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CRIMINAL CASE LAW DIGEST

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ILLINOIS SUPREME COURT

CASE #1

STATUTORY CONSTRUCTION (Home Invasion): A suspect who enters a dwelling place of another in violation of a court order enters that dwelling place "without authority**."**

People v. Marcelus Witherspoon, 2019 IL 123092, (Ill. Sup. Ct., January 25, 2019) Home Invasion - - Affirmed**.**

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FACTS: The issue before the Court was whether a person who enters the dwelling place of another in violation of a court order thereby enters the dwelling "without authority" under the home invasion statute (720 ILCS 5/19-6(a)).

APPEAL: The Supreme Court held that evidence was sufficient to prove that defendant knowingly entered victim's home "without authority," as element of home invasion statute. *The Appellate Court judgment was reversed, and the Trial Court judgment was affirmed*.

CASE ANALYSIS

ISSUE: Does a suspect who enters a dwelling place of another in violation of a court order enter that dwelling place "without authority**?" (Yes).**

RULE #A: When a statutory term is undefined the Supreme Court will assume the legislature intended the word to have its ordinary and popularly understood meaning and that it may ascertain this meaning through the use of contemporary dictionaries. **RULE #B**: Courts may not depart from the plain language of a statute by reading exceptions, limitations, or conditions into it that the legislature did not express. **RULE #C**: The home invasion statute is intended to protect the safety of persons in their homes. 720 Ill. Comp. Stat. Ann. 5/19-6(a). **RULE #D**: When a court orders a defendant to refrain from entering or remaining at a residence, this means there has been a judicial determination that the defendant poses a risk to the safety of his victims. **RULE #E**: A defendant enters the dwelling place of another "without authority," for purposes of the home invasion statute, when either the occupant has not granted consent to enter or a court order has prohibited entry. **RULE #F**: When a defendant's prosecution for home invasion is premised on the violation of a court order, the consent of the occupant is legally irrelevant; the occupant's consent to a defendant's entry does not, in some sense, trump the court order. **RULE #G**: The mere absence of express language describing a mental state for a given offense does not per se lead to the conclusion that none is required, and if at all possible, the court will infer the existence of a culpable mental state, even where the statute itself appears to impose absolute liability. **RULE #H**: The "without authority" element of the home invasion statute includes the mental state of knowledge. **RULE #I**: Both the criminal offense of violation of bail bond and the criminal offense of violation of a protective order require proof of a knowing violation before criminal liability may be imposed. 720 Ill. Comp. Stat. Ann. 5/32-10(b); 750 Ill. Comp. Stat. Ann. 60/223(a)(1), 60/223(d). **RULE #J**: "Knowledge" generally refers to an awareness of the existence of the facts which make an individual's conduct unlawful, not to knowledge of the law.

FINDING #1: Evidence was sufficient to prove that defendant knowingly entered victim's home "without authority," as element of home invasion statute**. WHY:** *The defendant testified that he knew the circuit court had ordered him not to enter victim's home, and that he violated that order*.

RESULT: The defendant's conviction for Home Invasion was affirmed.

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CASE #2

TRIAL PROCEDURE (Rescission of Summary Suspension): A defendant who petitions for the rescission of his statutory summary suspension has a duty to present affirmative evidence to make a *prima facie* case for rescission**.**

People v. Daksh N. Relwani, 2019 IL 123385, (Ill. Sup. Ct., January 25, 2019) Denial of Motion to Rescind Summary Suspension - - Affirmed**.**

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FACTS: Relwani was charged with driving under the influence of alcohol, and his driver's license was summarily suspended under Illinois's implied consent statute (625 ILCS 5/11-501.1). He filed a petition to rescind the statutory summary suspension. When he rested his case at the hearing on his rescission petition, the People successfully moved for a directed finding, arguing he had not met his initial burden of proof. On appeal, a divided panel of the Appellate Court affirmed the directed finding in favor of the People. Relwani then sought the supreme court's review, asking whether he was required to present affirmative evidence to make a *prima facie* case for rescission.

APPEAL: The Supreme Court held that trial court's finding that motorist failed to make a prima facie case for rescission of driver's license suspension was not against the manifest weight of the evidence.

CASE ANALYSIS

ISSUE: Does a defendant who petitions for the rescission of his statutory summary suspension have a duty to present affirmative evidence to make a *prima facie* case for rescission**? (Yes).**

RULE #A: If, and only if, a motorist requesting judicial rescission of a summary suspension of a driver's license makes a sufficient prima facie case supporting the request, thereby avoiding a directed finding, the burden will shift to the State to come forward with evidence in rebuttal justifying suspension. 625 Ill. Comp. Stat. Ann. 5/11-501.1. **RULE #B**: In making a prima facie case in support of judicial rescission of a summary suspension of his driver's license, a motorist has the primary responsibility for establishing the factual and legal bases for the requested action. **RULE #C**: Trial court's finding as to whether suspended motorist established prima facie case for rescission of summary suspension of driver's license will not be overturned upon appeal unless against manifest weight of evidence. **RULE #D**: For appellate purposes, a finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence. **RULE #E**: If a defendant motorist offers a satisfactory prima facie case for rescission of a summary license suspension and the State fails to rebut it, rescission of the summary suspension is proper, but the ultimate burden of proof must be continuously borne by the motorist.

FINDING: The trial court's finding that the motorist failed to make a prima facie case for rescission of his summary driver's license suspension under the implied consent statute was not against the manifest weight of the evidence**. WHY:** *The motorist presented no evidence to show that the parking lot in which he was found partially unconscious behind the wheel of a running car was on privately owned property and that it was privately maintained; and the fact that the parking lot was in front of a retail store did not provide any further evidence as to who actually owned or maintained the parking lot*. 625 Ill. Comp. Stat. Ann. 5/1-126, 5/11-501.1.

RESULT: The trial court's denial of the defendant's motion to rescind his summary suspension was affirmed**.**

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FIRST DISTRICT

CASE #1

1) CONSTITUTIONALITY OF STATUTE (SORA): The SORA was not unconstitutional on its face or as applied to this defendant**.**

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2) FEES AND FINES (Propriety): The trial court improperly order this defendant to pay some fees and fines but not others**.**

People v. Jodie Christian, 2019 IL APP (1st) 153155, (1st Dist., January 22, 2018) Aggravated Criminal Sexual Assault - - Affirmed**.**

FACTS: Christian was found guilty of two counts of aggravated criminal sexual abuse and sentenced to concurrent terms of four years and six months in prison. The conviction arose from the sexual assault of a 14-year-old victim when Christian was 38 years old. Section 3 of the Sex Offender Registration Act (Registration Act) required Christian to register as a sex offender. 730 ILCS 150/3. Christian did not challenge the sufficiency of the evidence against him or his sentence. Instead, he claimed the Registration Act violated his constitutional rights to due process and to be free from disproportionate penalties. He also contended he was entitled to seven additional days of sentencing credit. Finally, he argued his fines and fees order should be amended by vacating one fee and applying monetary credit against several other assessments.

APPEAL: The Appellate Court held that: (a) the defendant's constitutional challenges to the Sex Offender Registration Act were beyond the scope of the Appellate Court's power to grant relief; (b) the Appellate Court would vacate the $5 electronic citation fee; (c) the state police operations assessment was subject to presentencing custody credit; (d) the defendant was not entitled to presentence custody credit against his felony complaint filing assessment, the circuit clerk automation assessment, and the circuit court clerk documentation storage assessment; and (e) he was not entitled to presentence custody credit against his public defender records automation assessment.

CASE ANALYSIS

ISSUE #1: Was the SORA unconstitutional on its face and as applied to this defendant**? (No).**

FINDING #1: **(A)** The defendant failed to preserve for appellate review his as-applied constitutional challenge to the Sex Offender Act in prosecution for aggravated criminal sexual abuse**. WHY:** The defendant's challenges were litigated for the first time on review. 730 Ill. Comp. Stat. Ann. 150/1 et seq. **(B)** The defendant's constitutional challenges to the Sex Offender Registration Act were beyond the scope of the Appellate Court's power to grant relief in prosecution for aggravated criminal sexual abuse**. WHY:** The trial court's sentencing order did not require the defendant to register as a sex offender under the Act.

ISSUE #2: Did the trial court improperly order this defendant to pay various fees and fines**? (Yes and No).**

RULE #2a: A defendant is entitled to a credit applied against fines of $5 for each day spent in presentence custody; the credit can only be applied to offset fines, not fees. **RULE #2b**: To decide whether an assessment enumerated in a statute is a fine or a fee, the Appellate Court considers the nature of the assessment rather than its statutory label. **RULE #2c**: A "fee," is a charge that seeks to recoup expenses incurred by the state, or to compensate the state for some expenditure incurred in prosecuting the defendant.

FINDING #2: **(A)** The Appellate Court would vacate $5 electronic citation fee in prosecution for aggravated criminal sexual abuse**. WHY:** The fee applied only to traffic, misdemeanor, municipal ordinance, and conservation violations, not a felony offense. 705 Ill. Comp. Stat. Ann. 105/27.3e. **(B)** The state police operations assessment was a "fine" and thus subject to presentencing custody credit in prosecution for aggravated sexual abuse, although the assessment was labeled as a fee**. WHY:** The assessment did not compensate the state for expenses incurred in the prosecution of defendant. 705 Ill. Comp. Stat. Ann. 105/27.3a (1.5); 725 Ill. Comp. Stat. Ann. 5/110-14. **(C)** The felony complaint filing assessment, the circuit clerk automation assessment, and the circuit court clerk documentation storage assessment were a "fees," not fines, and thus the defendant was not entitled to presentence custody credit

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against the assessments in prosecution for aggravated criminal sexual abuse**. WHY:** The assessments were compensatory and represented a collateral consequence of a defendant's conviction. 705 Ill. Comp. Stat. Ann. 105/27.2a(w)(1)(A), 105/27.3a (1), 105/27.3c(a); 725 Ill. Comp. Stat. Ann. 5/110-14. **(D)** The public defender records automation assessment was a "fee," not a fine, and thus the defendant was not entitled to presentence custody credit against the assessment**. WHY:** The automating records was a cost necessary to the public defender's office and was a cost incurred as the result of prosecuting defendant. 55 Ill. Comp. Stat. Ann. 5/3-4012, 5/4-2002.1(c); 725 Ill. Comp. Stat. Ann. 5/110-14.

RESULT: The defendant's Aggravated Criminal Sexual Assault conviction was affirmed**.**

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CASE #2

1) FEES AND FINES (Credit): This defendant's fees and fines sentence must be corrected**.**

2) SENTENCES (Excessive): This defendant's concurrent 15-year sentences were not excessive**.**

People v. Danarius Jones-Beard, 2019 IL APP (1st) 162005, (1st Dist., January 29, 2019) Aggravated Vehicular Hijacking and Armed Robbery - - Affirmed and Remanded with Directions**.**

FACTS: Jones-Beard opted for a bench trial at which he was convicted of aggravated vehicular hijacking and armed robbery and sentenced to concurrent terms of 15 years' imprisonment. On appeal, he contended that his sentence was excessive. He also contended that his fines, fees, and costs order should be corrected.

APPEAL: The Appellate Court held that: (a) this defendant's concurrent 15-year sentences were not excessive; (b) this defendant's sentence did not amount to punishment against him for exercising his right to trial; (c) the electronic citation fee and the State DNA identification system fee were improperly imposed; (d) the court system fee and the state police operations fee were considered fines, and thus the charges were subject to offset by the defendant's presentence incarceration credit; and (e) the felony complaint fee, the clerk automation fee, the document storage fee, the state's attorney records automation fee, and the public defender records automation fee were considered fees, and thus the charges were not subject to offset by the defendant's presentence incarceration credit.

CASE ANALYSIS

ISSUE #1: Was this defendant's concurrent 15-year sentences excessive**? (No).**

RULE #1a: The Illinois Constitution requires that a trial court impose a sentence that reflects both the seriousness of the offense and the objective of restoring the defendant to useful citizenship; in reaching this balance, a trial court must consider a number of aggravating and mitigating factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. **RULE #1b**: The seriousness of the crime is the most critical factor in determining an appropriate sentence, not the presence of mitigating factors. **RULE #1c**: A sentencing court need not state every factor it considered in determining a defendant's sentence.

FINDING #1: Concurrent 15-year sentences for defendant who was convicted of aggravated vehicular hijacking and armed robbery were not excessive, although defendant argued that the trial court failed to consider the nonviolent nature of his offenses and the presence of several mitigating factors**. WHY:** *The trial court considered all evidence of mitigation, including hearing from defense counsel on defendant's age, his difficult childhood, and the counsel's belief that a prison term above the minimum would not aid*

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in rehabilitating him; and the record showed the court was not persuaded by these mitigating factors in light of defendant's extensive criminal history. Ill. Const. art. 1, § 11; 720 Ill. Comp. Stat. Ann. 5/18-4(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a).

ISSUE #2: Did this defendant's sentence amount to punishment against him for exercising his right to trial**? (No).**

RULE #2a: A trial court may not penalize a defendant during sentencing for choosing to exercise his right to stand trial; but, the mere fact that the defendant was given a greater sentence than that offered during the plea bargaining does not, in and of itself, support an inference that the greater sentence was imposed as a punishment for demanding trial. **RULE #2b**: To determine that a defendant was penalized during sentencing for choosing to exercise his right to stand trial, it must be clearly evident in the record that the harsher sentence resulted from the trial demand; this evidence can come when a trial court makes explicit remarks concerning the harsher sentence or where the actual sentence is outrageously higher than the one offered during plea negotiations. **RULE #2c**: In determining whether defendant was penalized during sentencing for choosing to exercise his right to stand trial, the appellate court considers the entire record rather than focusing on a few words or statements of the trial court.

FINDING #2: Defendant's sentence of 15 years imprisonment, after defendant rejected an offer for a seven-year sentence in exchange for a guilty plea, did not amount to punishment against defendant for exercising his right to trial, in prosecution for aggravated vehicular hijacking and armed robbery**. WHY:** *The defendant's sentence, which amounted to just over a twofold increase from the pretrial offer, was not so outrageously disproportionate to conclude that it was the result of a "trial tax*."

ISSUE #3: Should this defendant's fees and fines be corrected**? (Yes).**

RULE #3a: Broadly speaking, a "fine" is a part of the punishment for a conviction, whereas a "fee" or "cost" seeks to recoup expenses incurred by the state. **RULE #3b**: The most important factor in determining whether a charge is a fee or a fine is whether the charge seeks to compensate the State for any costs incurred as a result of prosecuting the defendant.

FINDING #3: **(A)** The electronic citation fee of $5 was improperly imposed, in prosecution for aggravated vehicular hijacking and armed robbery**. WHY:** *The fee did not apply to felonies and was, therefore, inapplicable to the defendant's felony convictions*. 705 Ill. Comp. Stat. Ann. 105/27.3e. **(B)** The state DNA identification system fee of $250 was improperly imposed, in prosecution for aggravated vehicular hijacking and armed robbery**. WHY:** *The defendant's DNA was already in the Illinois database as a result of his prior felony conviction*. 730 Ill. Comp. Stat. Ann. 5/5-4-3(j). **(C)** The court system fee of $50 and the State police operations fee of $15 imposed on this defendant following convictions were "fines," rather than "fees," and thus the defendant was entitled to offset these charges under statute providing presentence incarceration credit against fines. 55 Ill. Comp. Stat. Ann. 5/5-1101(c); 705 Ill. Comp. Stat. Ann. 105/27.3a (1.5); 725 Ill. Comp. Stat. Ann. 5/110-14(a). **(D)** Felony complaint fee of $190, clerk automation fee of $15, document storage fee of $25, State's attorney records automation fee of $2, and public defender records automation fee of $2, imposed on defendant following convictions for aggravated vehicular hijacking and armed robbery, were considered "fees," rather than "fines," and thus defendant was not entitled to offset these charges under statute providing presentence incarceration credit against fines**. WHY:** *The costs were compensatory and represented a collateral consequence of a defendant's conviction, and the costs were incurred as the result of prosecuting the defendant*. 55 Ill. Comp. Stat. Ann. 5/4-2002.1(c), 5/3-4012; 705 Ill. Comp. Stat. Ann. 105/27.2a(w)(1)(A), 105/27.3a (1), 105/27.3c(a); 725 Ill. Comp. Stat. Ann. 5/110-14(a).

RESULT: The defendant's convictions for Aggravated Vehicular Hijacking and Armed Robbery were affirmed and the case remanded with directions**.**

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SECOND DISTRICT

CASE #1

SEARCH AND SEIZURE (Probable Cause): The police had sufficient probable cause to justify the arrest of this defendant for a drug offense**.**

People v. Fernando Monroy-Jaimes, 2019 IL App (2nd) 160426, (2nd Dist., January 11, 2019) Denial of Motion to Suppress - - Affirmed**.**

FACTS: Monroy-Jaimes appealed from an order of the court denying his motion to quash and suppress. He contended that the police did not have probable cause to arrest him and that evidence seized from his vehicle and statements made to the police following his improper arrest should have been suppressed.

APPEAL: The Appellate Court held that: (a) the informant's tip was reliable, and (b) even if the defendant did not specifically state in a phone call with the informant that he would have cocaine when arrived at the location where his arrest occurred, probable cause existed to believe the defendant had committed a crime.

CASE ANALYSIS

ISSUE: Did the police have sufficient probable cause to justify the arrest of this defendant for a drug offense**? (Yes).**

RULE #A: Although the Appellate Court accords great deference to a trial court's factual findings and will reverse only if they are against the manifest weight of the evidence, the Appellate Court reviews de novo the ultimate ruling. **RULE #B**: A warrantless arrest is valid only if supported by probable cause to believe a suspect has committed a crime. **RULE #C**: Probable cause required to make an arrest exists when the facts known to police when they make the arrest are sufficient to lead a reasonably cautious person to believe that the suspect has committed a crime. **RULE #D**: The existence of probable cause to believe that a suspect has committed a crime, as required to make an arrest, depends upon the totality of the circumstances at the time of the arrest. **RULE #E**: In addressing probable cause to believe that a suspect has committed a crime, the Appellate Court deals with probabilities, which are the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act; accordingly, whether probable cause exists depends upon commonsense considerations, and such a determination concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. **RULE #F**: Probable cause to believe a suspect has committed a crime does not require a showing that the belief that the suspect had committed a crime was more likely true than false. **RULE #G**: If the facts supplied in an informant's tip are essential to a finding of probable cause to believe a suspect has committed a crime, as required to make an arrest, the tip must be reliable. **RULE #H**: An indication of the reliability of an informant's tip used to support a finding of probable cause that a suspect has committed a crime, as required to make an arrest, is when the facts learned through police investigation independently verify a substantial part of the tip. **RULE #I**: The reliability of an informant is a fact to be considered in determining whether there is probable cause to believe a suspect has committed a crime, as required to make arrest. **RULE #J**: The reliability of an informant is enhanced if he is known to the police, for purposes of determining whether an informant's tip supports probable cause to believe a suspect has committed a crime, as required to make an arrest. **RULE #K**: If an informant is offered leniency in exchange for information that incriminates others, such information is clearly suspect. **RULE #L**: In the context of determining whether there is probable cause to believe a suspect had committed a crime, as required to make an arrest, whether an informant has provided reliable information depends on

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the totality of the circumstances. **RULE #M**: A confidential informant is deemed more reliable than an anonymous informant, for purposes of determining whether there is probable cause to believe a suspect has committed a crime, as required to make an arrest. **RULE #N**: Prior reliable tips are one consideration in the totality of the circumstances as to whether an informant who provided information to support probable cause to believe a suspect committed a crime is reliable.

FINDING: **(A)** Even if the informant had never provided information to the police in the past, the informant's tip, that the defendant could provide cocaine, was reliable, as an element of establishing probable cause to believe the defendant had committed a crime, as required to arrest the defendant**. WHY:** *The informant provided the tip in person while in police custody, and much of the information relied upon to establish probable cause was based on the police officer's personal observations during the phone calls between the informant and the defendant, since the officer listened to the phone calls and heard the defendant's statement that he could provide cocaine*. **(B)** Even if informant did not know the defendant's real name, the informant's tip that the defendant could provide cocaine was reliable**. WHY:** The informant and the defendant reached a specific agreement regarding the delivery of cocaine, and the defendant arrived at the prearranged location. **(C)** Even if the defendant did not specifically state in the phone call with the informant that he would have cocaine when arrived at location where his arrest occurred, probable cause existed to believe the defendant had committed a crime, as required to arrest him**. WHY:** There was a fair probability that the defendant had brought cocaine to the location.

RESULT: The trial court's order denying this defendant's motion to suppress was affirmed.

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THIRD DISTRICT

CASE #1

1) COUNSEL (Effectiveness): The defense attorney did not provide ineffective assistance by failing to secure a jury instruction of the affirmative defense of consent**.**

2) COUNSEL (Krankel Hearing): The trial court erred in failing to properly inquire into the defendant's complaints about his counsel**.**

3) JURY SELECTION (Zehr principles): The trial court may have failed to properly question this defendant's jurors concerning their understanding of the rights of a defendant, but any error was harmless.

4) OFFENSES (One Act – One Crime): The defendant was properly convicted of both Home Invasion and Criminal Sexual Assault**.**

People v. Alejandro Reveles-Cordova, 2019 IL APP (3rd) 160418, (3rd Dist., January 17, 2019) Home Invasion and Criminal Sexual Assault - - Affirmed**.**

FACTS: A jury found Reveles-Cordova guilty of criminal sexual assault and home invasion. 720 ILCS 5/12-11(a)(6); *id.* § 12-13(a)(1). On direct appeal, he argued the appellate court should reverse his convictions, remand for further proceedings, or modify his convictions because (1) the trial court committed plain error by failing to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), where the evidence was closely balanced, (2) his trial counsel denied him effective assistance of counsel, (3) the trial court did not adequately address his *pro se* claims of ineffective assistance as required by *People v. Krankel*, 102 Ill. 2d 181, (1984), and (4) his conviction for criminal sexual assault should be vacated under the one-act, one-crime rule.

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APPEAL: The Appellate Court held that: (a) any error resulting from the trial court's failure to properly instruct the jury according to the voir dire rule was not plain error; (b) the defense counsel did not abandon a promised defense, as would constitute ineffective assistance of counsel; (c) the evidence at a hearing conducted pursuant to *People v. Krankel*, 102 Ill. 2d 181, did not support the defendant's claim that his trial counsel was ineffective because he failed to give the defendant option to proceed with a bench trial; (d) a remand was required to address the ineffective assistance claims that arose after the preliminary *Krankel* hearing; and (e) the defendant's convictions for home invasion and criminal sexual assault were not required to be merged under the one act, one crime rule.

CASE ANALYSIS

ISSUE #1: Did the trial court fail to properly question this defendant's jurors concerning their understanding of the rights of a defendant**? (Perhaps, but any error was harmless.).**

RULE #1a: Pursuant to rule governing voir dire examination, and principles articulated in *People v. Zehr*, 103 Ill.2d 472, 83 Ill. Dec. 128, 469 N.E.2d 1062, trial court must inquire whether potential jury members understand and accept four principles: that the defendant is presumed innocent, the State is required to prove guilt beyond a reasonable doubt, the defendant is not required to put on a case, and the jury cannot hold defendant's decision not to testify against him or her. **RULE #1b**: Trial court's failure to comply with voir dire examination rule requiring jurors to acknowledge and accept certain principles, such as State's burden of proof, does not automatically require remand for a new trial.

FINDING #1: The evidence in this prosecution for home invasion and criminal sexual assault was not so closely balanced that trial court's error, in failing to properly instruct the jury according to the voir dire rule as to the four principles they were required to accept, constituted plain error**. WHY:** *The People's case was replete with evidence that the defendant committed both of the charged offenses, including police photographs corroborating the victim's version of events and testimony of multiple witnesses; the defense counsel clarified the principle that the defendant did not have to put on a case at all; and the testimony of the defendant's sole witness, his own son, independently corroborated the victim's version of events.*

ISSUE #2: Did the defense attorney provide ineffective assistance by failing to secure a jury instruction of the affirmative defense of consent**? (No).**

RULE #2a: To show ineffective assistance of counsel, a defendant must show counsel's representation fell below an objective standard of reasonableness and that counsel's shortcomings were so serious as to deprive the defendant of a fair trial. **RULE #2b**: To establish ineffective assistance of counsel, a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. **RULE #2c**: For purposes of showing a reasonable probability that result of proceeding would have been different but for counsel's unprofessional errors, as required to establish ineffective assistance of counsel, "reasonable probability" is a probability sufficient to undermine confidence in the outcome.

FINDING #2: **(A)** The defense counsel did not abandon a promised defense, as would constitute ineffective assistance of counsel, by telling the jury in his opening statement that the issue in the case would be consent, and then not requesting a jury instruction on consent**. WHY:** *The counsel's statement indicated that the People would not be able to prove beyond a reasonable doubt that the defendant used force to have sex with the victim and did not receive consent, but he never claimed he would be presenting a case demonstrating that the victim consented to intercourse, and in fact he explicitly told the jury he might not present a case at all, as it was within the defendant's rights to present no evidence and let the People's case speak for itself.* **(B)** The defense counsel's failure to obtain a ruling before opening statements on the People's ability to impeach the defendant regarding an envelope with money he allegedly came to retrieve from the victim's house, which the defendant purportedly would use to show

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consent, did not cause any prejudice to the defendant, as required to show ineffective assistance of counsel**. WHY:** *There was nothing in the record to indicate the trial court would have ruled differently on the motion at an earlier point in trial*.

ISSUE #3: Did the defense counsel provide ineffective assistance of counsel by abandoning a promised defense**? (No).**

RULE #3a: When conducting a hearing under *People v. Krankel*, 102 Ill. 2d 181, to determine whether to appoint postconviction petitioner new counsel to litigate claims alleging ineffective assistance of trial counsel, trial court must examine defendant's pro se claims to determine whether they have merit or concern matters of purely trial strategy. **RULE #3b**: In conducting a hearing under *Krankel* to determine whether to appoint postconviction petitioner new counsel to litigate claims alleging ineffective assistance of trial counsel, if the defendant's allegations show possible neglect of the case, new counsel should be appointed to fully prosecute the ineffectiveness claim before the trial court.

FINDING #3: Evidence at the hearing to determine whether to appoint the defendant new counsel for his postconviction claims alleging ineffective assistance of trial counsel did not support a finding that his trial counsel failed to give the defendant option to proceed with a bench trial**. WHY:** *The trial counsel testified that he had a conversation with the defendant about his options at trial and advised against a bench trial; a memo in the trial counsel's case file documented the conversations regarding a bench trial; the defendant chose to proceed before a jury at both the first and second trial; and the defendant never mentioned an issue with the jury despite being present at every step of the proceeding*.

ISSUE #4: Did the trial court err in failing to properly inquire into the defendant's complaints about his counsel**? (Yes).**

RULE #4: When reviewing the issue of whether the trial court properly conducted a hearing under *Krankel* to determine whether to appoint postconviction petitioner new counsel to litigate claims alleging ineffective assistance of trial counsel, the operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's pro se allegations of ineffective assistance of counsel.

FINDING #4: The trial court's failure to inquire into the defendant's postconviction claims alleging ineffective assistance of trial counsel, which arose after preliminary hearing under *Krankel*, required remand for a hearing to address such subsequent claims**. WHY:** *The defendant was entitled to more than one* Krankel *inquiry*.

ISSUE #5: Could the defendant properly have been convicted of both Home Invasion and Criminal Sexual Assault**? (Yes).**

RULE #5a: Under the one-act, one-crime rule, a defendant may only be convicted and sentenced for the most serious offense if multiple charges arise out of the same act. **RULE #5b**: Pursuant to the one-act, one-crime rule, if a defendant committed multiple acts, the court must determine whether any of the offenses are completely encompassed by a greater offense; if so, multiple convictions and sentences are improper.

FINDING #5: The defendant's convictions for home invasion and criminal sexual assault were not required to be merged under the one act, one crime rule, even if the home invasion was predicated on the criminal sexual assault**. WHY:** *It was possible to commit home invasion without committing criminal sexual assault.*

RESULT: The defendant's convictions for Home Invasion and Criminal Sexual Assault were affirmed**.**

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CASE #2

1) FEES AND FINES (Assessments): The trial court did not improperly apply various assessments against this defendant**.**

2) GUILTY PLEA (Motion to Withdraw): The trial court did not err in denying this defendant's motion to withdraw her guilty plea**.**

3) TRIAL PROCEDURE (604(d) Rule): The defendant's counsel did not fail to comply with Rule 604(d.

People v. Zakeya E. Young, 2019 IL APP (3rd) 160528, (3rd Dist., January 3, 2019) Battery - - Affirmed**.**

FACTS: Young appealed after pleading guilty to misdemeanor battery. She argued, on multiple grounds, that the circuit court erred in denying her motion to withdraw her guilty plea. She also argued that remand was necessary for compliance with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016). Finally, she made a number of arguments regarding her monetary assessments.

APPEAL: The Appellate Court held that: (a) the statute governing a defendant's plea at arraignment, which was amended during the pendency of the defendant's appeal, did not apply retroactively to the defendant's case; (b) the defendant failed to demonstrate that her guilty plea was based on her misapprehensions of the consequences of her plea agreement; (c) the evidence of the defendant's guilt was overwhelming; (d) the defendant's counsel, for her motion to withdraw the defendant's guilty plea, did not fail to comply with the rule governing appeals of guilty pleas; and (6) The appellate court lacked jurisdiction to review the defendant's monetary arguments related to her fines.

CASE ANALYSIS

ISSUE #1: Did the trial court err in denying this defendant's motion to withdraw her guilty plea**? (No).**

RULE #1: If a statutory amendment does not indicate the legislature's intent regarding the temporal reach, the Statute on Statutes controls, since it is itself an indicator of the legislative intent; accordingly, unless the legislature has indicated the temporal reach of a statutory amendment within that amendment, retroactivity analysis in Illinois courts generally turn on whether an amendment is considered substantive or procedural in nature.

FINDING #1: The statute governing a defendant's plea at arraignment, which was amended to require the trial court, before accepting a guilty plea, to admonish the defendant regarding certain consequences of a plea of guilty, and was amended during the pendency of the defendant's appeal of the trial court's denial of her motion to withdraw her guilty plea for misdemeanor battery, did not apply retroactively to the defendant's case**. WHY:** *The trial court properly admonished the defendant prior to her guilty plea, pursuant to the statute in effect at that time; and remanding so that the defendant could withdraw her plea and go to trial, simply because trial court did not deliver admonishments that it was not obligated to give, would create inconvenience and waste of judicial resources*. 725 Ill. Comp. Stat. Ann. 5/113-4.

ISSUE #2: Did the defendant demonstrate that her guilty plea was based on her misapprehensions of the consequences of her plea agreement**? (No).**

FINDING #2: The defendant failed to demonstrate that her guilty plea was based on her misapprehensions of the consequences of her plea agreement**. WHY:** *At the hearing on her motion to*

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withdraw her plea, the defendant testified that she "had the whole weekend to think about" the consequences of her plea; she did not testify that she did not previously understand those consequences; she did not testify that she came upon any new information; and she did not testify that she had pled guilty under mistaken beliefs; the defendant had only taken the weekend to think more about the consequences of the plea, which could only be construed as a simple change of mind.

ISSUE #3: Did the err in denying this defendant's motion to withdraw her guilty plea**? (No).**

RULE #3a: A defendant has no absolute right to withdraw his or her guilty plea. **RULE #3b**: Withdrawal of a guilty plea is appropriate where the plea was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the accused and justice would be better served through a trial. **RULE #3c**: Where a defendant seeks to withdraw a guilty plea based on a claimed misapprehension of the facts or of the law, the misapprehension must be shown by the defendant. **RULE #3d**: To find that a bare post-plea denial of guilt entitles a defendant to withdrawal of that plea would be to effectively bestow on defendants an absolute right to withdraw any plea.

FINDING #3: The evidence of the defendant's guilt for misdemeanor battery was overwhelming, and therefore she was not entitled to withdraw her guilty plea based on doubt as to her guilt**. WHY:** *The victim was attacked in a bar by an individual with jumper cables, and surveillance video showed the defendant carrying jumper cables into the bar*.

ISSUE #4: Did the defendant's counsel fail to comply with Rule 604(d)**? (No).**

RULE #4: The certificate that a defendant's attorney is required to file with trial court stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant's contentions of error is designed to provide proof of counsel's compliance with the rule governing appeals by a defendant from a judgment entered upon a plea of guilty.

FINDING #4: The defendant's counsel, concerning her motion to withdraw the defendant's guilty plea to misdemeanor battery, did not fail to comply with the rule governing appeals of guilty pleas when, upon being asked if he would like to proceed on the motion to withdraw despite the defendant's absence at the hearing, the counsel responded, "I couldn't really proffer what her reasons would be. I don't—I don't think that that's really appropriate to do that." **WHY:** *It would have been inappropriate for the counsel to proceed on the defendant's motion when the defendant was inexplicably absent from court, and the counsel, in stating he could not proffer what the defendant's contentions of error were, did not mean that he did not ascertain what the defendant's contentions of error were*.

ISSUE #5: Did the trial court improperly apply various assessments against this defendant**? (No).**

FINDING #5: The Appellate Court lacked jurisdiction to review defendant's monetary arguments related to fines imposed upon her following her guilty plea to misdemeanor battery**. WHY:** *Each of the actions challenged by the defendant were taken by the circuit clerk and were not reflected in any order of the circuit court*.

RESULT: The defendant's misdemeanor battery conviction was affirmed.

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CASE #3

1) REASONABLE DOUBT (Aggravated Battery): The People did not fail to present sufficient evidence to show that this defendant caused his victim to suffer great bodily harm**.**

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2) SENTENCES (Credit): The defendant was entitled to an additional day of sentence credit**.**

People v. Richard A. Moore, 2019 IL APP (3rd) 160639, (3rd Dist., January 23, 2019) Aggravated Battery - - Affirmed and Remanded with Directions**.**

FACTS: Moore appealed his conviction for aggravated battery and argued that the evidence at his trial was insufficient to prove beyond a reasonable doubt that the victim suffered great bodily harm as a result of the battery. He also argued that he was entitled to $5 in presentence incarceration credit for one partial day spent in presentence custody.

APPEAL: The Appellate Court held that: (a) sufficient evidence supported a finding that the victim suffered great bodily harm in this case, and (b) the defendant was entitled to $5 in presentence incarceration credit for one partial day spent in presentence custody.

CASE ANALYSIS

ISSUE #1: Did the People fail to present sufficient evidence to show that this defendant caused his victim to suffer great bodily harm**? (No).**

RULE #1a: When presented with a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **RULE #1b**: A criminal conviction will not be set aside on a challenge to the sufficiency of the evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. **RULE #1c**: Whether the victim's injuries rise to the level of great bodily harm, as required for aggravated battery conviction, is a question for the trier of fact. 720 Ill. Comp. Stat. Ann. 5/12-3.05(a)(1).

FINDING #1: Sufficient evidence supported a finding that the victim suffered great bodily harm, in this prosecution for aggravated battery**. WHY:** *The item that struck the victim's head weighed approximately five to ten pounds; the victim received a 3 ½-inch gash on the side of his head and a swollen eye; the victim was bleeding significantly as a result of the injury; the victim received stitches for his laceration; and the victim suffered memory loss as a result of the injury*.

ISSUE #2: Was the defendant entitled to an additional day of sentence credit**? (Yes).**

RULE #2: A defendant held in custody for any part of the day should be given credit against his sentence for that day.

FINDING #2: The defendant was entitled to $5 in presentence incarceration credit for one partial day spent in presentence custody**. WHY:** *The record showed that a warrant for the defendant's arrest was served and the defendant posted bond on the same day*. 725 Ill. Comp. Stat. Ann. 5/110-14(a).

RESULT: The defendant's conviction for Aggravated Battery was affirmed and this case remanded with directions**.**

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CASE #4

TRIAL PROCEDURE (Double Jeopardy): The law double jeopardy did bar the retrial of this defendant after a mistrial was declared during his previous trial**.**

People v. Linda M. Shoevlin, 2019 IL APP (3rd) 170258, (3rd Dist., January 3, 2019) Denial of Motion

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to Dismiss - - Reversed**.**

FACTS: Shoevlin was charged with two counts of domestic battery (720 ILCS 5/12-3.2(a)(2)), and the case proceeded to a jury trial. After both the People and the defense counsel gave their closing arguments, but prior to the People's rebuttal argument, the trial court declared a mistrial. After the trial court set a date for a new trial, Shoevlin filed a motion to dismiss on double jeopardy grounds. The court denied the motion. Shoevlin appealed, asserting that the trial court erred in denying her motion to dismiss the subsequent criminal complaint on double jeopardy grounds because no manifest necessity existed to declare a mistrial during her first trial.

APPEAL: The Appellate Court held that: (a) the defendant did not acquiesce to a mistrial, and (b) the defense counsel's closing statement did not justify the trial court's declaration of a mistrial.

CASE ANALYSIS

ISSUE: Did double jeopardy bar the retrial of this defendant after a mistrial was declared during his previous trial**? (Yes).**

RULE #A: A defendant who consents to a mistrial, either explicitly or implicitly, generally may not assert that double jeopardy bars his or her subsequent retrial. **RULE #B**: The constitutional protection against double jeopardy attaches once the jury is impaneled and sworn because a defendant is entitled to have his or her trial completed before a particular tribunal. **RULE #C**: The People are generally entitled to only one opportunity to prosecute a defendant because a second trial increases the financial and emotional burden on the accused, prolongs the period in which he or she is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted. **RULE #D**: Where a trial court declares a mistrial without the defendant's consent, it deprives the defendant of his or her valued right to have a particular tribunal decide defendant's fate. **RULE #E**: In determining whether manifest necessity exists for a mistrial, the trial court must balance the defendant's interest in having the trial completed in a single proceeding, reserving the possibility of obtaining an acquittal before that particular tribunal, against the strength of the justification for declaring a mistrial rather than attempting to continue the trial to a verdict. **RULE #F**: In order for manifest necessity for a mistrial to exist, for double jeopardy purposes, circumstances must be very extraordinary and striking; the necessity for a mistrial must be imperious. **RULE #G**: Factors that may be considered in determining whether manifest necessity warranted mistrial include whether: (1) prosecutor, defense counsel, or judge caused difficulty; (2) prosecution intentionally created or manipulated difficulty; (3) difficulty had alternative cure; (4) judge considered alternatives; (5) conviction would be subject to reversal; (6) judge acted in heat of trial confrontation; (7) judge's decision was based on evaluation of factors not amenable to strict appellate review; (8) judge granted mistrial solely to protect defendant against prejudice; (9) State's evidence suggested weakness in its case; (10) jurors heard enough of case to form tentative opinions; (11) case gave prosecution preview of defense tactics and evidence; and (12) composition of jury was unusual. **RULE #H**: On review of a trial court's decision to declare a mistrial, appellate court has an obligation to ensure that the trial judge exercised sound discretion in declaring a mistrial. **RULE #I**: On review, whether the trial judge gave counsel an opportunity to be heard regarding a mistrial is of major importance, as is the amount of time devoted to the mistrial decision. **RULE #J**: A hasty decision, reflected by a rapid sequence of events culminating in a declaration of a mistrial, tends to indicate insufficient concern for the defendant's constitutional rights against double jeopardy.

FINDING #1: **(A)** This defendant did not acquiesce to a mistrial in her trial for domestic battery, for double jeopardy purposes**. WHY:** *The defendant never had an opportunity to object to People's request for a mistrial, aside from her defense counsel's brief statement that he believed his closing argument did not warrant a mistrial, after which the trial court interjected that it disagreed, immediately took a five minute recess, and subsequently granted a mistrial without seeking further comment from either party; and neither the defendant's failure to request a hearing on the day following the declaration of mistrial, nor her failure to file a motion to dismiss her new trial until three weeks after the first jury had been*

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discharged, constituted acquiescence to mistrial. 720 Ill. Comp. Stat. Ann. 5/3-4(a)(3). **(B)** The statement in the defense counsel's closing argument, that the defendant could possibly lose custody of her children if she were convicted of battering her husband, did not create a manifest necessity for a mistrial, and therefore a new trial violated the defendant's right against double jeopardy**. WHY:** *The jury was well aware, as a result of having heard all case evidence, that the defendant's husband was seeking custody of their children in a divorce; the defense's entire theory of the case, encapsulated in the closing argument, was that the husband had fabricated the alleged attack on him by his wife in order to gain advantage in custody and divorce proceedings; the People requested a mistrial only after the trial court announced, unprompted, that it found the defense counsel's statement to be prejudicial; and the defendant did not consent to mistrial*.

RESULT: The trial court's denial of the defendant's motion to dismiss was reversed.

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FOURTH DISTRICT

CASE #1

1) COUNSEL (Effectiveness): The defendant's attorney did not provide ineffective assistance by failing to provide the jury with a copy of a 911 call**.**

2) FEES AND FINES (Circuit Clerk): The appellate court did not have jurisdiction to consider this defendant's complaint about his fees and fines assessments**.**

3) REASONABLE DOUBT (Domestic Battery): The People did not fail to present sufficient evidence to support this defendant's Domestic Violence conviction**.**

4) TRIAL PROCEDURE (Jury Request): The trial court did not err in allowing the jury to hear a 911 recording in open court during their deliberations**.**

People v. Noble Lewis Jr., 2019 IL APP (4th) 150637-B, (4th Dist., January 8, 2019) Home Invasion and Domestic Battery - - Affirmed**.**

FACTS: Lewis was charged with home invasion (720 ILCS 5/19-6) and domestic battery (subsequent offense) (720 ILCS 5/12-3.2(a)(2)). A jury found him guilty of domestic battery but not guilty of home invasion. The trial court later sentenced him to five years in prison. Lewis appealed, arguing that (1) the People failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred because, when the deliberating jury requested to hear again the compact disc recording of the victim's 911 call, the court had the jury brought into the courtroom where the compact disc was replayed in the presence of the court, both counsel, and the defendant; (3) his trial counsel rendered ineffective assistance of counsel; and (4) this court should vacate the purported fines imposed by the circuit clerk but not imposed by the judge.

APPEAL: On remand, the Appellate Court held that: (a) in light of Supreme Court's opinion in *People v. Vara*, 115 N.E.3d 53, the Appellate Court lacked jurisdiction to review the clerk-imposed fines that were not included as part of the trial court's final judgment; (b) the victim's trial testimony, though purportedly inconsistent with statements she made during a 911 call, was not so pervasively inconsistent and so wildly implausible that no sensible trier of fact could possibly have believed it; (c) the evidence in this case was sufficient to support the defendant's conviction for domestic battery; (d) the trial court's error, if any, in replaying the victim's recorded 911 call to jury in courtroom in the presence of parties during deliberations was invited by the defendant; and (e) the trial counsel's agreement to replay the

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recording in courtroom in lieu of sending it to the jury room was a reasonable strategic decision, and thus did not amount to ineffective assistance.

CASE ANALYSIS

ISSUE #1: Did the appellate court have jurisdiction to consider this defendant's complaint about his fees and fines assessments**? (No).**

FINDING #1: In light of Supreme Court's opinion in *People v. Vara*, 115 N.E.3d 53, the Appellate Court lacked jurisdiction to review the clerk-imposed fines that were not included as part of the trial court's final judgment.

ISSUE #2: Did the People fail to present sufficient evidence to support this defendant's Domestic Violence conviction**? (No)'**

RULE #2: Inconsistencies in and contradictions of testimony do not destroy credibility as a matter of law; rather, the credibility of witnesses and the weight to be given their testimony are for the jury to decide.

FINDING #2: **(A)** The victim's testimony at the defendant's domestic-battery trial, though purportedly inconsistent with the statements she made during a 911 call, was not so pervasively inconsistent and so wildly implausible that no sensible trier of fact could possibly have believed it**. WHY:** *Although the victim stated during the 911 call that she was alone in the apartment she shared with the defendant but testified at trial that she made the 911 call while the defendant and the witness were still in apartment, this supposed inconsistency was explainable because the victim might have dialed 911 while the defendant and the witness were still in apartment, and they might have left as she was making call, thus leading her to tell the 911 operator that she was alone, and other supposed inconsistencies did not necessarily exist*. 720 Ill. Comp. Stat. Ann. 5/12-3.2(a)(2). **(B)** The evidence was in this case was sufficient to support the defendant's conviction for domestic battery, although there were purported discrepancies in the victim's testimony**. WHY:** *The apparent discrepancies were not dispositive as a matter of law; the jury might have regarded the discrepancies as genuine but insufficient to make the victim unbelievable, given that the victim sounded hysterical and distraught in the 911 call and that the People presented photographs of her battered face; and the jury could justifiably have regarded the defendant's explanations as so implausible as to lead to an inference that the defendant deliberately lied because he inflicted facial injuries on the victim, and could have regarded his implausible stories as circumstantial evidence of guilt.*

ISSUE #3: Did the trial court err in allowing the jury to hear a 911 recording in open court during their deliberations**? (No).**

RULE #3a: If a deliberating jury requests to hear an audio-recording or to see a video-recording again, the trial court does not have to send the recording and equipment to the jury room but may instead exercise its discretion to bring the jury into the courtroom for a replaying of the recording; allowing a deliberating jury to listen to a recording again in the courtroom instead of in the jury room avoids problems with equipment and the skills necessary to operate the equipment, and also minimizes the risk of breakage or erasure of the recording. **RULE #3b**: The mode and manner in which a trial court allows a jury to review a piece of evidence falls directly within the scope of the court's inherent authority to manage its courtroom. **RULE #3c**: If a deliberating jury requests to hear an audio-recording or to see a video-recording again, and if the trial court chooses to have the recording replayed in the courtroom, then the court, parties, and counsel must be present to view or hear the evidence, and the court should instruct the jury not to discuss the evidence while in the courtroom. **RULE #3d**: If a deliberating jury requests to hear an audio-recording or to see a video-recording again, and if the trial court chooses to have the recording replayed in the courtroom, then the court should in the jury's presence admonish everyone else in the courtroom not to comment on the evidence, communicate with the jury, or try in any manner to influence the jury. **RULE #3e**: If a deliberating jury requests to hear an audio-recording or to see a video-

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recording again, and if the trial court chooses to have the recording replayed in the courtroom, then the court should instruct the jury that after the replay, the jury will return to the jury room and should then continue its deliberations, which may include, if it wishes, the replay.

FINDING #3: The trial court's error, if any, in replaying the victim's recorded 911 call to the jury in courtroom in the presence of parties was invited by the defendant**. WHY:** *During deliberations the jury sent out note asking for the recording to be sent to the jury room; the prosecutor suggested that because the compact disc containing the recording also contained a different, unadmitted recording, the jury should instead be brought back into the courtroom to hear a replaying of the recording so court could control what the jury heard, and the defendant, through defense counsel, affirmatively agreed with the prosecutor's suggestion; and although the prosecutor and court declined the defense counsel's suggestion of burning the recording on another compact disc that excluded the unadmitted recording, the defense counsel did not need to agree to the prosecutor's suggestion*.

ISSUE #3: Did the defendant's attorney provide ineffective assistance by failing to provide the jury with a copy of the 911 call**? (No).**

FINDING #3: The defense counsel's agreement, in response to the jury's request that the recording of the domestic-battery victim's 911 call be sent to the jury room during their deliberations, to replay the recording in the courtroom in lieu of sending it to the jury room was a reasonable strategic decision, and thus did not amount to ineffective assistance**. WHY:** *The recording, which captured the victim saying such things as "He's already on probation for battery for hitting me," and "He won't leave me alone…[h]e keeps coming back," and "He's trying to kill me and make me have seizures[,]" could not possibly have benefited the defense and was, in fact, damaging to the defense from start to finish, and if the recording had gone back to the jury room, then the jury could have played the recording over and over again in an attempt to ascertain everything the victim said*.

RESULT: The defendant's convictions for Home Invasion and Domestic Battery were affirmed**.**

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CASE #2

1) EVIDENCE (Prior Bad Acts): The trial court did not err when it allowed two witnesses to testify about the defendant's prior bad acts**.**

3) EVIDENCE (Relevance): The trial court did not err by refusing to allow "irrelevant" evidence to be introduced**.**

4) SENTENCING (Aggravation): The trial court did not err in considering the grief suffered by the victim's family as an aggravating factor**.**

2) TRIAL PROCEDURE (Propensity Evidence): The trial court did not deny this defendant a fair trial by allowing a "mini-trial to occur concerning the propensity evidence to be introduced against this defendant.

People v. Kevin Kelley, 2019 IL APP (4th) 160598, (4th Dist., January 22, 2019) First-Degree Murder -- Affirmed**.**

FACTS: Kelley was tried for the first-degree murder (720 ILCS 5/9-1(a)(1) and the jury found him guilty. The trial court sentenced him to imprisonment for 60 years. He appealed on five grounds. First, he argued that the trial court abused its discretion by admitting the testimony of a witness as propensity evidence because (1) the events to which the witness testified bore little "factual similarity to the charged

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* * * offense" and (2) there was no evidence that Kelley committed an "offense * * * of domestic violence" against the witness. Second, he claimed that the trial court abused its discretion by admitting another witness's testimony as further evidence of his propensity to commit domestic violence. He likewise argued a lack of factual similarity between her testimony and the charged offense. Third, he complained that the People presented so much propensity evidence as to cause his trial to become a mini-trial on the propensity evidence. Fourth, he argued that the trial court abused its discretion by sustaining the prosecutor's relevancy objection when his counsel tried to elicit testimony from a witness that a man seen walking with the victim three months before her disappearance was a known drug dealer. Fifth, he complained that, in the sentencing hearing, the trial court violated the rule against double enhancement by considering, as an aggravating factor, something that already was implicit in the offense of murder, namely, the grief of the victim's family members.

APPEAL: The Appellate Court held that: (a) the trial court did not abuse its discretion in finding that there were factual similarities between the witness's testimony and the charged offense; (b) the defendant failed to establish that the evidence in his murder trial was closely balanced, and therefore, the doctrine of plain error could not avert the procedural forfeiture of his argument that a witness's propensity evidence was inadmissible; (c) the trial court did not abuse its discretion by deciding that the defendant's acts of violence against the witness tended to prove his propensity to commit the charged offense against the victim, and, therefore, were admissible; (d) the People's presentation of propensity evidence was not so overabundant as to cause jury confusion or unnecessary delay, and, therefore, the jury was not invited to conduct mini-trials about other bad acts rather than focus on the conduct actually charged; (e) the trial court did not abuse its discretion in sustaining the prosecutor's relevancy objection to the defendant's attempt to elicit testimony from the witness about whether a person the victim was seen with three months before her disappearance was a known drug dealer; and (f) the loss felt by the victim's family was not inherent in the crime of murder itself, and, therefore, the trial court did not engage in a double enhancement when it considered that loss when sentencing the defendant. *One Justice specially concurred*.

CASE ANALYSIS

ISSUE #1: Did the trial court err when it allowed two witnesses to testify about the defendant's prior bad acts**? (No).**

RULE #1a: "Undue prejudice," within the meaning of statute governing weighing of probative value of evidence in domestic violence cases, necessarily is prejudice other than that resulting from proof of the defendant's propensity to commit domestic violence, because the very purpose of statute is to lift the common-law ban on that particular kind of propensity evidence. 725 Ill. Comp. Stat. Ann. 5/115-7.4(b).
RULE #1b: Other-crimes evidence admitted pursuant to statute governing evidence in domestic violence cases may be considered by the jury for any relevant matter, including the defendant's propensity to commit the charged crime, even though, at common law, such propensity evidence would have been inadmissible.

FINDING #1: The trial court did not abuse its discretion in finding that there were factual similarities between the witness's testimony and the charged offense of first-degree murder, for purposes of the statute governing the weighing of the probative value of evidence in domestic violence cases, though the defendant argued that he had a strictly business relationship with the witness but a romantic relationship with the victim**. WHY:** *The defendant purchased sexual services from both the victim and the witness; both the victim and the witness took money from the defendant after spending time with him and the defendant responded to both with extreme violence; and the testimony showed the defendant had a propensity to become violent toward female sexual partners who took his property*.

ISSUE #2: Did the trial court deny this defendant a fair trial by allowing a "mini-trial to occur concerning the propensity evidence to be introduced against this defendant**? (No).**

RULE #2a: To be admissible under statute governing evidence in domestic violence cases, the propensity

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evidence must be the defendant's commission of another offense of domestic violence. **RULE #2b**: All propensity evidence aims to be prejudicial to the defendant; however, the prejudice is undue, for purposes of statute allowing State to adduce evidence that defendant had propensity to commit sexual offenses, if the propensity evidence is calculated to persuade the jury to return a guilty verdict only because the defendant supposedly is a bad person who, in any event, deserves to be punished. 725 Ill. Comp. Stat. Ann. 5/115-7.3(c). **RULE #2c**: To be admissible under statute allowing State to adduce evidence that defendant had propensity to commit sexual offenses, the evidence has to be, genuinely, propensity evidence. **RULE #2d**: Under statute allowing State to adduce evidence that defendant had propensity to commit sexual offenses, propensity evidence remains inadmissible if all it does is prove the defendant's propensity to do bad things in general; the propensity evidence must more narrowly tend to prove the defendant's propensity to commit sexual offenses. **RULE #2e**: When evaluating whether evidence is admissible under statute allowing State to adduce evidence that defendant had propensity to commit sexual offenses, the trial court must consider the degree of factual similarity to the charged or predicate offense to determine the extent to which the testimony offered as propensity evidence really tends to prove a propensity to commit the charged sexual offense.

FINDING #1: **(A)** The defendant failed to establish that the evidence in his murder trial was closely balanced, and therefore, the doctrine of plain error could not avert the procedural forfeiture of his argument that the witness's propensity evidence was inadmissible**. WHY:** *Other the highly damaging propensity evidence made it implausible that subtracting the single violent incident with the witness would have made any difference in the verdict; the defendant confessed to two other witnesses; he lied to the police about when he last saw the victim; and the witness testified that he heard the defendant threaten the victim*. **(B)** The trial court did not abuse its discretion by deciding that the defendant's acts of violence against the witness tended to prove his propensity to commit the charged offense against the victim, and, therefore, were admissible under the statute allowing the People to adduce evidence that the defendant had a propensity to commit sexual offenses**. WHY:** *Both the victim and the witness were the defendant's girlfriends; the defendant brutalized both women; his ire was especially raised when the victim and the witness attempted to flee from him; and the defendant once appeared to be on the verge of killing the witness*. **(C)** The People's presentation of propensity evidence was not so overabundant as to cause jury confusion or unnecessary delay, and, therefore, jury was not invited to conduct mini-trials about other bad acts rather than focus on conduct actually charged, in murder prosecution.

ISSUE #3: Did the trial court err by refusing to allow "irrelevant" evidence to be introduced**? (No).**

RULE #3a: Defendant's right to prove that someone else committed the crime with which the defendant is charged is not without limitations. **RULE #3b**: When a defendant is attempting to prove that someone else committed the crime with which he is charged, the trial court should exclude the evidence if it is too remote or too speculative, or if it fails to link a third person with the commission of the crime.

FINDING #3: The trial court did not abuse its discretion in sustaining the prosecutor's relevancy objection to the defendant's attempt to elicit testimony from a witness about whether a person the victim was seen with three months before her disappearance was a known drug dealer**. WHY:** *It would have been nothing more than speculation to suggest that alleged drug dealer possibly murdered victim simply because he was a drug*.

ISSUE #4: Did the trial court err in considering the grief suffered by the victim's family as an aggravating factor**? (No).**

RULE #4: Unless the statute clearly states otherwise, a factor implicit in the offense for which the defendant is convicted cannot be used as an aggravating factor at sentencing.

FINDING #4: The loss felt by the victim's family was not inherent in the crime of murder itself, and, therefore, the trial court did not engage in a double enhancement when it considered that loss when sentencing the defendant following his murder conviction**. WHY:** The grief of the surviving family

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members was a common result of murder, but it was not implicit in the murder itself.

RESULT: The defendant's conviction for First-Degree Murder was affirmed.

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CASE #3

1) FEES AND FINES (Credit): This defendant was entitled to credit off of his sentence**.**

2) SENTENCES (Excessive): This defendant's sentences were not excessive**.**

3) SENTENCING (Extended Term): The trial court improperly impose an extended-term sentence upon this defendant**.**

People v. Richard D. Cisco, 2019 IL APP (4th) 160515, (4th Dist., January 28, 2019) Domestic Battery and Violation of an Order of Protection - - Affirmed and Remanded with Directions**.**

FACTS: Following a jury trial, Cisco was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1)) and violation of an order of protection (*id.* § 12-3.4(a)). The trial court sentenced him to consecutive prison terms of six and three years, respectively. He appealed, arguing (1) the court erred in imposing an extended-term sentence in connection with his domestic battery conviction, (2) the court abused its discretion when imposing his sentences, and (3) he is entitled to $ 475 in monetary credit toward imposed fines.

APPEAL: The Appellate Court held that: (a) this defendant was not subject to extended-term sentencing for his felony domestic battery or felony violation of an order of protection; (b) the defendant's receiving of the maximum sentence allowable for domestic battery and a violation of a protection order was not excessive; and (c) the defendant was entitled to monetary credit toward his fines for the 95 days he spent in custody prior to being sentenced. However, *one Justice filed a specially concurring opinion.*

CASE ANALYSIS

ISSUE #1: Did the trial court improperly impose an extended-term sentence upon this defendant**? (Yes).**

FINDING #1: Although the defendant had previously been found guilty of a felony in the previous 10 years, he had been sentenced to second chance probation in connection with that felony, and the trial court in that case never revoked the defendant's probation or entered judgment on its finding of guilt, and therefore the defendant was not subject to extended-term sentencing for felony domestic battery or felony violation of an order of protection. 720 Ill. Comp. Stat. Ann. 5/12-3.2(b); 730 ILCS 5/5-6-3.4.

ISSUE #2: Was this defendant's sentences excessive**? (No).**

RULE #2a: In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed. **RULE #2b**: In determining an appropriate sentence, a defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense. **RULE #2c**: In determining an appropriate sentence, the existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed. **RULE #2d**: On review, the sentence imposed by the trial court is entitled to great deference and will not be reversed absent an abuse of discretion.

FINDING #2: The defendant's receiving of maximum sentence allowable for domestic battery and

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violation of protection order was not excessive**. WHY:** *The aggravating factors included the fact that the defendant had numerous prior convictions, including a violation of an order of protection, driving under influence of drugs, and resisting a peace officer; although the defendant had no technical felony conviction in his past, he had been found guilty of a felony offense of theft, for which he received a sentence of second chance probation; and the defendant was on probation at time he committed the offenses at issue and a petition to revoke his probation was pending in his theft case; and over a period of approximately six years, the defendant was subject of 12 requests by 10 different women for orders of protection or no contact orders*. 720 Ill. Comp. Stat. Ann. 5/12-3.2(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a).

ISSUE #3: Was this defendant entitled to credit off of his sentence**? (Yes).**

RULE #3a: A court's oral pronouncement controls over a conflicting written order. **RULE #3b**: A claim for monetary credit under statute providing credit to any person incarcerated on a bailable offense may be raised at any time and at any stage of court proceedings, even on appeal.

FINDING #3: The defendant was entitled to monetary credit toward his fines for the 95 days he spent in custody prior to being sentenced for domestic battery and violation of an order of protection**. WHY:** *Although the trial court awarded him monetary credit in its oral ruling, the credit was not reflected in the trial court's written sentencing orders*. 725 Ill. Comp. Stat. Ann. 5/110-14(a).

RESULT: The defendant's convictions for Domestic Battery and Violation of an Order of Protection were affirmed and the case remanded with directions

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CASE #4

1) FEES AND FINES (Circuit Clerk): The appellate court did not have jurisdiction to consider the propriety of fees and fines imposed by the circuit clerk**.**

2) PROSECUTOR CONDUCT (Direct Examination): The prosecutor did not improperly ask a witness a question that would require an answer that constituted hearsay evidence**.**

3) REASONABLE DOUBT (DUI): The People presented sufficient evidence to support this defendant's DUI conviction**.**

4) SENTENCES (Credit): The defendant was not entitled to an additional day of sentence credit**.**

People v. William E. Day, 2019 IL APP (4th) 160217, (4th Dist., January 22, 2019) DUI and DWLR - - Affirmed**.**

FACTS: A jury found Day guilty of driving under the combined influence of alcohol and cannabis (625 ILCS 5/11-501(a)(5)) and driving while his driver's license was revoked (*id.* § 6-303(d-2)). The trial court sentenced him to concurrent terms of imprisonment. He appealed on five grounds. First, he argued that the evidence is insufficient to support the convictions. Second, he claimed that the prosecutor committed plain error by repeatedly attempting to introduce hearsay in the teeth of multiple sustained objections. Third, he complained that the circuit clerk-imposed fines upon him that the trial court never imposed in its sentence. Fourth, he claimed he was entitled to an additional day of presentence credit—and in his petition for rehearing, he reminds us of that claim. Fifth, he claimed he was entitled, for the same day, an additional $5 of monetary credit against his fines.

APPEAL: The Appellate Court held that: (a) sufficient evidence supported a finding that the defendant

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was so intoxicated on alcohol and cannabis that it was dangerous for him to drive; (b) sufficient evidence supported the finding that the defendant drove his vehicle while he was intoxicated; and (c) the prosecutor had a good faith argument that her purpose for eliciting the officer's testimony that the vehicle was registered to the defendant was to explain why the officer had directed another officer to transport the defendant back to scene rather than for the truth of the matter asserted.

CASE ANALYSIS

ISSUE #1: Did the People fail to present sufficient evidence to support this defendant's DUI conviction**? (No).**

RULE #1a: The "corpus delicti" provides that the occurrence of a crime cannot be established solely by a defendant's uncorroborated confession. **RULE #1b**: For purposes of the application of the corpus delicti rule that provides that the occurrence of a crime cannot be established solely by a defendant's uncorroborated confession, there is a difference between, on the one hand, confessing to a crime and, on the other hand, admitting facts that, taken with other facts, tend to increase the probability of one's guilt. **RULE #1c**: A driving under the influence conviction may be sustained based solely on the testimony of the arresting officer, if credible; a field sobriety test and chemical testing are not essential elements to prove a defendant is drunk. 625 Ill. Comp. Stat. Ann. 5/11-501(a)(5).

FINDING #1: **(A)** Sufficient evidence supported a finding that the defendant was so intoxicated on alcohol and cannabis that it was dangerous for him to drive, as required for a DUI conviction, although a field sobriety test and a breath test were not performed**. WHY:** *The three police officers testified that the defendant was highly intoxicated, and it would be reasonable to infer that the reason for the defendant's refusal to take field sobriety or breath tests was that he knew these tests would confirm that he was under the influence*. **(B)** Sufficient evidence supported the finding that the defendant drove vehicle while he was intoxicated, as required to support his conviction for DUI, although he was found walking a mile up the road from the accident**. WHY:** *There was evidence that the defendant's cell phone and flip-flop were on the driver's side floorboard of the vehicle; that the defendant could not say how long he had been acquainted with the person who he claimed was driving the vehicle or where that person could be reached; that the defendant set out on barefoot, six to eight miles from home, away from a single-vehicle accident; the defendant refused to submit to chemical testing, which would have only mattered if he had been driving; and that the defendant was the registered owner of the vehicle*.

ISSUE #2: Did the prosecutor improperly ask a witness a question that would require an answer that constituted hearsay evidence**? (No).**

RULE #2a: A false exculpatory statement is probative of a defendant's consciousness of guilt. **RULE #2b**: A defendant's refusal to submit to chemical testing is relevant circumstantial evidence of his consciousness of guilt in a driving under the influence prosecution. **RULE #2c**: Repeatedly trying to introduce improper evidence can deprive the trial court's rulings of their salutary effect. **RULE #2d**: Statements are not inadmissible hearsay when offered for the limited purpose of showing the course of a police investigation where such testimony is necessary to fully explain the State's case to the trier of fact. **RULE #2e**: A police officer may testify about conversations with others to show the steps in his investigation so long as this testimony is not used to prove the truth of the matter asserted by these other persons.

FINDING #2: **(A)** The defendant failed to preserve for review his claim that the prosecutor committed misconduct when she allegedly attempted on multiple occasions to elicit testimony from the officer that the vehicle that was in an accident was registered to the defendant in this DUI prosecution**. WHY:** *He failed to raise the issue in his posttrial motion*. **(B)** The prosecutor had a good faith argument that her purpose for eliciting officer's testimony that vehicle was registered to the defendant was to explain why the officer had directed another officer to transport the defendant back to the scene rather than for the truth of the matter asserted, as would amount to inadmissible hearsay, and therefore did not constitute

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prosecutorial misconduct**. WHY:** *The testimony would have been offered to explain officer's investigatory actions*. **(C)** The Officer's repetitive instances of testifying that the vehicle involved in the accident was registered to the defendant did not constitute intentional and pervasive prosecutorial misconduct**. WHY:** *The prosecutor asked the question once, and the officer volunteered statements that the vehicle was registered to the defendant other times during his testimony that was non-responsive to the prosecutor's question*.

RESULT: The defendant's convictions for DUI and DWLR were affirmed**.**

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CASE #5

SEARCH AND SEIZURE (Vehicle Stop): The Officer was justified in stopping the suspect vehicle based upon his belief that a passenger in that vehicle had an outstanding arrest warrant**.**

People v. Charles D. Hill, 2019 IL App (4th) 180041, (4th Dist., January 25, 2019) Suppression of Evidence - - Reversed and Remanded**.**

FACTS: The People charged Hill with one count of unlawful possession of a substance containing less than 15 grams of cocaine. He filed a motion to suppress evidence of cocaine located in his car, and the trial court granted the motion. This appeal followed.

APPEAL: The Appellate Court held that: (a) the officer had reasonable suspicion to conduct an investigatory stop of the defendant's vehicle, and (b) the officer had probable cause to search the defendant's vehicle. *However, one Justice filed specially concurring opinion*.

CASE ANALYSIS

ISSUE: Was the Officer justified in stopping the suspect vehicle based upon his belief that a passenger in that vehicle had an outstanding arrest warrant**? (Yes).**

RULE #A: The Fourth Amendment of the United States Constitution focuses on the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. **RULE #B**: A police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to commit, a crime. **RULE #C**: The standard for an investigatory stop by a police officer is reasonable, articulable suspicion. **RULE #D**: Although "reasonable, articulable suspicion" is a less demanding standard than probable cause, an officer's suspicion, in order to justify an investigatory stop, must amount to more than an inchoate and unparticularized suspicion or hunch of criminal activity. **RULE #E**: Although clearly "seizures," traffic stops are more like *Terry* investigative detentions than formal arrests and therefore may be reasonable if initially justified and reasonably related in scope to the circumstances that justified the interference in the first place. **RULE #F**: The Appellate Court applies an objective standard and considers whether the facts available to the officer at the moment of the seizure or search would warrant a man of reasonable caution in the belief that the action was appropriate, considering the totality of the circumstances. **RULE #G**: Reasonable suspicion determinations, as would warrant an investigatory stop, must be made on commonsense judgments and inferences about human behavior. **RULE #H**: A determination that reasonable suspicion exists for an investigatory stop need not rule out the possibility of innocent conduct. **RULE #I**: In determining if there was reasonable suspicion for the investigatory stop, there is no bright-line rule, but instead the court is to consider the totality of the circumstances of each case. **RULE #J**: The deferential standard of review as to factual findings on a motion to suppress is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony. **RULE #K**: Sufficient probability,

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rather than certainty, is the touchstone of reasonableness under the Fourth Amendment. **RULE #L**: A police officer may conduct a brief, investigatory stop of a person where the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. **RULE #M**: The standards of "reasonable suspicion" and "probable cause," as used to evaluate the constitutionality of investigative stops and searches, are commonsense, nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. **RULE #N**: A recognized exception to the Fourth Amendment's warrant requirement is the automobile exception, which is based on the understanding that automobiles may be readily driven away often rendering it impossible for officers to obtain warrants for their search. **RULE #O**: Under the automobile exception to the Fourth Amendment's warrant requirement, law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize. **RULE #P**: Probable cause, under the warrant requirement of the Fourth Amendment, means more than bare suspicion. **RULE #Q**: Under the Fourth Amendment, probable cause exists where the arresting officer has knowledge of facts and circumstances that are sufficient to justify a reasonable person to believe that the defendant has committed or is committing a crime. **RULE #R**: Distinctive odors can be persuasive evidence of probable cause. **RULE #S**: The odor of marijuana is relevant to a probable cause determination and can support an inference that a crime is ongoing, even though possession of an ounce or less is legal.

FINDING: **(A)** This Officer had reasonable suspicion to conduct an investigatory stop of the defendant's vehicle to ascertain the identity of the passenger**. WHY:** *The officer believed the passenger to be an individual for whom there was an active traffic warrant; the general physical appearance of the passenger and the wanted individual were similar; the passenger was riding low in his seat and leaning back behind the center pillar of car; and the defendant's vehicle decelerated rapidly upon coming into view of the officer's marked squad car*. **(B)** Officer had probable cause to search defendant's vehicle, upon initiating investigatory stop of vehicle to ascertain identity of passenger, who was suspected of being wanted on active traffic warrant**. WHY:** *The officer smelled odor of cannabis immediately upon approaching vehicle and making contract with passenger*.

RESULT: The trial court's order Suppressing evidence was reversed and the case remanded**.**

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ADDITIONAL PUBLISHED OPINIONS FOR JANUARY OF 2019

1. People v. Kevin Tucek, 2019 IL APP (2nd) 160788, (2nd Dist., January 16, 2019) Dismissal of PCP - - Affirmed.

FACTS: Tucek appealed the summary dismissal of his petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.*). He argued that he had shown even the gist of a meritorious argument that he was prejudiced by his trial counsel's alleged defective performance.

ISSUE: POST-CONVICTION PETITION (Dismissal): Was this defendant denied reasonable assistance of counsel**? (No).**

2. People v. Alexander G. Castillo, 2019 IL APP (2nd) 160873, (2nd Dist., January 24, 2019) Dismissal of PCP - - Affirmed.

FACTS: Castillo appealed from the summary dismissal of his *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* for relief from his convictions of two counts of first-degree

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murder (720 ILCS 5/9-1(a)(1)) and a single count of home invasion (*id.* § 12-11(a)(5)). He contended that his petition sufficiently stated a claim that he was deprived of his right to the effective assistance of counsel in his direct appeal. The claim was based on his appellate counsel's failure to argue that the trial court erred by restricting the cross-examination of a witness who testified that defendant admitted committing the murders.

ISSUE: POST-CONVICTION PETITION (Dismissal): Was this defendant denied reasonable assistance of appellate counsel**? (No).**

3. People v. Octavius Lorenzo Johnson, 2019 IL 122956, (Ill. Sup. Ct., January 25, 2019) Various Drug Convictions - - Appellate Court Judgement Reversed in Part and Vacated in Part**.**

FACTS: In this case, the Court considered whether a defendant who enters into a negotiated plea agreement may challenge a sentence that conforms to the plea agreement, on the ground that the trial court relied on improper aggravating factors, without withdrawing his guilty plea under Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). The appellate court recognized a split of authority on the issue and held that Rule 604(d) did not bar a defendant under these circumstances from challenging the sentence.

ISSUE: APPELLATE PROCEDURE (Jurisdiction): Did the failure of defense counsel from complying with Rule 604(d) bar the defendant from challenging his sentence**? (Yes).**

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INDEX OF PUBLISHED OPINIONS FOR THE MONTH OF JANUARY OF 2019

Title Citation. Date.

1. People v. Zakeya E. Young, 2019 IL APP (3rd) 160528, (3rd Dist., January 3, 2019) Battery - - Affirmed**. ISSUES: 1) GUILTY PLEA (Motion to Withdraw):** Did the trial court err in denying this defendant's motion to withdraw her guilty plea**? (No); 2) TRIAL PROCEDURE (604(d) Rule):** Did the defendant's counsel fail to comply with Rule 604(d)**? (No); 3) FEES AND FINES (Assessments):** Did the trial court improperly apply various assessments against this defendant**? (No). Page 12.**

2. People v. Linda M. Shoevlin, 2019 IL APP (3rd) 170258, (3rd Dist., January 3, 2019) Denial of Motion to Dismiss - - Reversed**. ISSUE: TRIAL PROCEDURE (Double Jeopardy):** Did double jeopardy bar the retrial of this defendant after a mistrial was declared during his previous trial**? (Yes). Page 15.**

3. People v. Noble Lewis Jr., 2019 IL APP (4th) 150637-B, (4th Dist., January 8, 2019) Home Invasion and Domestic Battery - - Affirmed**. ISSUES: 1) REASONABLE DOUBT (Domestic Battery):** Did the People fail to present sufficient evidence to support this defendant's Domestic Violence conviction**? (No); 2) TRIAL PROCEDURE (Jury Request):** Did the trial court err in allowing the jury to hear a 911 recording in open court during their deliberations**? (No); 3) COUNSEL (Effectiveness):** Did the defendant's attorney provide ineffective assistance by failing to provide the jury with a copy of the 911 call**? (No); 4) FEES AND FINES (Circuit Clerk):** Did the appellate court have jurisdiction to consider this defendant's complaint about his fees and fines assessments**? (No). Page 17.**

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4. **People v. Fernando Monroy-Jaimes, 2019 IL App (2nd) 160426, (2nd Dist., January 11, 2019)** Denial of Motion to Suppress - - Affirmed**. ISSUE: SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient probable cause to justify the arrest of this defendant for a drug offense**? (Yes). Page 9.**

5. **People v. Kevin Tucek, 2019 IL APP (2nd) 160788, (2nd Dist., January 16, 2019)** Dismissal of PCP - - Affirmed. **ISSUE: POST-CONVICTION PETITION (Dismissal):** Was this defendant denied reasonable assistance of counsel**? (No). Page 26.**

6. **People v. Alejandro Reveles-Cordova, 2019 IL APP (3rd) 160418, (3rd Dist., January 17, 2019)** Home Invasion and Criminal Sexual Assault - - Affirmed**. ISSUES: 1) JURY SELECTION (Zehr principles):** Did the trial court fail to properly question this defendant's jurors concerning their understanding of the rights of a defendant**? (Perhaps, but any error was harmless.); 2) COUNSEL (Effectiveness):** Did the defense attorney provide ineffective assistance by failing to secure a jury instruction of the affirmative defense of consent**? (No); 3) COUNSEL (Krankel Hearing):** Did the trial court err in failing to properly inquire into the defendant's complaints about his counsel**? (Yes); 4) OFFENSES (One Act – One Crime):** Could the defendant properly have been convicted of both Home Invasion and Criminal Sexual Assault**? (Yes). Page 10.**

7. **People v. Kevin Kelley, 2019 IL APP (4th) 160598, (4th Dist., January 22, 2019)** First-Degree Murder - - Affirmed**. ISSUES: 1) EVIDENCE (Prior Bad Acts):** Did the trial court err when it allowed two witnesses to testify about the defendant's prior bad acts**? (No); 2) TRIAL PROCEDURE (Propensity Evidence):** Did the trial court deny this defendant a fair trial by allowing a "mini-trial to occur concerning the propensity evidence to be introduced against this defendant**? (No); 3) EVIDENCE (Relevance):** Did the trial court err by refusing to allow "irrelevant" evidence to be introduced**? (No); 4) SENTENCING (Aggravation):** Did the trial court err in considering the grief suffered by the victim's family as an aggravating factor**? (No). Page 19.**

8. **People v. William E. Day, 2019 IL APP (4th) 160217, (4th Dist., January 22, 2019)** DUI and DWLR - - Affirmed**. ISSUES: 1) REASONABLE DOUBT (DUI):** Did the People fail to present sufficient evidence to support this defendant's DUI conviction**? (No); 2) PROSECUTOR CONDUCT (Direct Examination):** Did the prosecutor improperly ask a witness a question that would require an answer that constituted hearsay evidence**? (No); 3) FEES AND FINES (Circuit Clerk):** Did the appellate court have jurisdiction to consider the propriety of fees and fines imposed by the circuit clerk**? (No); 4) SENTENCES (Credit):** Was the defendant entitled to an additional day of sentence credit**? (No). Page 23.**

9. **People v. Jodie Christian, 2019 IL APP (1st) 153155, (1st Dist., January 22, 2018)** Aggravated Criminal Sexual Assault - - Affirmed**. ISSUES: 1) CONSTITUTIONALITY OF STATUTE (SORA):** Was the SORA unconstitutional on its face and as applied to this defendant**? (No); 2) FEES AND FINES (Propriety):** Did the trial court improperly order this defendant to pay various fees and fines**? (Yes and No). Page 6.**

10. **People v. Richard A. Moore, 2019 IL APP (3rd) 160639, (3rd Dist., January 23, 2019)** Aggravated Battery - - Affirmed and Remanded with Directions**. ISSUES: 1) REASONABLE DOUBT (Aggravated Battery):** Did the People fail to present sufficient evidence to show that this defendant caused his victim to suffer great bodily harm**? (No); 2) SENTENCES (Credit):** Was the defendant entitled to an additional day of sentence credit**? (Yes). Page 15.**

11. **People v. Alexander G. Castillo, 2019 IL APP (2nd) 160873, (2nd Dist., January 24, 2019)** Dismissal of PCP - - Affirmed. **ISSUE: POST-CONVICTION PETITION (Dismissal):** Was this defendant denied reasonable assistance of appellate counsel**? (No). Page 26.**

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12. People v. Charles D. Hill, 2019 IL App (4th) 180041, (4th Dist., January 25, 2019) Suppression of Evidence - - Reversed and Remanded**. ISSUE: SEARCH AND SEIZURE (Vehicle Stop):** Was the Officer justified in stopping the suspect vehicle based upon his belief that a passenger in that vehicle had an outstanding arrest warrant**? (Yes). Page 25.**

13. People v. Marcelus Witherspoon, 2019 IL 123092, (Ill. Sup. Ct., January 25, 2019) Home Invasion - - Affirmed**. ISSUE: STATUTORY CONSTRUCTION (Home Invasion):** Does a suspect who enters a dwelling place of another in violation of a court order enter that dwelling place "without authority**?" (Yes). Page 3.**

14. People v. Daksh N. Relwani, 2019 IL 123385, (Ill. Sup. Ct., January 25, 2019) Denial of Motion to Rescind Summary Suspension - - Affirmed**. ISSUE: TRIAL PROCEDURE (Rescission of Summary Suspension):** Does a defendant who petitions for the rescission of his statutory summary suspension have a duty to present affirmative evidence to make a *prima facie* case for rescission**? (Yes). Page 4.**

15. People v. Octavius Lorenzo Johnson, 2019 IL 122956, (Ill. Sup. Ct., January 25, 2019) Various Drug Convictions - - Appellate Court Judgement Reversed in Part and Vacated in Part**. ISSUE: APPELLATE PROCEDURE (Jurisdiction):** Did the failure of defense counsel from complying with Rule 604(d) bar the defendant from challenging his sentence**? (Yes). Page 27.**

16. People v. Richard D. Cisco, 2019 IL APP (4th) 160515, (4th Dist., January 28, 2019) Domestic Battery and Violation of an Order of Protection - - Affirmed and Remanded with Directions**. ISSUES: 1) SENTENCING (Extended Term):** Did the trial court improperly impose an extended-term sentence upon this defendant**? (Yes); 2) SENTENCES (Excessive):** Was this defendant's sentences excessive**? (No); 3) FEES AND FINES (Credit):** Was this defendant entitled to credit off of his sentence**? (Yes). Page 22.**

17. People v. Danarius Jones-Beard, 2019 IL APP (1st) 162005, (4th Dist., January 29, 2019) Aggravated Vehicular Hijacking and Armed Robbery - - Affirmed and Remanded with Directions**. ISSUES: 1) SENTENCES (Excessive):** Was this defendant's concurrent 15-year sentences excessive**? (No); 2) FEES AND FINES (Credit):** Should this defendant's fees and fines be corrected**? (Yes). Page 7.**

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