

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

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

## TABLE OF CONTENTS

<u>APPEAL</u> .....	1
<u>ARMED VIOLENCE</u> .....	2
<u>COLLATERAL REMEDIES</u> .....	2
<u>COUNSEL</u> .....	4
<u>HOMICIDE</u> .....	5
<u>INDICTMENTS, INFORMATION, COMPLAINTS</u> .....	5
<u>JURY</u> .....	6
<u>JUVENILE</u> .....	6
<u>NARCOTICS</u> .....	7
<u>SEARCH &amp; SEIZURE</u> .....	7
<u>SENTENCING</u> .....	8
<u>SEX OFFENSES</u> .....	11
<u>STATUTES</u> .....	12
<u>TRAFFIC</u> .....	13
<u>TRIAL PROCEDURES</u> .....	14
<u>UNLAWFUL USE OF WEAPONS</u> .....	14
<u>VENUE &amp; JURISDICTION</u> .....	16
<u>VERDICTS</u> .....	16
<u>WAIVER - PLAIN ERROR - HARMLESS ERROR</u> .....	17

## TABLE OF AUTHORITIES

People ex rel. Hartrich v. Henderson (2010 Harley-Davidson) . . . . .	7	People v. Harvey.. . . .	1, 9
People v. Bingham. . . . .	11, 12	People v. Johnson. . . . .	2
People v. Bonilla. . . . .	7	People v. Lesley. . . . .	2, 4
<b>*People v. Buffer.</b> . . . .	9	<b>*People v. Manzo.</b> . . . .	8
People v. Campanelli. . . . .	4	People v. McKinney. . . . .	15
People v. Carey. . . . .	5	<b>*People v. Nere.</b> . . . .	6, 17
People v. Chairez. . . . .	15	People v. Pepitone. . . . .	11, 13
People v. Clark. . . . .	10	<b>*People v. Plank.</b> . . . .	13
People v. Coats.. . . .	2, 16	People v. Reed. . . . .	8, 14
People v. DuPree. . . . .	3	<b>*People v. Simms.</b> . . . .	3
People v. Encalado. . . . .	6	People v. Vara. . . . .	1, 8
<b>*People v. Griffin.</b> . . . .	1, 10, 16	People v. Wilson. . . . .	6, 12
People v. Harding. . . . .	15	<b>*People v. Young.</b> . . . .	11
People v. Harris. . . . .	9	People v. Zimmerman. . . . .	14

## APPEAL

No. 121823

**People v. Vara**, State leave to appeal granted 3/29/17 from 2016 IL App (2d) 140848

Whether **People v. Castleberry**, 2015 IL 116916 prohibits the Appellate Court from remanding a cause for resentencing where statutorily mandatory fines were imposed by the circuit court clerk rather than by the trial court, and requires the State to file a *mandamus* action in the Illinois Supreme Court so that mandatory fines can be imposed. (§2-6(e))

Defense counsel: Jaime Montgomery, Elgin OSAD

No. 122325

**People v. Harvey**, Defense leave to appeal granted 9/27/17 from 2017 IL App (4th) 140576-U

Whether the reviewing court has authority under the plain error doctrine and/or Illinois Supreme Court Rule 615(b)(1) to review improperly assessed fees that were not objected to in the trial court. (§2-6(a))

Defense counsel: Mariah Shaver, Springfield OSAD

**\*No. 122549**

**People v. Griffin**, Defense leave to appeal granted 11/22/17 from 2017 IL App (1st) 143800

**Whether the Appellate Court has jurisdiction to grant defendant pre-trial custody credit against his fines and to correct an improperly imposed fee on the appeal of a denial of his motion to correct mittimus that was filed more than 30 days after defendant was sentenced. (§2-6(a))**

Defense counsel: Mike Orenstein, Chicago OSAD

## ARMED VIOLENCE

No. 121926

**People v. Coats**, Defense leave to appeal granted 5/24/17 from 2017 IL App (1st) 142028-U

Whether under the one-act, one-crime doctrine a defendant may be convicted of multiple offenses for possessing a single weapon? (§3-1)

Defense counsel: Sam Hayman, Chicago OSAD

## COLLATERAL REMEDIES

No. 122100

**People v. Lesley**, State leave to appeal granted 9/27/17 from 2017 IL App (3d) 140793

1. Whether the post-conviction petitioner waived his statutory right to appointed counsel where he and appointed counsel both stated that the petitioner did not want to be represented by the attorney who had been appointed. (§9-1(j))

2. Whether the trial court was required to warn the post-conviction petitioner that his continued misbehavior could result in waiver by misconduct of the statutory right to counsel, where the petitioner yelled obscenities at defense counsel and pulled papers out of his hand but did not engage in severe misconduct such as assaulting or threatening to assault counsel. (§9-1(j))

Defense counsel: Tiffany Green, Chicago OSAD

No. 122227

**People v. Johnson**, Defense leave to appeal granted 9/27/17 from 2017 IL App (4th) 160449

1. Whether counsel who is retained to file an initial post-conviction petition is required to provide reasonable assistance at the first stage of the process, where the issue is whether the petition is frivolous and patently without merit. (§§9-1(e)(1), 9-1(j)(2))

2. Whether counsel who is retained to file an initial post-conviction petition and who disagrees with the merits of the petitioner's proposed issues is obligated to either include those

issues in the petition or inform the petitioner that he should file a *pro se* petition to preserve those issues. (§§9-1(e)(1), 9-1(j)(2))

Defense counsel: John McCarthy, Springfield OSAD

No. 122307

**People v. DuPree**, Defense leave to appeal granted 9/27/17 from 2017 IL App (2d) 141013-U

Whether 725 ILCS 5/122-2, which provides that a post-conviction petition shall have attached “affidavits, records, or other evidence supporting its allegations or state why the same are not attached,” requires that a post-conviction petition which alleges that trial counsel failed to investigate and call a witness must be supported by an affidavit from the proposed witness. (§9-1(d))

Defense counsel: Christopher Gehrke, Chicago OSAD

**\*No. 122378**

**People v. Simms**, State leave to appeal granted 11/22/17 from 2017 IL App (2d) 141251

**Whether a defendant who has withdrawn the remaining claims in his post-conviction petition may move to reinstate his original petition 10 years later or whether he must file a motion for leave to file a successive petition. (§9-1(i)(1))**

Defense counsel: Fletcher Hamill, Elgin OSAD

## COUNSEL

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

No. 122100

**People v. Lesley**, State leave to appeal granted 9/27/17 from 2017 IL App (3d) 140793

1. Whether the post-conviction petitioner waived his statutory right to appointed counsel where he and appointed counsel both stated that the petitioner did not want to be represented by the attorney who had been appointed. (§13-2)

2. Whether the trial court was required to warn the post-conviction petitioner that his continued misbehavior could result in waiver by misconduct of the statutory right to counsel, where the petitioner yelled obscenities at defense counsel and pulled papers out of his hand but did not engage in severe misconduct such as assaulting or threatening to assault counsel. (§13-2)

Defense counsel: Tiffany Green, Chicago OSAD

## HOMICIDE

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. 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. 122059

**People v. Encalado**, State petition for leave to appeal granted 5/24/17 from 2017 IL App (1st) 142548

Whether the trial court abused its discretion by denying a defense request to ask prospective jury members about any bias against persons who are customers of prostitutes, where the evidence would show that defendant engaged in sexual acts with prostitutes and then robbed them. (§32-4(a))

Defense counsel: Jennifer Bontrager, Chicago OSAD

**\*No. 122566**

**People v. Nere**, Leave to appeal granted 11/22/17 from 2017 IL App (2d) 141143

**Whether the Appellate Court erred by finding that the trial court did not abuse its discretion in giving causation instructions in a prosecution for drug-induced homicide, because in light of the holding of *Burrage v. U.S.*, 571 U. S. \_\_\_, 134 S.Ct. 881 (2014) concerning similar instructions, the correct legal standard was whether the erroneous instructions were harmless beyond a reasonable doubt. (§32-8(a))**

Defense counsel: David P. Gaughan, Chicago

## JUVENILE

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

## NARCOTICS

No. 121636

**People ex rel. Hartrich v. Henderson (2010 Harley-Davidson)**, State leave to appeal granted 1/25/17 from 2016 IL App (5th) 150035

Whether the excessive fines clause of the Eighth Amendment was violated where a motorcycle that was worth \$35,000 was ordered forfeited on the ground that it was used with the owner's consent to commit the offense of driving on a suspended or revoked license where the revocation was due to a prior DUI conviction. (§34-5)

Defense counsel: Jon C. Anderson, Robinson, IL

## SEARCH & SEIZURE

No. 122484

**People v. Bonilla**, State leave to appeal granted 9/27/17 from 2017 IL App (3d) 160457

1. Whether the use of a drug-detection dog in the unlocked common hallway of an apartment building constitutes a search under the Fourth Amendment. (§44-9)

2. Whether the good-faith exception of the exclusionary rule applies to the search of an unlocked common hallway of an apartment building when the only authority at the time of the search addressed searches in locked apartment hallways. (§44-1(c)(2))

Defense counsel: Katherine Strohl, private counsel

**\*No. 122761**

**People v. Manzo, Defense leave to appeal granted 11/22/17 from 2017 IL App (3d) 150264-U (Published Opinion 2017 IL App (3d) 150264)**

**Whether there was sufficient nexus between criminal offenses committed by Ruben Casillas and a residence owned by the defendant to justify a search warrant for the residence where: (1) the warrant did not allege that any criminal activity had occurred in the residence, and (2) the only information connecting Casillas to the residence was that police observed him leaving the house before one drug transaction was conducted in public and saw him drive a car, which was registered to a different person who lived at the residence, to and from a second public transaction. (§44-6(a))**

**Defense counsel: Editha Rosario-Moore, Chicago OSAD**

## **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. 121823

**People v. Vara**, State leave to appeal granted 3/29/17 from 2016 IL App (2d) 140848

Whether **People v. Castleberry**, 2015 IL 116916 prohibits the Appellate Court from remanding a cause for resentencing where statutorily mandatory fines were imposed by the circuit

court clerk rather than by the trial court, and requires the State to file a *mandamus* action in the Illinois Supreme Court so that mandatory fines can be imposed. (§45-7(b))

Defense counsel: Jaime Montgomery, Elgin OSAD

No. 121932

**People v. Harris**, State appeal as a matter of right or in the alternative leave to appeal granted from 2016 IL App (1st) 141744

Whether the 18-year-old defendant's statutorily mandated minimum aggregate sentence of 76 years imprisonment for first degree murder and attempt first degree murder during which he personally discharged a firearm that proximately caused death or great bodily harm was unconstitutional as applied under the rehabilitation clause of Article I, Section 11 of the Illinois Constitution. (§45-1(b)(2))

Defense counsel: Lauren Bauser, Chicago OSAD

No. 122325

**People v. Harvey**, Defense leave to appeal granted 9/27/17 from 2017 IL App (4th) 140576-U

Whether the reviewing court has authority under the plain error doctrine and/or Illinois Supreme Court Rule 615(b)(1) to review improperly assessed fees that were not objected to in the trial court. (§45-18(c))

Defense counsel: Mariah Shaver, Springfield OSAD

**\*No. 122327**

**People v. Buffer**, State leave to appeal granted 11/22/17 from 2017 IL App (1st) 142931

**1. Whether defendant's 50-year sentence, imposed for a murder he committed when he was 16 years old, is an unconstitutional *de facto* life sentence. (§45-1(b)(2))**

**2. Whether, assuming this was a *de facto* life sentence, a new sentencing hearing is required where the 50-year sentence (five years over the minimum sentence of 45 years) was imposed at the trial court's discretion, and the court was legally required to consider mitigating factors, including defendant's youth and rehabilitative potential, but was not required to make explicit finding as to each factor. (§§45-1(b)(2), 45-3(a))**

**Defense counsel: Chris Gehrke, Chicago OSAD**

No. 122495

**People v. Clark**, Defense leave to appeal granted 9/27/17 from 2017 IL App (1st) 150740-U

Whether the following assessments, which are labeled fees, are actually fines and therefore subject to being offset by defendant's pretrial custody credit: (1) \$190 "Felony Complaint Filed (Clerk)"; (2) \$15 "Automation (Clerk)"; (3) \$15 "Document Storage (Clerk)"; (4) \$25 "Court Services (Sheriff)"; (5) \$2 "Public Defender Records Automation"; and (6) \$2 "State's Attorney Records Automation." (§§45-7(b), 45-7(c))

Defense counsel: Sharifa Rahmany, Chicago OSAD

**\*No. 122549**

**People v. Griffin**, Defense leave to appeal granted 11/22/17 from 2017 IL App (1st) 143800

Whether the Appellate Court has jurisdiction to grant defendant pre-trial custody credit against his fines and to correct an improperly imposed fee on the appeal of a denial of his motion to correct mittimus that was filed more than 30 days after defendant was sentenced. (§§45-7(b), 45-7(c), 45-16(d))

**Defense counsel: Mike Orenstein, Chicago OSAD**

**\*No. 122598**

**People v. Young, Defense leave to appeal granted 11/22/17 from 2017 IL App (4th) 150575-U**

**Whether defendant is entitled to pre-sentence credit for time which he spent in the custody of the Department of Human Services because he was unfit to stand trial. (§45-16(b))**

**Defense counsel: Jason Jordan, Springfield OSAD**

## **SEX OFFENSES**

No. 122008

**People v. Bingham, Defense leave to appeal granted from 2017 IL App (1st) 143150**

1. Whether the 2011 amendment to the Sex Offender Registration Act (SORA), which requires lifetime registration for a defendant who is convicted of any felony after having been previously convicted of a sex offense, violates due process as applied to defendant since there is no rational relationship between SORA's purpose of protecting the public from sex offenders and defendant's current conviction for theft coupled with a conviction for a sex offense that occurred 30 years earlier. (§46-7)

2. Whether the current version of the Sex Offender Registration Act has become punitive in nature and thus its imposition in this case for a sex offense that occurred 30 years earlier violates the prohibition against ex post facto legislation by increasing the punishment for an offense that had already been committed. (§46-7)

Defense counsel: Deborah Nall, Chicago OSAD

No. 122034

**People v. Pepitone, State leave to appeal as a matter of right or in the alternative for leave to appeal granted 5/24/17 from 2017 IL App (3d) 140627 (2/10/17)**

Whether 720 ILCS 5/11-9.4-1, which provides that it is unlawful for a child sex offender or sexual predator to be knowingly present in any public park building or on real property comprising any public park, violates due process because a total ban of persons convicted of a sex offense from all public park buildings and all public parks at all times is an unreasonable method of protecting the public and encompasses substantial amounts of innocent conduct. (§46-4)

Defense counsel: Katherine Strohl, Ottawa

## STATUTES

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

No. 122008

**People v. Bingham**, Defense leave to appeal granted from 2017 IL App (1st) 143150

Whether the current version of the Sex Offender Registration Act has become punitive in nature and thus its imposition in this case for a sex offense that occurred 30 years earlier violates the prohibition against ex post facto legislation by increasing the punishment for an offense that had already been committed. (§48-2)

Defense counsel: Deborah Nall, Chicago OSAD

No. 122034

**People v. Pepitone**, State leave to appeal as a matter of right or in the alternative for leave to appeal granted 5/24/17 from 2017 IL App (3d) 140627 (2/10/17)

Whether 720 ILCS 5/11-9.4-1, which provides that it is unlawful for a child sex offender or sexual predator to be knowingly present in any public park building or on real property comprising any public park, violates due process because a total ban of persons convicted of a sex offense from all public park buildings and all public parks at all times is an unreasonable method of protecting the public and encompasses substantial amounts of innocent conduct. (§48-3(a))

Defense counsel: Katherine Strohl, Ottawa

**\*No. 122202**

**People v. Plank, Direct appeal (Douglas)**

**Whether for purposes of the offense of driving a motor vehicle with a revoked license, the definition of a “low-speed gas bicycle” is unconstitutionally vague because it is based on maximum speed if the bicycle is ridden by an operator who weighs 170 pounds, meaning that: (1) individuals of ordinary intelligence who do not weigh 170 pounds lack a reasonable opportunity to know whether a particular bicycle is prohibited, and (2) the lack of certainty in the definition encourages arbitrary enforcement. (§48-3(b))**

Defense counsel: J. Steven Beckett, Urbana

## TRAFFIC

**\*No. 122202**

**People v. Plank, Direct appeal (Douglas)**

**Whether for purposes of the offense of driving a motor vehicle with a revoked license, the definition of a “low-speed gas bicycle” is unconstitutionally vague because it**



is based on maximum speed if the bicycle is ridden by an operator who weighs 170 pounds, meaning that: (1) individuals of ordinary intelligence who do not weigh 170 pounds lack a reasonable opportunity to know whether a particular bicycle is prohibited, and (2) the lack of certainty in the definition encourages arbitrary enforcement. (§50-1)

Defense counsel: J. Steven Beckett, Urbana

### TRIAL PROCEDURES

No. 122261

**People v. Zimmerman**, et al, Intervener leave to appeal granted 9/27/17 from 2017 IL App (4th) 170055

Whether the trial court erred by ordering that motions *in limine* concerning inflammatory materials be sealed until after the jury was selected. (§52-1)

Intervenors counsel: John P. Rogers, Clayton, MO

Intervenors: Bloomington Pantagraph, WGLT FM and Illinois Press Association

### 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

No. 121417

**People v. Chairez**, Direct appeal (Kane County)

Whether 720 ILCS 5/24-1(a)(4), (c)(1.5), which prohibits carrying a firearm on a public way within 1000 feet of a park, amounts to a blanket prohibition on the exercise of Second Amendment rights or is a permissible regulation of the right to carry a firearm. (§53-1)

Defense counsel: Elgin OSAD

No. 121926

**People v. Coats**, Defense leave to appeal granted 5/24/17 from 2017 IL App (1st) 142028-U

Whether under the one-act, one-crime doctrine a defendant may be convicted of multiple offenses for possessing a single weapon? (§53-1)

Defense counsel: Sam Hayman, Chicago OSAD

### **VENUE & JURISDICTION**

**\*No. 122549**

**People v. Griffin**, Defense leave to appeal granted 11/22/17 from 2017 IL App (1st) 143800

**Whether the Appellate Court has jurisdiction to grant defendant pre-trial custody credit against his fines and to correct an improperly imposed fee on the appeal of a denial of his motion to correct mittimus that was filed more than 30 days after defendant was sentenced. (§54)**

Defense counsel: Mike Orenstein, Chicago OSAD

### **VERDICTS**

No. 121926

**People v. Coats**, Defense leave to appeal granted 5/24/17 from 2017 IL App (1st) 142028-U

Whether under the one-act, one-crime doctrine a defendant may be convicted of multiple offenses for possessing a single weapon? (§55-3(a))

Defense counsel: Sam Hayman, Chicago OSAD

**WAIVER - PLAIN ERROR - HARMLESS ERROR**

**\*No. 122566**

**People v. Nere, Leave to appeal granted 11/22/17 from 2017 IL App (2d) 141143**

**Whether the Appellate Court erred by finding that the trial court did not abuse its discretion in giving causation instructions in a prosecution for drug-induced homicide, because in light of the holding of *Burrage v. U.S.*, 571 U. S. \_\_\_, 134 S.Ct. 881 (2014) concerning similar instructions, the correct legal standard was whether the erroneous instructions were harmless beyond a reasonable doubt. (§56-3(a))**

**Defense counsel: David P. Gaughan, Chicago**