

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

December 1, 2016

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

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APPEAL

No. 118882

People v. McDonald, Defense petition for leave to appeal granted 5/27/15 from 2014 IL App (1st) 121009-U

Whether a trial court's refusal to give a jury instruction on a lesser-included offense because there is insufficient evidence in the record to support giving the instruction is reviewed under a *de novo* or abuse of discretion standard of review. (§2-7(a))

Defense counsel: Deborah Nall, Chicago OSAD

No. 120162

People v. Shinaul, State leave to appeal granted 1/20/16 from 2015 IL App (1st) 140477

Whether the Appellate Court has jurisdiction to review the circuit court's denial of the State's request to reinstate charges that were *not-prossed* as part of a negotiated guilty plea when the circuit court has granted defendant relief under 2-1401 by vacating his conviction. (§2-4(a))

Defense counsel: Amanda Ingram, Chicago OSAD

No. 120331

People v. Peterson, Defense leave to appeal granted 3/30/16 from 2015 IL App (3d) 130157

Whether the Appellate Court erred by finding that a decision in a prior appeal precluded it from considering whether evidence was properly admitted under the forfeiture by wrongdoing doctrine, where the prior appeal concerned only a different aspect of the doctrine - the possible application of a new statute. (§2-6(a))

Defense counsel: Stephen Greenberg, Chicago

No. 120649

People v. Veach, Defense leave to appeal granted 9/28/16 from 2016 IL App (4th) 130888

Whether the Appellate Court incorrectly held that it could not review defendant's claim of ineffective assistance of counsel on direct appeal because the record was inadequate to determine why counsel had agreed to admit recordings that contained inadmissible evidence damaging to defendant's case. (§2-6(a))

Defense counsel: Jack Hildebrand, Elgin OSAD

BAIL

No. 120797

People v. Casas, Defense leave to appeal granted 9/28/16 from 2016 IL App (2d) 150456

Whether violation of bail bond is a continuing offense so that the statute of limitations is tolled until the offender is returned to custody. (§§6-1, 6-3)

Defense counsel: Mark Kusatzky, Northfield, IL

BATTERY, ASSAULT & STALKING OFFENSES

No. 120958

People v. Gray, State leave to appeal as a matter of right granted 9/28/16 from 2016 IL App (1st) 134012

Whether 725 ILCS 5/122A-3(3), which defines a "[f]amily or household member" for purposes of aggravated domestic battery to include "persons who have or have had a dating or engagement relationship" but not "casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts," is unconstitutional as applied where the victim and defendant had a dating relationship which ended 15 years before the incident in question, because

treating all persons who have dated at any time in the past as members of the same family or household has no rational relationship to any legitimate State interest. (§7-1(a)(1))

Defense counsel: Christofer Bendik, Chicago OSAD

***No. 121094**

People v. Releford, State appeal as a matter of right granted 11/23/16 from 2016 IL App (1st) 132531(Cook)

Whether the stalking statute (720 ILCS 5/12-7.3) and cyberstalking statute (720 ILCS 5/12-7.5) are unconstitutional on their face because the statutes lack any *mens rea* requirement and rely on a “reasonable person” standard in assessing criminal liability. (§7-2(a))

Defense counsel: Jonathan Yeasting, Chicago OSAD

COLLATERAL REMEDIES

No. 120310

People v. Johnson, Defense leave to appeal granted 3/30/16 from 2015 IL App (2d) 131029

1. Whether the Post-Conviction Hearing Act fails to provide a time limit for filing a post-conviction petition where a criminal defendant does not file a petition for leave to appeal from the Appellate Court’s ruling on his or her direct appeal. (§9-1(b)(2))

2. Whether the Post-Conviction Hearing Act time limitation of six months after the date for filing a certiorari petition can fairly be construed as six months after the date for filing a petition for leave to appeal if the defendant elected not to file a petition for leave to appeal in a direct appeal. (§9-1(b)(2))

3. Whether the trial judge’s ruling that an untimely filing was not due to the post-conviction petitioner’s culpable negligence could be overturned by a second judge to whom the petition was

subsequently assigned, where the petitioner testified before the first judge but not the second. (§9-1(b)(3))

Defense counsel: Susan Wilham, Springfield, OSAD

COUNSEL

No. 119561

People v. Wright, State leave to appeal granted 11/25/15 from 2015 IL App (1st) 123496

Whether the waiver of the right to counsel was unknowing and involuntary where the trial court erroneously admonished defendant that he faced a potential 60-year maximum sentence, where the maximum sentence was 75 years but a sentence of 50 years was ultimately imposed. (§13-2(d))

Defense counsel: Peter Sgro, Chicago OSAD

No. 120071

People v. Ayres, Defense leave to appeal granted 1/20/16 from 2015 IL App (4th) 130996-U

Whether a defendant's bare allegation in a *pro se* motion mailed to the trial court that his counsel was ineffective is sufficient to require the court to conduct a **Krankel** inquiry into the underlying factual basis of defendant's claim. (§13-5(d)(3)(a)(1))

Defense counsel: John McCarthy, Springfield OSAD

No. 120198

People v. Nelson, Defense leave to appeal granted 3/30/16 from 2015 IL App (1st) 132157

Whether Illinois should abandon its current test for determining whether there is a conflict of interest in representing co-defendants (which holds that the mere availability of a strategy that would help one defendant at the expense of another does not create a conflict between defendants), and replace it with the test used in federal courts (which only requires a showing that defendant had a plausible alternative defense that was inherently in conflict with counsel's other loyalties or interests.) (§13-5(b)(2))

Defense counsel: Emily Hartman, Chicago OSAD

No. 120331

People v. Peterson, Defense leave to appeal granted 3/30/16 from 2015 IL App (3d) 130157

1. Whether defense counsel suffered from a conflict of interest where before trial: (1) he and defendant signed a media rights deal by which counsel was to receive 85% of any revenues generated, and (2) counsel presented defendant for interviews which resulted in answers that were used by the State at trial. (§13-5(d)(1))

2. Whether defense counsel was ineffective at defendant's murder trial where he called as a defense witness an attorney who had been contacted by the decedent for purposes of obtaining a divorce from defendant, where the witness testified about the decedent's statements which the trial court had previously ruled were privileged and could not be presented by the prosecution in its case in chief. (§§13-4(b)(3), 13-4(b)(6)(c))

Defense counsel: Stephen Greenberg, Chicago

No. 120649

People v. Veach, Defense leave to appeal granted 9/28/16 from 2016 IL App (4th) 130888

Whether trial counsel was ineffective for stipulating to recordings that contained inadmissible evidence damaging to defendant's case by mistakenly believing that he had already opened the door to such evidence by using portions of the recordings that were helpful to defendant's case. (§13-4(b)(5))

Defense counsel: Jack Hildebrand, Elgin OSAD

No. 120997

People v. Campanelli, Direct appeal (Cook)

1. Whether a public defender's office constitutes a "law firm" under the rules of professional conduct and may therefore refuse an appointment on conflict of interest grounds where co-defendants would be represented by different assistant public defenders. (§§13-5(a), 13-5(d)(2)(c))

2. Whether in this case there was a conflict of interest between various co-defendants such that some clients should be represented by counsel other than the Public Defender. (§13-5(a))

Defense counsel: Lester Finkle, Cook County PD

EVIDENCE

No. 118589

People v. Thomas, State leave to appeal granted 5/27/2015 from 2014 IL App (2d) 121001

Whether the burden to show that the clergy-penitent privilege (735 ILCS 5/8-803) applied to the confession of a minor third-party penitent shifted to the penitent where the minister testified that under the rules of his religion it was his decision alone whether statements were confidential, and §8-803 permits the privilege only when disclosure by the clergyman is "enjoined by the rules or practices" of the religion to which he or she belongs. (§19-26(d))

Defense counsel: Rachel Moran, Chicago OSAD

No. 119561

People v. Wright, State leave to appeal granted 11/25/15 from 2015 IL App (1st) 123496

Whether the trial court erred by failing to admit the co-defendant's statement that he committed the crime with a BB gun where that statement was admissible as a statement against penal interest, was sufficiently corroborated, and was essential to defendant's defense on the firearm element of armed robbery with a firearm. (§19-19)

Defense counsel: Peter Sgro, Chicago OSAD

No. 120331

People v. Peterson, Defense leave to appeal granted 3/30/16 from 2015 IL App (3d) 130157

1. Whether the trial court erred by admitting evidence of other crimes where it found that there was no "good cause" for the State's failure to provide notice as required by Illinois Rule of Evidence 404(b). (§19-24(a))

2. Whether the trial court erred at a murder trial by allowing defense counsel to call as a defense witness a lawyer who testified about privileged statements that had been made by the decedent. (§19-26(b))

3. Whether the forfeiture by wrongdoing doctrine permits the introduction of statements by a deceased person where the State failed to establish that defendant acted with the intent to make the witness unavailable for trial. (§19-10(b))

Defense counsel: Stephen Greenberg, Chicago

FITNESS TO STAND TRIAL

***No. 119594**

People v. Gipson, State petition for appeal as a matter of right or leave to appeal granted 11/23/16 from 2015 IL App (1st) 122451

Whether the trial court conducted an improper fitness restoration hearing by relying on the parties stipulations to the experts' testimony where there were questions about defendant's fitness that could not be adequately resolved by the stipulations. (Ch. 21)

Defense counsel: David Harris, Chicago OSAD

GUILTY PLEAS

***No. 121365**

People v. Boykins, Defense leave to appeal granted 11/23/16 from 2016 IL App (1st) 142542-U

Whether a trial court, in the course of admonishing a defendant about the terms of his negotiated guilty plea, must explicitly inform defendant that he will be required to serve a term of mandatory supervised release, or whether it is sufficient for a trial court to simply inform defendant that a term of mandatory supervised release is a possible penalty. (§24-6(d))

Defense counsel: Aliza Kaliski, Chicago OSAD

HOMICIDE

No. 118882

People v. McDonald, Defense petition for leave to appeal granted 5/27/15 from 2014 IL App (1st) 121009-U

1. Whether a trial court's refusal to give a jury instruction on a lesser-included offense because there is insufficient evidence in the record to support giving the instruction is reviewed under a *de novo* or abuse of discretion standard of review. (§§26-4(b), 26-5(b))

2. Whether evidence that a defendant intentionally stabbed the victim automatically precludes an involuntary manslaughter instruction. (§26-5(b))

3. Whether evidence that a defendant's act of stabbing the victim was disproportionate to the victim's actions during a fight with defendant automatically precludes an instruction on the provocation by mutual combat theory of second degree murder. (§26-4(b))

Defense counsel: Deborah Nall, Chicago OSAD

***No. 121371**

People v. Carey, State petition for leave to appeal granted 11/23/16 from 2016 IL App (1st) 131944

Whether an indictment for felony murder based on armed robbery is legally insufficient if it does not describe the underlying felony with enough detail, including a statutory citation, to determine whether the underlying felony is armed robbery with a firearm or armed robbery with a dangerous weapon. (§26-2)

Defense counsel: Manny Serritos, Chicago OSAD

INDICTMENTS, INFORMATION, COMPLAINTS

No. 119561

People v. Wright, State leave to appeal granted 11/25/15 from 2015 IL App (1st) 123496

Whether due process was violated when the prosecutor secured an indictment for armed robbery with a firearm by presenting testimony which misled the grand jurors where a detective testified that no weapon was recovered, when in fact a BB gun was discovered at the location where the co-defendant discarded the weapon used in the offense. (§29-2)

Defense counsel: Peter Sgro, Chicago OSAD

***No. 121371**

People v. Carey, State petition for leave to appeal granted 11/23/16 from 2016 IL App (1st) 131944

Whether an indictment for felony murder based on armed robbery is legally insufficient if it does not describe the underlying felony with enough detail, including a statutory citation, to determine whether the underlying felony is armed robbery with a firearm or armed robbery with a dangerous weapon. (§29-4(b))

Defense counsel: Manny Serritos, Chicago OSAD

JURY

No. 118613

People v. Price, State leave to appeal granted 5/27/15 from 2014 IL App (1st) 130037-U

Whether **People v. Smith**, 233 Ill. 2d 1 (2009) and **People v. Bailey**, 2013 IL 113690, which provide that the trial court errs by refusing a defense request for separate verdict forms

where the various forms of murder carry different sentencing consequences, apply retroactively to cases which were decided before those opinions were issued. (§32-8(a))

Defense counsel: Todd McHenry, Chicago OSAD

No. 118882

People v. McDonald, Defense petition for leave to appeal granted 5/27/15 from 2014 IL App (1st) 121009-U

1. Whether a trial court's refusal to give a jury instruction on a lesser-included offense because there is insufficient evidence in the record to support giving the instruction is reviewed under a *de novo* or abuse of discretion standard of review. (§32-8(i))

2. Whether evidence that a defendant intentionally stabbed the victim automatically precludes an involuntary manslaughter instruction. (§32-8(i))

3. Whether evidence that a defendant's act of stabbing the victim was disproportionate to the victim's actions during a fight with defendant automatically precludes an instruction on the provocation by mutual combat theory of second degree murder. (§32-8(i))

Defense counsel: Deborah Nall, Chicago OSAD

No. 119445

People v. Seby, Defense leave to appeal granted 9/30/15 from 2015 IL App (3d) 130214

1. Whether a violation of Supreme Court Rule 431(b), which requires the trial court to ask prospective jurors whether they understand and accept the four **Zehr** principles, should be reviewed under the first prong of the plain error doctrine, which applies where the evidence is closely balanced. (§32-4(a))

2. Whether a defendant seeking to obtain relief on a Rule 431(b) violation must show not only that the evidence was closely balanced, but also that the error likely affected the verdict. (§32-4(a))

3. Whether a case which presents a credibility contest is necessarily one in which the evidence is closely balanced. (§32-4(a))

Defense counsel: Editha Rosario-Moore, Ottawa OSAD

No. 119561

People v. Wright, State leave to appeal granted 11/25/15 from 2015 IL App (1st) 123496

Whether the trial court erred by failing to instruct the jury on the definition of a firearm, and that a BB gun was excluded from this definition, where the evidence at trial showed that a BB gun was found in the area where the co-defendant discarded his weapon and the failure to instruct left the jury without guidance on one of the elements of armed robbery with a firearm. (§32-8(a))

Defense counsel: Peter Sgro, Chicago OSAD

No. 121072

People v. Pearse, Defense leave to appeal granted 9/28/16 from 2016 IL App (2d) 140051-U

Whether the trial court erred in a prosecution for failing to register as a sex offender by giving non-IPi instructions which did not accurately state the elements of the charged offense. (§32-8(a))

Defense counsel: Jack Hildebrand, Elgin OSAD

JUVENILE

No. 118966

People v. Fort, Defense leave to appeal granted 7/24/15 from 2014 IL App (1st) 113315-U

Whether a juvenile who has been automatically transferred to adult court based on the nature of the offense he was charged with, must be sentenced under the Juvenile Court Act when he is acquitted of the transferable offense and instead found guilty of a lesser non-transferable offense, and the State does not move to treat him as an adult for sentencing. (§33-6(d))

Defense counsel: Heidi Lambros, Chicago OSAD

No. 120655

People v. Holman, Defense leave to appeal granted 9/28/16 from 2012 IL App (5th) 100587-U

Whether the trial court properly considered the factors in mitigation required by *Miller v. Alabama*, 567 U.S. ____ (2012) when it sentenced defendant, a juvenile, to natural life imprisonment. (§33-6(d))

Defense counsel: Amanda Horner, Mount Vernon OSAD

No. 120796

In re Destiny P., Direct appeal (Cook)

Whether the Juvenile Court Act (705 ILCS 405/5101(3) and 405/5-605(1)) violates equal protection because it fails to authorize a jury trial for a minor facing a charge of first degree murder. (§33-5(c)(1))

Defense counsel: Jessica Fortier, Chicago OSAD

***No. 121306**

People v. Hunter, Defense leave to appeal granted 11/23/16 from 2016 IL App (1st) 141904 (consolidated with People v. Wilson, No. 121345)

Whether Public Act 99-69 and 99-258, which became effective January 1, 2016 modified the law concerning transfer and sentencing of juvenile offenders and among other provisions affords the trial court discretion not to impose a mandatory firearm enhancement, should be applied retroactively to cases which were on appeal on the effective date of the legislation. (§§33-3, 33-6(a))

Defense counsel: Katie Anderson, Chicago OSAD

***No. 121345**

People v. Wilson, Defense leave to appeal granted 11/23/16 from 2016 IL App (1st) 141500 (consolidated with People v. Hunter, No. 121306)

Whether Public Act 99-69 and 99-258, which became effective January 1, 2016 modified the law concerning transfer and sentencing of juvenile offenders and among other provisions affords the trial court discretion not to impose a mandatory firearm enhancement, should be applied retroactively to cases which were on appeal on the effective date of the legislation. (§§33-3, 33-6(a))

Defense counsel: Meredith Baron, Chicago OSAD

PROSECUTOR

No. 119484

People v. Ringland, Pirro, Saxen, Harris and Flynn, State leave to appeal granted 11/25/15 from 2015 IL App (3d) 130523

Whether 55 ILCS 5/3-9005(b), which permits the State's Attorney to appoint one or more special investigators to serve subpoenas, make return of process, conduct investigations that assist the State's Attorney in the performance of his or her duties, and exercise the powers possessed by investigators under the State's Attorneys Appellate Prosecutor's Act, authorizes the State's Attorney to appoint and equip investigators to staff a drug interdiction unit to patrol highways which pass through the county. (§41-1)

Defense counsel:

Saxen: Dimitri Golfis (Ottawa OSAD)

Ringland: Stephen Komie & Allan Ackerman (Chicago)

Harris: Douglas Olivero (Peru, IL)

Pirro & Flynn: Louis Bertrand (LaSalle, IL)

ROBBERY

No. 119561

People v. Wright, State leave to appeal granted 11/25/15 from 2015 IL App (1st) 123496

Whether the State proved that defendant committed armed robbery while his co-defendant was armed with a firearm where the State's witnesses only briefly saw the handle of an alleged gun in the co-defendant's waistband and the defense presented compelling evidence that the co-defendant actually possessed a BB gun. (§43-2)

Defense counsel: Peter Sgro, Chicago OSAD

No. 120011

People v. Reese, State petition for leave to appeal granted 3/30/16 from 2015 IL App (1st) 120654

Whether a defendant commits aggravated vehicular hijacking where he enters a vehicle while armed and orders the driver to drive, but does not actually dispossess the driver of the vehicle. (§43-4)

Defense counsel: David Harris, Chicago OSAD

SEARCH & SEIZURE

No. 120407

People v. Holmes, State leave to appeal granted 9/28/16 from 2015 IL App (1st) 141256

Whether the Fourth Amendment was violated by an arrest based on probable cause that the arrestee committed Aggravated Unlawful Use of a Weapon, where the arresting officer relied on the state of law at the time of the arrest but the statute creating the offense was subsequently found unconstitutional in **People v. Aguilar**. (§§44-1(c)(1), 44-4(b))

Defense counsel: Eileen Pahl, Cook County PD

***No. 121413**

People v. Brooks, State leave to appeal granted from 11/23/16 from 2016 IL App (5th) 150095-
U

Whether a hospital blood test was the result of State action where, despite defendant's refusal of emergency medical treatment, an officer physically removed him from a vehicle, forced him onto a gurney, assisted in putting him into an ambulance for transport to the hospital, and when defendant tried to resist applied handcuffs, rode in the ambulance to the hospital, and assisted paramedics in delivering defendant to the emergency room. (§§44-1(a), 44-1(b))

Defense counsel: H. Kent Heller, Mattoon

SENTENCING

No. 118164

People v. Reed, Direct appeal from St. Clair County

Whether aggravated unlawful use of a weapon for possession of a firearm without a FOID card, which is a Class 4 felony under 720 ILCS 5/24-1.6(a)(1), (a)(3)(C), violates the proportionate penalties clause because under 430 ILCS 65/2(a)(1), the identical offense of possession of a firearm without a FOID card is a Class A misdemeanor. (§45-1(b)(2))

Defense counsel: James Gomric, Belleville

***No. 119594**

People v. Gipson, State petition for appeal as a matter of right or leave to appeal granted 11/23/16 from 2015 IL App (1st) 122451

1. Whether defendant's mandatory minimum aggregate sentence of 52 years for two counts of attempt first degree murder, resulting from the convergence of the excluded jurisdiction provision, the mandatory firearm enhancements, and the mandatory consecutive sentencing provision, violated the proportionate penalties clause of the Illinois Constitution as applied to defendant who was 15 years old at the time of the offense. (§45-1(b)(2))

2. Whether the Appellate Court exceeded its authority by directing the trial court to impose an appropriate Class X sentence without considering the mandatory firearm enhancements applicable to defendant's case rather than simply directing the trial court to impose a constitutionally proportionate sentence. (§45-18(c))

Defense counsel: David Harris, Chicago OSAD

No. 119659

People v. Smith, State petition leave to appeal granted 9/30/15 from 2015 IL App (4th) 130453-U

Whether 730 ILCS 5/5-4.5-95(b), which provides a defendant who is “over the age of 21” shall be sentenced as a Class X offender if he has previously been convicted of a Class 2 or greater felony on two occasions, applies to all persons who are 21 when convicted of the Class 1 or Class 2 felony or only to defendants who were 21 when they were charged with that offense. (§45-10(d))

Defense counsel: Michael G. Soukup, Milwaukee, WI

SEX OFFENSES

No. 120443

People v. Howard, Defense leave to appeal granted 5/25/16 from 2016 IL App (3d) 130959

1. Whether 720 ILCS 5/11-9.3(d)(11)(I), which prohibits child sex offenders from being present in a school zone and defines “loitering” as “standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school or public property,” is unconstitutionally vague because it fails to include either an improper purpose or overt-act requirement. (§46-1(c))

2. Whether defendant was proven guilty beyond a reasonable doubt of loitering within 500 feet of a school where it was undisputed that he had a proper purpose for being in the area - driving a friend so that she could drop off her grandchildren’s lunch at the school. (§46-1(c))

Defense counsel: Kerry Bryson, Ottawa OSAD

No. 121072

People v. Pearse, Defense leave to appeal granted 9/28/16 from 2016 IL App (2d) 140051-U

Whether defendant violated the Sex Offender Registration Act (730 ILCS 150/3) where he was hospitalized for several days and then returned to his previously registered address, where

defendant notified the police when he went to the hospital but failed to re-register his home address when he was discharged. (§46-7)

Defense counsel: Jack Hildebrand, Elgin OSAD

STATUTES

No. 120443

People v. Howard, Defense leave to appeal granted 5/25/16 from 2016 IL App (3d) 130959

Whether 720 ILCS 5/11-9.3(d)(11)(I), which prohibits child sex offenders from being present in a school zone and defines “loitering” as “standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school or public property,” is unconstitutionally vague because it fails to include either an improper purpose or overt-act requirement. (§48-3(a))

Defense counsel: Kerry Bryson, Ottawa OSAD

No. 120958

People v. Gray, State leave to appeal as a matter of right granted 9/28/16 from 2016 IL App (1st) 134012

Whether 725 ILCS 5/122A-3(3), which defines a “[f]amily or household member” for purposes of aggravated domestic battery to include “persons who have or have had a dating or engagement relationship” but not “casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts,” is unconstitutional as applied where the victim and defendant had a dating relationship which ended 15 years before the incident in question, because treating all persons who have dated at any time in the past as members of the same family or household has no rational relationship to any legitimate State interest. (§48-3(a))

Defense counsel: Christofer Bendik, Chicago OSAD

***No. 121306**

People v. Hunter, Defense leave to appeal granted 11/23/16 from 2016 IL App (1st) 141904 (consolidated with People v. Wilson, No. 121345)

Whether Public Act 99-69 and 99-258, which became effective January 1, 2016 modified the law concerning transfer and sentencing of juvenile offenders and among other provisions affords the trial court discretion not to impose a mandatory firearm enhancement, should be applied retroactively to cases which were on appeal on the effective date of the legislation. (§48-2)

Defense counsel: Katie Anderson, Chicago OSAD

***No. 121345**

People v. Wilson, Defense leave to appeal granted 11/23/16 from 2016 IL App (1st) 141500 (consolidated with People v. Hunter, No. 121306)

Whether Public Act 99-69 and 99-258, which became effective January 1, 2016 modified the law concerning transfer and sentencing of juvenile offenders and among other provisions affords the trial court discretion not to impose a mandatory firearm enhancement, should be applied retroactively to cases which were on appeal on the effective date of the legislation. (§48-2)

Defense counsel: Meredith Baron, Chicago OSAD

TRAFFIC OFFENSES

No. 120023

People v. Way, State leave to appeal granted 1/21/16 from 2015 IL App (5th) 130096

Whether aggravated DUI based on driving "while there was an amount of a drug, substance or compound in [one's] breath, blood, or urine resulting from the unlawful use or consumption of

cannabis" (625 ILCS 5/11-501(a)(6), (d)(1)(C)) is a strict liability offense for which the State needs to prove only that defendant's driving was a proximate cause of the accident, so that defendant is not entitled to present evidence that the accident was actually the result of an unforeseeable physical condition (*i.e.*, low blood pressure.) (§50-2(a))

Defense counsel: Maggie Heim, Mt. Vernon OSAD

***No. 121413**

People v. Brooks, State leave to appeal granted from 11/23/16 from 2016 IL App (5th) 150095-U

Whether a hospital blood test was the result of State action where, despite defendant's refusal of emergency medical treatment, an officer physically removed him from a vehicle, forced him onto a gurney, assisted in putting him into an ambulance for transport to the hospital, and when defendant tried to resist applied handcuffs, rode in the ambulance to the hospital, and assisted paramedics in delivering defendant to the emergency room. (§50-2(a))

Defense counsel: H. Kent Heller, Mattoon

UNLAWFUL USE OF WEAPONS

No. 118164

People v. Reed, Direct appeal from St. Clair County

Whether aggravated unlawful use of a weapon for possession of a firearm without a FOID card, which is a Class 4 felony under 720 ILCS 5/24-1.6(a)(1), (a)(3)(C), violates the proportionate penalties clause because under 430 ILCS 65/2(a)(1), the identical offense of possession of a firearm without a FOID card is a Class A misdemeanor. (§53-1)

Defense counsel: James Gomric, Belleville

No. 118392

People v. Harding, Direct appeal (St. Clair)

Whether the Class 4 felony penalty for aggravated unlawful use of a weapon based on possessing a firearm without having been issued a valid FOID card (720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(C)) violates the proportionate penalties clause because it is composed of the same elements as acquiring or possessing a firearm while not in possession of a FOID card (430 ILCS 65/2(a)(1)), which is a Class A misdemeanor. (§53-1)

Defense counsel: Nathan Swanson, Clayton MO

No. 118782

People v. McKinney, Direct appeal (St. Clair)

Whether the Class 4 felony penalty for aggravated unlawful use of a weapon based on possessing a firearm without having been issued a valid FOID card (720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(C)) violates the proportionate penalties clause because it is composed of the same elements as acquiring or possessing a firearm while not in possession of a FOID card (430 ILCS 65/2(a)(1)), which is a Class A misdemeanor. (§53-1)

Defense counsel: OSAD