evidence was favorable to defendant.

Likewise, defendant could not show that he was denied due process by the destruction of “potentially useful” evidence under the bad-faith standard articulated in [Arizona v. Youngblood](#), 488 U.S. 51 (1988). A deputy testified that he collected the container of lighter fluid, photographed it, checked it for latent prints, and then destroyed it pursuant to department policy because there was no safe way to store flammable liquid in the evidence vault. On this record, there was no evidence of bad faith.

Finally, defendant argued that the State violated [Illinois Supreme Court Rule 412](#) by failing to disclose tangible evidence that was used at trial and had the potential to negate defendant’s guilt of attempt residential arson. First, the court found defendant had forfeited his [Rule 412](#) argument by not presenting this specific challenge to the destruction of the lighter fluid container in the trial court. The court went on to hold that defendant could not satisfy either prong of the plain error test. While there was a violation of [Rule 412](#) given the destruction of the evidence in question here, the evidence at trial was not closely balanced in light of defendant’s threats and conduct on the date in question. And, the error was not so serious that it affected the fairness of defendant’s trial or challenged the integrity of the judicial system. The evidence was destroyed pursuant to common practice of the sheriff’s department, and defendant did not even raise the question of improper destruction during his cross-examination of the department’s evidence officer.

(Defendant was represented by Assistant Defender Adam Bukani, Ottawa.)

EVIDENCE

§19-27(a)

People v. Southall, 2026 IL App (3d) 250264 (4/8/26)

The Will County Sheriff's Office policy of clearing and destroying flammable evidence retrieved from a crime scene did not violate defendant's right to due process or [Illinois Supreme Court Rule 412](#).

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The appellate court disagreed. Presuming the evidence to be favorable would essentially do away with the first element of the **Brady** test. And, here, without presuming the evidence was favorable, the court could not find a reasonable probability the result would have been different had the lighter fluid been preserved and made available to defendant. There was testimony at trial that defendant threatened to burn down the home, left for a short time, and returned with the liquid in question and sprayed it on the home. The liquid was in a Kingsford Charcoal Lighter container. Defendant also sprayed the liquid on an individual, who testified it tasted like lighter fluid, made her sinuses burn, and made her eyes water. In light of all of these facts, the court could not find that the destroyed evidence was favorable to defendant.

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(Defendant was represented by Assistant Defender Adam Bukani, Ottawa.)

INSANITY

§30-1(a)

[People v. Andrews, 2026 IL App \(5th\) 250290 \(4/20/26\)](#)

On appeal, defendant argued that the trial court erred in ordering him to submit to a psychological exam for the purpose of a hearing on his motion to suppress statements. The appellate court affirmed.

In his motion to suppress, defendant argued that based on his "psychiatric state" at the time, he was unable to knowingly, intelligently, and voluntarily waive his rights and speak to police. In support of his motion, defendant relied on a report from a mental health expert. At the State's request, and over defendant's objection, the court ordered that defendant be examined by a clinical psychologist chosen by the State.

Under [725 ILCS 5/115-6](#), a court can order a defendant to submit to an examination by a clinical psychologist or psychiatrist where the defendant has given notice that he intends to assert either the defense of insanity or intoxicated or drugged condition, that he intends to plead guilty but mentally ill, or where the facts and circumstances of the case justify a reasonable belief that the aforesaid defenses may be raised. Defendant argued that Section 115-6 did not cover the situation here. The appellate court disagreed.

Defendant's challenge to the voluntariness of his statement due to his "psychiatric state" raised the issue of his mental health. And Section 115-6, by its plain language, suggests an expansive reading given that it can be triggered not only by defendant's stated intent to assert insanity but also by a reasonable belief, based on facts and circumstances of the case, that a defendant may assert an insanity defense. And here, where defendant put his mental status at issue in his motion to suppress, and where defendant told his sister in a recorded jail call that he intended to raise an insanity defense, such reasonable belief existed. Accordingly, the court did not err in ordering that defendant undergo a psychological examination, even though the order was entered in relation to a motion to suppress rather than the trial itself.

(Defendant was represented by Assistant Defender Dimitri Golfis, Ottawa.)

JURY

§32-5(b)

People v. Murbarger, 2026 IL App (5th) 230430 (4/13/26)

Prior to trial on charges of first degree murder, defendant moved to have his case transferred to a different county for trial, arguing that he could not receive a fair trial in Wayne County due to extensive pretrial publicity. He also requested appointment of an expert to conduct a survey of Wayne County residents to support his motion, at an anticipated cost of \$8,000 to \$12,000. The trial court denied both motions. Defendant renewed his motion after the jury was selected, pointing out that a majority of the venire was familiar with the case. In denying the renewed motion, the court noted that all of the selected jurors and alternates indicated they could be fair and impartial, had not followed any publicity closely, and did not have preconceived opinions about the case. Defendant was convicted, sentenced to 50 years of imprisonment, and appealed.

The appellate court held that the trial court did not err in denying defendant's motion for change of venue or his motion for an expert. The denial of a change of venue will not be disturbed absent an abuse of discretion. The right to an impartial jury does not require that jurors know nothing about the case before trial. Generally, it is enough that the jurors indicate at *voir dire* that they are willing and able to set aside any preconceptions and decide the case on the evidence presented at trial. Here, the selected jurors had limited, if any, knowledge of the case from the media and stated they could be fair and impartial, regardless. Further, the trial here occurred eight years after the decedent went missing, five years after her remains were discovered, and two years after defendant was arrested. A lapse of time between the publicity and trial can serve to dissipate prejudice.

Likewise, the court did not err in denying the motion for an expert to conduct a phone survey. The court determined that *voir dire* would be the best mechanism for obtaining a fair jury, a fact which was born out by the ability to select a jury from the individuals called to serve here.

(Defendant was represented by Assistant Defender Arianne Stein, Chicago.)

SENTENCING

§44-1(c)(5)

People v. Murbarger, 2026 IL App (5th) 230430 (4/13/26)

Defendant was 18 years old at the time of the murder offense for which he was convicted, but was not arrested until he was 24, and not tried until he was 26. On appeal, defendant argued that he was more like a juvenile than an adult at the time of the offense and that his case should be remanded for a hearing pursuant to **People v. Harris**, 2018 IL 121932, to determine whether the sentencing protections established in **Miller** should apply to him under the proportionate penalties clause of the Illinois constitution. The appellate court disagreed.

Defendant was subject to a term of between 20 and 60 years of imprisonment, and was ultimately sentenced to 50 years. Because he was 18 at the time of the offense, he is eligible for parole under 730 ILCS 5/5-4.5-115. Thus, he has the opportunity to be released before he serves more than 40 years in prison, and accordingly he did not receive a *de facto* life sentence. And, the record was insufficient to consider defendant's further as-applied constitutional challenge because, while defendant also raised an as-applied challenge below, he did not adequately develop the record to support that claim. Accordingly, it is better raised in a post-conviction petition.

(Defendant was represented by Assistant Defender Arianne Stein, Chicago)

§44-4(b)

People v. Valladares, 2026 IL App (1st) 240576 (4/10/26)

After successfully vacating a prior conviction for aggravated unlawful use of a weapon as void under **People v. Aguilar**, 2013 IL 112116, defendant sought leave to file a successive post-conviction petition in the instant case arguing that the use of that void prior conviction at his sentencing in this case violated due process. The circuit court denied leave to file, concluding that the void conviction played little role in the sentencing court's decision and that defendant could not establish cause because he could have raised the issue in any of his prior post-conviction petitions.

The appellate court disagreed. Defendant established cause because, at the time he filed his initial post-conviction petition in 2014, he had not yet been able to obtain an order vacating his void AUUW conviction, and case law did not yet allow for defendant to seek to have that conviction vacated through the instant case. That only became possible after **In re N.G.**, 2018 IL 121939, was decided. Thus, defendant's prior AUUW conviction was "void but not vacated" when he filed his first post-conviction petition in this case, establishing cause for his failure to raise this claim in 2014.

Defendant also established prejudice where the record raised the possibility that the trial court relied on his void conviction when imposing sentence. The trial judge specifically commented at sentencing that defendant was a danger because of his prior history "with guns and violence" and noted that his "prior conviction was for a weapons offense." While the court cited other factors at sentencing, as well, the reliance on a void prior conviction as an aggravating factor demonstrates prejudice. And, here, both the State and the court highlighted the void conviction, impacting the sentence defendant received and thus demonstrating prejudice.

Because defendant's claim was fully established on the face of the record, the appellate court found no need to remand for further post-conviction proceedings. Rather, the court reversed the denial of leave to file, granted defendant's petition, and remanded for a new sentencing hearing.

(Defendant was represented by Assistant Defender Daniel Regenscheit, Chicago.)