

Office of the State Appellate Defender

# Summary of Significant Criminal Issues Pending in the Illinois Supreme Court

*October 5, 2020*

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## COLLATERAL REMEDIES

No. 124046

**People v. Lusby**, State leave to appeal granted 1/31/19 from 2018 IL App (3d) 150189; oral argument held 5/12/20

Whether, where the circuit court improperly relies on State input when considering a defendant's motion for leave to file a successive post-conviction petition, the reviewing court must remand for the circuit court to consider defendant's motion for leave to file without State input. (§9-1(i)(1))

Alternatively, whether a reviewing court can reach the merits of a post-conviction claim on appeal from the denial of a motion for leave to file successive post-conviction petition. (§9-1(i)(1))

Defense counsel: Deborah Nall, Chicago OSAD

No. 124818

**People v. Jackson**, Defense leave to appeal granted 9/25/19 from 2019 IL App (1st) 171773; oral argument held 5/12/20

Whether, in a successive post-conviction proceeding, the same evidence may be used to support both an actual innocence claim and an assertion of cause-and-prejudice premised on coercive police misconduct. (§§9-1(i)(2), 9-1(i)(3))

Whether an eyewitness's affidavit can be treated as newly discovered evidence of actual innocence where defendant knew of the witness's potential testimony previously but was prevented from presenting it because, through no fault of defendant, the witness's prior "affidavit" was not notarized. (§§9-1(i)(2), 9-1(i)(3))

Whether evidence of police misconduct can satisfy the cause-and-prejudice test for filing a successive post-conviction petition where that misconduct involved the same officers in other cases and is similar to the misconduct alleged in the defendant's motion for leave to file, or whether the misconduct must be "strikingly similar" between the prior cases and defendant's case. (§§9-1(i)(2), 9-1(i)(3))

Defense Counsel: Brandon Clark & Richard Corn, Proskauer Rose LLP, Chicago  
Elizabeth Bacon Ehlers, Brooks, Tarulis & Tibble, LLC,  
Naperville

No. 124940

**People v. Reed**, Defense leave to appeal granted 9/25/19, from 2019 IL App (4th) 170090; oral argument held 9/15/20

Whether a post-conviction claim of actual innocence is cognizable in a case where the defendant pled guilty and does not claim the plea was involuntary. (§9-1(c)(2))

Defense counsel: Alexander Muntges, Chicago OSAD

No. 124992

**People v. Knapp**, Defense leave to appeal granted 9/25/19 from 2019 IL App (2d) 160162; oral argument held 9/15/20

Whether a post-conviction petition raising a claim of ineffective assistance of counsel which is grounded in off-the-record discussions can be summarily dismissed on the basis that the claim is rebutted by the record where the record does not fully reach the allegations made in the petition. (§9-1(e)(1))

Defense Counsel: Kelly Taylor, Ottawa OSAD

No.125621

**People v. Palmer**, Defense leave to appeal granted 3/25/20 from 2019 IL App (4th) 190148

Whether the court erred in denying a Certificate of Innocence on the basis that the exonerating evidence did not exclude the possibility that the petitioner was accountable for the offense, even if the State theorized at trial the defendant was the principal offender. (§9-1(c)(2))

Defense counsel: Loevy & Loevy, Chicago

No. 125738

**People v. Johnson**, Defense leave to appeal granted 3/25/20 from 2019 IL App (1st) 163169

Whether a post-conviction petition may be summarily dismissed at the first stage based on lack of standing, and whether defendant, imprisoned for failing to register under VOYRA, has standing to file a petition attacking the initial conviction that led to the registration requirement. (§9-1(e)(1))

Defense counsel: Maggie Heim, Chicago OSAD

No. 125891

**People v. Taliani**, Defense leave to appeal granted 5/27/20 from 2020 IL App (3d) 170546

Whether an affirmative defense which had not been recognized at the time of trial can constitute newly discovered evidence for purposes of allowing a defendant to file a successive post-conviction petition based upon a claim of actual innocence. (§9-1(i)(3))

Defense counsel: Lucas Walker, Elgin OSAD

### CONFESSIONS

No. 125722

**People v. Salamon**, Defense leave to appeal granted 3/25/20 from 2019 IL App (1st) 160986-U

Whether law enforcement's failure to comply with 725 ILCS 5/103-3(a), which requires the police to provide a suspect with access to a phone call within a reasonable time of being taken into custody, renders the suspect's statement involuntary. (§10-5(a))

Defense counsel: Linda Olthoff, Chicago OSAD

### COUNSEL

No. 125981

**People v. Hatter**, Defense leave to appeal granted 9/30/20 from 2020 IL App (1st) 170389-U

Whether a defendant alleging ineffective assistance of guilty-plea counsel must establish the existence of a plausible defense to all charged crimes, including those nolle'd as part of plea negotiations, in order to show prejudice. If so, whether that standard should be imposed at the first stage of post-conviction proceedings. (§§14-4(a)(1), 14-4(b)(2))

Defense counsel: Jonathan Krieger, Chicago OSAD

No. 126187

**People v. Yost**, State leave to appeal granted 9/30/20 from 2020 IL App (4th) 190333-U

Whether the per se conflict rule applies where defense counsel previously represented the deceased victim as appointed counsel in a criminal matter. (§14-6(e))

Defense counsel: Sheril Varughese, Springfield OSAD

### **DISORDERLY, ESCAPE, RESISTING AND OBSTRUCTING OFFENSES**

No. 125117

**People v. Casler**, Defense leave to appeal granted 9/25/19 from 2019 IL App (5th) 160035; oral argument held 3/11//20

Whether the State can prove obstruction of justice for furnishing false information without showing that the defendant's act created a material impediment to the administration of justice. (§16-2)

Defense counsel: Daniel Janowski, Mt. Vernon OSAD

### **EVIDENCE**

No. 125945

**People v. Brand**, Defense leave to appeal granted 9/30/20 from 2020 IL App (1st) 171728

Whether the State is required to provide some basis on which a reasonable juror could conclude that a social media post was created by defendant or at his direction in order for the post to be admissible, or whether some other foundational requirement applies to the authentication of social media evidence. (§19-2(a))

Defense counsel: Joseph Michael Benak, Chicago OSAD

No. 126120

**People v. Deroo**, Defense leave to appeal granted 9/30/20 from 2020 IL App (3d) 170163

Whether the provision of 625 ILCS 5/11-501.4 allowing for the admission of blood test results in DUI cases under the business-record exception to the hearsay rule, conflicts with Illinois Rule of Evidence 803(6), which prohibits the use of the

business-record exception to admit medical records in criminal cases. (§§19-27(g), 19-28(b))

Defense counsel: Terry Slaw, Of Counsel, Ottawa OSAD

### **FITNESS TO STAND TRIAL**

No. 125203

**People v. Brown**, State leave to appeal granted 11/26/19, from 2019 IL App (3d) 170119; oral argument held 9/15/20

Whether, after a fitness evaluation has been ordered and completed, a trial court violates due process when it finds defendant fit “by agreement.” (§§21-3(e), 21-3(f))

Whether a retrospective fitness hearing is an inadequate remedy for a violation of a defendant’s due process rights where more than one year has passed since trial and sentencing. (§§21-3(e), 21-3(f))

Defense counsel: Emily Brandon, Ottawa OSAD

### **GUILTY PLEAS**

No. 125642

**People v. Burge**, Defense leave to appeal granted 3/25/20 from 2019 IL App (4th) 170399

Whether 725 ILCS 5/113-4(c)(4)(B), which requires a court to admonish a defendant regarding the potential employment consequences of entering a guilty plea, applies only where a defendant pleads guilty at arraignment or whether it applies to all guilty pleas. (§24-6(a))

Defense counsel: Mariah Shaver, Springfield OSAD

### **JURY**

No. 125644

**People v. Birge**, Defense leave to appeal granted 3/25/20 from 2019 IL App (4th) 170341-U

Whether a trial court errs when it collapses the four **Zehr** principles into a single statement of the law and fails to give potential jurors the opportunity to

respond whether they understand and accept each of the four principles individually. (§32-4(d))

Defense counsel: Zach Rosen, Springfield OSAD

No. 125959

**People v. Moon**, Defense leave to appeal granted 9/30/20 from 2020 IL App (1st) 170675

Whether conviction by an unsworn jury constitutes structural error. (§32-8(a))

Defense Counsel: Eric Castaneda, Chicago OSAD

### JUVENILE PROCEEDINGS

No. 123010

**People v. Dorsey**, Defense leave to appeal granted 3/25/20 from 2016 IL App (1st) 151124-U

Whether the 14-year-old defendant's consecutive sentences of 40, 18, and 18 years, for an aggregate sentence of 76 years, is a *de facto* natural life sentence, where the defendant's eligibility for day-for-day credit may lead to release after 38 years. (§33-6(g)(2))

Defense counsel: Bryon Reina, Chicago OSAD

No. 124046

**People v. Lusby**, State leave to appeal granted 1/31/19 from 2018 IL App (3d) 150189; oral argument held 5/12/20

Whether a sentencing judge must specifically reference a juvenile offender's youth and attendant characteristics before imposing a *de facto* life sentence in order to comply with the **Miller** line of cases, or whether the general presumptions that a sentencing court followed the law and considered any mitigating evidence apply such that a court's failure to specifically reference the **Miller** factors is not fatal where the PSI contained evidence about defendant's youth and attendant characteristics. (§33-6(g)(1))

Defense counsel: Deborah Nall, Chicago OSAD

No. 125124

**People v. House**, State leave to appeal granted 1/29/20 from 2019 IL App (1st) 110580-B

Whether defendant created an adequate evidentiary record in the trial court to support the Appellate Court's holding that a mandatory natural life sentence, as applied to a 19-year-old defendant convicted under a theory of accountability, is unconstitutional under the Illinois Constitution's proportionate penalties clause. (§§33-6(g)(4), 33-6(g)(5))

Defense counsel: Lauren Bauser, Chicago OSAD

No. 125680

**In re J.M.A.**, Defense leave to appeal granted 3/4/20 from 2019 IL App (3d) 190346; oral argument held 9/23/20

Whether section 5-750 of the Juvenile Court Act requires that a court, before ordering IDOJJ commitment, (1) review evidence of the specific services offered by the IDOJJ that will meet the minor's individualized needs, and (2) make an express finding that IDOJJ commitment is the least restrictive alternative. (§33-6(b))

Defense counsel: Dimitri Golfis, Ottawa OSAD

## REASONABLE DOUBT

No. 125954

**People v. Carter**, Defense leave to appeal granted 9/30/20 from 2019 IL App (1st) 170803

Whether the State has the burden of proving that defendant's prior aggravated battery conviction caused great bodily harm or permanent disfigurement for purposes of satisfying an element of armed habitual criminal, or whether, once the State proves the prior conviction exists, the burden shifts to defendant to show the prior conviction does not satisfy the element. (§41-1)

Defense counsel: Sean Collins-Stapleton, Chicago OSAD

## SEARCH AND SEIZURE

No. 125434

**People v. Bass**, State leave to appeal granted 3/25/20 from 2019 IL App (1st) 160640

Whether the Chicago Police Department's use of investigative alerts, whereby officers conduct warrantless arrests based on the department's internal determination of probable cause, violates the warrant clause of the Illinois Constitution, even if probable cause does exist. Additionally, whether the Appellate Court erred in reaching the issue, where it found independent grounds to invalidate the seizure. (§43-5(a)(1))

Defense counsel: Brian Josias, Chicago OSAD

No. 125550

**People v. McCavitt**, State leave to appeal granted 5/27/20 from 2019 IL App (3d) 170830

Whether a defendant has a protected Fourth Amendment interest in a digital copy of his computer hard drive which was lawfully obtained by the police in a separate prosecution and where defendant was acquitted in that separate prosecution prior to the further search of the digital copy of his hard drive. (§§43-1(d)(2); 43-2(c)(5); 43-5(b)(2))

Whether an officer acts in good faith when he relies on a previously-executed warrant to justify a further search of a defendant's computer after defendant was acquitted of the charges related to that previously-executed warrant. (§§43-1(d)(2), 43-2(c)(5); 43-5(b)(2))

Defense counsel: Joshua Kutnick, Chicago

No. 125954

**People v. Carter**, Defense leave to appeal granted 9/30/20 from 2019 IL App (1st) 170803

Whether police had reasonable suspicion to conduct a **Terry** stop when they received an anonymous phone tip about a man carrying a gun and assaulting two women, followed by two more calls updating them on the man's location, at which time the police seized defendant, who matched the description and was holding his waistband. (§43-3(b)(2))

Defense counsel: Sean Collins-Stapleton, Chicago OSAD

## SENTENCING

No. 123010

**People v. Dorsey**, Defense leave to appeal granted 3/25/20 from 2016 IL App (1st) 151124-U

Whether the 14-year-old defendant's consecutive sentences of 40, 18, and 18 years, for an aggregate sentence of 76 years, is a *de facto* natural life sentence, where the defendant's eligibility for day-for-day credit may lead to release after 38 years. (§44-1(c)(2))

Defense counsel: Bryon Reina, Chicago OSAD

No. 124046

**People v. Lusby**, State leave to appeal granted 1/31/19 from 2018 IL App (3d) 150189; oral argument held 5/12/20

Whether a sentencing judge must specifically reference a juvenile offender's youth and attendant characteristics before imposing a *de facto* life sentence in order to comply with the **Miller** line of cases, or whether the general presumptions that a sentencing court followed the law and considered any mitigating evidence apply such that a court's failure to specifically reference the **Miller** factors is not fatal where the PSI contained evidence about defendant's youth and attendant characteristics. (§44-1(c)(1))

Defense counsel: Deborah Nall, Chicago OSAD

No. 125124

**People v. House**, State leave to appeal granted 1/29/20 from 2019 IL App (1st) 110580-B

Whether defendant created an adequate evidentiary record in the trial court to support the Appellate Court's holding that a mandatory natural life sentence, as applied to a 19-year-old defendant convicted under a theory of accountability, is unconstitutional under the Illinois Constitution's proportionate penalties clause. (§§44-1(c)(4), 44-1(c)(5))

Defense counsel: Lauren Bauser, Chicago OSAD

No. 125644

**People v. Birge**, Defense leave to appeal granted 3/25/20 from 2019 IL App (4th) 170341-U

Whether a restitution order must be supported by numerical evidence of the amount of restitution ordered or whether no specific type of evidence is required. (§44-7(a))

Whether an error in a restitution order affects a defendant's fundamental right to liberty thereby warranting second-prong plain error review. (§44-7(a))

Defense counsel: Zach Rosen, Springfield OSAD

No. 126047

**People v. Miles**, State leave to appeal granted 9/30/20 from 2020 IL App (1st) 180736

Whether a prior criminal conviction may be treated as a qualifying offense for purposes of establishing Class X sentencing eligibility where the defendant was a juvenile at the time of that earlier offense. (§§44-4(b), 44-4(d))

Defense Counsel: Douglas Hoff, Chicago OSAD

### **SPEEDY TRIAL**

No. 126163

**People v. Rogers**, State leave to appeal granted 9/30/20 from 2020 IL App (3d) 180088

Whether compulsory joinder applies to related misdemeanors later charged by information or indictment where the original charge was filed by a police officer via a uniform citation. (§46-9)

Whether a police officer is a "proper prosecuting officer" under the compulsory joinder statute, 720 ILCS 5/3-3(b). (§46-9)

Defense counsel: Sean Conley, Ottawa OSAD

## STATUTES

No. 125124

**People v. House**, State leave to appeal granted 1/29/20 from 2019 IL App (1st) 110580-B

Whether defendant created an adequate evidentiary record in the trial court to support the Appellate Court's holding that a mandatory natural life sentence, as applied to a 19-year-old defendant convicted under a theory of accountability, is unconstitutional under the Illinois Constitution's proportionate penalties clause. (§47-3(a)(2))

Defense counsel: Lauren Bauser, Chicago OSAD

## THEFT AND OTHER PROPERTY OFFENSES

No. 125945

**People v. Brand**, Defense leave to appeal granted 9/30/20 from 2020 IL App (1st) 171728

Whether a conviction for possession of a stolen or converted motor vehicle can be upheld where the State fails to show that defendant took the vehicle with the intent to permanently deprive the owner of its use. (§48-1)

Defense counsel: Joseph Michael Benak, Chicago OSAD

## TRIAL PROCEDURES

No. 123975

**People v. Radford**, Defense leave to appeal granted 1/3/19 from 2018 IL App (3d) 140404; oral argument held 11/19/19

Whether defendant's right to a public trial was violated, as a matter of second prong plain error, where the trial court *sua sponte* closed the courtroom to all members of the public except for two individuals from the victim's family and two from the defendant's family, in order to create space for the entire jury venire in the courtroom during jury selection. (§51-1)

Defense counsel: Steve Varel, Ottawa OSAD

No. 124832

**People v. Schoonover**, State leave to appeal granted 9/30/20 from 2020 IL App (4th) 160882

Whether the trial court's exclusion of the public during a minor victim's testimony, without first determining whether they had an interest in the case, in violation of 725 ILCS 5/115-11, constitutes second-prong plain error. (§51-1)

Defense counsel: Akshay Mathew, Ottawa OSAD

## VENUE AND JURISDICTION

No. 125889

**People v. Bochenek**, Defense leave to appeal granted 5/27/20 from 2020 IL App (2d) 170545

Whether the provision in the identity theft statute allowing for venue in the victim's home county violates the Illinois constitutional right to be tried in the county in which the crime occurred, in a case where the defendant is charged only with using the victim's personal identification under section 16-30(a)(1), and not unlawfully obtaining the information under sections 16-30(a)(3) or 16-30(a)(4). (§52)

Defense counsel: Bryan Lesser, former OSAD, Elgin

## VERDICTS

No. 124797

**People v. Reveles-Cordova**, Defense leave to appeal granted 9/25/19 from 2019 IL App (3d) 160418; oral argument held 9/15/20

Whether a predicate offense is a lesser-included offense under the abstract-elements test. (§53-3(a))

Defense counsel: Brian Carroll, Chicago OSAD

## WAIVER - PLAIN ERROR - HARMLESS ERROR

No. 124832

**People v. Schoonover**, State leave to appeal granted 9/30/20 from 2020 IL App (4th) 160882

Whether the trial court's exclusion of the public during a minor victim's testimony, without first determining whether they had an interest in the case, in violation of 725 ILCS 5/115-11, constitutes second-prong plain error. (§54-2(b))

Defense counsel: Akshay Mathew, Ottawa OSAD

No. 125644

**People v. Birge**, Defense leave to appeal granted 3/25/20 from 2019 IL App (4th) 170341-U

Whether a restitution order must be supported by numerical evidence of the amount of restitution ordered or whether no specific type of evidence is required. (§54-2(e)(6)(a))

Whether an error in a restitution order affects a defendant's fundamental right to liberty thereby warranting second-prong plain error review. (§54-2(e)(6)(a))

Defense counsel: Zach Rosen, Springfield OSAD

No. 125959

**People v. Moon**, Defense leave to appeal granted 9/30/20 from 2020 IL App (1st) 170675

Whether conviction by an unsworn jury constitutes structural error. (§54-3(b))

Defense Counsel: Eric Castaneda, Chicago OSAD

## WEAPONS

No. 125392

**People v. Wise**, State leave to appeal granted 1/29/20, from 2019 IL App (3d) 170252

Whether, under 720 ILCS 5/24-1.1(a), an individual can be found to be in possession of a firearm "on or about his person" where the firearm is out of arm's reach. (§55-5)

Defense counsel: Steve Varel, Ottawa OSAD

No. 125954

**People v. Carter**, Defense leave to appeal granted 9/30/20 from 2019 IL App (1st) 170803

Whether the State has the burden of proving that defendant's prior aggravated battery conviction caused great bodily harm or permanent disfigurement for purposes of satisfying an element of armed habitual criminal, or whether, once the State proves the prior conviction exists, the burden shifts to defendant to show the prior conviction does not satisfy the element. (§55-3)

Defense counsel: Sean Collins-Stapleton, Chicago OSAD