

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

June 21, 2019

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

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APPEAL

No. 123492

[People v. Abdullah](#), Defense leave to appeal granted 9/26/18 from 2018 IL App (2d) 150840

Whether a post-judgment motion filed by the State, seeking an increased sentence, should result in the striking of a timely-filed notice of appeal pursuant to Illinois Supreme Court Rule 606(b) or whether the timely-filed notice of appeal divests the circuit court of jurisdiction to hear the State's motion. (§2-2(a))

Defense counsel: David Harris, Chicago OSAD

No. 123505

[People v. Gayden](#), Defense leave to appeal granted 9/26/18 from 2018 IL App (1st) 150748-U

1. Whether where the reviewing court finds the record on direct appeal insufficient to decide a claim of ineffective assistance of trial counsel, but sufficient to establish "possible neglect" by trial counsel, the court should retain jurisdiction and remand the cause for an evidentiary hearing on the claim of ineffective assistance of counsel. (§2-5(b))

2. Whether the record on appeal was adequate to decide defendant's claim of ineffective assistance of trial counsel based on counsel's failure to file a motion to suppress where the record showed that the police forced entry into defendant's apartment solely based upon observing him holding a shotgun inside his own home. (§2-5(b))

Defense counsel: John Breffeilh, Chicago OSAD

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BATTERY, ASSAULT & STALKING OFFENSES

No. 123539

[People v. Brzuskiwicz](#), State leave to appeal as a matter of right

Whether 725 ILCS 5/112A-11.5, requiring the court to grant a protective order where the court finds *prima facie* evidence of a crime involving domestic battery, a sexual offense, or stalking,

is facially unconstitutional because it fails to provide for notice to the respondent and an opportunity to be heard and infringes on the fundamental right to bear arms. (§§7-1(a), 7-2(a))

Defense Counsel:

***No. 123975**

[People v. Radford](#), Defense leave to appeal granted 1/3/19 from 2018 IL App (3d) 140404

Whether defendant was deprived of a fair trial by the trial court's instruction to the jury that the mental state requirement for child endangerment is "willfully" because it led the jury to convict him based on a less culpable mental state than "knowledge." (§7-1(d))

Defense counsel: Steve Varel, Ottawa OSAD

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BURGLARY & RESIDENTIAL BURGLARY

No. 123318

People v. Johnson, State leave to appeal granted 5/30/18 from 2018 IL App (3d) 150352

Whether the act of shoplifting by entering and exiting a retail establishment during regular business hours and remaining in designated public areas in the store can constitute burglary by entering-without-authority. (§§8-1(a), 8-1(c))

Defense counsel: Gilbert Lenz, Chicago OSAD

COLLATERAL REMEDIES

No. 123339

[People v. Custer](#), State leave to appeal granted 9/26/18 from 2018 IL App (3d) 160202

Whether a post-conviction petitioner is entitled to a **Krankel**-like inquiry into his *pro se* complaints that he received unreasonable assistance of post-conviction counsel. (§9-1(j)(2))

Defense counsel: Steve Varel, Ottawa OSAD

No. 123505

[People v. Gayden](#), Defense leave to appeal granted 9/26/18 from 2018 IL App (1st) 150748-U

Whether the Illinois Supreme Court should exercise its supervisory authority to provide defendants who have completed their sentences while direct appeal was pending with the right to file a post-conviction petition raising ineffective assistance of trial counsel claims that were raised in the Appellate Court but not decided. (§9-1(b)(1))

Defense counsel: John Breffeilh, Chicago, OSAD

***No. 123849**

People v. Robinson, Defense leave to appeal granted 5/22/19 from 2018 IL App (1st) 153547-U

Whether a post-conviction petitioner is required to support his actual innocence claim with direct evidence, as opposed to circumstantial evidence, and what it means to take an affidavit as “true” when determining whether to allow leave to file a successive post-conviction petition raising a claim of actual innocence. (§9-1(i)(3))

Defense counsel: Michael Gomez, Chicago OSAD

No. 124046

[People v. Lusby](#), State leave to appeal granted 1/31/19 from 2018 IL App (3d) 150189

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

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COUNSEL

No. 123339

People v. Custer, State leave to appeal granted 9/26/18 from 2018 IL App (3d) 160202

Whether a post-conviction petitioner is entitled to a **Krankel**-like inquiry into his *pro se* complaints that he received unreasonable assistance of post-conviction counsel. (§§14-5, 14-7(a))

Defense counsel: Steve Varel, Ottawa OSAD

No. 123505

People v. Gayden, Defense leave to appeal granted 9/26/18 from 2018 IL App (1st) 150748-U

1. Whether where the reviewing court finds the record on direct appeal insufficient to decide a claim of ineffective assistance of trial counsel, but sufficient to establish “possible neglect” by trial counsel, the court should retain jurisdiction and remand the cause for an evidentiary hearing on the claim of ineffective assistance of counsel. (§14-4(a)(3))

2. Whether the record on appeal was adequate to decide defendant’s claim of ineffective assistance of trial counsel based on counsel’s failure to file a motion to suppress where the record showed that the police forced entry into defendant’s apartment solely based upon observing him holding a shotgun inside his own home. (§14-4(a)(3))

Defense counsel: John Breffeilh, Chicago OSAD

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No. 124112

People v. Jackson, Defense leave to appeal granted 1/31/19 from 2018 IL App (5th) 150274

Whether the State’s improper participation in a preliminary **Krankel** hearing can be harmless error, and whether a ruling on a preliminary **Krankel** hearing is reviewed *de novo*. (§14-7(a)(1))

Defense counsel: Susan Wilham, Springfield OSAD

No. 124143

People v. Bates, Defense leave to appeal granted 1/31/19 from 2018 IL App (4th) 160255

Whether a **Krankel** hearing is required where defense counsel, as opposed to defendant, raises a claim of his or her own ineffectiveness in a post-trial motion. (§14-7(a)(1))

Defense counsel: Emily Filpi, Chicago OSAD

No. 124352

People v. Roddis, State leave to appeal granted 3/20/19 from 2018 IL App (4th) 170605

Whether a circuit court may conclude that a *pro se* claim of ineffective assistance of counsel lacks merit after speaking to defendant and his attorney at an initial **Krankel** inquiry, or whether the trial court should instead withhold a ruling on the merits until after a hearing with appointment of counsel, and decline to appoint counsel only if the claim is patently frivolous. (§14-7(a)(1))

Defense counsel: Ryan Wilson, Springfield OSAD

***No. 124538**

People v. Moore, Defense leave to appeal granted 5/22/19 from 2018 IL App (3d) 150736-U

Whether defendant received ineffective assistance of counsel during his trial for unlawful use of a weapon by a felon, where his attorney did not ask to stipulate to his felon status, thus allowing the State to elicit the fact that this prior felony was a murder conviction. (§14-4(b)(3))

Defense counsel: Yasemin Eken, Elgin OSAD

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DISORDERLY, ESCAPE, RESISTING AND OBSTRUCTING OFFENSES

*No. 124688

[People v. Swenson](#), Defense leave to appeal granted 5/22/19 from 2019 IL App (2d) 160960.

Whether defendant's disorderly conduct conviction, based on his "unreasonable" and "morbid" language during a phone call which alarmed and disturbed the listener and caused a breach of the peace, violates the First Amendment, where the speech contained no unprotected language such as threats or fighting words. Alternatively, whether defendant knew or should have known such language was likely to cause a breach of the peace. (§16-1(b))

Defense counsel: Erin Johnson, Elgin OSAD

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EVIDENCE

No. 123926

People v. King, State leave to appeal granted 1/31/19 from 2018 IL App (2d) 151112

Whether the field of crime scene analysis has become so settled and widely accepted that expert testimony on the subject is generally admissible at a criminal trial. And, if so, whether a crime scene analysis witness may give expert opinion testimony as to cause of death where he lacks any formal medical education. (§19-23(b))

Defense counsel: Gabriel Fuentes and Clifford Berlow, Jenner & Block, Chicago OSAD

GUILTY PLEAS

No. 124337

[People v. Sophanavong](#), State leave to appeal granted 3/20/19 from 2018 IL App (3d) 170450

Whether, on appeal from denial of a motion to withdraw a negotiated guilty plea, defendant can challenge the plea court's failure to strictly comply with 730 ILCS 5/5-3-1, which requires that

a PSI be ordered and considered unless there is an agreement to a specific sentence and a finding on the record as to defendant's criminal history, including any previous sentence. (§24-8(a))

Defense counsel: Santiago Durango, Ottawa OSAD

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JUVENILE

No. 123972

[People v. Coty](#), State leave to appeal granted 1/31/19 from 2018 IL App (1st) 162383

Whether a sentencing court violates the proportionate penalties clause of the Illinois Constitution when it imposes a legislatively mandated *de jure* or *de facto* natural-life sentence on an intellectually disabled, adult criminal offender, without first following procedures similar to those outlined in **Miller v. Alabama**, 567 U.S. 460 (2012). (§33-6(g)(5))

Defense counsel: Daniel Mallon, Chicago OSAD

No. 124046

[People v. Lusby](#), State leave to appeal granted 1/31/19 from 2018 IL App (3d) 150189

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

PROBATION, PERIODIC IMPRISONMENT, CONDITIONAL DISCHARGE & SUPERVISION

No. 123643

People v. Morger, Defense leave to appeal granted 9/26/18 from 2018 IL App (4th) 170285

Whether a condition of probation barring the defendant's access to social media violates the First Amendment pursuant to **Packingham v. North Carolina**, 582 U.S. ____, 137 S. Ct. 1730 (2017), which found such restrictions impermissible when attached to sex offender registration. (§39-4(a))

Defense counsel: Zach Rosen, Springfield OSAD

REASONABLE DOUBT

No. 123289

[People v. Murray](#), defense leave to appeal granted 5/30/18 from 2017 IL App (2d) 150599

Whether the State proved that the Latin Kings are a "streetgang" as defined by 740 ILCS 147/10, for purposes of proving unlawful possession of a firearm by a streetgang member, where the statute requires a showing that members committed two specific felonies within five years, and the State's "gang expert" testified only to general conduct before giving his expert opinion that the Latin Kings fit the statute's definition of a streetgang. (§41-1)

Defense counsel: Jennifer Bontrager, Chicago OSAD

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SEARCH & SEIZURE

No. 123525

[People v. Eubanks](#), State leave to appeal granted 9/26/18 from 2017 IL App (1st) 142837

Whether section 11-501.2(c)(2) of the Illinois Vehicle Code is unconstitutional under **Missouri v. McNeely**, 569 U.S. 141 (2013), because it allows the police to obtain blood and urine

samples without a warrant whenever they have probable cause to believe that a motorist involved in an accident resulting in death or injury to another, is under the influence. (§43-2(a))

Defense counsel: Deepa Punjabi, Chicago OSAD

No. 124289

People v. Lindsey, State leave to appeal granted 1/31/19 from 2018 IL App (3d) 150877

Whether a dog sniff in the common area outside of defendant's motel room violated his reasonable expectation of privacy, and if so, whether the "good faith" exception to the exclusionary rule applies because of prior precedent finding reduced expectations in privacy for motel guests. (§§43-1(d)(2), 43-2(b))

Defense counsel: Edith Rosario-Moore, Ottawa OSAD

***No. 124595**

People v. Hill, Defense leave to appeal granted 5/22/19 from 2019 IL App (4th) 180041

Whether police may still search a vehicle without a warrant following a traffic stop based solely on a perceived odor of cannabis, or whether the State legislature's decision to decriminalize possession of less than 10 grams of cannabis requires officers to justify their search based on specific evidence that the occupant possesses more than 10 grams. (§§43-4(a), 43-6(c))

Defense counsel: Zachary Rosen, Springfield OSAD

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SENTENCING

No. 123972

People v. Coty, State leave to appeal granted 1/31/19 from 2018 IL App (1st) 162383

Whether a sentencing court violates the proportionate penalties clause of the Illinois Constitution when it imposes a legislatively mandated *de jure* or *de facto* natural-life sentence on an intellectually disabled, adult criminal offender, without first following procedures similar to those outlined in **Miller v. Alabama**, 567 U.S. 460 (2012). (§§44-1(b)(2), 44-1(c)(5))

Defense counsel: Daniel Mallon, Chicago OSAD

No. 124046

People v. Lusby, State leave to appeal granted 1/31/19 from 2018 IL App (3d) 150189

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

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No. 124337

People v. Sophanavong, State leave to appeal granted 3/20/19 from 2018 IL App (3d) 170450

Whether strict compliance with 730 ILCS 5/5-3-1, which requires that a PSI be ordered and considered unless there is an agreement to a specific sentence and a finding on the record as to defendant's criminal history, including any previous sentence, can be satisfied by the factual basis for the plea and information that defendant had prior traffic offenses and a Class 1 felony. (§44-3(d))

Defense counsel: Santiago Durango, Ottawa OSAD

SEX OFFENSES

No. 123539

[People v. Brzuskiwicz](#), State leave to appeal as a matter of right

Whether 725 ILCS 5/112A-11.5, requiring the court to grant a protective order where the court finds *prima facie* evidence of a crime involving domestic battery, a sexual offense, or stalking, is facially unconstitutional because it fails to provide for notice to the respondent and an opportunity to be heard and infringes on the fundamental right to bear arms. (§45-1(c))

Defense Counsel:

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STATUTES

No. 123289

[People v. Murray](#), defense leave to appeal granted 5/30/18 from 2017 IL App (2d) 150599

Whether the State proved that the Latin Kings are a “streetgang” as defined by 740 ILCS 147/10, for purposes of proving unlawful possession of a firearm by a streetgang member, where the statute requires a showing that members committed two specific felonies within five years, and the State’s “gang expert” testified only to general conduct before giving his expert opinion that the Latin Kings fit the statute’s definition of a streetgang. (§47-1(b))

Defense counsel: Jennifer Bontrager, Chicago OSAD

No. 123492

People v. Abdullah, Defense leave to appeal granted 9/26/18 from 2018 IL App (2d) 150840

Whether a statute declared void *ab initio* can be applied to cases arising before a later decision that overrules the void-*ab-initio* holding. (§47-2(a))

Defense counsel: David Harris, Chicago OSAD

No. 123525

People v. Eubanks, State leave to appeal granted 9/26/18 from 2017 IL App (1st) 142837

Whether section 11-501.2(c)(2) of the Illinois Vehicle Code is unconstitutional under **Missouri v. McNeely**, 569 U.S. 141 (2013), because it allows the police to obtain blood and urine samples without a warrant whenever they have probable cause to believe that a motorist involved in an accident resulting in death or injury to another, is under the influence. (§47-3(b)(4)(c))

Defense counsel: Deepa Punjabi, Chicago OSAD

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No. 123539

People v. Brzuskiwicz, State leave to appeal as a matter of right

Whether 725 ILCS 5/112A-11.5, requiring the court to grant a protective order where the court finds *prima facie* evidence of a crime involving domestic battery, a sexual offense, or stalking, is facially unconstitutional because it fails to provide for notice to the respondent and an opportunity to be heard and infringes on the fundamental right to bear arms. (§§47-3(b)(2)(a), 47-3(b)(4)(b))

Defense Counsel:

No. 123910

People v. Austin, Appeal as a matter of right from Circuit Court of McHenry County, 16 CF 935

Whether 720 ILCS 5/11-23.5 (Non-Consensual Dissemination of Private Sexual Images) is an over-broad, content-based restriction on free speech in violation of the United States and Illinois constitutions. (§§47-3(b)(1)(a)(3), 47-3(b)(5))

Defense counsel: Igor Bozic, Koch Law Group

No. 124100

People v. Brown, Appeal as a matter of right from Circuit Court of White County, 17 CM 60

Whether 430 ILCS 65/2(a)(1), which requires that an individual have a Firearm Owner's Identification Card in order to possess a firearm, is unconstitutional under the Second Amendment to the United States Constitution and Article I, Section 22, of the Constitution of Illinois, because an individual is required to fill out a form, provide a picture ID, and pay a \$10 fee before she can exercise her constitutional right to self defense. (§47-3(b)(2)(a))

Defense counsel: Alan Downen, McLeansboro

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***No. 124688**

People v. Swenson, Defense leave to appeal granted 5/22/19 from 2019 IL App (2d) 160960.

Whether defendant's disorderly conduct conviction, based on his "unreasonable" and "morbid" language during a phone call which alarmed and disturbed the listener and caused a breach of the peace, violates the First Amendment, where the speech contained no unprotected language such as threats or fighting words. Alternatively, whether defendant knew or should have known such language was likely to cause a breach of the peace. (§47-3(b)(1)(a)(2))

Defense counsel: Erin Johnson, Elgin OSAD

***No. 124744**

People v. DeLeon, Appeal as a matter of right filed 4/4/19 from Cook County Circuit Court No. 18 CR 13629

Whether 725 ILCS 5/112A-11.5(a)(1) is facially unconstitutional because it denies defendant due process under the Illinois and U.S. Constitutions where it allows the State to make a *prima facie* case for issuance of an Order of Protection simply by showing that defendant has been charged with a domestic offense, sexual offense, or stalking but does not require that the complaining witness testify and be subject to cross-examination. (§§47-3(a), 47-3(b)(4)(b))

Whether 725 ILCS 5/112A-11.5(a-5) is facially unconstitutional because, to rebut the *prima facie* case for issuance of an order of protection, it requires defendant to present evidence of a meritorious defense, thereby violating defendants' privilege against self-incrimination under both the Illinois and U.S. Constitutions. (§§47-3(a), 47-3(b)(4)(b))

Whether 725 ILCS 5/112A-11.5 is facially unconstitutional because it shifts the burden to defendant/respondent compared with the Illinois Civil No Contact Act [740 ILCS 22/204 and 22/215.5]. (§§47-3(a), 47-3(b)(4)(b))

Defense counsel: Robert Cotter, Chicago

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TRIAL PROCEDURES

***No. 123975**

People v. Radford, Defense leave to appeal granted 1/3/19 from 2018 IL App (3d) 140404

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

VERDICTS

No. 123901 & 123902

People v. Smith & People v. Brown (cons.), State leave to appeal granted 11/28/18 from 2018 IL App (1st) 151312-B & (1st) 151311-B

Whether defendants' aggravated battery convictions were properly vacated under the one-act, one-crime doctrine where defendants were also convicted of robbery of the same individual, both the robbery and aggravated battery were premised on the act of punching that individual one

time, and the evidence did not establish a separate physical act for the taking-of-property element of the robbery. (§53-3(a))

Defense counsel: Christopher Kopacz, Chicago OSAD (Brown)
Christopher Cronson, Waukegan (Smith)

WEAPONS

No. 123289

People v. Murray, defense leave to appeal granted 5/30/18 from 2017 IL App (2d) 150599

Whether the State proved that the Latin Kings are a “streetgang” as defined by 740 ILCS 147/10, for purposes of proving unlawful possession of a firearm by a streetgang member, where the statute requires a showing that members committed two specific felonies within five years, and the State’s “gang expert” testified only to general conduct before giving his expert opinion that the Latin Kings fit the statute’s definition of a streetgang. (§55-1(a))

Defense counsel: Jennifer Bontrager, Chicago OSAD

***No. 124563**

People v. McLaurin, State leave to appeal granted 5/22/19 from 2018 IL App (1st) 170258

Whether proof that an item is a firearm for purposes of the armed habitual criminal statute is satisfied by unequivocal eyewitness testimony that she saw a gun under *People v. Washington*, 2012 IL 107993, and *People v. Wright*, 2017 IL 119561, or whether there must be specific evidence that the item seen was “designed to expel a projectile or projectiles by the action of a gas explosion, expansion of gas or escape of gas.” (§§55-3, 55-7)

Defense counsel: Steven Greenberg, Chicago

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