

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

February 8, 2012

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

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APPEAL

No. 111746

People v. Cathey, Defense petition for leave to appeal granted 3/30/11 from 406 Ill.App.3d 503, 942 N.E.2d 1 (1st Dist. 2010)

1. Whether the decision in **People v. Patrick**, 233 Ill.2d 62, 908 N.E.2d 1 (2009), holding that a court abuses its discretion when it refuses to rule on a defense motion *in limine* to exclude defendant's prior convictions until after defendant testifies, applies retroactively to convictions that were final when **Patrick** was decided. (§2-6(e))

2. Regardless of the retroactivity of **Patrick**, whether a post-conviction petition states an arguable claim that appellate counsel was ineffective for failing to raise the **Patrick** issue on direct appeal, where, while defendant's direct appeal was pending, the First District issued a decision adopting the **Patrick** rule in **People v. Phillips**, 371 Ill.App.3d 948, 864 N.E.2d 823 (1st Dist. 2007). (§2-6(e))

Defense counsel: David Holland, Chicago OSAD

No. 111835

People v. Colyar, State leave to appeal granted 5/25/11 from 407 Ill.App.3d 294, 941 N.E.2d 479 (1st Dist. 2010)

Whether the Appellate Court erroneously concluded that the State forfeited the argument that a search of the defendant's car was conducted for purposes of officer safety, where the record showed that the State had argued **Terry** at the first hearing on the motion to suppress. (§2-6(a))

Defense counsel:

No. 113181

People v. Geiger, Defense petition for leave to appeal granted 11/30/11 from 2011 IL App (3d) 090688 (No. 3-09-0688, 11/10/11)

Whether the Illinois Supreme Court should adopt the standard of review utilized by federal courts for reviewing contempt sentences, which is less deferential than the standard utilized in reviewing sentences for other offenses. (§2-7(a))

Defense counsel: Fletcher Hamill, Elgin OSAD

***No. 113475**

People v. Martinez, Defense leave to appeal granted 1/25/12 from 2011 IL App (2d) 100498 (No. 2-10-0498, 10/6/11)

Whether the Appellate Court had jurisdiction to entertain a State appeal from the trial court's order of acquittal, which the State contended was a "sham" and should be treated as a dismissal because the State had refused to participate in the trial, where the State participated in jury selection and agreed that if its witnesses did not appear after jury selection it would either move to dismiss or proceed without the witnesses, and after the jury was sworn and given preliminary instructions the trial court granted a motion for a directed verdict when the State declined to make an opening argument or present any evidence. (§2-4(a))

Defense counsel: Darren Miller, Elgin OSAD

COLLATERAL REMEDIES

No. 106311

People ex rel. Devine v. Linn, (Mandamus/Prohibition)

Whether the State may obtain review of a constitutional ruling – that the mandatory sentence violated the proportionate penalties clause – by seeking a writ of *mandamus* or prohibition rather than by taking a direct appeal. (§9-3)

Defense counsel:

No. 107832

People v. Kelly, Direct appeal (McLean)

Whether a defendant may challenge the constitutionality of the mandatory 20-year-enhancement to armed robbery by filing a post-conviction petition, instead of moving to withdraw the plea. (§9-1(c))

Defense counsel: Susan Wilham, Springfield OSAD

No. 111711

People v. Edwards, Defense petition for leave to appeal granted 3/30/11 from an unpublished order (Nos. 1-07-0714 & 1-08-1089 cons. 9/30/10) (1st Dist.)

1. Whether a court should judge the sufficiency of a successive post-conviction petition in accordance with the standards applicable to first-stage proceedings, accepting the allegations in the petition as true and dismissing only if the allegations lack an arguable basis in fact and in law. (§9-1(i)(1))

2. Whether a court may deny defendant leave to file a successive post-conviction petition because his allegations of actual innocence based on newly-discovered evidence are contradicted by his post-arrest statement. (§9-1(i)(2))

Defense counsel: Shawn O'Toole, Chicago OSAD

No. 111746

People v. Cathey, Defense petition for leave to appeal granted 3/30/11 from 406 Ill.App.3d 503, 942 N.E.2d 1 (1st Dist. 2010)

1. Whether the decision in **People v. Patrick**, 233 Ill.2d 62, 908 N.E.2d 1 (2009), holding that a court abuses its discretion when it refuses to rule on a defense motion *in limine* to exclude defendant's prior convictions until after defendant testifies, applies retroactively to convictions that were final when **Patrick** was decided. (§9-5(d))

2. Regardless of the retroactivity of **Patrick**, whether a post-conviction petition states an arguable claim that appellate counsel was ineffective for failing to raise the **Patrick** issue on direct appeal, where, while defendant's direct appeal was pending, the First District issued a decision adopting the **Patrick** rule in **People v. Phillips**, 371 Ill.App.3d 948, 864 N.E.2d 823 (1st Dist. 2007). (§§9-1(e)(2), 9-5(d))

3. Whether a post-conviction petition states an arguable claim of ineffective assistance of counsel for failure to request a reckless conduct instruction, even though the petition fails to specifically allege that defendant wanted his counsel to request the instruction. (§9-1(e)(2))

Defense counsel: David Holland, Chicago OSAD

No. 112020

People v. Guerrero, State petition for leave to appeal granted 5/25/11 from an unpublished order (No. 3-07-0856, 2/1/11) (3d Dist.)

1. Whether the defendant established cause to overcome procedural default where at the time of his plea he was 16 years of age, neither the trial court nor the court's sentencing order advised defendant of the MSR-term requirement, and defendant learned of the requirement of an admonition of the MSR term while in prison from **Whitfield** (of **People v. Whitfield**, 217 Ill.2d 177, 840 N.E.2d 615 (2005)). (§9-1(i)(2))

2. Whether defendant established prejudice to overcome procedural default on the ground that his guilty plea was not knowing and voluntary where he entered a fully-negotiated plea for a 50-year sentence, but was never admonished that a MSR term would follow his term of incarceration. (§9-1(i)(2))

Defense counsel: Kerry Bryson, Ottawa OSAD

No. 112214

People v. Tate, Defense petition for leave to appeal granted 9/28/11 from unpublished order (No. 1-09-2379, 3/8/11) (1st Dist.)

1. Whether the trial court erred in denying defendant's post-conviction petition at the first stage by applying technical pleading requirements, construing the petitioner's affidavit strictly against him, engaging in credibility assessments without benefit of a hearing, and dismissing, without comment, a post-conviction petition which demonstrated valid, nonfrivolous constitutional claims. (§9-1(e)(1))

2. Whether a post-conviction petition fails to raise a due process claim of actual innocence merely because the affidavits used to support the due process claim were also used to support a claim of ineffective assistance of counsel. (§9-1(c))

Defense counsel: Daniel S. Alexander, Chicago

***No. 112890**

People v. English, Defense petition for leave to appeal granted 1/11/12 from 2011 IL App (3d) 100764

Whether defendant forfeited the claim that aggravated battery of a child could not serve as the predicate felony for his felony murder conviction due to his failure to raise that issue on direct appeal, where *People v. Viser*, 62 Ill.2d 568, 343 N.E.2d 903 (1975), was the controlling law when

defendant's appeal was pending, and *People v. Morgan*, 97 Ill.2d 404, 758 N.E.2d 818 (2001), and *People v. Pelt*, 207 Ill.2d 434, 800 N.E.2d 1193 (2003), had not yet been decided. (§9-1(h)(2))

Defense counsel: Kerry Bryson, Ottawa OSAD

***No. 113307**

People v. Coleman, Defense leave to appeal granted 1/25/12 from 2011 IL App (3d) 100419-U (No. 3-10-0419, 8/25/11)

1. Whether a post-conviction petitioner who raised a claim of actual innocence was entitled to a new trial where five newly discovered witnesses admitted their guilt of the crime and completely exculpated the petitioner, because the newly discovered evidence would likely have been believed by a reasonable jury and would have compelled an acquittal. (§9-1(c))

2. Whether the test to be applied by the post-conviction court to a claim of actual innocence based on newly-discovered evidence includes consideration of two factors - whether the newly discovered evidence of innocence would result in an acquittal if believed, and if so, whether a reasonable jury could have believed the evidence. (§9-1(c))

Defense counsel: Karen Daniel, Center of Wrongful Convictions, Bluhm Legal Clinic, Chicago

***No. 113399**

People v. Cruz, Defense leave to appeal granted 1/25/12 from unpublished order 2011 IL App (1st) 091944-U

Where a *pro se* petitioner represented himself at the second stage of post-conviction proceedings and claimed that he was not culpably negligent for the late filing of the initial post-conviction petition, whether the Appellate Court erred by refusing to address the merits of the claim because it had been raised in a supplemental petition that was signed but not notarized. (§9-1(d))

Defense counsel: Pamela Rubeo, Chicago OSAD

***No. 113471**

People v. Evans, Defense leave to appeal granted 1/25/12 from unpublished order 2011 IL App (1st) 100391-U

Whether a *pro se* petitioner seeking to meet the “cause” and “prejudice” test for filing a successive post-conviction petition is required to meet a higher standard than that his claim of cause and prejudice has an arguable basis in fact. (§9-1(i)(2))

Defense counsel: Patrick Cassidy, Chicago OSAD

CONFESSIONS

No. 111089

People v. Hunt, State’s petition for leave to appeal allowed 1/26/11 from 403 Ill.App.3d 802, 934 N.E.2d 1039 (1st Dist. 2010)

Whether the rule of **People v. McCauley**, 163 Ill.2d 414, 645 N.E.2d 923 (1994), which prohibits the police from continuing to interrogate a suspect without informing him that an attorney is present at the police station and is attempting to speak to him, applies to an interrogation of a suspect by an informant conducted at the direction of the police in a police station, where no police are physically present in the interrogation room. (§10-4(a))

Defense counsel: Jack P. Rimland, Chicago

No. 112362

People v. Murdock, Defense petition for leave to appeal granted 9/28/11 from unpublished order (No. 3-07-0438, 4/7/11) (3d Dist.)

Whether the statement of a 16-year-old defendant should have been suppressed as involuntary where the officers conducting the interrogation acted as if the minor was an adult, making no accommodation for his youth and without attempting to comply with the relevant provisions of the Juvenile Court Act, which include allowing the defendant access to his grandfather, who was present in the station, and to a juvenile officer. (§10-5(c)(2))

Defense counsel: Fletcher Hamill, Ottawa OSAD

CONTEMPT OF COURT

No. 113181

People v. Geiger, Defense petition for leave to appeal granted 11/30/11 from 2011 IL App (3d) 090688 (No. 3-09-0688, 11/10/11)

Whether a 20-year-sentence for contempt of court, based a refusal to testify at a first degree murder trial, was so disproportionate to the offense that a reduction is justified. (§12-1)

Defense counsel: Fletcher Hamill, Elgin OSAD

COUNSEL

No. 111194

In re Austin M., Defense leave to appeal granted 1/26/11 from 403 Ill.App.3d 667, 941 N.E.2d 903 (4th Dist. 2010)

Whether the respondent minor was deprived of the right to counsel at a delinquency proceeding where his attorney acted as a guardian *ad litem* rather than as a zealous advocate for the minor's rights. (§13-1(a))

Defense counsel: Jacqueline Bullard, Springfield OSAD

No. 111746

People v. Cathey, Defense petition for leave to appeal granted 3/30/11 from 406 Ill.App.3d 503, 942 N.E.2d 1 (1st Dist. 2010)

Regardless of the retroactivity of **Patrick**, whether a post-conviction petition states an arguable claim that appellate counsel was ineffective for failing to raise the **Patrick** issue on direct appeal, where, while defendant's direct appeal was pending, the First District issued a decision adopting the **Patrick** rule in **People v. Phillips**, 371 Ill.App.3d 948, 864 N.E.2d 823 (1st Dist. 2007). (§13-4(b)(10))

Defense counsel: David Holland, Chicago OSAD

No. 112438

People v. Fields, State petition for leave to appeal granted 9/28/11 from 409 Ill.App.3d 398, 948 N.E.2d 290 (3d Dist. 2011)

Whether defense counsel labored under a *per se* conflict of interest where he had previously acted as guardian *ad litem* for a prosecution witness in a juvenile proceeding unrelated to the prosecution of defendant. (§13-5(c))

Defense counsel: Mark Fisher, Ottawa OSAD

***No. 112890**

People v. English, Defense petition for leave to appeal granted 1/11/12 from 2011 IL App (3d) 100764

Whether appellate counsel was ineffective in failing to argue on appeal that aggravated battery of a child could not serve as the predicate felony for defendant's felony murder conviction where the acts constituting that predicate felony arise from and are inherent in the murder and had no felonious purpose other than the killing itself. (§13-4(b)(10))

Defense counsel: Kerry Bryson, Ottawa OSAD

No. 113197

People ex rel. Glasgow v. Kinney, Petition for original writ of *Mandamus* (Will)

Whether **People v. Finley**, 209 Ill.App.3d 968, 568 N.E.2d 412 (3d Dist. 1991), which held that under **Baldasar v. Illinois**, 446 U.S. 222 (1980), a prior uncounseled misdemeanor conviction may not be used to impose an increased term of imprisonment upon a subsequent conviction, has been overruled by **Nicols v. U.S.**, 511 U.S. 738 (1994), so that defendant's prior uncounseled misdemeanor conviction for driving under the influence may be used to enhance the sentence for a subsequent DUI. (§13-1(a))

Defense counsel: Jeffrey Tomczak, Joliet

DISORDERLY, ESCAPE, RESISTING AND OBSTRUCTING OFFENSES

No. 111056

People v. Baskerville, State leave to appeal granted 11/24/10 from an unpublished order (Nos. 3-08-0656 & 3-08-0657, 8/12/10) (3d Dist.)

1. Must the defendant perform a physical act to be convicted of obstructing a peace officer? (§16-2)
2. Does the act of furnishing false information to the police satisfy that requirement? (§16-2)

Defense counsel: Jay Wiegman, Ottawa OSAD

DOUBLE JEOPARDY

*No. 113475

People v. Martinez, Defense leave to appeal granted 1/25/12 from 2011 IL App (2d) 100498 (No. 2-10-0498, 10/6/11)

Whether the Appellate Court had jurisdiction to entertain a State appeal from the trial court's order of acquittal, which the State contended was a "sham" and should be treated as a dismissal because the State had refused to participate in the trial, where the State participated in jury selection and agreed that if its witnesses did not appear after jury selection it would either move to dismiss or proceed without the witnesses, and after the jury was sworn and given preliminary instructions the trial court granted a motion for a directed verdict when the State declined to make an opening argument or present any evidence. (§17-4)

Defense counsel: Darren Miller, Elgin OSAD

EVIDENCE

No. 111534

People v. Leach, Defense leave to appeal granted 1/26/11 from 405 Ill.App.3d 297, 939 N.E.2d 537 (1st Dist. 2010)

Whether the Appellate Court erred by finding that an autopsy protocol prepared by a non-testifying medical examiner for use in a criminal prosecution was not "testimonial" hearsay which was subject to **Crawford v. Washington**, and was instead admissible as a public document. (§§19-10(b), 19-28(b))

Defense counsel: Maya Szilak, Chicago OSAD

No. 111896

People v. Chapman, Defense petition for leave to appeal granted 5/25/11 from an unpublished order (No. 3-07-0799, 1/5/11) (3d Dist.)

Whether 725 ILCS 5/115-20 authorized admission of defendant's prior conviction for domestic battery of the murder victim as propensity evidence at his trial for the murder of that victim, where first-degree murder is not one of the offenses enumerated in the statute, and the probative value of the prior conviction did not outweigh its undue prejudice to the defendant. (§§19-24(a), 19-24(b)(1))

Defense counsel: Bob Burke, Mt. Vernon OSAD

FITNESS TO STAND TRIAL

No. 112204

In re S.B., State leave to appeal granted 5/25/11 from 408 Ill.App.3d 516, 945 N.E.2d 102 (3d Dist. 2011)

1. Whether the adult fitness procedures of the Criminal Code are incorporated in the Juvenile Court Act. (Ch. 21)

2. Whether a minor charged on a delinquency petition and found unfit to stand trial, but who is not found "not not guilty" in a discharge hearing, must register as a sex offender under 730 ILCS 150/2, which requires registration by a person who is charged with a sex offense and the "subject of a finding not resulting in an acquittal." (Ch. 21)

Defense counsel: Carrie Stevens, Fruita, Colorado

GUILTY PLEAS

No. 111336

People v. Dominquez, Defense leave to appeal granted 1/26/11 from unpublished order (No. 1-09-0125, 9/7/10) (1st Dist.)

Where the trial court fails to give proper admonishments to a guilty plea defendant concerning his appellate rights under Supreme Court Rule 605, and the case reaches the reviewing court without the

defendant having filed an appropriate motion, must the defendant establish prejudice from the improper admonishments in order to obtain a remand for proper admonishments and the opportunity to file a proper motion. (§24-8(a))

Defense counsel: Michael Orenstein, Chicago OSAD

No. 112020

People v. Guerero, State petition for leave to appeal granted 5/25/11 from an unpublished order (No. 3-07-0856, 2/1/11) (3d Dist.)

1. Whether the Appellate Court erred in ordering a sentence reduction as a post-conviction remedy for the failure to admonish defendant of the applicable MSR term on the ground that defendant's plea was not knowingly and voluntarily made, where defendant demonstrated that his plea was fully negotiated, he was not admonished by the trial judge or the sentencing order that a three-year MSR term would be added to his sentence, and he only learned of his right to the admonition after meeting **Whitfield** (of **People v. Whitfield**, 217 Ill.2d 177, 840 N.E.2d 615 (2005)) in prison and learning of the new rule of law established in **Whitfield's** case. (§§24-1, 24-4, 24-5, 24-6(d))

2. Whether defendant entered into a fully-negotiated plea where defendant pled guilty in return for the State's recommendation of a 50-year term of imprisonment, the court imposed the recommended term, and the parties waived a presentence investigation report. (§24-3)

Defense counsel: Kerry Bryson, Ottawa OSAD

No. 112817

People v. Hughes, Defense petition for leave to appeal granted 11/30/11 from 2011 IL App (2d) 090992

Whether defendant's guilty plea was involuntary where the circuit court failed to advise him that his plea could be the basis for the filing of a sexually-violent-person petition. (§§24-5, 24-6(a))

Defense counsel: Darren Miller, Elgin OSAD

HOMICIDE

***No. 112890**

People v. English, Defense petition for leave to appeal granted 1/11/12 from 2011 IL App (3d) 100764

Whether a conviction for felony murder can be based on the predicate felony of aggravated battery to a child where the acts constituting that predicate felony arise from and are inherent in the murder and had no felonious purpose other than the killing itself. (§26-2)

Defense counsel: Kerry Bryson, Ottawa OSAD

INDICTMENTS, INFORMATIONS, COMPLAINTS

No. 112817

People v. Hughes, Defense petition for leave to appeal granted 11/30/11 from 2011 IL App (2d) 090992

Whether the circuit court had jurisdiction under the revestment doctrine to accept defendant's guilty plea to a charge that the State had nol-prossed. (§29-1)

Defense counsel: Darren Miller, Elgin OSAD

JURY

No. 111746

People v. Cathey, Defense petition for leave to appeal granted 3/30/11 from 406 Ill.App.3d 503, 942 N.E.2d 1 (1st Dist. 2010)

Whether there is some evidence of recklessness sufficient to support a reckless conduct instruction where defendant testified that he struggled with a man armed with a gun. (§32-8(i))

Defense counsel: David Holland, Chicago OSAD

JUVENILE

***No. 110810**

In re Danielle J., Direct appeal (Cook)

1. Whether 705 ILCS 405/5-615(1)(b) violates the separation of powers doctrine and equal protection because it requires the consent of the prosecutor before the trial court may order a continuance under supervision in a delinquency case. (§33-6(f)(1))

2. Whether the minor had standing to challenge §615(1)(b) where the trial court pronounced the minor guilty before the State raised an objection to a continuance under supervision, because a continuance under supervision is authorized only before a finding of guilt is made. (§33-6(f)(1))

Defense counsel: Lester Finkle, Cook County Public Defender's Office

No. 111194

In re Austin M., Defense leave to appeal granted 1/26/11 from 403 Ill.App.3d 667, 941 N.E.2d 903 (4th Dist. 2010)

Whether the respondent minor was deprived of his right to counsel at a delinquency proceeding where his attorney acted as a guardian *ad litem* rather than as a zealous advocate for the minor's rights. (§33-4)

Defense counsel: Jacqueline Bullard, Springfield OSAD

No. 112118

In re Tyrees C., Direct appeal (Cook County)

Whether the separation of powers doctrine, equal protection, and the right to due process are violated by 705 ILCS 405/5-615(1)(b), which allows the State's Attorney's office to preclude supervision in a delinquency case by raising an objection. (§33-6(f)(1))

Defense counsel: Cook County Public Defender

No. 112204

In re S.B., State leave to appeal granted 5/25/11 from 408 Ill.App.3d 516, 945 N.E.2d 102 (3d Dist. 2011)

1. Whether the adult fitness procedures of the Criminal Code are incorporated in the Juvenile Court Act. (§33-9)

2. Whether a minor charged on a delinquency petition and found unfit to stand trial, but who is not found “not not guilty” in a discharge hearing, must register as a sex offender under 730 ILCS 150/2, which requires registration by a person who is charged with a sex offense and the “subject of a finding not resulting in an acquittal.” (§33-9)

Defense counsel: Carrie Stevens, Fruita, Colorado

No. 112362

People v. Murdock, Defense petition for leave to appeal granted 9/28/11 from unpublished order (No. 3-07-0438, 4/7/11) (3d Dist.)

Whether the statement of a 16-year-old defendant should have been suppressed as involuntary where the officers conducting the interrogation acted as if the minor was an adult, making no accommodation for his youth and without attempting to comply with the relevant provisions of the Juvenile Court Act, which include allowing the defendant access to his grandfather, who was present in the station, and to a juvenile officer. (§33-9)

Defense counsel: Fletcher Hamill, Ottawa OSAD

NARCOTICS

No. 111745

People v. Young, State leave to appeal granted 3/30/11 from unpublished order (No. 1-08-2690, 12/3/10) (1st Dist.)

Whether the legislature intended the phrase “any school” in 720 ILCS 570/407(b)(2), which enhances the penalty for delivery of controlled substances within 1,000 feet “of the real property comprising any school,” to include a preschool. (§35-1)

Defense counsel: Beth Herndobler, Chicago OSAD

OBSCENITY

No. 112754

People v. Hollins, Defense petition for leave to appeal granted 9/28/11 from an unpublished order (No. 2-10-0051, 6/27/11)

Whether the Illinois pornography statute, which criminalizes the depiction of sexual activity involving persons under 18 (725 ILCS 5/11-20.1), constitutionally applies to a defendant who photographed his legal consensual sexual activity with his 17-year-old girlfriend, for their private use. (§36-2)

Defense counsel: Kathleen Hamill, Elgin OSAD

PAROLE, PARDONS & PRISONERS' RIGHTS

***No. 113471**

People v. Evans, Defense leave to appeal granted 1/25/12 from unpublished order 2011 IL App (1st) 100391-U

Whether due process is violated where the combination of the mandatory supervised release term and the 85% truth in sentencing law results in the defendant being held in custody longer than the term of years specified by the trial court in imposing the sentence. (§37-1(a))

Defense counsel: Patrick Cassidy, Chicago OSAD

REASONABLE DOUBT

No. 107993

People v. Washington, State leave to appeal granted 3/25/09 from unpublished order (No. 1-06-3159, 12/31/08) (1st Dist.)

What evidence is necessary to prove the presence of a dangerous weapon where no weapon is recovered or introduced at trial, but the victim testifies that the offender used a weapon. (§42-1)

Defense counsel: Laura Weiler, Chicago OSAD

No. 111534

People v. Leach, Defense leave to appeal granted 1/26/11 from 405 Ill.App.3d 297, 939 N.E.2d 537 (1st Dist. 2010)

Whether the Appellate Court erred by concluding that the evidence was sufficient to uphold a conviction for first degree murder rather than involuntary manslaughter, where the Appellate Court ignored uncontested evidence that the defendant acted recklessly and drew an impermissible negative inference from the fact that the defendant made alternative arguments that the evidence proved only involuntary manslaughter. (§42-1)

Defense counsel: Maya Szilak, Chicago OSAD

No. 112370

People v. Lara, State petition for leave to appeal granted 9/28/11 from 408 Ill.App.3d 732, 946 N.E.2d 516 (1st Dist. 2011)

1. Whether the *corpus delicti* rule, which states that a conviction may not be based solely on the defendant's confession and that the State must introduce evidence other than the confession to prove that the offense occurred, requires that the independent evidence corroborate every element of the offense. (§42-1)

2. Whether the Appellate Court erred by finding that the *corpus delicti* rule was not satisfied concerning predatory criminal sexual assault, which requires a showing of sexual penetration, where the complainant stated that she had not been penetrated and the only evidence of penetration came from the defendant's statement. (§42-1)

Defense counsel: Megan Ledbetter, Chicago OSAD

SEARCH & SEIZURE

No. 108523

People v. Prinzing, State leave to appeal granted 9/30/09 from 389 Ill.App.3d 923, 907 N.E.2d 87 (2d Dist. 2009)

Whether an officer's discovery of apparent child pornography on the hard drive of defendant's computer was beyond the scope of defendant's consent to search the computer, which allowed a search for evidence of computer viruses or any indication that defendant's credit card information had been compromised. (§44-11(a))

Defense counsel:

No. 111781

People v. Hackett, State leave to appeal granted 3/3/11 from 406 Ill.App.3d 209, 943 N.E.2d 13 (3d Dist. 2010)

Whether the trial court erred by finding that a police officer lacked probable cause to stop a motorist who twice momentarily swerved across a lane divider line, where the vehicle's tires slightly crossed the divider for a few seconds and there was no basis to believe that if the defendant did change lanes, he failed to first determine whether it was safe. (§44-12(a))

Defense counsel:

No. 111835

People v. Colyar, State leave to appeal granted 5/25/11 from 407 Ill.App.3d 294, 941 N.E.2d 479 (1st Dist. 2010)

Whether a bullet observed in plain view on the center console of an automobile provides probable cause to search the defendant and the car for a weapon. (§§44-6(d), 44-6(e))

Defense counsel:

No. 112734

People v. Grant, State petition for leave to appeal granted 9/28/11 from 2011 IL App (1st) 091107

Whether probable cause exists to arrest defendant for the municipal ordinance violation of soliciting unlawful business, where the police observed defendant yelling, "Dro, dro," a slang term for marijuana, at a passing vehicle at a known narcotics sales spot. (§§44-5(b), 44-6(e))

Defense counsel: Brian McNeil, Chicago OSAD

No. 113221

People v. Allison, Direct appeal (Crawford)

Whether the Illinois Eavesdropping Statute (720 ILCS 5/14-2(a)(1)), which prohibits recording conversations without the consent of all parties thereto, violates substantive due process because it lacks a culpable mental state and subjects wholly innocent conduct to prosecution, and violates the First Amendment because it creates an absolute prohibition against citizens making audio recordings of public officials performing their public duties. (§44-17)

Defense counsel: William Sunderman, Charleston

***No. 113449**

People v. Fitzpatrick, Defense leave to appeal granted 1/25/12 from 2011 IL App (2d) 100463 (No. 2-10-0463, 11/3/11)

Whether the Illinois Constitution authorizes an arrest, and a full custodial search incident to that arrest, for commission of a petty offense which is punishable by fine only. (§44-5(a))

Defense counsel: Barb Paschen, Elgin OSAD

SENTENCING

No. 107821

People v. Clemons, State appeal granted 11/24/10 from unpublished order (No. 4-06-0823, 11/26/08) (4th Dist.)

1. Whether the proportionate penalties clause permits disparate sentences for armed violence and armed robbery while armed with a firearm, because armed violence is a broad crime which can be predicated on any of several felonies while armed with any of several weapons, and armed robbery while armed with a firearm is a narrow offense which applies only to one predicate and involves only one type of weapon. (§45-1(b)(2))

2. Whether the identical elements test should be abandoned in proportionate penalties analysis. (§45-1(b)(2))

Defense counsel: Susan Wilham, Springfield OSAD

No. 107832

People v. Kelly, Direct appeal (McLean)

1. Whether the 20-year-enhancement for armed robbery with discharge of a firearm is unconstitutional because the offense has identical elements to armed violence predicated on robbery, which carries a lesser sentence. (§45-1(b)(2))

2. Whether the remedy for a violation of the proportionate penalties clause is to strike the unconstitutional portion of the sentence. (§45-1(b)(2))

3. Whether **People v. Hauschild**, 226 Ill.2d 63, 871 N.E.2d 1 (2007), which held that the enhancement penalties for armed robberies involving the use of a firearm violate the proportionate penalties clause, applies retroactively to sentences imposed before **Hauschild** was decided. (§45-1(b)(2))

4. Whether the Supreme Court should overrule **Hauschild** and abandon the identical elements approach to assessing proportionality. (§45-1(b)(2))

Defense counsel: Susan Wilham, Springfield OSAD

No. 113181

People v. Geiger, Defense petition for leave to appeal granted 11/30/11 from 2011 IL App (3d) 090688 (No. 3-09-0688, 11/10/11)

Whether a 20-year-sentence for contempt of court, based a refusal to testify at a first degree murder trial, was so disproportionate to the offense that a reduction is justified. (§45-4(a))

Defense counsel: Fletcher Hamill, Elgin OSAD

***No. 113471**

People v. Evans, Defense leave to appeal granted 1/25/12 from unpublished order 2011 IL App (1st) 100391-U

Whether due process is violated where the combination of the mandatory supervised release term and the 85% truth in sentencing law results in the defendant being held in custody longer than the term of years specified by the trial court in imposing the sentence. (§§45-1(a), 45-16(a))

Defense counsel: Patrick Cassidy, Chicago OSAD

SEX OFFENSES

No. 112204

In re S.B., State leave to appeal granted 5/25/11 from 408 Ill.App.3d 516, 945 N.E.2d 102 (3d Dist. 2011)

Whether a minor charged on a delinquency petition and found unfit to stand trial, but who is not found “not not guilty” in a discharge hearing, must register as a sex offender under 730 ILCS 150/2, which requires registration by a person who is charged with a sex offense and the “subject of a finding not resulting in an acquittal.” (§46-7)

Defense counsel: Carrie Stevens, Fruita, Colorado

No. 112337

In re Detention of Stanbridge, State leave to appeal granted 11/30/11 from 408 Ill.App.3d 553, 948 N.E.2d 1063 (4th Dist. 2011)(consolidated with No. 112802, **In re Detention of Lieberman**, Defense leave to appeal granted 11/30/11 from 2011 IL App (1st) 090796 (No. 1-09-0796, 6/30/11))

Whether **In re Detention of Hardin**, 238 Ill.2d 33, 932 N.E.2d 1016 (2010), which determined how expert opinion testimony is to be evaluated when considering an initial Sexually Violent Person commitment petition, applies to a post-commitment probable cause determination concerning whether the committed individual is still a Sexually Violent Person, so that in a post-commitment hearing the trial court is not permitted to weigh the conflicting testimony of respective experts. (§46-6)

Defense counsel: Betsy Bier, Quincy

***No. 113116**

People v. Giraud, State leave to appeal granted 1/25/12 from 2011 IL App (1st) 091261 (No. 1-09-1261, 8/30/11)

Whether 720 ILCS 5/12-14(a)(3), which elevates criminal sexual assault to aggravated criminal sexual assault if the defendant acts “in such a manner as to threaten or endanger the life of the victim or any other person,” requires that the threat occur contemporaneously with the criminal sexual assault, and therefore does not apply where an offender who is HIV-positive poses a future risk to the victim’s health by engaging in forced, unprotected intercourse. (§46-2(a))

Defense counsel: Amanda Ingram, Chicago OSAD

SPEEDY TRIAL

***No. 113216**

People v. Lacy, State leave to appeal granted 1/25/12 from 2011 IL App (5th) 100347 (No. 5-10-0347, 9/20/11)

Whether 725 ILCS 5/103-5(c), which authorizes the trial court to continue the cause for “not more than an additional 60 days” if the State has unsuccessfully exercised due diligence to obtain the

results of DNA testing, limits the State to seeking a single 60-day extension or was intended to authorize multiple continuances so long as each is not more than 60 days. (§47-5)

Defense counsel: Paul Christenson, Murphysboro and Christian Baril, Carbondale

STATUTES

***No. 110810**

In re Danielle J., Direct appeal (Cook)

1. Whether 705 ILCS 405/5-615(1)(b) violates the separation of powers doctrine and equal protection because it requires the consent of the prosecutor before the trial court may order a continuance under supervision in a delinquency case. (§§48-3(c), 48-3(i))

2. Whether the minor had standing to challenge §615(1)(b) where the trial court pronounced the minor guilty before the State raised an objection to a continuance under supervision, because a continuance under supervision is authorized only before a finding of guilt is made. (§48-1)

Defense counsel: Lester Finkle, Cook County Public Defender's Office

No. 111745

People v. Young, State leave to appeal granted 3/30/11 from unpublished order (No. 1-08-2690, 12/3/10) (1st Dist.)

Whether the term "any school" in 720 ILCS 570/407(b)(2), which enhances the penalty for delivery of controlled substances within 1,000 feet "of the real property comprising any school," is ambiguous because the legislature did not specifically provide whether preschools were to be included. (§48-1)

Defense counsel: Beth Herndobler, Chicago OSAD

No. 111896

People v. Chapman, Defense petition for leave to appeal granted 5/25/11 from an unpublished order (No. 3-07-0799, 1/5/11) (3d Dist.)

Whether 725 ILCS 5/115-20 authorized admission of defendant's prior conviction for domestic battery of the murder victim as propensity evidence at his trial for the murder of that victim, where first-degree murder is not one of the offenses enumerated in the statute. (§48-1)

Defense counsel: Bob Burke, Mt. Vernon OSAD

No. 112754

People v. Hollins, Defense petition for leave to appeal granted 9/28/11 from an unpublished order (No. 2-10-0051, 6/27/11)

Whether the Illinois pornography statute, which criminalizes the depiction of sexual activity involving persons under 18 (725 ILCS 5/11-20.1), constitutionally applies to a defendant who photographed his legal consensual sexual activity with his 17-year-old girlfriend, for their private use. (§§48-3(b), 48-3(c), 48-3(d))

Defense counsel: Kathleen Hamill, Elgin OSAD

UNLAWFUL USE OF WEAPONS

No. 112026

Wilson v. Cook County, Plaintiffs' petition for leave to appeal granted 5/25/11 from 407 Ill.App.3d 759, 943 N.E.2d 768 (1st Dist. 2011)

Whether Cook County's ban on assault weapon and assault weapon ammunition is unconstitutionally vague, violates equal protection, and violates the fundamental Second Amendment right to bear arms as recognized by **District of Columbia v. Heller**, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) and **McDonald v. City of Chicago**, ___ U.S. ___, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010). (§53-1)

Defense counsel: Victor D. Quilici, River Grove for Matthew Wilson, Troy Edlund, and Joseph M. Essineo

No. 112116

People v. Aguilar, Defense leave to appeal granted 5/25/11 from 408 Ill.App.3d 136, 944 N.E.2d 816 (1st Dist. 2011)

Whether the Second Amendment right to bear arms, as interpreted by **District of Columbia v. Heller**, 554 U.S. 570 (2008) and **McDonald v. City of Chicago**, 561 U.S. ____, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010), is violated by the Illinois aggravated unlawful use of a weapon statute, which at the time of defendant's conviction prohibited (in most circumstances) carrying firearms which were uncased, loaded and immediately accessible. (§§53-1, 53-5(b))

Defense counsel: David Holland, Chicago OSAD

WAIVER – PLAIN ERROR – HARMLESS ERROR

No. 112467

People v. Rivera, State petition for leave to appeal granted 9/28/11 from 409 Ill.App.3d 122, 947 N.E.2d 819 (1st Dist. 2011)

Whether the Appellate Court erred by finding that a violation of Supreme Court Rule 402(f), which prohibits the introduction of plea related statements which do not result in a guilty plea, can constitute plain error under the "fundamental error" prong of the plain error doctrine, because the Supreme Court has equated the second prong with "structural error," which does not include the mere violation of a Supreme Court Rule. (§56-2(a))

Defense counsel:

No. 112938

People v. Wilmington, Defense petition for leave to appeal granted 11/30/11 from 2011 IL App (1st) 072518-B

1. Whether a violation of Supreme Court Rule 431(b) (which requires that the trial court ask potential jurors if they accept and understand that defendant is presumed innocent, that the State must prove defendant's guilt beyond a reasonable doubt, that defendant is not required to offer any evidence, and that defendant's failure to testify cannot be held against him) may be noticed as plain error on the ground that the evidence was closely balanced, where defendant's conviction depended entirely on his unreliable statement to the police. (§56-2(b)(6)(a))

2. Whether the circuit court's failure to confirm that defendant agreed with defense counsel's decision to tender a second-degree murder instruction may be noticed as plain error, without any showing of prejudice, because the error affected defendant's substantial rights. (§56-2(b)(1)(a))

Defense counsel: Brian Koch, Chicago OSAD