

**SUMMARY OF SIGNIFICANT CRIMINAL ISSUES
PENDING IN THE ILLINOIS SUPREME COURT***

June 6, 2008

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***SUMMARIES OF NEW CASES APPEAR IN BOLD AND WITH AN ASTERISK**

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APPEAL

No. 105314 & 105316 (consol.)

People v. Sutton, Defense and State leave to appeal granted 1/30/08 from 375 Ill.App.3d 889, 874 N.E.2d 212 (1st Dist. 2007)

Whether the trial court erred on remand when it suppressed post-hypnotic testimony in reliance on the Appellate Court's previous finding that the testimony had been influenced by hypnosis, instead of holding an evidentiary hearing to determine the extent to which the testimony had been affected. (§2-6(a))

Defense counsel: Shawn O'Toole, Chicago OSAD

***No. 106494**

People v. Marker, Certificate of Importance issued 5/1/08 from ___ Ill.App.3d ___, ___ N.E.2d ___ (2d Dist. 2008) (No. 2-06-1071, 5/1/08)

Whether the State's motion to reconsider an order suppressing evidence tolls the time for the State to appeal. (§2-4(b))

Defense counsel: Larry Wechter, Geneva

ARMED VIOLENCE

No. 104558

People v. Lucas, Defense leave to appeal granted 9/26/07 from 372 Ill.App.3d 279, 865 N.E.2d 420 (3d Dist. 2007)

1. Whether a conviction for armed violence can be affirmed where an element of the predicate offense - defendant's prior convictions - was not proven until the sentencing hearing. (§3-1)

2. Whether a misdemeanor enhanced to a felony for sentencing purposes can serve as the predicate for armed violence. (§3-3)

Defense counsel: Fletcher Hamill, Ottawa OSAD

BATTERY, ASSAULT & STALKING OFFENSES

*No. 106078

People v. Robinson, Defense leave to appeal granted 5/29/08 from 379 Ill.App.3d 679, 883 N.E.2d 529 (2d Dist. 2008)

Whether the Appellate Court erred by finding that the State had proven domestic battery beyond a reasonable doubt, because the court erroneously believed that battery is a general intent crime and the conviction rested solely on excited utterance hearsay testimony. (§7-1(a)(1))

Defense counsel: Darren Miller, Elgin OSAD

COLLATERAL REMEDIES

No. 103405

People v. Patterson, Defense leave to appeal granted 9/26/07 from unpublished order (No. 1-04-0777, 11/14/05) (1st Dist.) (consolidated with No. 102694)

Whether a State *habeas corpus* petition may be summarily dismissed without advance notice to the petitioner and leave to amend the petition. (§9-4)

Defense counsel: *Pro se*

No. 104176

Beacham v. Walker, State petition for leave to appeal granted 5/31/07 from unpublished order (No. 4-06-0269, 4th Dist.)

1. In determining whether a State *habeas corpus* petitioner has completed his maximum sentence - so as to entitle him to release - should good conduct credits and the time to be spent on mandatory supervised release be deducted from the maximum term to which the petitioner was sentenced. (§9-4)

2. Whether State *habeas corpus* is an appropriate vehicle to bring a claim that a conviction is void on one act-one crime grounds, where the petitioner did not previously raise the claim on direct appeal or by a §2-1401 petition. (§9-4)

Defense counsel: Jerold Solovy, Chicago

No. 105621

People v. Conick, State leave to appeal granted 1/30/08 from unpublished order (No. 1-06-1375, 8/31/07) (1st Dist.)

1. Whether 735 ILCS 5/22-105, which authorizes the trial court to assess filing fees and court costs against a *pro se* petitioner who “files” a frivolous post-conviction petition, applies where the only pleading filed by the petitioner was a motion for leave to file a successive post-conviction petition, which was denied. (§9-1(c))

2. Whether a motion for leave to file a successive post-conviction petition constitutes a “petition to vacate, modify, or reconsider a final judgment,” so as to trigger the \$90 filing fee under 705 ILCS 105/27.2a(g)(2). (§9-1(c))

Defense counsel: Kirstie Bowling, Chicago OSAD

No. 105767

People v. Hodges, Defense leave to appeal granted 3/26/08 from unpublished order (No. 1-06-0902, 9/20/07) (1st Dist.)

Whether the gist of a constitutional issue was alleged by a post-conviction petition claiming that defense counsel was ineffective for failing to investigate and present evidence in support of defendant’s self-defense argument, where the petition included: (1) affidavits from three men stating that the decedent had been armed, (2) an explanation of efforts taken by the defense to secure reports showing that police recovered more bullet casings from the scene than were introduced at trial, and (3) portions of the record showing that counsel proceeded to trial without examining all of the bullet casings or suggesting that the forensic expert had not been given all of the evidence. (§9-1(c))

Defense counsel: Patrick Cassidy, Chicago OSAD

***No. 106203**

People v. Laugharn, Defense appeal allowed 5/29/08 from 378 Ill.App.3d 981, 883 N.E.2d 700 (4th Dist. 2008)

Whether a trial court may summarily dismiss a §2-1401 petition *sua sponte* on the grounds of timeliness, without notice to the defendant and an opportunity to respond. (§9-2)

Defense counsel: Arden Lang, Springfield OSAD

***No. 106243**

People v. Brown, Defense leave to appeal granted 5/29/08 from unpublished order (No. 1-06-3275, 10/19/08) (1st Dist.) (Consolidated with No. 1-06-0273, People v. Brown, State appeal from same order)

Whether the term “frivolous” is defined differently for purposes of the Post-Conviction Hearing Act, which allows the summary dismissal of frivolous petitions, and 735 ILCS 5/22-105(b)(1), which requires full payment for the filing fees and actual court costs caused by a “frivolous” petition. (§9-1(c))

Defense counsel: Yasaman Navai, Chicago OSAD

CONFESSIONS

No. 103529

People v. Runge, Capital appeal (Cook)

Whether it was proper to prevent the defense from taking depositions of prosecution experts, as a sanction for the defendant’s exercise of his right to remain silent when examined by the prosecution’s psychiatric experts, where the trial court allowed the prosecution to depose defense experts. (§10-12)

Defense counsel: Steve Clark, Supreme Court Unit OSAD

No. 103768

People v. Lopez, Defense leave to appeal granted 1/24/07 from 367 Ill.App.3d 817, 856 N.E.2d 471 (1st Dist. 2006)

1. Whether the defendant was under arrest during his interrogation at the police station where: (1) three police officers came to the 15-year-old defendant's home and told him that he was going to come with them to the station; (2) the officers did not tell defendant's mother that she could accompany him to the station; (3) defendant testified that he thought he had no choice but to go to the station; and (4) defendant was questioned in a closed room and never told he was free to leave. (§10-4(c))

2. Whether **Missouri v. Seibert**, 542 U.S. 600 (2004), which prohibits use of a "two-step" interrogation procedure by which an unwarned statement is followed by **Miranda** warnings and a second statement, was violated where the interrogating officers did not admit that they intentionally used the "two-step" technique, but one detective admitted that the officers did not administer **Miranda** warnings although they had evidence implicating defendant in a murder and would not have allowed defendant to leave the station. (§10-4(a))

Defense counsel: Mark Solock, Chicago

No. 105530

People v. Richardson, State leave to appeal granted 1/30/08 from 376 Ill.App.3d 537, 875 N.E.2d 1202 (1st Dist. 2007)

1. Whether **People v. Wilson**, 116 Ill.2d 211 (1987), which holds that where a defendant is injured while in police custody the State must show by clear and convincing evidence that any confession was not the product of coercion, applies where the injury occurred before interrogation started and was not caused by the interrogating officers. (§§10-6(a),(c))

2. Whether the State showed by clear and convincing evidence that defendant's eye injury was not related to his confession, where defendant was injured in lockup prior to his videotaped confession, but it was unclear who inflicted the injury. (§§10-6(a),(c))

Defense counsel: Melissa Chiang, Chicago OSAD

COUNSEL

No. 98911

People v. Baez, Capital appeal (Cook)

1. Whether defendant's right to counsel was violated where the trial court removed defense counsel, over counsel's objection, in the erroneous belief that where the public defender can be appointed, the Capital Crimes Litigation Act prohibits the appointment of two private attorneys. (§13-1(b))

2. Whether defendant's right to self-representation was violated where his clear and unequivocal request to represent himself was denied. (§13-1(a))

Defense counsel: Kim Fawcett, Supreme Court Unit OSAD

No. 104077

People v. Patrick, Defense leave to appeal granted 5/16/07 from unpublished order (No. 1-04-1895) (1st Dist.) (consolidated with No. 104071, **People v. Phillips**, Defense leave to appeal granted 6/19/07 from 371 Ill.App.3d 948, 864 N.E.2d 823 (1st Dist. 2007))

Whether the trial court erroneously interfered with the defendant's ability to knowingly exercise his constitutional rights to testify and to the assistance of counsel where it refused to rule, before defendant testified, on a motion *in limine* seeking to bar the introduction of prior convictions as impeachment. (§13-1(a))

Defense counsel: Stephen Gentry, Chicago OSAD

No. 105368

People v. Hernandez, Defense leave to appeal granted 11/29/07 from unpublished order (Nos. 1-04-2776 & 1-06-2052, 6/29/07) (1st Dist.)

1. Whether defense counsel suffered from a *per se* conflict of interest at a trial for attempt murder and solicitation of murder for hire, because in another case defendant's attorney was counsel of record for the intended victim (a potential witness at defendant's trial), but the victim had fled the jurisdiction five years before trial and counsel had no contact with him during his absence. (§13-5(e))

2. Whether defense counsel suffered from an actual conflict of interest under such circumstances.
(§13-5(e))

Defense counsel: Allan Ackerman, Chicago

***No. 105437**

People v. Walker, Defense leave to appeal granted 1/30/08 from unpublished order (No. 1-06-1761, 9/4/07) (1st Dist.)

1. Whether the Appellate Court erred by refusing to apply the *Cronic* test, which presumes prejudice where counsel entirely fails to subject the State's case to any meaningful adversarial testing, where defense counsel stated that she had erred in calendaring the trial and was not prepared to represent the defendant, counsel had spent the previous two days in a different trial which lasted until 7 p.m. the night before defendant's trial, and at defendant's trial for double murder counsel failed to raise a single objection, asked only 19 questions on cross-examination, and failed to ask the court for a ruling on a pending motion to suppress, and where defendant's entire double murder trial covered only 43 pages of transcript. (§§13-4(a),(c))

2. Whether the trial judge erred by refusing to allow a continuance in the above circumstances. (§13-4(a),(c))

Defense counsel: Robert Stephenson, Chicago OSAD

DEATH PENALTY

No. 98911

People v. Baez, Capital appeal (Cook)

Whether the trial court committed reversible error where it applied a previous standard for determining the appropriateness of a death sentence, where that standard has been superseded by subsequent amendments to the Illinois death penalty statute. (Ch. 14)

Defense counsel: Kim Fawcett, Supreme Court Unit

No. 100983

People v. Bannister, Capital Appeal (Cook)

1. Whether the jury at defendant's death hearing should have been instructed that if defendant was not sentenced to death, he would receive mandatory consecutive sentences totaling at least 107 years in prison, because the mandatory sentence was a *de facto* natural life sentence, and such an instruction is required if a natural life sentence is mandatory in the absence of a death sentence. (Ch. 14)

2. Whether the defendant was deprived of a fair death penalty sentencing hearing where the trial court gave a confusing and inaccurate instruction stating that the jury could sign a verdict imposing a sentence other than death only if it unanimously found that death was not the appropriate sentence. (Ch. 14)

3. Whether the decision to choose a bench or jury death penalty sentencing is a matter of trial strategy to be decided by counsel, or a personal right to be decided by the defendant. (Ch. 14)

Defense counsel: Larry Bapst, Supreme Court Unit OSAD

No. 103529

People v. Runge, Capital appeal (Cook)

1. Whether the prosecutor violated **People v. Hope**, 184 Ill.2d 39 (1998) at the death hearing by asking questions about victim impact testimony concerning crimes other than the case on trial. (Ch. 14)

2. Whether the Illinois Death Penalty statute violates **Apprendi** because the State is not required to prove, beyond a reasonable doubt, that death is an appropriate sentence. (Ch. 14)

3. Whether the death sentence is cruel and unusual, in violation of the Eighth Amendment, where the crimes were committed under the influence of a neuropsychological disorder that may have biological causes, distort reality, and diminish impulse control and memory, and for which state legislatures provide civil commitment and medical treatment. (Ch. 14)

Defense counsel: Steve Clark, Supreme Court Unit OSAD

See also "PENDING DEATH PENALTY ISSUES IN THE ILLINOIS SUPREME COURT," by Charles M. Schiedel.

DISCOVERY

No. 104443

People v. Lovejoy, Capital appeal (DuPage)

Whether defendant was denied a fair trial, the right to present a defense, and the effective assistance of counsel when the trial court denied a motion to reopen the case to allow the defense to refute the opinion of a State's expert, where the State failed to provide the expert's opinion in discovery. (§15-3)

Defense counsel: Kim Robert Fawcett, Supreme Court Unit OSAD

DISORDERLY, ESCAPE, RESISTING & OBSTRUCTING OFFENSES

***No. 106200**

People v. Cardamone, Defense leave to appeal granted 5/29/08 from 379 Ill.App.3d 656, 883 N.E.2d 628 (2d Dist. 2008)

Whether 720 ILCS 5/32-4(a), which creates the offense of harassment of a witness where a person with the required intent communicates directly or indirectly with a witness in such a manner as to produce "mental anguish or emotional distress" or convey a threat of injury or damage to the witness's person or property, requires that the "mental anguish or emotional distress" suffered by the witness must be akin to that inherent in a "threat of injury or damage to one's property." (§16-1)

2. Whether the defendant "communicated" with a witness directly or indirectly, as is required by the harassment of a witness statute, where he made an anonymous call to 911 to report a drunk driver and had no reason to suspect that the police would inform the complainant of the identity of the person who reported her. (§16-1)

Defense counsel: Mark Levine, Elgin OSAD

DOUBLE JEOPARDY - COLLATERAL ESTOPPEL

No. 103529

People v. Runge, Capital appeal (Cook)

Whether judicial estoppel and due process prevented the prosecution from presenting evidence that defendant could control his conduct after it claimed in a Sexually Violent Person's petition that he was unable to do so. (§17-1)

Defense counsel: Steve Clark, Supreme Court Unit OSAD

No. 105314 & 105316 (consol.)

People v. Sutton, Defense and State leave to appeal granted 1/30/08 from 375 Ill.App.3d 889, 874 N.E.2d 212 (1st Dist. 2007)

Whether the trial court erred on remand when it suppressed post-hypnotic testimony in reliance on the Appellate Court's previous finding that the testimony had been influenced by hypnosis, instead of holding an evidentiary hearing to determine the extent to which the testimony had been affected. (§17-6)

Defense counsel: Shawn O'Toole, Chicago OSAD

EVIDENCE

No. 99581

In re Rolandis G., State leave to appeal granted 5/31/07 from 352 Ill.App.3d 776, 817 N.E.2d 183 (2d Dist. 2004)

1. Whether complaints of sexual abuse made to a police officer and to a child abuse investigator were "testimonial" for purposes of **Crawford**, where the statements were the result of "formal and systematic questioning" by persons assigned to investigate reports of sexual assault. (§19-10(a))

2. Whether the complainant was "unavailable" for purposes of §115-10 where, at trial, he answered preliminary questions but refused to talk about the alleged offense. (§19-14(c))

Defense counsel: Elizabeth Botti, Chicago OSAD

No. 102372

People v. McKown, (Cause remanded for *Frye* hearing with Supreme Court retaining jurisdiction; 226 Ill.2d 245, 875 N.E.2d 1079 (2007))

Whether HGN evidence is admissible under *Frye*. (§19-27(a))

Defense counsel: Mark Fisher, Ottawa OSAD

No. 103529

People v. Runge, Capital appeal (Cook)

1. Where the issue at defendant's murder trial was whether he was able to conform his conduct to the law at the time of the offense, whether the trial court erred by excluding - as a party admission - a Sexually Violent Person petition in which the prosecution stated that defendant should be civilly committed because of his inability to control his mental disorder. (§19-11)

2. Whether it was proper to prevent the defense from taking depositions of prosecution experts, as a sanction for the defendant's exercise of his right to remain silent when examined by the prosecution's psychiatric experts, where the trial court allowed the prosecution to depose defense experts. (§19-27(a))

Defense counsel: Steve Clark, Supreme Court Unit OSAD

No. 104443

People v. Lovejoy, Capital appeal (DuPage)

1. Whether the trial court abused its discretion by accepting a State witness as an expert where the witness testified that he had only a two-week training course in the area in question, had not been certified in any court as an expert, and could think of only one time several years earlier when he had used his training to give an opinion in court. (§19-23(b))

2. Whether the standard for applying the "forfeiture by wrongdoing" doctrine is clear and convincing evidence, particularly where the issue at trial is whether the defendant committed the crime. (§19-10(a))

3. Whether the trial court erred by allowing an autopsy doctor to read from a toxicology report which had been prepared by an unknown person at an out-of-state laboratory. (§19-23(b))

Defense counsel: Kim Robert Fawcett, Supreme Court Unit OSAD

No. 104723

People v. Jackson, State leave to appeal granted 9/26/07 from 372 Ill.App.3d 112, 865 N.E.2d 195 (1st Dist. 2007)

Whether the jury was improperly exposed to other crimes evidence when a DNA expert testified that he entered an unidentified DNA profile into a database and received information “from Springfield” that the sample matched defendant’s DNA profile. (§19-27(g))

Defense counsel: Kari Firebaugh, Chicago OSAD

No. 105314 & 105316 (consol.)

People v. Sutton, Defense and State leave to appeal granted 1/30/08 from 375 Ill.App.3d 889, 874 N.E.2d 212 (1st Dist. 2007)

1. Whether a witness who has forgotten his prior out-of-court statements, but who has been hypnotized in attempt to regain his memory, is “available” for cross-examination under **Crawford v. Washington**, 541 U.S. 36 (2004). (§19-10(a))

2. Whether statements provided to the police were “testimonial” where they were made at the scene of the crime but after the perpetrator left. (§ 19-10(a))

3. Whether statements which described the crime and the offender in a carjacking and double shooting were “testimonial,” where they were made after the offense was complete and while the declarant was being taken to the hospital for treatment. (§19-10(a))

Defense counsel: Shawn O’Toole, Chicago OSAD

***No. 106078**

People v. Robinson, Defense leave to appeal granted 5/29/08 from 379 Ill.App.3d 679, 883 N.E.2d 529 (2d Dist. 2008)

Whether hearsay statements were properly admitted as excited utterances where: (1) they were not the product of an event that was likely to produce a non-reflective response and (2) the State

failed to present any evidence concerning the lapse in time between the alleged contact and the statements. (§19-14(a))

Defense counsel: Darren Miller, Elgin OSAD

GUILTY PLEAS

No. 105212

People v. Jackson, Defense leave to appeal granted 11/29/07 from unpublished order (No. 4-06-0706, 7/26/07) (4th Dist.)

Whether the trial court complied with **People v. Whitfield**, 217 Ill.2d 177, 840 N.E.2d 658 (2005), which requires that before accepting a plea in exchange for a specific sentence the trial court must admonish the defendant that a mandatory supervised release term will be added to the sentence, where the sole mention of MSR at the guilty plea hearing was the trial court's statement that a MSR term would have been added to the prison sentence if the case "were handled by other than a plea agreement." (§24-6(d))

Defense counsel: John Gleason, Mt. Vernon OSAD

No. 105415

Holly v. Montes, Original *mandamus* action

1. Whether there is statutory authority to impose electronic home detention as a condition of mandatory supervised release. (§§24-3, 24-6(d))

2. Whether the Prisoner Review Board deprived the defendant of the benefit of his negotiated plea agreement by adding a MSR condition not included in that agreement - electronic monitoring. (§§24-3, 24-6(d))

Defense counsel: Jerold Solovy, Michael Otto, J. Kevin McCall, Chicago

No. 105887

People v. Bannister, Defense leave to appeal granted 3/26/08 from 378 Ill.App.3d 19, 880 N.E.2d 607 (1st Dist. 2007)

1. Whether the defendant had standing to challenge a plea agreement between the State and one of its witnesses, where the agreement was illegal because it vacated two convictions and substituted a guilty plea after the witness had been sentenced and transported to the Department of Corrections. (§24-1)

2. Whether a criminal defendant's constitutional rights are violated by a plea agreement which requires a State witness to testify consistently with his previous statements. (§24-1)

Defense counsel: Lester Finkle and Edwin Burnette, Chicago

No. 105953

People v. Brooks, State leave to appeal granted 3/26/08 from 377 Ill.App.3d 836, ___ N.E.2d ___ (4th Dist. 2007) (No. 4-06-0163, 12/26/07)

When a properly admonished guilty plea defendant writes a letter requesting a transcript and appeal of his sentence, should the clerk merely file a notice of appeal (resulting in the possible waiver of issues due to the failure to file a post-plea motion) or present the letter to the trial judge to determine what should be done. (§24-8(b)(1))

Defense counsel: Steve Clark, Supreme Court Unit OSAD

HOMICIDE

No. 104077

People v. Patrick, Defense leave to appeal granted 5/16/07 from unpublished order (No. 1-04-1895) (1st Dist.)

Whether there is a conflict between IPI Crim. No. 7.04X and 26.01Q, because the former directs the jury to acquit the defendant of first degree murder before considering involuntary manslaughter, and the latter indicates that greater and lesser offenses should be considered at the same time. (§26-5(b))

Defense counsel: Sarah Curry, Chicago OSAD

No. 105092

People v. Davis, Defense leave to appeal granted 11/29/07 from unpublished opinion (No. 1-05-1251, 6/29/07) (1st Dist.)

Whether a conviction for first degree murder was proper where the jury returned only a general verdict for first degree murder after it was instructed that it could find defendant guilty of either knowing and intentional murder or felony murder, because as a matter of law the conviction could not have been based on felony murder and it was impossible to determine whether the murder conviction rested on a legally sufficient ground. (§26-2)

Defense counsel: Douglas Hoff, Chicago OSAD

No. 105206

People v. Robinson, Defense leave to appeal granted 11/29/07 from 374 Ill.App.3d 949, 872 N.E.2d 73 (1st Dist. 2007)

1. Whether involuntary manslaughter of a household member is a lesser included offense of first degree murder, in light of the fact that involuntary manslaughter of a household member includes one element - that the decedent is a household member - which is not required for first degree murder. (§§26-5(a),(b))

2. Whether 725 ILCS 5/111-3(c-5), which requires the State to provide notice to the defense that it intends to use a fact to increase the range of penalties for an offense, applies where the defendant was charged with first degree murder but at his request was convicted in a bench trial of involuntary manslaughter, and at sentencing the trial judge imposed a higher class sentence for the offense of involuntary manslaughter of a household member. (§26-5(a))

Defense counsel: Linda Olthoff, Chicago OSAD

No. 105575 (consolidated with No. 104685)

People v. Titus, State leave to appeal granted 1/30/08 from unpublished order (No. 1-05-1523, 10/4/07) (1st Dist.) (consolidated with No. 104685 **People v. Smith**, State leave to appeal granted 11/7/07 from 372 Ill.App.3d 762, 866 N.E.2d 1192 (1st Dist. 2007)

Where a defendant charged with intentional or knowing murder and felony murder requests a separate verdict form for felony murder, and there is an evidentiary basis to support a felony murder

conviction, does the trial court's refusal to give a separate verdict form preclude a consecutive sentence on the predicate felony for felony murder. (§26-2)

Defense counsel: Katherine Donahoe, Chicago OSAD

JURY

No. 100983

People v. Bannister, Capital appeal (Cook)

Whether defendant made a knowing and voluntary waiver of his right to a jury trial where the trial court incorrectly advised him of the minimum and maximum penalties for the charges. (§31-3(a))

Defense counsel: Larry Bapst, Supreme Court Unit OSAD

No. 103529

People v. Runge, Capital appeal (Cook)

Whether defendant was denied a fair trial where the jury foreperson informed the trial court that one juror was "cheering" for the prosecution, discussing evidence before the case was submitted for deliberation, and repeating testimony which the court told the jurors to disregard, and the trial court failed to either replace the juror or question all the jurors when the allegations first came to light (although it did replace the juror during the death hearing). (§31-5(a))

Defense counsel: Steve Clark, Supreme Court Unit OSAD

No. 103937

People v. Glasper, Defense leave to appeal granted 3/28/07 from unpublished order (No. 1-04-3005, 11/21/06)

Whether a violation of Supreme Court Rule 431(b), which at the time of trial stated that upon the defendant's request the trial court must question the venire about the presumption of innocence, the

reasonable doubt standard and the defendant's right not to testify or present evidence, can be harmless.¹
(§31-4(a))

Defense counsel: Elizabeth Botti, Chicago OSAD

No. 104077

People v. Patrick, Defense leave to appeal granted 5/16/07 from unpublished order (No. 1-04-1895) (1st Dist.)

Whether there is a conflict between IPI Crim. No. 7.04X and 26.01Q, because the former directs the jury to acquit the defendant of first degree murder before considering involuntary manslaughter, and the latter indicates that greater and lesser offenses should be considered at the same time. (§31-8(a))

Defense counsel: Sarah Curry, Chicago OSAD

No. 105092

People v. Davis, Defense leave to appeal granted 11/29/07 from unpublished opinion (No. 1-05-1251, 6/29/07) (1st Dist.)

1. Whether the trial court violated **Batson** by finding that the State's use of a peremptory against an African-American veniremember was based on the veniremember's equivocal answer to the question whether he could be fair, where three non-minority veniremembers were accepted despite giving almost identical answers and the excused veniremember gave an unequivocal answer to a followup question. (§31-4(c)(3))

2. Whether a conviction for first degree murder was proper where the jury returned only a general verdict for first degree murder after it was instructed that it could find defendant guilty of either knowing and intentional murder or felony murder, because as a matter of law the conviction could not have been based on felony murder and it was impossible to determine whether the murder conviction rested on a legally sufficient ground. (§31-8(a))

Defense counsel: Douglas Hoff, Chicago OSAD

¹Effective May 1, 2007, Rule 431(b) requires such questioning whether or not requested by the defendant, unless the defense objects.

No. 105206

People v. Robinson, Defense leave to appeal granted 11/29/07 from 374 Ill.App.3d 949, 872 N.E.2d 73 (1st Dist. 2007)

Whether involuntary manslaughter of a household member is a lesser included offense of first degree murder, in light of the fact that involuntary manslaughter of a household member includes one element - that the decedent is a household member - which is not required for first degree murder. (§31-8(i))

Defense counsel: Linda Olthoff, Chicago OSAD

***No. 106122**

People v. Meor, Defense leave to appeal granted 5/29/08 from unpublished order (No. 1-06-3580, 12/19/07) (1st Dist.)

1. Whether the charging instrument approach for determining lesser included offenses requires only that the lesser offense be broadly described in the charge. (§31-8(i))

2. Whether an allegation of an act of sexual penetration alleges insulting or provoking behavior sufficient to make battery a lesser included offense of criminal sexual abuse. (§31-8(i))

Defense counsel: Kathleen Flynn, Chicago OSAD

JUVENILE

No. 102667

People ex rel. Birkett v. Honorable James Konetski, *Mandamus* (DuPage)

Whether the Sex Offender Registration Act (730 ILCS 150/1) is unconstitutional as applied to juvenile sex offenders who have reached the age of 17, because: (1) minors are not afforded a jury trial on delinquency petitions which allege sex offenses that will require registration upon reaching adulthood, or (2) requiring registration by minors upon reaching adulthood is not sufficiently related to the goal of the Registration Act to satisfy due process and equal protection. (§32-4)

Defense counsel: Kathleen Weck, Elgin OSAD

No. 104519

In re M.W., State leave to appeal granted 9/26/07 from unpublished order (No. 1-05-3127, 2/16/07) (1st Dist.)

Whether the juvenile court lacked subject matter jurisdiction where the State failed to serve an amended petition for adjudication of wardship on a non-custodial parent who had been served with the original petition and who was neither represented by counsel nor personally present at the adjudicatory hearing, because 705 ILCS 405/5-530(1) requires service of a supplemental or amended petition on all parties. (§32-2)

Defense counsel: Joshua Tepfer, Chicago OSAD

No. 105137

In re Randall M., State petition for leave to appeal as a matter of right or leave to appeal allowed 11/29/07 from 374 Ill.App.3d 808, 872 N.E.2d 116 (2d Dist. 2007)

1. Whether a minor under the age of 17 who is facing pending delinquency charges may be automatically transferred to the county jail upon reaching age 17, without a hearing to consider the factors outlined in 705 ILCS 405/5-410(2)(c)(v), which include the minor's age, any previous delinquency or criminal history, any previous abuse or neglect history, and any mental health or educational history. (§32-4)

2. Whether 705 ILCS 405/5-410 permits a 17-year-old minor with pending delinquency matters to be housed in the general population of a county jail. (§32-4)

Defense counsel: Jaime Montgomery, Elgin OSAD

NARCOTICS

***No. 106219**

People v. Davison, State leave to appeal granted 5/29/08 from 378 Ill.App.3d 1010, 883 N.E.2d 648 (4th Dist. 2008)

Whether 720 ILCS 5/20.5-6, which defines the offense of possession of a deadly substance as possessing, manufacturing, or transporting any "poisonous gas," was intended to apply to the

possession of anhydrous ammonia, which is not an inherently deadly or injurious substance and which is subject to a separate statute which prohibits its possession. (§34-1)

Defense counsel: Michael Vonnahmen, Springfield OSAD

***No. 106306**

People v. Lewis, Defense leave to appeal granted 5/29/08 from 379 Ill.App.3d 336, 883 N.E.2d 759 (4th Dist. 2008)

Whether the failure to hold an evidentiary hearing to determine the street value of a controlled substance, as required by 730 ILCS 5/5-9-1.1(a), constitutes plain error which precludes imposition of a street value fine. (§34-4)

Defense counsel: Catherine Hart, Springfield OSAD

PAROLE

No. 105022

People v. Holland, Defense leave to appeal granted 9/26/07 from 374 Ill.App.3d 121, 870 N.E.2d 1004 (1st Dist. 2007) (consolidated with No. 104608, **People v. Howard**, State leave to appeal granted 9/26/07 from ___ Ill.App.3d ___, ___ N.E.2d ___ (1st Dist. 2007) (No. 1-05-1662, 3/30/07)

Whether the Governor's grant of a pardon authorizing expungement under 20 ILCS 2630/5(c) removes the trial court's discretion to deny a petition for expungement. (Ch. 37)

Defense counsel: Karen Daniel, Chicago

No. 105415

Holly v. Montes, Original *mandamus* action

1. Whether there is statutory authority to impose electronic home detention as a condition of mandatory supervised release. (Ch. 37)

2. Whether the Prisoner Review Board deprived the defendant of the benefit of his negotiated plea agreement by adding a MSR condition not included in that agreement - electronic monitoring. (Ch. 37)

Defense counsel: Jerold Solovy, Michael Otto, J. Kevin McCall, Chicago

PROSECUTOR

No. 103405

People v. Patterson, Defense leave to appeal granted 9/26/07 from unpublished order (No. 1-04-0777, 11/14/05) (1st Dist.) (consolidated with No. 102694)

Whether the Cook County State's Attorney has jurisdiction to defend or represent the State of Illinois in a proceeding in which the Illinois Department of Corrections is a party. (§41-1)

Defense counsel: *Pro se*

No. 103937

People v. Glasper, Defense leave to appeal granted 3/28/07 from unpublished order (No. 1-04-3005, 11/21/06)

Whether the Appellate Court erred where it found that approximately 20 remarks by the prosecutor were either proper or harmless error, without individually addressing the remarks. (§41-1)

Defense counsel: Elizabeth Botti, Chicago OSAD

REASONABLE DOUBT

No. 104375

People v. Brown, Defense leave to appeal granted 5/31/07 from 371 Ill.App.3d 450, 863 N.E.2d 283 (2d Dist. 2007)

Whether the defendant waived his claim that the State failed to prove he was eligible for habitual offender sentencing where he failed to raise the State's failure of proof at the sentencing hearing, as is

required by 720 ILCS 5/33B-2(c) (unless the lack of eligibility is presented by the prosecution's evidence). (§43-1)

Defense counsel: Jaime Montgomery, Elgin OSAD

SEARCH & SEIZURE

No. 100681 (consolidated with No. 102584)

People v. Cosby, State leave to appeal granted 9/27/06 from unpublished order (No. 3-03-0681, 4/25/05)

1. Whether **People v. Gonzalez**, 204 Ill.2d 220, 789 N.E.2d 260 (2003), which provided a multi-part test to determine whether the Fourth Amendment is violated by police questioning after a traffic stop, was overruled by **Illinois v. Caballes**, 125 S.Ct. 834 (2005). (§45-12(c))

2. If so, whether the Fourth Amendment permits a request for consent to search a vehicle after the officer has returned defendant's license and the purpose of the stop has been completed. (§45-12(c))

Defense counsel: Verlin Meinz, Ottawa OSAD

No. 102584 (consolidated with No. 102584)

People v. Mendoza, State leave to appeal granted 9/27/06 from 364 Ill.App.3d 564, 846 N.E.2d 169 (2d Dist. 2006)

1. Whether a traffic stop is terminated once the officer returns defendant's license, so that further questioning violates the Fourth Amendment only if it constitutes a second "seizure." (§45-12(c))

2. Whether a reasonable person would have felt free to leave where the two officers who questioned defendant after returning his documents approached defendant's car in a flanking maneuver, were dressed in dark, "special operations" clothing with visible weapons, shined a flashlight in the car, and questioned defendant concerning whether he had any illegal items in the car. (§45-12(c))

3. Whether the analytical framework of **People v. Gonzalez** was overruled by **Illinois v. Caballes**. (§45-12(c))

Defense counsel: Kathleen Colton, Batavia

No. 103845

People v. Galan, State leave to appeal granted 1/24/07 from 367 Ill.App.3d 876, 856 N.E.2d 511 (1st Dist. 2006)

Whether defendant's arrest was improper where Chicago officers arrested defendant in Indiana under that State's "fresh pursuit" statute, but failed to comply with the provision requiring that the arrestee be taken without unnecessary delay before an Indiana judge. (§45-3)

Defense counsel: John DeLeon, Chicago

No. 104181

People v. Wear, Defense leave to appeal granted 5/31/07 from 371 Ill.App.3d 517, 867 N.E.2d 1027 (4th Dist. 2007)

1. Whether **U.S. v. Santana**, 427 U.S. 38 (1976), which holds that a valid arrest in a public place cannot be avoided by retreating inside a residence, applies to investigatory stops, so that an officer may enter a home to accomplish a detention for which there is neither a warrant nor probable cause. (§§45-4(a), 45-5(c)(1))

2. Whether "hot pursuit" doctrine allows a warrantless entry to a home to conduct an investigatory stop concerning a misdemeanor offense. (§§45-4(a), 45-5(c)(1))

Defense counsel: Elliott Turpin, Carrollton

No. 104443

People v. Lovejoy, Capital appeal (DuPage)

Whether the trial court erred by denying defendant's motion to suppress a videotaped interview because the detention exceeded the scope of a permissible stop and defendant's consent to change the location of the interview was tainted by the illegal detention. (§45-4(a))

Defense counsel: Kim Robert Fawcett, Supreme Court Unit OSAD

No. 105075

People v. Bridgewater, Defense leave to appeal granted 11/29/07 from 375 Ill.App.3d 414, 873 N.E.2d 45 (3d Dist. 2007)

1. Whether **Thornton v. U.S.**, 541 U.S. 615 (2004), which held that when a “recent occupant” of a car is arrested a “search incident to the arrest” may be performed, applies where the defendant was arrested after he exited a car and the arrest was solely for conduct which occurred after he left the car. (§45-13)

2. Whether the Illinois Constitution affords greater protection to citizens than does **Atwater v. Lago Vista**, 522 U.S. 318 (2001), which held that a defendant may be arrested for a traffic violation which is punishable only by a fine, because **Atwater** conflicts with long standing Illinois law holding that traffic stops and custodial arrests are not treated identically. (§§45-5(a), 45-12(c))

Defense counsel: Fletcher Hamill, Ottawa OSAD

No. 105457

People v. Bailey, Defense leave to appeal granted 11/29/07 from 375 Ill.App.3d 1055, 874 N.E.2d 940 (2d Dist. 2007)

Whether the Fourth Amendment, the Illinois Constitutional provision on search and seizure, and Illinois statutory law permit a warrant check of a passenger in a car that has been stopped solely because the occupants are not wearing seatbelts. (§§45-12(a),(c))

Defense counsel: James Leven, Chicago

SENTENCING

No. 104375

People v. Brown, Defense leave to appeal granted 5/31/07 from 371 Ill.App.3d 450, 863 N.E.2d 283 (2d Dist. 2007)

Whether the defendant waived his claim that the State failed to prove he was eligible for habitual offender sentencing where he failed to raise the State’s failure of proof at the sentencing hearing, as is

required by 720 ILCS 5/33B-2(c) (unless the lack of eligibility is presented by the prosecution's evidence). (§46-8(b))

Defense counsel: Jaime Montgomery, Elgin OSAD

No. 104558

People v. Lucas, Defense leave to appeal granted 9/26/07 from 372 Ill.App.3d 279, 865 N.E.2d 420 (3d Dist. 2007)

Whether a 30-year sentence for the Class X felony for armed violence violates the proportionate penalties clause where defendant drove a car while holding a 2-inch-spring-loaded knife. (§46-1(c)(1))

Defense counsel: Fletcher Hamill, Ottawa OSAD

No. 105206

People v. Robinson, Defense leave to appeal granted 11/29/07 from 374 Ill.App.3d 949, 872 N.E.2d 73 (1st Dist. 2007)

Whether 725 ILCS 5/111-3(c-5), which requires the State to provide notice to the defense that it intends to use a fact to increase the range of penalties for an offense, applies where the defendant was charged with first degree murder but at his request was convicted in a bench trial of involuntary manslaughter, and the trial judge imposed a higher sentence for the offense of involuntary manslaughter of a household member. (§46-1(c)(2))

Defense counsel: Linda Olthoff, Chicago OSAD

No. 105719

People v. Klepper, Direct appeal (Kendall)

Whether 720 ILCS 5/26-1(a)(4), which creates the Class 4 felony of disorderly conduct, violates the proportionate penalties clause because the felony offense contains the same elements as the Class A misdemeanor offense of disorderly conduct under 720 ILCS 5/26-1(a)(12). (§46-1(c)(1))

Defense counsel: Larry Wechter, Geneva

***No. 106068**

People v. Siguenza-Brito, State leave to appeal granted 5/29/08 from unpublished order (No. 1-06-0632, 11/21/07) (1st Dist.)

Whether defendant was subjected to an improper double enhancement where he was charged with both aggravated criminal sexual assault based on kidnapping and aggravated kidnapping based upon the concurrent commission of the same criminal sexual assault. (§46-3)

Defense counsel: Manuel Serritos, Chicago OSAD

SEX OFFENSES

No. 102667

People ex rel. Birkett v. Honorable James Konetski, Mandamus (DuPage)

1. Whether the requirement that a sex offender register under the Sex Offender Registration Act constitutes "punishment" for the underlying offense. (§47-5)

2. Whether the Sex Offender Registration Act (730 ILCS 150/1) is unconstitutional as applied to juvenile sex offenders who have reached the age of 17, because minors are not afforded a jury trial on delinquency petitions alleging sex offenses that will require registration upon reaching adulthood, and because requiring the registration of minors who reach adulthood is not sufficiently related to the purpose of the Registration Act to satisfy due process and equal protection. (§47-5)

Defense counsel: Kathleen Weck, Elgin OSAD

SPEEDY TRIAL

No. 105632

People v. Van Schoyck, Defense leave to appeal granted 1/30/08 from unpublished order (No. 4-07-0024, 9/19/07) (4th Dist.)

Whether a speedy trial demand made after defendant was charged by a uniform traffic citation with driving under the influence of alcohol carried over to a subsequent information charging felony DUI with a

revoked driver's license, where both offenses arose from the same incident. (§48-1(b))

Defense counsel: Philip Summers, Champaign

STATUTES

No. 105453

People v. Williams, State petition for appeal as a matter of right allowed 1/30/08 from 376 Ill.App.3d 875, 876 N.E.2d 235 (1st Dist. 2007)

Whether federal copyright law preempts 720 ILCS 5/16-7(a)(2), which creates a state criminal offense for intentionally, knowingly or recklessly selling sound or audiovisual recordings which were created without the consent of the copyright owner. (§49-1)

Defense counsel: Ahmed Kosoko, Chicago OSAD

No. 105928

People v. Christopherson, Defense leave to appeal granted 3/26/08 from 377 Ill.App.3d 752, 879 N.E.2d 1035 (2d Dist. 2007)

Whether 735 ILCS 5/6-16(a), which creates the offense of unlawful delivery of alcoholic liquor to a person under the age of 21, was intended to apply to minors who sell, give, or deliver alcohol to other minors. (§49-1)

Defense counsel: Tom Lilien, Elgin OSAD

TRAFFIC OFFENSES

No. 102372

People v. McKown, (Cause remanded for *Frye* hearing with Supreme Court retaining jurisdiction; 226 Ill.2d 245, 875 N.E.2d 1079 (2007))

Whether HGN evidence is admissible under *Frye*. (§51-2(c))

Defense counsel: Mark Fisher, Ottawa OSAD

***No. 105805**

People ex rel. Madigan v. Kinzer & Kissack (*Mandamus*)(Iroquois)

1. Whether 730 ILCS 5/5-6-1(d), which bars a circuit court from imposing supervision if the defendant has previously pleaded guilty to reckless driving pursuant to a plea agreement, violates equal protection and creates an unconstitutional mandatory presumption. (§51-2(a))

2. Whether 730 ILCS 5/5-6-1(d), which bars supervision for any person who has previously been charged with DUI and pleaded guilty pursuant to a plea agreement, applies to anyone who has pleaded guilty to DUI, or only if the previous plea agreement reduced a DUI charge to some lesser offense. (§51-2(a))

Defense counsel: Ronald E. Boyer, Watseka

VERDICTS

No. 105751

People v. Artis, State leave to appeal granted 1/30/08 from 377 Ill.App.3d 216, 879 N.E.2d 427 (3d Dist. 2007) (No. 3-06-0346, 11/13/07)

1. Where one of two convictions for aggravated criminal sexual assault must be vacated on “one act-one crime” grounds, does the prosecution have discretion to insist that the count based on the more serious predicate felony be vacated. (§56-3(a))

2. Whether the one act-one crime rule should be abolished for defendants sentenced to concurrent terms of imprisonment on multiple convictions, because under Illinois’ current non-discretionary parole system, the existence of multiple convictions has no effect on the possibility of parole. (§56-3(a))

Defense counsel: Ken Brown, Ottawa OSAD

***No. 106068**

People v. Siguenza-Brito, State leave to appeal granted 5/29/08 from unpublished order (No. 1-06-0632, 11/21/07) (1st Dist.)

Whether defendant was subjected to an improper double enhancement where he was charged with both aggravated criminal sexual assault based on kidnapping and aggravated kidnapping based upon the concurrent commission of the same criminal sexual assault. (§56-3(a))

Defense counsel: Manuel Serritos, Chicago OSAD

WAIVER – PLAIN ERROR – HARMLESS ERROR

No. 100681 (consolidated with No. 102584)

People v. Cosby, State leave to appeal granted 9/27/06 from unpublished order (No. 3-03-0681, 4/25/05)

Whether the Appellate Court erred by reaching an issue as plain error merely because it raised a constitutional question, without considering whether the error was “obvious or clear” or whether defendant had shown that the fairness of the trial and integrity of the judicial process were affected. (§57-4)

Defense counsel: Verlin Mainz, Ottawa OSAD

WITNESSES

No. 104414

People v. Naylor, State leave to appeal granted 5/31/07 from 372 Ill.App.3d 1, 864 N.E.2d 718 (1st Dist. 2007)

Under **People v. Montgomery**, 47 Ill.2d 510, 268 N.E.2d 695 (1971), which authorizes the use of certain prior convictions as impeachment if less than 10 years has passed since the conviction or the defendant’s release from prison, should the end of the 10-year period be calculated from the date of the offense or the date of the trial. (§58-7(e))

Defense counsel: Patrick Cassidy, Chicago OSAD

No. 105320

People v. Harris, Defense leave to appeal granted 11/29/07 from 375 Ill.App.3d 398, 873 N.E.2d 584 (3d Dist. 2007)

Whether the trial court properly permitted the State to use a juvenile delinquency adjudication as impeachment where the defendant, who was no longer a juvenile, testified on direct examination that “I don’t commit crimes,” but made no other reference to his juvenile or criminal history. (§58-7(e),(g))

Defense counsel: Tom Karalis, Ottawa OSAD

No. 105887

People v. Bannister, Defense leave to appeal granted 3/26/08 from 378 Ill.App.3d 19, 880 N.E.2d 607 (1st Dist. 2007) (No. 1-04-2894, 12/4/07)

Whether a criminal defendant’s constitutional rights are violated by a plea agreement which requires a State witness to testify consistently with his previous statements. (§58-7(b))

Defense counsel: Lester Finkle and Edwin Burnette, Chicago