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Illinois Criminal Law Digest

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People v. Davis, 2024 IL App (1st) 241747 (12/20/24)

The April 2024 amendment to Supreme Court Rule 604(h), which removed the 14-day filing requirement for notices of appeal, was a procedural change that applies retroactively. Accordingly, defendant's notice of appeal filed in August 2024 was sufficient to confer jurisdiction over the original detention order entered in December 2023, as well as the continued detention determination made in July 2024.

When reviewing detention decisions, a two-tiered standard of review is appropriate. Findings of fact are reviewed under the manifest weight of the evidence standard, and the ultimate detention decision is reviewed for an abuse of discretion. Applying that standard, the court affirmed the detention determinations here.

The court did not err in finding that no conditions could mitigate the threat to safety posed by defendant's release based on the violent nature of the alleged offense here, an armed robbery where defendant fired a gun, as well as defendant's history of committing violent crimes involving weapons in the past. And, the court did not err when it found that defendant posed a flight risk based on his post-offense conduct of attempting to flee the scene. That conduct, coupled with the fact that defendant faced a potential life sentence based on his criminal history, was sufficient to support the original flight-risk finding.

Additionally, the court did not err in ordering defendant's continued detention. Defendant offered no new evidence to counter the court's finding that he posed a threat to safety if released. And, while defendant offered evidence that he worked and had a place to live if released on electronic monitoring, the court was free to weigh other factors more heavily, including his flight risk, access to weapons, criminal history, and an out-of-state bench warrant.

§6-5(c)

People v. Clark, 2024 IL App (1st) 231770-B (12/13/24)

The Cook County State's Attorney charged defendant with aggravated vehicular hijacking, and obtained an arrest warrant along with a bail amount of $100,000, although defendant was in custody in McHenry County at the time. Three weeks later he was arrested and detained on the Cook County warrant. Two days after that, the SAFE-T Act went into effect, and the State filed a petition to detain. The trial court denied pretrial release.

The appellate court originally found that the Act did not allow the State to file a petition to detain, because, under section 110-6.1(c), the State must file the petition at the first appearance before a judge. The supreme court reversed, holding the Act did not contemplate *ex parte* hearings, and therefore "first appearance" refers to a defendant's first appearance. **People v. Clark**, 2024 IL 130364. The supreme court remanded for consideration of defendant's remaining arguments.

Defendant's first remaining argument was that the State could not file a petition to detain because, under section 110-7.5(b), only he could move for reconsideration of conditions. Defendant argued that he fit within the category of defendant defined in section 110-7.5(b) as "those who remain in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security." The appellate court held, however, under **Clark**, it must interpret the statute to effectuate its purpose of ensuring the presence of the defendant and allowing the trial court to make an informed decisions about detention. Thus, it would interpret section 110-7.5(b) as if the Code said "any person who remains in pretrial detention after having been ordered released with pretrial conditions [at a bail hearing]." Because the bond in this case was set without a hearing, the State could file a petition to detain.

Defendant also argued that the trial court did not "sufficiently articulate the correct factors" or "make adequate findings" when ordering detention. The appellate court held that the trial court complied with the Act by considering the seriousness of the offense, including the victim's advanced age, defendant's threat of violence against her, his prior felony convictions, and previous failures to appear.

§6-5(h)

People v. Coe, 2024 IL App (5th) 240976 (12/23/24)

The circuit court did not err when it revoked defendant's pre-trial release. Section 110-6(a) provides for revocation when "a defendant has previously been granted pretrial release under this Section for a felony or Class A misdemeanor" and "is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release." The State here alleged that defendant committed a Class A misdemeanor, criminal trespass to public land, while on pre-trial release for another Class A misdemeanor. Defendant argued that the evidence failed to show by clear and convincing evidence that the land was public, meaning the State proved only a Class B misdemeanor.

The appellate court rejected this argument after finding that the State is not required to prove the new offense by "clear and convincing" evidence. Section 110-6(a) requires proof only that defendant was charged with a felony or Class A

misdemeanor. The "clear and convincing" language applies only to the question of whether conditions would suffice.

(Defendant was represented by Assistant Defender Lauren Bauser, Chicago.)

§6-5(h)

People v. Roa, 2024 IL App (4th) 241051 (12/18/24)

Defendant was charged with predatory criminal sexual assault of a child, and the State's petition to detain was granted. Defendant's counsel subsequently filed a motion for pretrial release pursuant to 725 ILCS 5/110-6.1(I) when his trial date was set more than 90 days after he was denied release. The court denied that motion, finding that there was delay attributable to defendant. The appellate court affirmed.

In addition to stating that a defendant who is detained shall be brought to trial within 90 days, section 110-6.1(I) provides that "[i]n computing the 90-day period, the court shall omit any period of delay resulting from a continuance granted at the request of the defendant...". The delay need not specifically delay the trial date because the statute refers to "any period of delay." Thus, even if the delay of defendant's trial date was not attributable to the agreed continuances in question, those continuances served to toll the statutory 90-day period under the plain language of the statute.

(Defendant was represented by PFA Supervisor Manuela Hernandez, Chicago.)

BATTERY. ASSAULT & STALKING OFFENSES

§7-1(h)(1)

People v. Patterson, 2024 IL App (1st) 221619 (12/27/24)

The trial court abused its discretion when it failed to provide a self-defense instruction. Defendant was charged with aggravated assault. According to the complainant's testimony, the defendant, a taxi driver, cut him off and almost hit his car. Complainant exited his car at the next stop light, stood in front of defendant's cab, and asked why he tried to hit him. Defendant pointed a gun at the complainant, an act the State alleged constituted aggravated assault.

The trial court denied defendant's request for a self-defense instruction. Defense counsel argued self-defense in closing, asserting that the complainant did not calmly approach defendant's cab as he testified, but was more likely experiencing

road rage which put defendant in a "scary situation." During deliberations, the jury sent a note asking if it could consider self-defense. The court answered yes.

A defendant is entitled to an instruction on his theory of the case if there is some evidence, however slight, in the record to support that defense. If there is such evidence, it is an abuse of discretion for the trial court to refuse to so instruct the jury. To obtain a self-defense instruction, the record must contain evidence of six factors: (1) force is threatened against a person, (2) the person is not the aggressor, (3) the danger of harm was imminent, (4) the threatened force was unlawful, (5) the person actually and subjectively believed a danger existed that required the use of the force applied, and (6) the person's beliefs were objectively reasonable.

Here, although there was no direct evidence of these factors, the complainant's testimony was "some evidence, however slight" that defendant acted in self-defense. The trial court admitted as much when denying the instruction, stating "one can imagine a scenario in which self defense comes into play here" and that, on this record, the jury "may reasonably infer that the defendant felt some apprehension of what the victim may [do]." The trial court mused that "perhaps" defendant may have "felt himself to be in imminent peril" though such a conclusion would be "wholly speculative." The court concluded that it could not give the instruction because it did not feel there was enough evidence to raise a reasonable doubt of guilt.

The appellate court re-affirmed that only "some evidence" of self-defense was required, and given that the trial court seemingly acknowledged that this standard was met, it was an abuse of discretion to deny the instruction. This error was not harmless in a case where the jury asked 10 questions during deliberations, including a question about self-defense, and suggested they were having difficulty arriving at a unanimous verdict.

(Defendant was represented by Assistant Defender Elizabeth Botti, Chicago.)

COLLATERAL REMEDIES

§§9-1(c)(1), 9-1(f)

People v. Mischke, 2024 IL App (2d) 240031 (12/12/24)

The trial court did not err in dismissing defendant's post-conviction petition at the second stage. In his petition, defendant argued that he was not proved guilty beyond a reasonable doubt of felony murder. A claim of insufficient evidence does not allege a constitutional violation and thus is not cognizable in a post-conviction petition. And, regardless, defendant's sufficiency claim would fail on the merits. Defendant asserted that the State failed to establish that he was still in flight from a burglary at the time he caused the fatal accident that formed the basis of the felony

murder charge. But, defendant had admitted at a post-trial hearing that he was indeed fleeing at the time of the crash. That voluntary admission of guilt would preclude relief on the merits, and the claim was properly dismissed.

Defendant also raised a claim of ineffective assistance of appellate counsel for arguing on direct appeal that the trial court had erroneously sentenced defendant to concurrent terms of imprisonment of 26 years for felony murder and 7 years for DUI when they were mandatorily consecutive, resulting in a remand for resentencing where the trial court imposed the same terms but ordered them to run consecutively. Attached to defendant's petition was his own affidavit wherein he admitted counsel discussed the issue with him and advised him to consider abandoning the appeal. Defendant went on to state that he had asked counsel whether the issue could be raised by the State at some future point in time, and upon counsel's confirming that it could, defendant authorized counsel to raise the issue on appeal. Also, during oral argument on direct appeal, defendant's counsel acknowledged that the appeal could result in a longer sentence and, without disclosing the specific nature of his conversations with defendant, explained that OSAD's policy is to communicate with clients about their appeals and confirmed that he complied with office policy in every case. On this record, the appellate court concluded that defendant chose to raise the sentencing issue on appeal against the advice of counsel and thus could not now claim ineffective assistance. The dissenting justice would have remanded for an evidentiary hearing on this issue, where both defendant and appellate counsel could testify to the specific content and circumstances of their communications.

§9-1(c)(2)

People v. Smith, 2024 IL App (2d) 230539 (12/3/24)

Defendant's post-conviction petition failed to make a substantial showing of actual innocence. Defendant's claim was based on the reports of three experts which defendant claimed rebutted the opinions of the State's trial experts.

To succeed on a claim of actual innocence, the supporting evidence must be newly discovered, material and not merely cumulative, and of such conclusive character that it would probably change the result on retrial Newly discovered evidence is evidence which was discovered after trial and which could not have been discovered earlier through the exercise of due diligence. The experts' reports were not newly discovered where they were based on evidence and information available at the time of trial Defendant cannot make out a claim of actual innocence simply because trial counsel made the strategic decision not to present expert witnesses. Further, the evidence of defendant's guilt was overwhelming, and thus he could not show that the expert testimony would probably have changed the result.

§9-1(g)

People v. Gallardo, 2024 IL App (2d) 230289 (12/24/24)

The denial of defendant's post-conviction petition after an evidentiary hearing was affirmed. Defendant alleged ineffective assistance of counsel during plea negotiations, asserting that counsel failed to properly inform him of the applicable minimum and maximum sentences, leading him to reject a favorable plea offer. In denying that claim, the circuit court noted trial counsel's testimony that, while she had no specific recollection of her discussions with defendant, it was her common practice to communicate the range of sentences a defendant faced when offered a plea.

The circuit court did not err in crediting defense counsel's testimony even though she could not recall her specific conversation with defendant in this matter. Counsel had more than 20 years of experience as a public defender, and her common practice was to convey plea offers to her clients and discuss the charges and possible sentences so that her clients could make informed decisions whether to accept those offers. The record here showed that defendant chose to reject the plea offer when it was confirmed that he would have to serve 85% of the ultimate sentence rather than 50%. It was not error for the court to conclude that counsel followed her usual practice and had provided defendant with the necessary information.

The appellate court also found that defendant's ineffective assistance claim would have failed on prejudice even if he had demonstrated deficient performance. The record supported the conclusion that defendant's rejection of the plea offer was also predicated on his belief that the victim was not cooperating, that he had a viable alibi defense, and that a State witness was not credible because he had made a deal for his testimony. In light of these facts, the record indicated defendant rejected the plea because he thought he would be acquitted, and thus he failed to demonstrate a reasonable probability that, but for trial counsel's alleged deficient performance, he would have accepted the offer.

(Defendant was represented by Assistant Defender Andrew Boyd, Ottawa.)

§9-1(g)

People v. Masters, 2024 IL App (4th) 230370 (12/2/24)

Defendant filed a post-conviction petition alleging that his 70- and 45-year consecutive sentences for murder and attempted murder, committed at age 18, violated the proportionate penalties clause of the Illinois constitution, as applied to him. The circuit court denied the petition after an evidentiary hearing. The appellate court affirmed.

At the hearing, defendant called Dr. Garbarino, who testified that the brain of an 18-year-old is under development, much like that of a juvenile's, and there is no justification for treating an 18-year-old like an adult. He further testified that several of the considerations about youth detailed in **Miller** applied to defendant's case, including the impetuosity of the offense and the corrupting influences of his childhood, such as absent parents, substance abuse, and exposure to violent video games. Based on defendant's youth, background, and his score on a 10-question ACE test, the doctor concluded that defendant had potential for rehabilitation.

The circuit court denied the petition, finding Garbarino's testimony did not establish that defendant's sentence shocked the moral sense of the community. The court found fault with several aspects of the doctor's testimony. For example, the doctor could not recall details about the defendant's juvenile record. The doctor relied on the ACE test, but never revealed the questions. He failed to offer factual support for his conclusion that defendant couldn't appreciate the consequences of his behavior or that violent video games influence behavior. The court also pointed to several factual discrepancies between Garbarino's testimony and the record, including defendant's relationship with his mother.

Defendant criticized several of these findings on appeal, but the appellate court held that they were not against the manifest weight of the evidence. The circuit court's findings were generally supported by the record, and while defendant established that many of the findings were arguable, the standard of review applicable to third-stage hearings requires deference to the circuit court. Despite defendant's youth and other mitigating characteristics, it was not manifestly erroneous to find defendant's sentence constitutional, and to reject his as-applied challenge, given the weaknesses in Gabarino's testimony and the seriousness of the offense.

A concurring justice agreed with the holding because of the standard of review, but wrote separately to point out that the circuit court did inject speculation into its findings regarding defendant's sophistication, and showed an unfair resistance to the idea that an emerging adult could make an as-applied proportionate penalties claim centered on youth and its attendant characteristics.

§9-1(g)

People v. Williams, 2024 IL 127304 (12/19/24)

Defendant filed a post-conviction petition alleging that his mandatory natural life sentence violated the proportionate penalties clause, because he was 22 years-old at the time of he committed multiple murders. The petition alleged that, based on **Miller** and its progeny, plus developments in brain science, defendant's age, maturity and culpability levels at the time of the offense were similar to that of a juvenile.

The supreme court affirmed the summary dismissal of the petition. The claim may have had a rational basis in law, because the court has previously held that it has not foreclosed emerging adults between 18 and 19 years-old from raising as-applied proportionate penalties challenges to life sentences based on the evolving science on juvenile maturity and brain development. But without deciding whether a 22 year-old could make such a claim, the court held the claim here lacked a rational basis in fact.

Defendant alleged that given his age, criminal history, involvement in the crime, and the "hallmark features of youth" that make him less culpable, his sentence was excessive. But nowhere in the petition did defendant detail the hallmark features of his youth, besides his age, that might explain why he was less mature and less culpable. Section 122-2 of the Post-Conviction Hearing Act requires petitioners to provide factual support for their claims. "An emerging adult postconviction petitioner who simply cites his age at the time of the offense and the evolving science on juvenile maturity and brain development does not state the gist of an as-applied claim that a mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution."

While defendant pointed out that the trial record contains some detail in support of the claim, including assertions made during closing argument by defense counsel that defendant was an immature "kid" who was manipulated by others, the supreme court found these allegations contradicted by the record:

> [A]ll five victims died from gunshot wounds to the head, three of the victims were shot at close range, and defendant personally shot at least two of the victims. Defendant planned the armed robbery of a victim's home, solicited the help of others, armed himself, ransacked nearly every part of the house, and stole numerous items from the victims. The jury heard testimony that defendant laughed as he transported the proceeds to his own home and distributed and sold them. Defendant was the instigator of the criminal plan and a principal offender in the unprovoked murder of five victims.

(Defendant was represented by Assistant Defender Ashlee Johnson, Chicago.)

§9-1(j)(2)

People v. Wise, 2024 IL App (2d) 191139 (12/9/24)

Defendant argued that post-conviction counsel provided unreasonable assistance because she amended the *pro se* petition to include additional claims, but failed to provide sufficient information about these claims to make a potential substantial showing.

Under Rule 651(c), counsel must make any amendments necessary to adequately present defendant's contentions. If counsel adds new claims, those too must be adequately presented. See **People v. Agee**, 2023 IL 128413. Here, post-conviction counsel added a claim that trial counsel was ineffective for failing to present an alibi defense, but failed to provide any information about this purported alibi. Post-conviction counsel also amended the petition to include an allegation of ineffective assistance of trial counsel for failing to move for substitution of judge, but didn't clarify whether counsel should have moved for cause or as a matter of right and, if for cause, what the grounds were for substitution. Post-conviction counsel also faulted trial counsel for not obtaining the investigating officers' field notes, but never specified why these notes were relevant and admissible. Finally, PC counsel amended the petition to include an ineffectiveness claim based on the failure to present mitigation at sentencing, but did not identify any mitigating evidence that could or should have been presented.

Based on these inadequacies in the petition, the record rebutted counsel's 651(c) certificate. Counsel's inclusion of these claims imply that she believed they had merit. Thus, counsel was required to support them. If the claims could not be supported, they should not have been included. The appellate court remanded for further amendment of the petition at the second stage.

(Defendant was represented by Assistant Defender Jessica Ware, Chicago.)

CONFESSIONS

§10-5(c)(1)

People v. Dawson, 2024 IL App (3d) 240129 (12/20/24)

The test for whether a statement was voluntary is whether it was given freely and without compulsion or inducement or whether defendant's will was overcome at the time he confessed. In assessing voluntariness, the court considers the totality of the circumstances, including defendant's age, intelligence, background, experience, mental capacity, education, and physical condition; the legality and duration of the interrogation; whether **Miranda** warnings were given; and whether there was any physical or mental abuse by the police, including whether any threats or promises were made.

Here, both defendant and his girlfriend were taken into custody in relation to a shooting incident. Defendant's girlfriend had been driving a vehicle from which defendant allegedly shot at another person. During transport to the police station, defendant told the police that he had a heart condition and complained that his heart was racing. Once at the station, he made additional claims of chest pain. EMS

ultimately assessed him, suggested he was suffering from anxiety, and left. During questioning, defendant was given **Miranda** warnings, and he told the police that was not his first "merry-go-round." He told the police to release his girlfriend because she wasn't involved. The officer shook defendant's hand and said if his girlfriend was not involved, "she gets to go." When defendant hesitated in his recounting of the details of the incident, the officer told defendant he was "breaking that deal." Later, when defendant asked why the police needed to know how many firearms he had, the officer said, "I just want to know from you. We made a deal here." When defendant inquired whether his girlfriend was being released, the officer then told him only the State's Attorney could release her. The officer testified that while defendant thought they had a deal for his girlfriend's release, the officer just wanted defendant to tell the truth and so he said things to put defendant at ease. According to the officer, the only deal was that if the girlfriend was not involved, she would not be arrested, but there were no promises made.

The trial court suppressed defendant's statements as involuntary. The court found that defendant was of reasonable intelligence, had received **Miranda** warnings, and was only questioned for approximately 30 minutes. On the other hand, defendant was suffering a medical condition of some sort. And, most significantly, the police either made a false promise of leniency knowing it would not be honored or led defendant to believe there was a deal when there was not and then exploited that belief to obtain his confession. The State appealed, and the appellate court affirmed, holding that the trial court's findings were not against the manifest weight of the evidence

The false promises of leniency for defendant's girlfriend rendered defendant's inculpatory statements involuntary. There were several mentions of a "deal" during the interrogation, and it was reasonable for defendant to believe he had a deal for his girlfriend to be released. While the law allows the use of deception and trickery in an interrogation, a promise of a nonexistent "deal" is treated differently because it goes a step further toward rendering "a decision to speak irrational and the resulting confession unreliable." **United States v. Villalpando**, 588 F. 3d 1124, 1128 (7th Cir. 2009). Additionally, the record showed that defendant had a medical condition which was not meaningfully addressed. And although there were circumstances weighing in favor of voluntariness, including that defendant was **Mirandized** and that he appeared to be of at least average intelligence and had some experience with the legal system, the totality of the circumstances supported the trial court's conclusion that his statements were involuntary.

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

§10-5(c)(1)

People v. Leverson, 2024 IL App (1st) 211083 (12/24/24)

The appellate court reversed defendant's murder conviction and remanded for a new trial because "short of physical torture, the Dolton police violated **Miranda** and the fifth amendment in just about every way they are capable of being violated."

Defendant was arrested as a suspect in a murder and a series of robberies. The police subjected him to seven custodial interrogations. During the first six, he repeatedly requested a phone call or an opportunity to confer with counsel. The police responded with questions, taunts, and threats. Still, defendant denied any wrongdoing. until his third day in custody. During the seventh interrogation, he signed a written **Miranda** waiver, and provided an inculpatory statement that was introduced against him at trial.

The trial court denied his motion to suppress, finding that, while defendant invoked his right to speak to an attorney, he initiated further contact with police and then knowingly and intelligently waived his rights before confessing. The appellate court reversed, finding the police violated due process to such an extent that the confession was involuntary.

The test for whether a confession is voluntary is whether the defendant made the statement freely and without compulsion or inducement of any sort, or if the defendant's will was overborne at the time he confessed. Here, at the time of questioning, defendant was 19 years old, had bipolar disorder, manic depression, ADHD, and schizophrenia. He asked four times to call a lawyer, and made 16 requests to use the phone. The officers denied all of these requests despite defendant's constitutional right to counsel and his statutory right to a phone call under 725 ILCS 5/103-3(a). The officers further held defendant beyond 48 hours in violation of **Gerstein**. Each of these factors weigh in favor of a finding of involuntariness. Even if defendant had reinitiated contact before his confession, the appellate court held that nothing he did at this point could be considered voluntary under these circumstances.

Finally, the State could not prove that the admission of defendant's involuntary confession was harmless beyond a reasonable doubt. The introduction of a confession is rarely harmless and here, the confession unquestionably contributed to the verdicts in a meaningful way.

(Defendant was represented by Assistant Defender Kelly Burden, Chicago.)

CONTEMPT

§§12-1, 12-4

People v. Martin, 2024 IL App (4th) 240629 (12/17/24)

Defendant pled guilty to violating the Timber Buyers Licensing Act [225 ILCS 735/1, et seq.] and was ordered to pay restitution to the victim, Ralph Roberts. When defendant failed to comply with the payment order, Roberts filed a motion to hold him in contempt. The trial court struck the motion, finding that Roberts lacked standing to initiate contempt proceedings in the underlying criminal case. Roberts appealed.

730 ILCS 5/5-5-6(m) provides that a restitution order is a judgment lien in favor of the victim and that it may be enforced by the person in whose favor the order is issued in the same manner that judgment liens are enforced under article XII of the Code of Civil Procedure. Section 12-107.5 of the Code states that a judgment creditor may seek to enforce a judgment through indirect civil contempt proceedings. Here, Roberts's motion was essentially a petition for rule to show cause, and it described an act of indirect civil contempt – the failure to pay restitution owed. Given the plain language of the restitution statute allowing for enforcement of the judgment by the person in whose favor it was ordered, the court found that Roberts had standing to initiate civil contempt proceedings in defendant's criminal case. The order striking his motion was reversed.

COUNSEL

§14-1(b)

People v. Lathem, 2024 IL App (1st) 220380 (12/6/24)

At his murder trial, defendant testified on direct examination that his co-defendant committed the murder without his knowledge. Before cross, the State moved to introduce evidence of prior statements going to defendant's knowledge and intent to commit murder. The trial court ruled that the State could confront defendant with these statements. Defense counsel asked to discuss the ruling with defendant during the overnight recess between direct and cross. The trial court denied the motion, finding it would be improper for a witness to discuss his testimony with his attorney while under oath and between direct and cross. The court forbade all conversations between defendant and his attorney until after he testified.

The appellate court reversed and remanded for a new trial. As the State conceded, an order forbidding a testifying defendant from consulting with his attorney "about anything" during an overnight recess violates the Sixth Amendment

right to the assistance of counsel. **Geders v. United States**, 425 U.S. 80 (1976). The Illinois Supreme Court has previously held that the denial of access to counsel for consultation during a critical stage is *per se* reversible, and does not require a showing of prejudice. **People v. Noble**, 42 Ill. 2d 425 (1969).

The State argued that the court's order did not foreclose all discussion, but merely warned defendant not to discuss his testimony. The record showed, however, that the trial court warned defendant not to speak with his attorneys "about anything, including your testimony." In other statements, the court suggested its ban covered any and all conversations. These admonishments served as a clear warning to defendant to avoid all discussions with his attorney. As **Geders** held, if the court and State were concerned about coaching, there were other ways to solve the problem, including through cross-examination, but denial of consultation with counsel was not a solution.

§14-4(b)(2)

People v. Gallardo, 2024 IL App (2d) 230289 (12/24/24)

The denial of defendant's post-conviction petition after an evidentiary hearing was affirmed. Defendant alleged ineffective assistance of counsel during plea negotiations, asserting that counsel failed to properly inform him of the applicable minimum and maximum sentences, leading him to reject a favorable plea offer. In denying that claim, the circuit court noted trial counsel's testimony that, while she had no specific recollection of her discussions with defendant, it was her common practice to communicate the range of sentences a defendant faced when offered a plea.

The circuit court did not err in crediting defense counsel's testimony even though she could not recall her specific conversation with defendant in this matter. Counsel had more than 20 years of experience as a public defender, and her common practice was to convey plea offers to her clients and discuss the charges and possible sentences so that her clients could make informed decisions whether to accept those offers. The record here showed that defendant chose to reject the plea offer when it was confirmed that he would have to serve 85% of the ultimate sentence rather than 50%. It was not error for the court to conclude that counsel followed her usual practice and had provided defendant with the necessary information.

The appellate court also found that defendant's ineffective assistance claim would have failed on prejudice even if he had demonstrated deficient performance. The record supported the conclusion that defendant's rejection of the plea offer was also predicated on his belief that the victim was not cooperating, that he had a viable alibi defense, and that a State witness was not credible because he had made a deal for his testimony. In light of these facts, the record indicated defendant rejected the plea because he thought he would be acquitted, and thus he failed to demonstrate a

reasonable probability that, but for trial counsel's alleged deficient performance, he would have accepted the offer.

(Defendant was represented by Assistant Defender Andrew Boyd, Ottawa.)

§14-4(b)(6)(b)

People v. Smith, 2024 IL App (2d) 230539 (12/3/24)

The trial court did not err in dismissing defendant's post-conviction petition over his claim that he received ineffective assistance of trial counsel during his decision to waive a jury trial. Defendant claimed that counsel told him that during a 402 conference, the judge said, "I don't think he meant to shoot this guy," apparently referring to defendant's contention that the shooting was accidental. Based on counsel's recounting of this statement, defendant agreed to proceed to a bench trial, at which he was ultimately convicted of murder. Defendant argued that he would not have waived his right to a jury trial absent this "promise" from defense counsel.

The appellate court noted that there was no promise and no definitive suggestion that the trial court would find defendant not guilty or even guilty of a lesser charge. Counsel's recounting of the judge's statement was an indication of his strategic belief that a bench trial gave defendant a better chance at acquittal or a lesser conviction. It was not a guarantee of a certain result.

§14-4(b)(10)

People v. Mischke, 2024 IL App (2d) 240031 (12/12/24)

The trial court did not err in dismissing defendant's post-conviction petition at the second stage. In his petition, defendant argued that he was not proved guilty beyond a reasonable doubt of felony murder. A claim of insufficient evidence does not allege a constitutional violation and thus is not cognizable in a post-conviction petition. And, regardless, defendant's sufficiency claim would fail on the merits. Defendant asserted that the State failed to establish that he was still in flight from a burglary at the time he caused the fatal accident that formed the basis of the felony murder charge. But, defendant had admitted at a post-trial hearing that he was indeed fleeing at the time of the crash. That voluntary admission of guilt would preclude relief on the merits, and the claim was properly dismissed.

Defendant also raised a claim of ineffective assistance of appellate counsel for arguing on direct appeal that the trial court had erroneously sentenced defendant to concurrent terms of imprisonment of 26 years for felony murder and 7 years for DUI when they were mandatorily consecutive, resulting in a remand for resentencing where the trial court imposed the same terms but ordered them to run consecutively.

Attached to defendant's petition was his own affidavit wherein he admitted counsel discussed the issue with him and advised him to consider abandoning the appeal. Defendant went on to state that he had asked counsel whether the issue could be raised by the State at some future point in time, and upon counsel's confirming that it could, defendant authorized counsel to raise the issue on appeal. Also, during oral argument on direct appeal, defendant's counsel acknowledged that the appeal could result in a longer sentence and, without disclosing the specific nature of his conversations with defendant, explained that OSAD's policy is to communicate with clients about their appeals and confirmed that he complied with office policy in every case. On this record, the appellate court concluded that defendant chose to raise the sentencing issue on appeal against the advice of counsel and thus could not now claim ineffective assistance. The dissenting justice would have remanded for an evidentiary hearing on this issue, where both defendant and appellate counsel could testify to the specific content and circumstances of their communications.

DISCOVERY

§§15-1, 15-5(b)

People v. Smith, 2024 IL App (2d) 230539 (12/3/24)

In a post-conviction petition, defendant alleged that the State's forensic examiner committed perjury at defendant's murder trial because he gave misleading testimony about his education. Defendant asserted that the doctor failed to specify that he did not have an undergraduate degree, misstated the name of the school from which he received his medical degree, and failed to state that his medical school had been shut down because of allegations that it was selling illegitimate medical degrees. Defendant argued that the doctor's testimony amounted to a due process violation under **Brady v. Maryland**, 373 U.S. 83 (1963), and **Napue v. Illinois**, 360 U.S. 264 (1959).

Under **Brady**, it is a due process violation for the State to fail to disclose evidence favorable to the accused that is material to either guilt or punishment. And, it is a due process violation under **Napue** for the State to knowingly use false testimony or allow false testimony to go uncorrected. Here, the defense was provided with the doctor's curriculum vitae prior to trial, including his educational background. No information was withheld. Likewise, the doctor did not give false testimony. He did not claim to have an undergraduate degree; he merely testified to having attended two different undergraduate institutions. And, at worst, he misstated the name of the institution in the Dominican Republic from which he received his medical degree.

A witness is allowed to testify as an expert if his experience and qualifications afford him knowledge not common to laypersons and if his testimony will aid the trier

of fact. Formal education and training is not necessarily required. A witness's schooling is just one factor to be considered. Here, the doctor testified to extensive experience in the field, including internships, training, licensing, and board certifications. Additionally, he had performed over 7,000 autopsies and had testified hundreds of times. Accordingly, any deficiencies in his education did not impeach his credibility or undermine his testimony.

JURY

§32-3(a)

People v. Smith, 2024 IL App (2d) 230539 (12/3/24)

The trial court did not err in dismissing defendant's post-conviction petition over his claim that he received ineffective assistance of trial counsel during his decision to waive a jury trial. Defendant claimed that counsel told him that during a 402 conference, the judge said, "I don't think he meant to shoot this guy," apparently referring to defendant's contention that the shooting was accidental. Based on counsel's recounting of this statement, defendant agreed to proceed to a bench trial, at which he was ultimately convicted of murder. Defendant argued that he would not have waived his right to a jury trial absent this "promise" from defense counsel.

The appellate court noted that there was no promise and no definitive suggestion that the trial court would find defendant not guilty or even guilty of a lesser charge. Counsel's recounting of the judge's statement was an indication of his strategic belief that a bench trial gave defendant a better chance at acquittal or a lesser conviction. It was not a guarantee of a certain result.

§32-6(c)

People v. Patterson, 2024 IL App (1st) 221619 (12/27/24)

The trial court committed plain error when it failed to share a deliberating jury's question with the parties, and failed to answer their substantive legal question. Defendant was charged with aggravated assault for pointing a gun at complainant. The complainant testified that defendant, a taxi driver, cut him off while driving, and that he exited his car to confront defendant. He was standing in front of defendant's car, asking why he cut him off, when defendant pulled the gun.

The jury sent several notes during deliberations. One note contained three questions about whether defendant was legally permitted to carry the firearm given that he was a taxi driver. The trial court did not inform the attorneys of the note's existence, and it provided no answers to the jury. The appellate court held that courts

must share jury notes with the parties, and that the failure to share this note was grounds for reversal. **See People v. Childs**, 230 Ill. App. 3d 993, 997 (1992).

A fourth question asking the same question was shared with the parties, but the court offered no substantive response, instead telling the jury to continue deliberating. This too was clear and obvious error. While the circuit court may decline to provide a substantive answer under certain circumstances, none of those circumstances were present here. The jury received no instructions regarding defendant's right to possess a firearm and its question suggests that the jury may have decided the case on an improper basis. Though defendant did not preserve this issue, the evidence was closely balanced, as evidenced by the jury's 10 questions during deliberations and its suggestion that it was having difficulty arriving at a unanimous verdict.

(Defendant was represented by Assistant Defender Elizabeth Botti, Chicago.)

PERJURY

§37
People v. Smith, 2024 IL App (2d) 230539 (12/3/24)

In a post-conviction petition, defendant alleged that the State's forensic examiner committed perjury at defendant's murder trial because he gave misleading testimony about his education. Defendant asserted that the doctor failed to specify that he did not have an undergraduate degree, misstated the name of the school from which he received his medical degree, and failed to state that his medical school had been shut down because of allegations that it was selling illegitimate medical degrees. Defendant argued that the doctor's testimony amounted to a due process violation under **Brady v. Maryland**, 373 U.S. 83 (1963), and **Napue v. Illinois**, 360 U.S. 264 (1959).

Under **Brady**, it is a due process violation for the State to fail to disclose evidence favorable to the accused that is material to either guilt or punishment. And, it is a due process violation under **Napue** for the State to knowingly use false testimony or allow false testimony to go uncorrected. Here, the defense was provided with the doctor's curriculum vitae prior to trial, including his educational background. No information was withheld. Likewise, the doctor did not give false testimony. He did not claim to have an undergraduate degree; he merely testified to having attended two different undergraduate institutions. And, at worst, he misstated the name of the institution in the Dominican Republic from which he received his medical degree.

A witness is allowed to testify as an expert if his experience and qualifications afford him knowledge not common to laypersons and if his testimony will aid the trier of fact. Formal education and training is not necessarily required. A witness's schooling is just one factor to be considered. Here, the doctor testified to extensive experience in the field, including internships, training, licensing, and board certifications. Additionally, he had performed over 7,000 autopsies and had testified hundreds of times. Accordingly, any deficiencies in his education did not impeach his credibility or undermine his testimony.

SEARCH & SEIZURE

§§43-3(c)(3)(a), 43-3(c)(3)(b), 43-5(a)(1)

People v. Clark, 2024 IL 127838 (12/19/24)

Defendant was charged with multiple counts of attempt murder and aggravated battery arising out of a gang-related shooting. He was arrested three days after the incident, pursuant to a Chicago Police Department investigative alert which was based upon the statement of a man who told police that he heard defendant admit his involvement in the shooting and disposal of the guns. Defendant filed a motion to suppress in the circuit court, arguing that the police lacked probable cause or a valid arrest warrant and thus his arrest was improper. That motion was denied. Defendant ultimately was convicted of two counts of aggravated battery and sentenced to a total of 32 years of imprisonment.

CPD's investigative alert system is used to record and share information internally that there is probable cause to arrest specific individuals. CPD officers regularly rely on this information in effectuating arrests rather than obtaining judicial arrest warrants.

In the supreme court, defendant argued that absent exigent circumstances or consent, an arrest in the home requires that the police obtain an arrest warrant issued by a neutral magistrate upon a finding of probable cause, relying on **Payton v. New York**, 445 U.S. 573 (1980). An investigative alert is an inadequate substitute for a warrant in that circumstance. The court agreed but found defendant had forfeited the issue. While defendant initially argued in the circuit court that the State failed to establish the existence of valid consent to enter defendant's home to arrest him, he did not include that ground in his post-trial motion, in briefing in the appellate court, or in his petition for leave to appeal.

Defendant also argued that a warrantless arrest pursuant to an investigative alert was unconstitutional, even when effectuated in public. While acknowledging that this claim also was forfeited because defendant only raised it for the first time on appeal following the 2019 appellate court decision in **People v. Bass**, 2019 IL App

(1st) 160640, *aff'd in part and vacated in part*, 2021 IL 125434, the court noted that forfeiture is a limitation on the parties, not the court, and a court may overlook forfeiture where necessary to reach a just result or maintain a sound body of precedent. Here, that meant reaching the merits of defendant's challenge to the investigative alert system.

As to defendant's assertion that the investigative alert procedure created an improper proxy warrant system within CPD, however, the court found that the failure to raise that particular argument in the circuit court deprived it of a proper record upon which to consider the issue. While defendant cited CPD directives and testimony from another case in support of his argument that the investigative alert system was an improper substitute for a judicial warrant, the supreme court declined to consider those sources because they were not part of the record here.

The court did reach the merits on the **Bass**-based argument, specifically that the investigative alert system violated article I, section 6, of the Illinois Constitution. The appellate court in **Bass** had based its decision on the conclusion that the Illinois Constitution provides greater protection than the fourth amendment because it requires that a warrant be based on probable cause supported by "affidavit" rather than by "oath or affirmation," thus going "a step beyond" the fourth amendment.

The supreme court rejected that analysis. First, the court noted that in **People v. Caballes**, 221 Ill. 2d 282 (2006), it relied upon the *similarity* between the language of the fourth amendment and the Illinois Constitution's warrant clause as reason not to depart from lockstep. Historically, the court has construed the phrases "supported by affidavit" and "oath or affirmation" alike, and there was no reason to depart from those holdings here.

Further, that language refers only to the mechanism for obtaining a warrant, not whether a warrant is required in a given circumstance. Under the fourth amendment, it is well established that the constitution does not require an arrest warrant where there exists probable cause, even if there was time to obtain an arrest warrant. **United States v. Watson**, 423 U.S. 411 (1976). Likewise, Illinois has a longstanding tradition of allowing warrantless arrests based on probable cause. And, probable cause may be established by the collective knowledge of the police. Here, the record established that the police collectively had information sufficient to support a finding of probable cause for defendant's arrest. Accordingly, his conviction was affirmed.

Justice Neville authored a lengthy dissent, concluding that the investigative alert system is a racially discriminatory policy which has a disparate impact on Black and Latinx individuals. An included appendix identified 183 criminal cases from Cook County decided in the appellate court between 2007 and 2024, where the defendants included 154 Black men and women, 19 Latinx men, and 1 White woman, as well as

9 cases where the defendant's race could not be determined from the records available.

Additionally, Justice Neville would have found the issue of defendant's warrantless arrest in his home reviewable under the constitutional exception to the forfeiture rule, whereby a constitutional issue that was raised at trial and that defendant could later raise in a post-conviction petition is not subject to forfeiture on direct appeal. And, he would have found no exigent circumstances and no voluntary consent to enter the home to effectuate defendant's arrest.

Finally, Justice Neville also would have held that defendant's warrantless arrest violated the Illinois Constitution where there were no exigent circumstances or other exception to the warrant requirement. He would have held that the investigative alert system improperly permits extrajudicial determinations of probable cause, and that the better policy would be to require judicially approved warrant for arrests.

(Defendant was represented by Assistant Defender Todd McHenry, Chicago.)

§§43-4(a), 43-6(c)

People v. Molina, 2024 IL 129237 (12/5/24)

Despite its recent holding in **People v. Redmond**, 2024 IL 129201, that, following the legalization of the recreational use of marijuana in Illinois, the odor of *burnt* cannabis emanating from a vehicle, alone, does not provide probable cause to search, the court here held that the odor of *raw* cannabis does provide probable cause to search.

The 5-2 majority based its holding on language in the Vehicle Code, which was amended in the same Regulation Act that legalized cannabis. Under 625 ILCS 5/11-502.15(b), cannabis transported in a motor vehicle must be in a "sealed, odor-proof, child-resistant cannabis container." Thus, when an officer detects the odor of raw marijuana, there is probable cause to believe the defendant is violating the odor-proof container provision of the Vehicle Code.

Defendant pointed out that the Regulation Act includes its own provision regarding possession in a vehicle: 410 ILCS 705/10-35, which requires a "reasonably secured, sealed container," but does not specify that this container must be odor proof. Defendant argued that this requirement controlled, and rendered the odor-proof container provision invalid. The court harmonized these two provisions by treating the more specific odor-proof provision as an additional requirement, finding the legislature did not intended to supercede or modify that requirement with section 10-35.

Having determined that the Act requires citizens to carry cannabis in an odor-proof container, the court next distinguished **Redmond.** The majority held that **Redmond** compared the odor of burnt cannabis to the odor of alcohol. Both may suggest current possession, but these odors could reflect prior use as well. On the other hand, the odor of raw cannabis strongly indicates the current presence of cannabis. Thus, unlike **Redmond**, the officer here had probable cause.

Two justices dissented, finding "absurd" the distinction between the odor of burnt and raw cannabis. The dissent reasoned that, just as the odor of burnt cannabis cannot inform an officer when that cannabis was burned, the odor of raw cannabis cannot inform an officer whether the cannabis was currently in the vehicle.

SENTENCING

§§44-1(c)(4), 44-1(c)(5)

People v. Masters, 2024 IL App (4th) 230370 (12/2/24)

Defendant filed a post-conviction petition alleging that his 70- and 45-year consecutive sentences for murder and attempted murder, committed at age 18, violated the proportionate penalties clause of the Illinois constitution, as applied to him. The circuit court denied the petition after an evidentiary hearing. The appellate court affirmed.

At the hearing, defendant called Dr. Garbarino, who testified that the brain of an 18-year-old is under development, much like that of a juvenile's, and there is no justification for treating an 18-year-old like an adult. He further testified that several of the considerations about youth detailed in **Miller** applied to defendant's case, including the impetuosity of the offense and the corrupting influences of his childhood, such as absent parents, substance abuse, and exposure to violent video games. Based on defendant's youth, background, and his score on a 10-question ACE test, the doctor concluded that defendant had potential for rehabilitation.

The circuit court denied the petition, finding Garbarino's testimony did not establish that defendant's sentence shocked the moral sense of the community. The court found fault with several aspects of the doctor's testimony. For example, the doctor could not recall details about the defendant's juvenile record. The doctor relied on the ACE test, but never revealed the questions. He failed to offer factual support for his conclusion that defendant couldn't appreciate the consequences of his behavior or that violent video games influence behavior. The court also pointed to several factual discrepancies between Garbarino's testimony and the record, including defendant's relationship with his mother.

Defendant criticized several of these findings on appeal, but the appellate court held that they were not against the manifest weight of the evidence. The circuit court's findings were generally supported by the record, and while defendant established that many of the findings were arguable, the standard of review applicable to third-stage hearings requires deference to the circuit court. Despite defendant's youth and other mitigating characteristics, it was not manifestly erroneous to find defendant's sentence constitutional, and to reject his as-applied challenge, given the weaknesses in Gabarino's testimony and the seriousness of the offense.

A concurring justice agreed with the holding because of the standard of review, but wrote separately to point out that the circuit court did inject speculation into its findings regarding defendant's sophistication, and showed an unfair resistance to the idea that an emerging adult could make an as-applied proportionate penalties claim centered on youth and its attendant characteristics.

§§44-1(c)(4), 44-1(c)(5)

People v. Williams, 2024 IL 127304 (12/19/24)

Defendant filed a post-conviction petition alleging that his mandatory natural life sentence violated the proportionate penalties clause, because he was 22 years-old at the time of he committed multiple murders. The petition alleged that, based on **Miller** and its progeny, plus developments in brain science, defendant's age, maturity and culpability levels at the time of the offense were similar to that of a juvenile.

The supreme court affirmed the summary dismissal of the petition. The claim may have had a rational basis in law, because the court has previously held that it has not foreclosed emerging adults between 18 and 19 years-old from raising as-applied proportionate penalties challenges to life sentences based on the evolving science on juvenile maturity and brain development. But without deciding whether a 22 year-old could make such a claim, the court held the claim here lacked a rational basis in fact.

Defendant alleged that given his age, criminal history, involvement in the crime, and the "hallmark features of youth" that make him less culpable, his sentence was excessive. But nowhere in the petition did defendant detail the hallmark features of his youth, besides his age, that might explain why he was less mature and less culpable. Section 122-2 of the Post-Conviction Hearing Act requires petitioners to provide factual support for their claims. "An emerging adult postconviction petitioner who simply cites his age at the time of the offense and the evolving science on juvenile maturity and brain development does not state the gist of an as-applied claim that a mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution."

While defendant pointed out that the trial record contains some detail in support of the claim, including assertions made during closing argument by defense counsel that defendant was an immature "kid" who was manipulated by others, the supreme court found these allegations contradicted by the record:

> [A]ll five victims died from gunshot wounds to the head, three of the victims were shot at close range, and defendant personally shot at least two of the victims. Defendant planned the armed robbery of a victim's home, solicited the help of others, armed himself, ransacked nearly every part of the house, and stole numerous items from the victims. The jury heard testimony that defendant laughed as he transported the proceeds to his own home and distributed and sold them. Defendant was the instigator of the criminal plan and a principal offender in the unprovoked murder of five victims.

(Defendant was represented by Assistant Defender Ashlee Johnson, Chicago.)

§44-2

People v. Clark, 2024 IL 127838 (12/19/24)

Defendant was convicted of two counts of aggravated battery arising out of a gang-related shooting and was sentenced to a total of 32 years of imprisonment, consisting of two consecutive 16-year terms. He was 17 years old at the time of the shooting and was convicted on the theory that he acted as the lookout.

On appeal, defendant argued that the circuit court erred in sentencing him without considering the juvenile sentencing factors contained in 730 ILCS 5/5-4.5-105(a). The court agreed with defendant that the statute applied to him where he committed his offense prior to its effective date, but was sentenced after. But, the court concluded that the circuit court had adequately considered the statutory factors, even though the judge did not specifically reference the statute.

(Defendant was represented by Assistant Defender Todd McHenry, Chicago.)

STATUTES

§47-1(c)(2)

People v. Cruz Aguilar, 2024 IL App (5th) 220651 (12/5/24)

The trial court did not err in dismissing charges of aggravated DUI under 625 ILCS 5/11-501(a)(1), (2), and (d)(1)(H). Under (a)(1) and (2), DUI is normally a Class A misdemeanor. The charge is elevated to a Class 4 felony under subsection (d)(1)(H)

where "the person committed the violation while he or she did not possess a driver's license or permit...". Here, the charges alleged that defendant did not "possess" a driver's license in that his license, while not expired, "was suspended pursuant to a financial responsibility insurance suspension."

Under the plain language of subsection (d)(1)(H), a DUI conviction is not elevated to a felony by a driver's license suspension. Rather, under subsection (d)(1)(G), the legislature has specifically enumerated circumstances where a suspended driver's license will elevate a DUI to a Class 4 felony. An insurance suspension is not one of those circumstances.

The court rejected the State's reliance on **People v. Rosenbalm**, 2011 IL App (2d) 100243, where the Second District stated, in *dicta*, that while subsection (H) does not expressly refer to possession of a valid driver's license, "to read the statute to avoid application of the aggravating factor where a person possesses a revoked, suspended, or expired license would lead to absurd results." **Rosenbalm**, 2011 IL App (2d) 100243, ¶ 9. The **Rosenbalm** court conceded that its interpretation of subsection (d)(1)(H) rendered subsection (d)(1)(G) superfluous.

Here, the court instead chose to follow the reasoning in **People v. Hartema**, 2019 IL App (4th) 170021-U. In **Hartema**, the Fourth District disagreed with the **Rosenbalm** court's *dicta*, noting the general principle of statutory construction that statutes should be interpreted in a manner so as not to render provisions superfluous whenever possible. Consistent with that mandate, subsection (H) does not act as a catchall to extend aggravated DUI to individuals with suspended licenses for reasons not listed in subsection (G); such an interpretation would render subsection (G) wholly superfluous.

(Defendant was represented by PFA Supervisor Manuela Hernandez, Chicago.)

§47-3(b)(2)(b)

People v. Johnson, 2024 IL App (1st) 231155 (12/20/24)

The unlawful use of a weapon by a felon statute is not unconstitutional. The appellate court rejected defendant's facial challenge because **Bruen** applies only to "law-abiding citizens," and regardless, there is an historical tradition dating back the founding era of identifying dangerous individuals and disarming them. This view was recently confirmed by **United States v. Rahimi**, 144 S. Ct. 1889 (2024).

Defendant also argued that the statute was unconstitutional as applied to him, because his prior felony for delivery of a controlled substance was non-violent, and the second amendment only permits the disarmament of dangerous felons. After

noting that precedent doesn't support this argument, the appellate court found it forfeited. An as-applied challenge requires an adequate factual record. Defendant's argument turns the circumstances of the prior felony, as drug offenses can potentially be considered violent. Because he did not raise this issue below, those facts are absent from the record, and the court could not rule on the as-applied challenge.

(Defendant was represented by Assistant Defender Stephanie Glassberg, Chicago.)

TRAFFIC OFFENSES

§49-2(a)

People v. Cruz Aguilar, 2024 IL App (5th) 220651 (12/5/24)

The trial court did not err in dismissing charges of aggravated DUI under 625 ILCS 5/11-501(a)(1), (2), and (d)(1)(H). Under (a)(1) and (2), DUI is normally a Class A misdemeanor. The charge is elevated to a Class 4 felony under subsection (d)(1)(H) where "the person committed the violation while he or she did not possess a driver's license or permit...". Here, the charges alleged that defendant did not "possess" a driver's license in that his license, while not expired, "was suspended pursuant to a financial responsibility insurance suspension."

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not listed in subsection (G); such an interpretation would render subsection (G) wholly superfluous.

(Defendant was represented by PFA Supervisor Manuela Hernandez, Chicago.)

WAIVER – PLAIN ERROR – HARMLESS ERROR

§§54-1(b)(7)(b), 54-3(d)(8)(a)

People v. Quezada, 2024 IL 128805 (12/19/24)

The appellate court reversed defendant's convictions for attempt murder of a peace officer and aggravated discharge of a firearm, finding that two forfeited errors cumulatively deprived defendant of a fair trial. The supreme court reversed the judgment of the appellate court.

The State alleged that defendant shot at police officers who were responding to a domestic disturbance in an apartment complex. On appeal, defendant alleged two trial errors. First, the trial court committed plain error when it allowed the State to introduce the full recording of a custodial interrogation of a key eyewitness. Defendant acknowledged that his trial attorney had "no objection" to the evidence, but argued on appeal that its admission was second-prong plain error because it contained prior consistent statements, hearsay, gang references, and the officers' opinions about the offense. Second, defendant argued the trial court committed plain error when it allowed the State to introduce prejudicial gang evidence without sufficient foundation. The appellate court found neither error on its own amounted to plain error, but that the cumulative effect of these errors prejudiced defendant and warranted a new trial.

Before the supreme court, the State argued that the cumulative error doctrine should not apply to forfeited errors. The supreme court rejected this argument, finding it inconsistent with the rule that forfeiture is an admonition to the parties, not a limitation on the jurisdiction of the reviewing court. The reviewing court should be free to find cumulative errors – even forfeited errors – worked in conjunction to deprive a defendant of a fair trial. This does not mean that forfeiture is irrelevant to the analysis. Rather, a claim that cumulative, forfeited errors requires reversal must be analyzed in the context of the plain error doctrine. Thus, a court should consider whether the alleged errors are "clear and obvious," and, if multiple errors meet this test, determine whether the cumulative impact of those errors affected the fairness of the trial and challenged the integrity of the judicial process.

The appellate court erred because its cumulative error analysis did not apply the plain error framework. The supreme court found defendant could not meet the

plain error standard. First, trial counsel "affirmatively acquiesced" to the admission of the interrogation video by informing the trial court that the defense had "no objection." When a defendant actively invites or acquiesces to the admission of evidence, he cannot challenge the ruling as plain error on appeal. Because only one other alleged error remained, and because this error alone did not warrant reversal, the supreme court reversed the appellate court's reversal of defendant's convictions.

(Defendant was represented by Assistant Defender Andrew Moore, Elgin.)

§54-2(e)(5)(a)

People v. Patterson, 2024 IL App (1st) 221619 (12/27/24)

The trial court committed plain error when it failed to share a deliberating jury's question with the parties, and failed to answer their substantive legal question. Defendant was charged with aggravated assault for pointing a gun at complainant. The complainant testified that defendant, a taxi driver, cut him off while driving, and that he exited his car to confront defendant. He was standing in front of defendant's car, asking why he cut him off, when defendant pulled the gun.

The jury sent several notes during deliberations. One note contained three questions about whether defendant was legally permitted to carry the firearm given that he was a taxi driver. The trial court did not inform the attorneys of the note's existence, and it provided no answers to the jury. The appellate court held that courts must share jury notes with the parties, and that the failure to share this note was grounds for reversal. **See People v. Childs**, 230 Ill. App. 3d 993, 997 (1992).

A fourth question asking the same question was shared with the parties, but the court offered no substantive response, instead telling the jury to continue deliberating. This too was clear and obvious error. While the circuit court may decline to provide a substantive answer under certain circumstances, none of those circumstances were present here. The jury received no instructions regarding defendant's right to possess a firearm and its question suggests that the jury may have decided the case on an improper basis. Though defendant did not preserve this issue, the evidence was closely balanced, as evidenced by the jury's 10 questions during deliberations and its suggestion that it was having difficulty arriving at a unanimous verdict.

(Defendant was represented by Assistant Defender Elizabeth Botti, Chicago.)

WITNESSES

§56-5

People v. Lathem, 2024 IL App (1st) 220380 (12/6/24)

At his murder trial, defendant testified on direct examination that his co-defendant committed the murder without his knowledge. Before cross, the State moved to introduce evidence of prior statements going to defendant's knowledge and intent to commit murder. The trial court ruled that the State could confront defendant with these statements. Defense counsel asked to discuss the ruling with defendant during the overnight recess between direct and cross. The trial court denied the motion, finding it would be improper for a witness to discuss his testimony with his attorney while under oath and between direct and cross. The court forbade all conversations between defendant and his attorney until after he testified.

The appellate court reversed and remanded for a new trial. As the State conceded, an order forbidding a testifying defendant from consulting with his attorney "about anything" during an overnight recess violates the Sixth Amendment right to the assistance of counsel. **Geders v. United States**, 425 U.S. 80 (1976). The Illinois Supreme Court has previously held that the denial of access to counsel for consultation during a critical stage is *per se* reversible, and does not require a showing of prejudice. **People v. Noble**, 42 Ill. 2d 425 (1969).

The State argued that the court's order did not foreclose all discussion, but merely warned defendant not to discuss his testimony. The record showed, however, that the trial court warned defendant not to speak with his attorneys "about anything, including your testimony." In other statements, the court suggested its ban covered any and all conversations. These admonishments served as a clear warning to defendant to avoid all discussions with his attorney. As **Geders** held, if the court and State were concerned about coaching, there were other ways to solve the problem, including through cross-examination, but denial of consultation with counsel was not a solution.