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The supreme court also clarified that in evaluating defendant's claim of torture on remand, the circuit court should consider an alleged **Brady** violation as part of the totality of the circumstances. The **Brady** claim is not a freestanding constitutional claim under the TIRC Act, but it is relevant to the ultimate determination of whether he is entitled to relief.

Finally, the circuit court did not err in denying defendant's request to rescind the appointment of a special prosecutor. Defendant asserted that the special prosecutor had an actual conflict of interest where he had previously served as a supervisor in the Cook County State's Attorney Office during the time period when defendant's alleged torture occurred. The attorney's mere position as a supervisor at the time defendant was arrested, charged, and prosecuted was insufficient to establish an actual conflict where defendant did not show any direct participation in his case.

§9-6

People v. Murry, 2025 IL App (1st) 232338 (7/29/25)

When the Torture Inquiry and Relief Commission (TIRC) determines that there is sufficient evidence of torture to merit judicial review and, accordingly, refers the matter to the circuit court for an evidentiary hearing, the court first reviews TIRC's determination under the manifest weight of the evidence standard. If the court agrees, the matter moves to an evidentiary hearing, similar to a third-stage post-conviction hearing. If the court finds that TIRC's decision was against the manifest weight of the evidence, however, it should dismiss the referral without further proceedings.

Here, the court conflated the threshold review of the TIRC referral and the evidentiary hearing on the merits of the TIRC claim. First, the court stated that the evidence was not sufficient to go forward on a TIRC claim. It then went on to conduct its version of an "evidentiary hearing" by reviewing the TIRC record and concluding that defendant had not met his burden on the merits. The appellate court stated that it could not determine which kind of hearing the court actually conducted and went on to find that the court erred under either.

If the court's ruling was meant as a determination on the merits, the proceeding was fundamentally inadequate. The parties should have been afforded an opportunity to put forth evidence and argument within the bounds of the TIRC act, and the failure to allow them to do so was reversible error.

If, on the other hand, the court believed it was reviewing the TIRC's sufficiency-for-hearing determination, it should have affirmed. In its referral decision, TIRC detailed evidence both for an against defendant's claim of torture and noted that were credibility issues on both sides of the issue, meaning defendant's claim could not be summarily dismissed without an evidentiary hearing. Accordingly, TIRC's determination was not against the manifest weight of the evidence, and the matter was remanded for a proper hearing.

COUNSEL

§14-2

People v. Anderson, 2025 IL App (2d) 230077-B (7/15/25)

On remand for reconsideration in light of **People v. Ratliff**, 2024 IL 129356, the court held that the failure to admonish a defendant in compliance with Supreme Court Rule 401(a) is not akin to structural error and thus is not reviewable as second-prong plain error. Because defendant's original briefing failed to raise the issue of whether defendant's waiver of counsel was knowing and voluntary, and instead raised only the admonishments issue, the court declined to address the issue of voluntariness. That issue is more amenable to resolution in a post-conviction proceeding where defendant may more thoroughly develop a factual record.

(Defendant was represented by Assistant Defender Anne Fung, Elgin.)

§14-6(a)

People v. Muhammad, 2025 IL 130470 (7/10/25)

Under the Torture Inquiry and Relief Commission Act (TIRC), 775 ILCS 40/1, *et seq*., a "tortured confession" is not limited to only inculpatory statements. It includes "incriminating vocalizations and gestures," as well as statements the individual denies making but the police or prosecutors have alleged he or she did make. A narrower construction would be inconsistent with the remedial nature of the Act. "[P]roviding relief only when torture results in revealing all elements of the crime and not just inculpatory evidence in general would do a disservice to the act's purpose." In the instant case, that meant that defendant's claim that he did not make the statements police attributed to him was not fatal to his TIRC claim. Thus, the trial court erred in terminating judicial review proceedings under the TIRC Act based on its conclusion that there was no confession here.

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EVIDENCE

§§19-2(a), 19-10(c)

People v. Safranek, 2025 IL App (4th) 240967 (7/30/25)

Defendant was charged with the murder of her 7-year-old son, N.B. The State filed motions *in limine* to admit prior statements N.B. made to various witnesses detailing abuse at the hands of his parents, and various Google searches made on a phone found in defendant's bedroom. The trial court admitted some of the statements and searches, but excluded others. The State filed an interlocutory appeal.

Regarding the Google searches, the court admitted four searches: (1) a search about cremation of a child on the morning N.B. died; (2) a search about child death investigations on the day N.B. died; (3) a search asking about parents who think about killing their child; and (4) a search for "I've had thoughts about killing my kid" in August 2020. The State argued that the court erred in denying its request to admit several other searches asking about various methods of killing someone, parents who kill, child abuse, and mental illness. While the court found these searches relevant, the trial court did not abuse its discretion in barring them as cumulative and overly prejudicial where the admitted searches were more directly relevant to the charges.

Two other uses of the phone – access to Facebook and the clock – were also barred as irrelevant, even though the State argued they showed ownership of the phone. The appellate court held this evidence may yet become relevant if the defense challenges foundation during trial.

The State next argued that the court erred when it denied its motion to admit all hearsay statements N.B. made to his grandmother, aunt, and foster parents. The appellate court found that the statements were covered by 725 ILCS 5/115-10.2a(a), which allows sufficiently trustworthy hearsay statements from unavailable witnesses in domestic violence prosecutions. It then held that the trial court erred when it excluded N.B.'s descriptions of an attempted drowning and attempted suffocation he endured at the hands of defendant. These statements met the criteria of section 115-10.2a(a), and were sufficiently trustworthy given they were spontaneously made. Similarly, the trial court acted in an arbitrary manner and therefore erred when it excluded three statements about attempted suffocations that were made around the same time and described similar acts as other statements the court chose to admit. Because there was no non-arbitrary reason to exclude some of these statements while admitting others, the appellate court reversed the ruling.

(Defendant was represented by Assistant Defender Edward Wittrig, Springfield.)

§19-26(c)

People v. Valderama, 2025 IL App (2d) 240574 (7/29/25)

The trial court erred when it held a sexual-abuse counseling center in indirect civil contempt for refusing to turn over a complainant's interview notes for *in camera* review. Defendant was charged with several counts of predatory criminal sexual assault, alleging he repeatedly raped his daughter. His daughter made several outcry statements to the counseling center. The defense believed that the initial statements differed from the latter statement, and wanted to use the subpoena to obtain all of her statements for impeachment purposes.

Section 8-802.1(d) of the Code of Civil Procedure (Code) (735 ILCS 5/8-802.1(d)) creates an absolute privilege from the disclosure of statements made during rape crisis counseling, even for *in camera* inspection. The trial court held that the privilege cannot defeat a defendant's right to present a defense or confront witnesses. But the appellate court found that the defendant must make an initial showing that the privileged evidence would be helpful to the defense. Here, defendant offered no reason to believe that his daughter's confidential statements would provide a source of impeaching material. Even if they did, defendant had other ways to impeach her credibility, including cross-examination, and questioning various other outcry witnesses.

INDICTMENT, INFORMATIONS, COMPLAINTS

§29-5

People v. Bonnette, 2025 IL App (4th) 240827 (7/16/25)

The trial court did not abuse its discretion when it granted the State leave to amend the indictment to correct the file name associated with the child pornography charge defendant was facing. The original indictment was not fatally defective for stating an incorrect file name. The indictment included the name of the offense, the statutory provision involved, the nature and elements, the date and county, and the name of the accused, thus satisfying 725 ILCS 5/111-3(a). In a child pornography prosecution, the State is not required to specifically define the details of the image(s) it intends to introduce at trial, thus the name of the file was not required to be stated in the indictment. Similarly, while the erroneously identified file allegedly was possessed outside of the statute of limitations, the content was identical to that corresponding to the correctly-named file, and the record demonstrated that defendant knew before trial exactly which file the State was charging him with possessing and on what date. And, finally, correction of the file name was a formal amendment, akin to the sort of misnomer correctable under 725 ILCS 5/111-5. It did not change the substance of the charge and did not prejudice the defense.

§29-5

People v. Bonnette, 2025 IL App (4th) 240827 (7/16/25)

Defendant was proved guilty beyond a reasonable doubt of child pornography. The evidence showed that the offending image was on defendant's cell phone, and circumstantial evidence supported an inference of knowing and voluntary possession where there was a digital trial indicating the image was once contained within the phone's photo application and "common life experience" teaches that images end up in a phone's photo application via user input and not as a hidden function of routine web browsing. There was no evidence that anyone else had access to defendant's phone, and no basis to suspect defendant was the victim of hacking or malware. The phone's digital records indicated that, on the date in question, someone actually clicked on the photo to enlarge it from the photo gallery to a full-screen view. And, there was further evidence that the charged image was also viewed on defendant's tablet, indicating defendant did not merely encounter the image inadvertently. Further, the evidence showed defendant possessed other uncharged images of child pornography, making it much more likely that he voluntarily possessed and viewed the image in question. Finally, defendant used software to erase files from his digital devices around the time he was being investigated, indicating a pattern of downloading child pornography and then deleting it to avoid detection. The totality of the evidence was sufficient to establish defendant's guilt beyond a reasonable doubt.

INSANITY – MENTALL ILL – INTOXICATION

§ 30-3

People v. Lawson, 2025 IL App (3d) 240450 (7/24/25)

A motion for directed verdict should only be granted where all of the evidence so overwhelmingly favors the movant that no contrary verdict based on that evidence could stand. Here, the circuit court erred in granting the State's motion for direct verdict on defendant's petition for discharge from inpatient treatment following an earlier verdict of not guilty by reason of insanity.

Under 730 ILCS 5/5-2-4(a), the standard applicable to discharge hearings is whether the defendant is no longer in need of mental health services on an inpatient care basis, defined in section 5-2-4(a-1)(B) as "a defendant who has been found not guilty by reason of insanity but who, due to mental illness, is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care." A defendant seeking discharge need only disprove one of those elements, i.e. that she is not reasonable expected to inflect harm upon herself or another or that she would not benefit from inpatient care.

Here, while there was evidence that defendant posed a continuing risk of harm to herself or others, two experts opined that she would not benefit from inpatient care because she was malingering and suffered from antisocial personality disorder, a condition not amenable to inpatient treatment. Accordingly, defendant established a *prima facie* case for discharge, and the circuit court erred in granting the State's motion for directed verdict. Reversed and remanded for further proceedings.

SEARCH & SEIZURE

§§43-2(c)(2), 43-6(c)

People v. Hoskins, 2025 IL App (4th) 240991 (7/16/25)

Police officers conducting a routine traffic stop used a drug detection dog to conduct a free-air sniff. The dog made a positive alert. The officers searched the truck and found methamphetamine.

On appeal, defendant argued that his trial attorney was ineffective for failing to argue that the police lacked probable cause because the dog was trained to give a positive alert when it detected any narcotic, including cannabis, which had been legalized. Defendant acknowledged that binding precedent holds that a dog sniff outside a vehicle is not a "search" under the fourth amendment, but argued that this precedent is distinguishable in a situation where the dog is trained to alert officers to the presence of legal and illegal substances. **See Caballes**, 533 U.S. at 409 (("[T]he use of a well-trained narcotics-detection dog – *one that 'does not expose noncontraband items that otherwise would remain hidden from public view*,' – during a lawful traffic stop, generally does not implicate legitimate privacy interests.") (emphasis added)

The appellate court disagreed that **Caballes** meant to imply that a dog trained to expose both legal and illegal substances necessarily implicates the fourth amendment. Here, the dog was trained to alert to many illegal substances, and one *sometimes* legal, but often still illegal, substance – cannabis. The court found cannabis "remains unlawful in more ways than it has become lawful," as it must be transported, used, and possessed in specific ways to be legal. The fourth amendment protects against only those searches and infringements on privacy that society would find unreasonable. The appellate court did not think that society would find it unreasonable to allow a dog to search and uncover the presence of potentially illegal narcotics, including heroin, cocaine, or methamphetamine, merely because the dog might instead have detected legally possessed cannabis. Moreover, at the time defense counsel filed the motion to suppress, binding precedent held that a positive alert by a trained canine supports a finding of probable cause. Thus, counsel could not be deemed deficient for failing to raise the issue.

(Defendant was represented by Assistant Defender Lucas Hall, Springfield.)

§43-7(a)

People v. Cummins, 2025 IL App (2d) 230516 (7/8/25)

The trial court granted a defense motion to suppress evidence the police obtained via a warrantless and nonconsensual search of defendant's residence. The State filed an interlocutory appeal, arguing that the emergency exception to the fourth amendment's warrant requirement validated the entry and search. The appellate court agreed with the State.

Police were dispatched to defendant's residence in response to a noise complaint. The responding officers heard loud music emanating from the house. The complaining neighbor explained that defendant had moved in recently, often played loud music late at night, and used drugs. The officers pounded on the doors repeatedly but received no response. They looked in a window and saw a gun cabinet but no sign of anyone home. After over an hour, they went inside and arrested defendant for illegal gun possession.

The trial court found insufficient evidence of an emergency, because, although the police believed that someone was in the house needing immediate assistance, it was equally likely that (1) no one was in the house or (2) someone was inside but was exercising the right not to answer the door. No signs of struggle were apparent, nobody was seen inside, and the only circumstance out of the ordinary was loud music. The officers waited an hour to enter, which, according to defendant, suggested they did not truly believe there was an emergency.

This latter argument, however, was rejected by the United States Supreme Court, which has held that the reasonableness of the entry is an objective question. **Brigham City v. Stuart**, 547 U.S. 398 (2006); **Michigan v. Fisher**, 558 U.S. 45, 46-47, 50 (2009). Though in Illinois, a delay is one factor to consider. **People v. Aljohani**, 2022 IL 127037. As for the trial court's finding that an emergency was only one of three possibilities, and that it was equally likely nobody was inside or the person inside did not want to answer the door, the appellate court rejected this reasoning as a mistake of law. Probable cause does not require a likelihood, only reasonable belief.

Looking at the objective factors facing the police, including the loud music, the fact that defendant's car was parked outside, defendant was an alleged drug user, and the police could not see the into the upper levels of the house, it was not unreasonable to believe there was an emergency inside.

SENTENCING

§§44-4(f), 44-5

People v. Murry, 2025 IL App (1st) 221202 (7/11/25)

Defendant received an 80-year sentence for first-degree murder. He argued that the sentencing court imposed a "trial tax" on him, pointing to the fact that the State had offered a six-year plea deal. The appellate court rejected this argument because that plea deal was offered before the State located the key eyewitness to the offense. The court did not reference the plea offer, or defendant's exercise of his right to trial, during the sentencing hearing.

Defendant also argued that the court erred by considering a statutory factor – defendant's conduct caused serious bodily harm – inherent in the offense. A majority of the appellate court agreed. While a dissenting justice found the remark a mere acknowledgment of the victim's death, the majority pointed out that the sentencing court not only mentioned this factor, it specifically stated that it "considered" the factor. The court remanded for a new sentencing hearing.

(Defendant was represented by Assistant Defender Hanna Pieterse, Chicago.)

SPEEDY TRIAL

§46-5(b)

People v. Murry, 2025 IL App (1st) 221202 (7/11/25)

The trial court did not abuse its discretion by granting the State's request to extend the speedy trial term. The speedy trial statute generally requires "[e]very person in custody in this State for an alleged offense" to "be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody." 725 ILCS 5/103-5(a) The trial court may extend the period for 60 days if it "determines that the State has exercised without success due diligence to obtain evidence material to the case" and finds "reasonable grounds to believe that such evidence may be obtained at a later day." 725 ILCS 5/103-5(c).

Here, the original speedy trial term began in August of 2018, and would have ended on March 28, 2019. The State documented at least 26 attempts to locate its key witness between November 2018 and February 2019, until learning, on March 18, 2019, that he was in custody in Wisconsin. The State served a subpoena on the witness and received a 60-day extension of the term.

Defendant argued that the trial court erred in granting this extension because the State failed to attempt to procure the witnesses' presence in the 10 days after they found him, before the end of the original term. The appellate court rejected this claim because the process of bringing the witness to court while in custody in Wisconsin required multiple steps, including a subpoena, a hearing, approval from the Wisconsin judge, and coordination with Wisconsin authorities for the transfer. The State acted with diligence by starting the process with a subpoena the day after the witness's arrest. Under these circumstances, the trial court's decision to approve an extension was proper.

(Defendant was represented by Assistant Defender Hanna Pieterse, Chicago.)