

CRIMINAL CASE LAW DIGEST



DON HAYS - EDITOR



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CONSTITUTIONALITY OF STATUTE: ISSUE - - Was the offense of Harassment of a Witness overbroad and vague on its face? ANSWER - - No.

REASONABLE DOUBT: ISSUE - - Did the People introduce sufficient evidence to support this defendant’s conviction for first-degree murder? ANSWER - - Yes.

People v. Ricky Butler, 313 Ill. Dec. 856, (1st Dist., No. 1-05-3288, August 1, 2007) Harassment of a Witness - - Affirmed.

Justice Karnezis delivered the Opinion the unanimous Court.

FACTS: The defendant was arrested for attempted misdemeanor theft after he was found on the roof of a local business. The owner of the business had filed a complaint against the defendant. The next day the defendant walked up to the owner of the business as he was inspecting the exterior of his building. The defendant then yelled “Mr. Troung, I will kill you. You filed a complaint against me. I’m going to kill you mother-----. I know what time you’re leaving. *** I know what time you come in the morning.” While so threatening the owner, the defendant was pointing directly at him. The police were then called and the defendant was then arrested and charged with witness harassment. Following a bench trial, the defendant was found guilty. This appeal followed.

ARGUMENT: The defendant first argued that the witness harassment statute was unconstitutionally overbroad and vague on its face.

OPINION: The appellate court ruled that the statute in question was neither overly broad nor was it unconstitutionally vague.

ARGUMENT: Alternatively, the defendant argued that the People have failed to prove him guilty of witness harassment beyond a reasonable doubt. Specifically, the defendant argued that no evidence was produced which demonstrated that the defendant’s “threatening words actually created a threat sufficient to harass the witness.” Rather, the defendant argued that the evidence in this case merely supported a conviction for the alleged lesser included offense of communicating with a witness.

OPINION: The appellate court also rejected this argument and ruled that in this case the defendant had, in fact, said enough to earn him a conviction for witness harassment.

Justices Karnezis and Cunningham concurred in this Opinion.

ANALYSIS: This case has more lives than a cat. It was published and then withdrawn and then republished. The final result was very similar to the original Opinion anyway. Therefore, no harm done it would seem.

CONSTITUTIONALITY OF STATUTE (DNA Extraction): ISSUE - - Was the mandatory DNA sample statute unconstitutional? ANSWER - - No.

EVIDENCE: ISSUE - - Did the trial court err when it refused to allow the defendant to review redacted evidence? ANSWER - - No.

JUDICIAL CONDUCT: ISSUE - - Were the comments of the trial judge sufficient to deny this defendant a fair trial? ANSWER - - No.

ONE ACT – ONE CRIME: ISSUE - - Was this defendant properly convicted of both solicitation offenses? ANSWER - - No.

People v. Martin Cszaszar, 314 Ill. Dec. 345, (1st Dist., No. 1-05-1087, August 23, 2007) Solicitation of Murder for Hire and Solicitation of Murder - - Affirmed as Modified.

Justice Neville delivered the Opinion the unanimous Court.

FACTS: The defendant was working as a truck driver for the victim. He quit his job in order to go into business with his father. When he returned to his former place of employment in order to pick up his final paycheck, he was disturbed to learn that three deductions had been taken out of that check. He became upset and pulled out a small gun. He pointed the gun at his former employer and threatened her. When he heard someone coming up the steps toward the office, the defendant fled. The victim reported this incident to the police and they arrested the defendant. After being charged with aggravated assault and a firearm violation, the defendant looked for a way out of his problem. He contacted an old friend of his and asked him to find someone who would kill the victim. Unfortunately, the old friend of the defendant's also happened to be a confidential informant for the ATF. The friend told the ATF of the defendant's request and the ATF used one of their agents to pose as a hit man. The agent met with the defendant and the defendant asked him to kill the victim. This conversation and the previous conversations with the defendant's friend were all tape recorded. Thereafter, the defendant was charged with and convicted of Solicitation of Murder For Hire and Solicitation of Murder. From those convictions the defendant brought this appeal.

ARGUMENT: During the defendant's trial, the defendant received documents from the ATF that indicated the terms and conditions of the association of the defendant's friend

with the ATF. However, these documents contained a large number of redactions (blacked out spots). The defendant complained that he was denied a fair trial when the ATF did not deliver to him the documents without the redactions.

OPINION: The appellate court, after reviewing the documents without the redactions, disagreed with the defendant and declared that those materials contained no information that would have been helpful to the defendant's defense.

ARGUMENT: Additionally, the defendant argued that he was improperly convicted of soliciting the same ATF agent both for murder and for murder for hire.

OPINION: After thoroughly reviewing the complicated convictions of this defendant, the appellate court partially agreed with them. It ruled that one of the defendant's convictions for solicitation of murder was a lesser included offense of solicitation of murder for hire. Therefore, the defendant's conviction for both of these offenses did violate the one act, one crime principal of Illinois law.

ARGUMENT: Next, the defendant argued that the trial court erred when it considered improper aggravating factors when it sentenced him.

OPINION: After considering all of the factors the trial court considered in aggravation, the appellate court ruled that the trial court did not consider any improper factors.

ARGUMENT: Finally, the defendant made the now standard argument that the mandatory DNA sample statute constituted an unconstitutional search of his person.

OPINION: For the umpteenth time, the appellate court summarily rejected this argument.

Justices Quinn and Murphy concurred in this Opinion.

CONSTITUTIONALITY OF STATUTE: ISSUE - - Did the sentencing provisions of the Armed Robbery statute violate the proportionate penalties clause? ANSWER - - Yes.

OFFENSES: Did this defendant's multiple convictions violate the one act – one crime rule? ANSWER: Yes.

REASONABLE DOUBT: ISSUE - - Was this defendant properly convicted of Armed Robbery beyond a reasonable doubt? ANSWER - - Yes.

People v. Terrin Lee, 2007 WL 2458484, (1st Dist, No. 1-04-2258, April 27, 2006) Armed Robbery and Aggravated Unlawful Detention - - Affirmed in part and Vacated in Part.

Justice Quinn delivered the Opinion of this unanimous Court.

FACTS: On the day in question, the three victims here were crossing a city street when they were approached by the defendant. Allegedly, the defendant demanded money from the victims and, according to the victims, the defendant possessed a handgun. Based upon this evidence, the defendant was arrested, charged, and convicted of the offense of Armed Robbery. The defendant then brought this appeal.

ARGUMENT: The defendant first argued that he was improperly convicted of armed robbery because the People had failed to properly prove beyond a reasonable doubt that he had possessed a weapon during the robbery.

OPINION: The appellate court rejected this argument by declaring that the evidence the People produced was sufficient to sustain his conviction for armed robbery.

ARGUMENT: Next, the defendant argued that he could not properly have been convicted of both aggravated unlawful restraint and armed robbery.

OPINION: The appellate court agreed with this argument, but only to a point. The Court ruled that the victim of the robbery could not also be the victim of the restraint. However, the restraint offenses committed against the family members of the robbery victim were proper.

ARGUMENT: Finally, the defendant argued that his Armed Robbery conviction was improper because that offense violated the proportionate penalties clause of the Illinois Constitution.

OPINION: The appellate court agreed with this argument and ruled that the Offense of Armed Robbery does violate the proportionate penalties clause of the Illinois Constitution.

Justices Greiman and Murphy concurred in this Opinion.

COMMENT: For the umpteenth time we have a disproportionate sentences argument raised by a defendant. These arguments spread like the flu through defense bar. On appellate counsel makes an argument and, suddenly, we are hit by a deluge of similar arguments. The problem is, however, these arguments are like a long freight train. It simply takes awhile for it to stop. These arguments are put in a number of briefs. The Supreme Court makes a decision on these arguments. However, because they are included in almost every appeal, the arguments each have to be dealt with individually. This is just one in a long line of disproportionate penalties arguments.

The defendant's one act – one crime argument is worth noting. While the defendant may not be convicted of both robbing and restraining the victim of his robbery, the family members of the victim who were standing next to the defendant were fair game. Restraining these individuals earned this defendant separate convictions.

CONSTITUTIONALITY OF STATUTE (Spinal Cord Fee): ISSUE - - Was the Spinal Cord Injury Fee Unconstitutional? ANSWER - - No.

COUNSEL (Effectiveness): ISSUE - - Did the defendant receive ineffective assistance when his attorney failed to move to quash his arrest? ANSWER - - No.

FEES AND FINES: ISSUE - - Was this defendant properly ordered to pay the Violent Crimes Victims Assistance fee? ANSWER - - No.

People v. Phillip Morrison, 314 Ill. Dec. 531, (1st Dist., No. 1-04-3545, August 14, 2007) Possession of a Controlled Substance - - Affirmed as Modified.

Justice Tully delivered the Opinion the unanimous Court.

FACTS: A police officer was on patrol when he saw two men engaged in an argument in the middle of street. The officer stopped his car, approached the men for a field interview, and learned their names. The officer then ran a warrant's check on the men and learned that one of them, the defendant in this case, had an outstanding warrant for his arrest. A search of the person of the defendant following his arrest revealed that he had a plastic pill bottle that contained crack cocaine. Following a bench trial, the defendant was convicted of possessing a controlled substance. This appeal followed.

ARGUMENT: First, the defendant argued that he had received ineffective assistance of counsel when his attorney failed to file a motion to suppress the evidence the officer discovered on his person. Specifically, the defendant argued that the arresting officer impermissible prolonged the defendant's detention when he ran a warrant's check on him.

OPINION: The appellate court rejected this argument by noting that under these circumstances the police officer did not unreasonably continue to detain the defendant merely by running a warrant's check. Since the defendant was not unreasonably detained, the defendant's attorney did not provide ineffective assistance by failing to file a useless motion to suppress.

ARGUMENT: Next, the defendant attacked the fact that he was required to pay a Spinal Cord Injury Paralysis Cure Research Fund fee.

OPINION: As is now the standard response to this standard argument, the appellate court cited the case of People v. Jones, 223 Ill. 2d 569 (2006) and rejected this argument of the defendant.

ARGUMENT: Finally, the defendant argued that he was improperly denied credit off of his Drug Assessment and Traffic and Criminal Conviction Surcharge payment and he was improperly required to pay the Violent Crime Victim Assistance Fund fee.

OPINION: Here the appellate court agreed with this defendant across the board. The Court ordered that the defendant should receive credit off of his drug assessment and

his traffic surcharge. Further, the Court declared that the defendant was improperly assessed the Violent Crime Victim's surcharge.

Justices Wolfson and Garcia concurred in this Opinion.

ANALYSIS: The defendant's search and seizure issue goes all of the way back to **Brownlee** and **Gonzalez**. It deals with the improper continued detention of a suspect based upon the conduct of the arresting officer. Here the Court ruled that the mere act of running a warrants check did not constitute an unreasonable extension of the duration of the defendant's detention. This seems to follow along with the trend of these types of cases today.

COUNSEL (Effectiveness): ISSUE - - Did the defendant's counsel render ineffective assistance by coercing him into pleading guilty? ANSWER - - No.

EVIDENCE (Brady Violation): ISSUE - - Was this defendant denied due process when the People withheld evidence? ANSWER - - No.

POST-CONVICTION PETITION: ISSUE - - Did the trial court err when it summarily dismissed the defendant's PCP? ANSWER - - The defendant waived this issue.

People v. Tony Anderson, 314 Ill. Dec. 367, (1st Dist., No. 1-05-2039, August 24, 2007) Dismissal of a Post-Conviction Petition - - Affirmed.

Justice Gordon delivered the Opinion the unanimous Court.

FACTS: The defendant was indicted on over 100 charges in 13 different cases in Cook County stemming from offenses he committed in March and April of 1990. After losing two cases in a row, the defendant pled guilty to the remaining charges. One of those cases consisted of three counts of first-degree murder, two counts of burglary, attempted armed robbery, attempted residential burglary, and attempted home invasion. In order to get rid of this case, the defendant pled guilty to two counts of first-degree murder and the People dismissed the rest of the charges. Thereafter, the defendant filed successive post-conviction petitions. From the denial of these petitions the defendant brought this appeal.

ARGUMENT: Initially, the defendant argued that the trial court erred in dismissing his post-conviction petition. Specifically, the defendant argued that he had raised the gist of a meritorious constitutional claim that his due process rights were violated when the police coerced him into confessing.

OPINION: In response to this argument, the appellate court noted that the defendant had only properly brought an appeal in one case. Therefore, it refused to consider the arguments of the defendant in the other cases. Further, the Court noted that the

defendant waived this argument by failing to raise it in his prior two post-conviction petitions.

ARGUMENT: Further, the defendant argued that he raised a meritorious claim that his counsel coerced him into pleading guilty by repeatedly informing him that he would be sentenced to death if he stood trial. In effect, the defendant argued that he had received ineffective assistance of counsel.

OPINION: Here, the appellate court noted that the defendant had raised this exact same argument in his prior petitions. Therefore, he was barred from raising it again. Further, the Court ruled that even if these arguments were not barred, the defendant was still not prevail because the evidence produced at his trial clearly did not indicate that he was coerced by anyone into pleading guilty.

ARGUMENT: Finally, the defendant argued that he raised a meritorious claim that the People failed to disclose evidence that would have assisted him in his defense.

OPINION: Once again, the appellate court noted that the defendant waived this claim by failing to raise it earlier.

Justices Fitzgerald Smith and McNulty concurred in this Opinion.

ANALYSIS: This is a case that springs out of the allegations of widespread torture committed by the Chicago Police for years. Whether or not it is true is irrelevant. The trouble caused by those allegations is clearly seen in this case.

Talk about strange. This is the same case that was produced and published in June under a different docket number.

COUNSEL (Effectiveness): ISSUE - - Did the attorney for the defendant err by requesting a jury instruction on “great bodily harm”? ANSWER - - No.

COUNSEL: ISSUE - - Was the defendant’s request for a new attorney improperly denied? ANSWER - - No.

EVIDENCE: ISSUE - - Were the People improperly allowed to renege on an agreement not to introduce the defendant’s statements? ANSWER - - No.

EVIDENCE (Photos): ISSUE - - Were irrelevant photos introduced? ANSWER - - No.

EVIDENCE: ISSUE - - Were the People improperly allowed to introduce evidence that was not disclosed to the defendant during discovery? ANSWER - - No.

JURIES (Batson): ISSUE - - Did the trial court err in finding no evidence of racial discrimination after the People used a peremptory challenge? ANSWER - - No.

SENTENCES (Excessive): ISSUE - - Was the defendant's sentence excessive?
ANSWER - - No.

People v. Bernie Bobo, 314 Ill. Dec. 387, (1st Dist., No. 1-05-2510, August 24, 2007)
Aggravated Kidnapping and Aggravated Criminal Sexual Abuse - - Affirmed as Modified.

Justice O'Mara Frossard delivered the Opinion the unanimous Court.

FACTS: On the evening in question the victim was arriving home at 4 a.m. She parked her car and started walking toward her house. Suddenly she heard a crash and saw another car hit her car from behind. While the victim was writing down the information from the other driver, he grabbed her from behind and forced her into his car. After sexually assaulting her, he released the victim. The victim reported this incident and the police pulled the defendant's car over and arrested him. It seems that the defendant had a foot fetish. He was sexually aroused by viewing and feeling women's feet. On a telephone found in the possession of the defendant were approximately 30 photographs of women's feet. From his conviction the defendant brought this appeal.

ARGUMENT: Initially, the defendant alleged that the trial court denied him a fair trial when it allowed the People to introduce into evidence the photographs of women's feet the defendant possessed.

OPINION: The appellate court ruled that the photos were properly introduced and even if they weren't, it was only harmless error.

ARGUMENT: Next, the defendant argued that he was denied a fair trial when the People were allowed to renege on an agreement not to use statements that the defendant made to the police.

OPINION: The appellate court ruled that the defendant "opened the door" to the use of these statements by cross-examining the People's witnesses concerning his identity.

ARGUMENT: Further, the defendant complained that the People were improperly allowed to use evidence at his trial that was not properly disclosed to the defendant.

OPINION: The defendant waived this issue by failing to object. Further, even if the defendant had not forfeited this argument, the evidence was disclosed to the defendant shortly before his trial. The trial judge offered to grant the defendant a continuance in order to deal with this evidence. This offer was rejected by the defendant. Under these circumstances, no reversible error was found.

ARGUMENT: Alternatively, the defendant argued that he had received ineffective assistance of counsel when his attorney objected to the People's request to eliminate the element of great bodily harm from the jury's aggravated kidnapping jury instruction. As a result of this decision, the defendant maintained that he was subjected to

consecutive sentences for aggravated kidnapping and aggravated criminal sexual assault.

OPINION: Calling this “trial strategy”, the appellate court declined to find that this conduct constituted ineffective assistance of counsel.

ARGUMENT: The defendant next argued that the trial court failed to conduct an adequate inquiry into the defendant’s post-trial claims of ineffective assistance of counsel.

OPINION: The appellate court disagreed with this Krankle argument and ruled that the trial court had, in fact, conducted a sufficient inquiry into the complaints of the defendant.

ARGUMENT: The defendant also argued that the trial court erred in finding that the defendant failed to establish the People’s use of juror challenges constituted racial discrimination.

OPINION: The appellate court ruled that the trial court’s ruling was correct.

ARGUMENT: Finally, the defendant argued that his 20-year sentence for aggravated kidnapping was excessive.

OPINION: The appellate court disagreed with the defendant and declared that the sentence of the defendant was proper.

Justices Tully and Gallagher concurred in this Opinion.

COUNSEL (Sixth Amendment): ISSUE - - Did the trial court deny this defendant his right to the counsel of his choice when it allowed the defendant’s attorney to withdraw from his case over his, the defendant’s, objection? ANSWER - - No.

REASONABLE DOUBT: ISSUE - - Did the People present sufficient evidence to support this defendant’s convictions? ANSWER - - Yes.

People v. Antonio Howard, 315 Ill. Dec. 36, (1st Dist., No. 1-05-1849, August 17, 2007) Armed Robbery and Aggravated Discharge of a Firearm - - Affirmed.

Justice Gallagher delivered the Opinion the unanimous Court.

FACTS: On the day in question, the victim in this case was seeking day labor. He and a friend drove to a building that housed a contracting business. As the victim walked up to the building, he was approached by the defendant in this case. The defendant asked the victim for money. When the victim said he didn’t have any, the defendant pistol whipped him. The victim then gave the defendant ten dollars and ran back to his car.

The driver of the car pulled up to the defendant and confronted him. The defendant pulled out his gun and fired at the car. Based upon this and other evidence the defendant was charged with Armed Robbery and Aggravated Discharge of a Firearm. From his conviction the defendant brought this appeal.

ARGUMENT: The defendant first argued that he was not properly proven guilty beyond a reasonable doubt. Specifically, the defendant argued that the evidence the People produced was too contradictory and implausible to support his conviction. Further, the defendant complained that the “show-up” the police conducted while he was in handcuffs so tainted the victims’ identification of him so as to render their testimony unreliable.

OPINION: The appellate court disagreed with these arguments of the defendant and affirmed his convictions.

ARGUMENT: Alternatively, the defendant argued that his right to the counsel of his choice was violated when the trial court permitted his attorney to withdraw over his, the defendant’s, objection.

OPINION: The appellate court again disagreed with the defendant and ruled that the defendant’s right to counsel was not violated.

Justices O’Brien and O’Mara Frossard concurred in this Opinion.

ANALYSIS: Two interesting questions are raised in this case. First, the defendant’s complaint about the show-up technique used by the police is worth noting. The Court analyzed the methods of reviewing such a complaint and declared that here the police did not violate any of the defendant’s rights.

Second, the defendant’s argument that his right to the counsel of his choice was violated by the trial court was unusual. The defendant argued that the conduct of his attorney was dilatory. That is, it was done to delay his trial. What is hard to understand is why would an appointed attorney try to delay the defendant’s trial? What would he gain by such conduct? Here the attorney for the defendant complained that the defendant would not communicate with him. That was the reason he wished to withdraw. After considering all of the factors involved in this case, the appellate court declared that the defendant’s right to the counsel of his choice was not violated by the order of the court granting the defense attorney’s motion to withdraw.

COUNSEL (Effectiveness): ISSUE - - Did the defendant’s counsel render ineffective assistance by failing to request that the defendant’s jury be instructed on a lesser included offense? ANSWER - - No.

JURY INSTRUCTIONS (Lesser Included Offense): ISSUE - - Did the trial court err by refusing to instruct the defendant's jury on the offense of simple theft? ANSWER - - No.

PROSECUTOR CONDUCT: ISSUE - - Did the prosecutor improperly misstate the facts in this case during his closing argument? ANSWER - - No.

People v. Jonathan Washington, 313 Ill. Dec. 918, (1st Dist., No. 1-05-0138, August 8, 2007) Armed Robbery - - Affirmed.

Justice Theis delivered the Opinion the majority of this Court.

FACTS: The victim was walking home after he had purchased some items at a local Walgreens when he was approached by a man who asked for directions. The victim gave the man directions and then walked away. Moments later the victim discovered that the man was following him. Suddenly, the man approached the defendant, stuck a gun into his ribs, and began taking things out of the victim's pockets. Two other men then approached the victim and they also started taking things from the victim. One of these men was the defendant in this case. He was holding a knife and he pointed the knife at the victim. Eventually, the men ran to a nearby parked car and drove away. The victim called the police and gave them a description of the car the offenders were using. The police pulled that car over. The defendant was driving. Inside of the car the police found the items that had been taken from the victim during his robbery.

ARGUMENT: Initially, the defendant argued that the trial court erred when it refused to instruct his jury on the lesser included offense of simple theft.

OPINION: Under the circumstances of this case, the appellate court declared that theft would have been a lesser included offense of robbery. However, any error was harmless beyond a reasonable doubt.

ARGUMENT: Next, the defendant argued that his trial counsel provided ineffective assistance when he failed to request the trial court to provide an answer to the defendant's jury regarding whether or not the commission of the armed robbery also included the "get-away." According to this defendant, the failure to provide such an answer left his jury susceptible to the erroneous belief that the "get-away" was an element of the offense of armed robbery.

OPINION: In response to this complaint, the appellate court noted that the plain language of the legal responsibility instruction the jury received sufficiently explained the law to the defendant's jury. Therefore, the trial judge did not need to respond to the question of the defendant's jury and the defendant's counsel did not provide ineffective assistance by failing to request such a response.

ARGUMENT: Finally, the defendant argued that he was denied his right to a fair trial when his prosecutor misstated the facts that were central to the defendant's case during his closing argument.

OPINION: The appellate court ruled that the defendant waived this issue by failing to object to it. Further, the Court ruled that the prosecutor did not misstate the facts. He merely made reasonable arguments based upon the evidence.

Justice Greiman concurred in this Opinion.

Justice Cunningham filed a dissenting Opinion.

ANALYSIS: In her dissent, Justice Cunningham argued that “there was ample evidence from which a properly instructed jury could have found the defendant guilty of theft rather than armed robbery.” Interesting.

EVIDENCE (Stipulation): ISSUE - - Was this defendant denied his right to confront witnesses when his attorney stipulated to evidence regarding the chain of custody and the chemical composition of the substance he possessed? ANSWER - - No.

FEES AND FINES: ISSUE - - Was the defendant properly required to pay the Spinal Cord Injury Fee and the Violent Crimes Victims Assistance Fund Fee? ANSWER - - Yes and No.

REASONABLE DOUBT: ISSUE - - Did the People produce sufficient evidence to convict the defendant of more than simple possession of a controlled substance? ANSWER - - Yes.

SENTENCE CREDIT (Fees and Fines): ISSUE - - Was the defendant entitled to credit for time served off of his drug assessment? ANSWER - - Yes.

SENTENCE CREDIT (Mittimus): ISSUE - - Was the defendant’s mittimus incorrect for a number of reasons? ANSWER - - Yes.

People v. Dontell Blakney, 314 Ill. Dec. 77, (1st Dist., No. 1-04-3669, August 8, 2007) Possession of a Controlled Substance - - Affirmed in Part and Order Vacated in Part; Mittimus Amended.

Justice Cunningham delivered the Opinion the unanimous Court.

FACTS: The police were executing a search warrant of a house. They entered the house and discovered the defendant in this case halfway into a nearby closet. In the closet the police found one plastic bag containing 35 smaller plastic bags. Each contained crack cocaine. Also found were three larger bags containing cannabis and approximately 100 smaller empty plastic bags. In a nearby bedroom the police found 12 more bags of cannabis and an electronic scale. Based upon this evidence, the defendant was convicted of possession of a controlled substance with the intent to deliver within 1000 feet of a public housing agency, possession of cocaine with the

intent to deliver, and possession of cannabis with the intent to deliver. From his convictions this defendant brought this appeal.

ARGUMENT: First, the defendant argued that the People failed to prove that he intended to deliver the 4.8 grams of cocaine he possessed.

OPINION: The appellate court disagreed with this defendant and concluded that the People here produced much more than enough evidence to prove his intent to deliver.

ARGUMENT: Next, the defendant made what is not a very, very common argument. He maintained that his right to confront witnesses was violated when his attorney entered into a stipulation concerning evidence without his direct approval.

OPINION: The appellate court summarily rejected this argument by citing the Illinois Supreme Court case of People v. Phillips, 217 Ill. 2d 270 (2005).

ARGUMENT: Further, the defendant argued that his mittimus was incorrect for several reasons. The defendant was concerning that the mittimus incorrectly listed the number and name of his convictions.

OPINION: The People conceded this point and the appellate court agreed with that concession.

ARGUMENT: The defendant also argued that he was entitled to credit off of his drug assessment for the number of days he spent in jail prior to his trial.

OPINION: The appellate court agreed with this argument of the defendant and ordered that he should receive this credit.

ARGUMENT: Finally, the defendant argued that he was improperly required to pay the Spinal Cord Injury fee and the Violent Crime Victim's Assistance Fund fee.

OPINION: Here the defendant won a split decision. The appellate court agreed that his should not have to pay the Violent Crime Victim's Assistance Fund fee but it affirmed the Spinal Cord Trauma Research fee.

Justices Theis and Karnezis concurred in this Opinion.

EVIDENCE: ISSUE - - Did the trial court deny this defendant a fair trial when it restricted the cross-examination of the People's DNA witness? ANSWER - - No.

EVIDENCE (Brady Violation): ISSUE - - Did the People improperly failed to reveal evidence that attacked the credibility of a People's witness? ANSWER - - No.

People v. Vincent Buckner, 315 Ill. Dec. 87, (1st Dist., No. 1-05-2910, August 29, 2007)
Predatory Criminal Sexual Assault of a Child and Aggravated Criminal Sexual Assault -
- Affirmed.

Justice Greiman delivered the Opinion the unanimous Court.

FACTS: The 11-year-old victim was sexually abused by a friend of her mother, the defendant in this case. She became pregnant and gave birth when she was 12 years of age. DNA samples were taken from the defendant and they positively identified the defendant. Prior to the defendant's trial for his sex offenses, the People moved to prohibit the defendant from cross-examining the People's expert witness about her prior indictment for misdemeanor theft, her plea, and her sentence of supervision. (It seems that the witness had allegedly padded her overtime paycheck by slipping in a few extra hours that she had not worked.) The trial court granted the People's motion and following a jury trial, the defendant was found guilty. This appeal followed.

ARGUMENT: Initially, the defendant argued that the trial court had erred when it barred him from cross-examining the People's expert witness about her guilty plea to theft and her sentence of supervision. Specifically, the defendant argued that because the defendant was under supervision at the time of his trial, she may have had a bias, interest, or motive to testify falsely.

OPINION: Calling the defendant's argument "too speculative and uncertain," the appellate court determined that the trial court did not abuse its discretion when it granted the People's motion.

ARGUMENT: Alternatively, the defendant argued that his due process rights were violated when the People failed to disclose evidence during discovery. Specifically, the defendant maintained that the People had failed to disclose that the DNA expert had collected one hour of unearned overtime on the day she ran the defendant's tests.

OPINION: The appellate court rejected this argument by determining that the defendant suffered no prejudice as a result of this failure to disclose because the conduct of the witness could not have been used against her. Additionally, the appellate court ruled that under these circumstances, even if the failure to disclose had been error, the evidence against this defendant was so overwhelming so as to render that error harmless beyond a reasonable doubt.

Justices Karnezis and Cunningham concurred in this Opinion.

ANALYSIS: I have seen many attempts to attack the testimony of an expert witness in my time, but this one is unique. To have an expert witness who admits to a criminal offense is one for the books.

EVIDENCE (Prior Consistent Statements): ISSUE - - Did the trial court err by allowing into evidence the prior consistent statements of a witness for the People? ANSWER - - No.

OFFENSES (Lesser Included Offense): ISSUE - - Was the defendant improperly convicted of Armed Robbery because that conviction was a lesser included offense of Felony Murder? ANSWER - - No, the defendant was convicted of Intentional Murder.

SENTENCES (Concurrent): ISSUE - - Did the trial court here improperly impose concurrent sentences upon this defendant? ANSWER - - Yes.

People v. Sherome Griffin, 314 Ill. Dec. 311, (1st Dist., No. 1-05-2481, August 15, 2007) First-Degree Murder - - Affirmed in Part and Vacated in Part; Cause Remanded.

Justice Greiman delivered the Opinion the majority of this Court.

FACTS: On the day in question, the defendant and his friends forced the victim and his young son into a van at gunpoint. They restrained the victim, a known drug dealer, and stole items from his and his mother's home. Then, when the victim tried to make a run for it, he was fatally shot. Thereafter, a longtime friend of the defendant agreed to talk to the defendant while wearing a wire. The defendant chatted about the murder and the police picked him up. Following his conviction, the defendant brought this appeal.

ARGUMENT: The defendant first argued that the trial court improperly allowed into evidence the overhear the defendant's friend obtained. Specifically, the defendant maintained that this tape amounted to a prior consistent statement of the witness.

OPINION: The appellate court first noted that the defendant waived this argument by failing to object to the use of the tape during his trial. Additionally, the Court determined that a tape such as this is not considered to be hearsay evidence. It is a mechanical recording that will or will not be admitted based upon the accuracy of its content. Here the defendant did not argue that the tape was inaccurate or in any way not authentic. Therefore, the trial court did not err in admitting the tape.

ARGUMENT: The defendant next argued that his armed robbery conviction was a lesser-included offense of his felony murder conviction.

OPINION: The trouble with the defendant's argument was that his jury, without objection, was permitted to return an general verdict of guilty of first-degree murder. Therefore, the appellate court determined that the defendant was properly found guilty of the most serious offense, intentional first-degree murder. Since he was not convicted of felony murder, his armed robbery conviction was not a lesser-included offense.

ARGUMENT: Finally, the People argued that in this case the defendant was improperly sentenced to serve concurrent sentences.

OPINION: Here, the appellate court agreed with the argument of the People. All of the defendant's offenses were considered to have been "triggering offenses" that required that the defendant serve his sentences consecutive to each other. Therefore, the defendant was improperly allowed to serve his sentences concurrently.

Justices Karnezis and Cunningham concurred in this Opinion.

ANALYSIS: The true irony here is that the defendant brought this appeal and he ended up serving consecutive rather than concurrent sentences.

EVIDENCE (Crawford): ISSUE - - Did the trial court err in ruling that the out-of-court statements made by a witness to the police were inadmissible? ANSWER - - Yes.

EVIDENCE (Hypnotically Enhanced Statements): ISSUE - - Did the trial court err in ruling that the statements made by a witness who had undergone hypnosis were inadmissible without first holding a hearing? ANSWER - - No.

People v. Darryl Sutton, 314 Ill. Dec. 302, (1st Dist., No. 1-06-0475, August 14, 2007) Suppression of Evidence - - Affirmed in Part and Reversed in Part; Cause Remanded.

Justice Hall delivered the Opinion the unanimous Court.

FACTS: On February 14, 1991, David Janik and his girlfriend, Monica Rinaldi were attacked. Rinaldi was raped and shot to death. Janik was shot but he survived. The wounds suffered by Janik were so severe that they caused him to lose his short-term memory. In order to "assist" him in recovering his memory, Janik underwent a series of hypnosis sessions. Following these sessions Janik was able to identify the defendant in this case as the attacker. Janik then testified at the defendant's rape and murder trial. Following his conviction, the defendant brought an appeal and the appellate court reversed his convictions. It ruled that use of this "hypnotically enhanced testimony" violated the defendant's due process rights. Upon remand, the trial court made two rulings. First, the court ruled that the victim's lineup identification and his potential in-court identification were inadmissible against the defendant because they were tainted by the hypnosis sessions. Second, the court ruled that victim's out-of-court statements could not be used against the defendant because they constituted inadmissible hearsay that was barred by the United States Supreme Court case of Crawford v. Washington, 541 U. S. 36 (2004). From these rulings the People brought an interlocutory appeal.

ARGUMENT: Initially, the People argued that the trial court erred when it declared that the identification testimony of the victim was inadmissible without first holding a hearing concerning whether or not it was tainted by the hypnosis sessions.

OPINION: The appellate court ruled that the doctrine of the law of the case bars this argument of the People. Specifically, the Court concluded that in the previous trial of the defendant, the trial court declared that the testimony of the victim in question was, in

fact, tainted by the hypnosis sessions. Since that decision was never overturned, it is now the law of the case and the trial court properly refused to revisit it upon the motion of the People.

ARGUMENT: Alternatively, the People argued that the trial court improperly declared that testimony of the police concerning what the victim told them was barred by Crawford.

OPINION: With this argument the appellate court agreed. It ruled that the statements in question were not testimonial in nature. Therefore, Crawford clearly did not bar their use. Further, the Court declared that the statements of the victim were, in fact, spontaneous declarations. Therefore, they did not constitute hearsay and could properly be used against this defendant.

Justices Hoffman and South concurred in this Opinion.

ANALYSIS: Talk about rare cases. When was the last time you read a case that dealt with hypnotically enhanced testimony? This is exactly what we have here. Additionally, we have yet another Crawford case. This time it went in the favor of the People.

* * * * *

SECOND DISTRICT

EVIDENCE (Confrontation): ISSUE - - Was this defendant denied due process when the trial court prohibited him from cross-examining a police officer about whether or not the officer was investigating police coercion in another case? ANSWER - - No.

PROSECUTOR CONDUCT: ISSUE - - Did the conduct and comments of the prosecutor deny this defendant a fair trial? ANSWER - - No.

TRIAL PROCEDURE (Substitution of Judge): ISSUE - - Did the trial court err when it granted the People's motion for substitution of judge? ANSWER - - No.

People v. Kenneth Schneider, 313 Ill. Dec. 890, (2nd Dist., No. 2-05-0819, August 3, 2007) Aggravated Criminal Sexual Assault - - Affirmed.

Justice Grometer delivered the Opinion the Court.

FACTS: The victim, a prostitute, was sexually assaulted by the defendant in this case. From his conviction for the offense of aggravated criminal sexual assault, the defendant brought this appeal.

ARGUMENT: The defendant first argued that the trial court erred when it granted the People's motion for substitution of judge. Specifically, the defendant complained that the motion was not filed within the 10-day period of time required of such motions.

OPINION: The appellate court responded to this argument by noting that the defendant waived any complaint by failing to object to the People's motion. Further, after discussing how one would calculate the timing of a motion for the substitution of a judge, the appellate court declared that this motion was, in fact, timely filed.

ARGUMENT: The defendant next argued that he was denied due process when his trial court failed to allowed the defendant's attorney to cross-examine a police officer about whether he (the officer) was under investigation for coercing a false confession from a young suspect in an unrelated case. The defendant maintained that this failure prevented him from presenting a complete defense in this case.

OPINION: Here the appellate court declared that the defendant failed to prove that the alleged conduct of the officer in the prior case was sufficiently similar to the alleged conduct in this case. Therefore, the trial court did not err in denying the defendant an opportunity to introduce this evidence.

ARGUMENT: Finally, the defendant complained that the comments the prosecutor made in this case during his closing argument denied him a fair trial.

OPINION: Again, the defendant waived this argument by failing to object. On the merits, the appellate court determined that the comments of the prosecutor were, in fact, improper. They were irrelevant to whether the defendant was guilty or innocent and they merely served to inflame the passions of the jury. However, any such error was found to have been harmless beyond a reasonable doubt.

Justices O'Malley and Callum concurred in this Opinion.

ANALYSIS: The prosecutor conduct has been an issue of increasing importance lately. Many defendants are attempting to use this as a hammer against prosecutors. This is an example of just such a problem.

REASONABLE DOUBT: ISSUE - - Was sufficient evidence introduced to support the defendant's conviction for attempted first-degree murder? ANSWER - - No.

People v. Ian Washington, 314 Ill. Dec. 421, (2nd Dist., No. 2-05-0826, August 24, 2007) Attempted First-Degree Murder - - Reversed.

Justice Callum delivered the Opinion the Court.

FACTS: At 2 a.m. on the morning in question, the victim drove into the driveway of a house in Aurora. With him was one other person. As they were pulling into the

driveway, a van pulled in behind them. Someone in the driver's seat of the van yelled and then pointed a gun at the victims and opened fire. One of the victims was hit in the arm. Thereafter, the van drove away. The police were informed of this incident and they stopped a van that matched the description of the one used by the shooter. Inside of that van the police found the defendant in this case. He was the front seat passenger. In the back of the van were two more persons. The defendant was charged with Attempted First-Degree murder. At his trial, each of the other passengers in the van rolled over on the defendant and identified him as the shooter. Following his conviction, the defendant brought this appeal.

ARGUMENT: The defendant argued that the evidence introduced against at his trial was insufficient to support his conviction.

OPINION: The appellate court agreed with the defendant and reversed his conviction.

Justice Byrne concurred in this Opinion.

Justice Bowman filed a dissenting Opinion.

ANAYLSIS: It is very unusual that you will see an appellate court flat out reverse a defendant's conviction based upon the lack of credible evidence. That is exactly what happened in this case. The majority of this Court ruled that none of the People's occurrence witnesses actually saw the shooter and the co-conspirator's statements were simply not believable. This was not enough evidence to support the defendant's conviction in their opinion.

Justice Bowman disagreed with the majority here and declared that the verdict of the defendant's jury should have been affirmed.

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THIRD DISTRICT

EVIDENCE: ISSUE - - Were the police properly allowed to testify about smelling the odor of burnt cannabis inside of the defendant's car? ANSWER - - Yes.

REASONABLE DOUBT: ISSUE - - Did the People properly prove that the defendant drove with any amount of cannabis on his breath? ANSWER - - No.

People v. David Allen, 313 Ill. Dec. 735, (3rd Dist., No. 3-06-0783, August 7, 2007) DUI - - Reversed and Remanded.

Justice Schmidt delivered the unanimous Opinion of the Court.

FACTS: A police officer was conducting a road safety check when the defendant pulled up in his car. Noticing a smell of burnt cannabis coming from his car, the defendant was asked to step out. While speaking with the defendant, an officer noticed the smell of burnt cannabis on the defendant's breath and the defendant's eyes were dilated. Based upon this evidence, a police officer asked the defendant if he had been smoking cannabis. The defendant admitted that he had smoked it the night before. Based upon this admission the defendant was placed under arrest. The defendant then refused to submit to a blood test. Thereafter, he was charged with DUI. At the defendant's trial, the arresting officer was called to testify. He stated that using his training and experience he recognized the smell of burnt cannabis on the defendant's breath. However, he also testified that he could not tell whether the defendant had any amount of cannabis on his breath. Further, the officer testified that he did not ask the defendant to perform field sobriety tests because he did not believe that they would be effective. Following his conviction, the defendant brought this appeal and argued that he had not been proven guilty of DUI beyond a reasonable doubt.

ARGUMENT: Initially, the defendant argued that the trial court erred when it denied his motion to bar the police officer from testifying about smelling the odor of cannabis on the breath of the defendant.

OPINION: The appellate court rejected this argument of the defendant and ruled that the trial court had not abused its discretion when it allowed the officer to testify about what he had smelled.

ARGUMENT: Alternatively, the defendant argued that the People had failed to produce sufficient evidence to support his conviction for DUI.

OPINION: The appellate court agreed with this argument of the defendant and reversed his conviction.

Justices McDade and O'Brien concurred in this Opinion.

ANALYSIS: This case deals with the issue of what exactly does it take to convict a defendant of DUI based on the mere presence of any amount of cannabis in the driver's system by using only circumstantial evidence. Here the driver refused to take a blood test and no other field tests were available to show whether or not the defendant had any amount of cannabis (actually THC) on his breath. The officer proved that the defendant's smelled like burnt cannabis. This, according to the appellate court, was insufficient to prove that the defendant actually had THC on his breath. The best line of the Opinion was "The statute does not criminalize having breath that smells like burnt cannabis."

EVIDENCE (Impeachment): ISSUE - - Was this defendant improperly impeached with his prior juvenile adjudications? ANSWER - - No.

SENTENCES: ISSUE - - Did the trial court err when sentencing this defendant by considering unreliable hearsay evidence concerning his other criminal activity? ANSWER - - No.

People v. Martez Harris, 313 Ill. Dec. 960, (3rd Dist., No. 3-05-0724, August 15, 2007)
Armed Robbery - - Affirmed.

Justice Carter delivered Opinion of a majority of the Court.

FACTS: It was closing time at the local tap and the bartender of that bar was starting to close up the bar when in walked the defendant. Right behind the defendant was a man with a mask and a gun. The bartender yelled for the lone customer in the bar to duck and run. Both the bartender and the patron ran out of the bar's back door while the defendant and his friend ran out of the front door. As he ran, he was carrying the patron's purse and the masked man was carrying the bar's cash register. The defendant denied that he committed the robbery and stated "There is no possible way that I could have committed this crime. I mean people who commit robberies, things like that, have a motive, have a reason for doing things like that. But I am a professional man. I work. I go to college. I went to Robert Morris, ICC, Midstate. I mean, it's no reason-I mean I live a productive life. I live just like any of the 12 jurors, like you live. I don't commit crimes." In rebuttal, the prosecutor sought to introduce evidence of the defendant's prior juvenile adjudications for aggravated battery with a firearm, aggravated discharge of a firearm, theft, and possession of a controlled substance. After some initial hesitation, the trial judge allowed the defendant's weapons offenses to be presented to the defendant's jury. From the defendant's subsequent conviction, this appeal followed.

ARGUMENT: Initially, the defendant argued that he was denied a fair trial when he was impeached by the use of his prior juvenile adjudication.

OPINION: The appellate court noted that the defendant took the stand and made false statements on direct examination, arguably attempting to portray himself and his character to the jury in a false manner. A defendant cannot be allowed to use the policy based prohibition against the admission of a juvenile adjudication as a license to provide false testimony to a jury. Had the defendant not attempted to provide false information to his jury, his prior juvenile adjudication would not have been admissible.

ARGUMENT: Alternatively, this defendant argued that the trial court erred in considering the hearsay statements of a police detective when considering what the defendant's punishment should be.

OPINION: The appellate court here would not create a ruled that would require the People to produce a "mini-trial" in order to sentence a defendant. The Court concluded that as long as the testimony of witnesses at a sentencing hearing are reliable, they could be considered by the sentencing court.

Justice Holdridge filed a specially concurring Opinion.

Justice O'Brien filed a dissenting Opinion.

ANALYSIS: Concerning the defendant's first argument, on appeal he argued that instead of having a certified copy of his record published to the jury, the prosecutor should have been required to have asked the defendant about his prior adjudications. Talk about turning this issue on its head. If the prosecutor had attempted to question this defendant about his past juvenile record while he was on the witness stand, the defendant himself would have screamed that it was reversible error. This was a truly remarkable argument for this defendant to have made.

Also, it should be noted that this appellate court acknowledged in this Opinion that this outcome was directly contrary to what other districts have ruled on this issue. According to this appellate court, more recent United States Supreme Court decisions have dictated this result.

Justice O'Brien disagreed with majority and argued that the prior juvenile adjudications should not have been used against this defendant. The Justice did not believe that the defendant was referring to his lack of a prior criminal history when he testified. What exactly the defendant was referring to the Justice did not identify.

SEARCH AND SEIZURE: ISSUE - - Did the police conduct a proper search incident to an arrest? ANSWER - - Yes.

People v. Lavar Bridgewater, 314 Ill. Dec. 750, (3rd Dist., No. 3-05-0897, August 9, 2007) Suppression of Evidence - - Reversed and Remanded.

Justice McDade delivered the Opinion of the Court.

FACTS: A police officer noticed that the defendant was speeding. Before he could be pulled over, the defendant pulled into the parking lot of a convenience store. The officer pulled in behind the defendant. When the defendant exited his car, the officer asked him to get back in. The defendant ignored the officer and entered the store. The officer followed the defendant inside of the store and ordered him outside. The defendant exited the store and then refused to give the officer his driver's license because he had "done nothing wrong." The officer arrested the defendant and searched his car. A firearm was found inside of that car. The defendant then moved to suppress the evidence discovered by the police during their search of his car. He argued that the search of the police was too remote to fall under the doctrine of a search incident to an arrest. The trial court agreed with this argument and suppressed the gun. From this ruling the People brought an appeal.

ARGUMENT: In this case the People argued that trial court had erred when it granted the defendant's motion to suppress. Specifically, the People maintained that the search the police made did, in fact, constitute a proper search incident to an arrest.

OPINION: The appellate court agreed with this argument and reversed the trial court's order suppressing evidence.

Justices Lytton and Carter concurred in this Opinion.

ANALYSIS: There are a number of interesting things about this Opinion. First, the Court in this case specifically adopted the reasoning of the United States Supreme Court case of Atwater v. City of Lego Vista, 532 U. S. 318 (2001), wherein that Court ruled that a defendant stopped for a traffic violation may reasonably be placed under arrest even though the traffic violation was punishable by a fine only. This is a clear break from the decisions of other Illinois appellate courts. Further, this Court adopted the reasoning of the Supreme Court in the case of Thornton v. United States, 541 U. S. 615 (2004), in which that Court declared that a search of the passenger compartment of a vehicle was reasonable subsequent to the arrest of a suspect even when that arrest was made away from the vehicle.

The really interesting thing about this decision was the tone of Justice McDade. The Justice seemed to really hate following these above listed decisions but she just did not have a choice. The best she could do was state repeatedly (over and over and over) that this Court disagreed with the rationale of those decisions. However, due to the adoption of the limited lockstep doctrine by the Illinois Supreme Court, they just had no choice.

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FOURTH DISTRICT

EVIDENCE (Impeachment): ISSUE - - Did the trial court err in refusing to make a pretrial ruling on whether or not the defendant's prior convictions could be used to impeach his testimony? ANSWER - - No.

REASONABLE DOUBT: ISSUE - - Did the People present sufficient evidence to support the defendant's conviction? ANSWER - - Yes.

People v. Demetric DeBerry, 314 Ill. Dec. 622, (4th Dist., No. 4-06-0244, August 13, 2007) Robbery - - Affirmed.

Justice McCullough delivered the Opinion of the majority of this Court.

FACTS: On the evening in question, the victim was walking from his girlfriend's house to a friend's house. While walking, the victim stopped and spoke to the defendant in

this case. Another person approached the victim and grabbed something out of his front pocket. When the victim took a swing at the other person, the defendant grabbed the victim from behind and threw him to the ground. One of the men then kicked the defendant. The men then ran away and the victim called the police. The police caught the defendant and his friend and interrogated them. The friend informed on the defendant and told that police all about the robbery. At the defendant's trial, the friend was called to testify. Following a jury trial, the defendant was convicted of robbery. This appeal followed.

ARGUMENT: The defendant first argued that he was not properly convicted of robbery beyond a reasonable doubt. Specifically the defendant argued that the evidence the People produced against him did not support his conviction because it was unreliable and conflicting.

OPINION: While not being the strongest evidence ever seen, the appellate court ruled that sufficient evidence was introduced to support this defendant's conviction.

ARGUMENT: Alternatively, the defendant argued that he was denied due process when his trial judge refused to rule on his pre-trial motion concerning whether or not the People would be allowed to impeach him with his prior convictions should he decide to testify in his own defense. Specifically, the defendant argued that he should have had been "a fair chance to weigh the costs and benefits of the decision as to whether to exercise his constitutional right to testify." This he could have done if the trial judge had stated whether or not the People would be allowed to use his prior convictions against him.

OPINION: The appellate court declared that the trial court's refusal to rule on this issue did not deprive this defendant of his right to testify. The defendant still had that option and in this case he chose to exercise it by testifying. Consequently, the trial court did not deprive this defendant of his rights.

Justice Knecht concurred in this Opinion.

Justice Cook filed a dissenting Opinion.

ANALYSIS: Justice Cook dissented and argued that this defendant's conviction should have been reversed because the trial judge did not rule on the defendant's motion. The exact reasoning of the Justice is a bit murky. He seems to state that if a defendant requests such a ruling and the trial judge declines such an invitation, then reversible error will occur if the defendant does, in fact, testify. Seems like a golden ruling for the defense. If the trial judge declines to rule, a guaranteed reversal would be had by the defendant proceeding to testify. The bottom line for Justice Cook seems to require the trial court to make a ruling. The failure to do so is not an option.

FIFTH DISTRICT

SEARCH AND SEIZURE: ISSUE - - Did the trial court err when it granted the defendant's motion to suppress? ANSWER - - Yes.

People v. Thomas Damian, 313 Ill. Dec. 706, (5th Dist., No. 5-06-0026, August 14, 2007)
Suppression of Evidence - - Reversed and Remanded.

Justice Stewart delivered the Opinion of the unanimous Court.

FACTS: The police received a call concerning a motorist in a ditch. Responding to the call, a State Trooper drove to the area and found no car. He then drove to a nearby rest stop and there he spotted the defendant standing outside of a car trying to unlock it with a stick. The Trooper learned that the defendant had driven to the rest stop after he had run off into a ditch. Once at the rest stop, the defendant had inadvertently locked his keys inside of his car. The behavior of the defendant convinced the Trooper that the defendant was under the influence of a drug. After opening the defendant's car, the Trooper searched it and found contraband. The defendant moved to suppress the evidence the officer found in this case and the trial court granted that motion. From that ruling the People brought this appeal.

ARGUMENT: Before the appellate court, the People argued that the trial court erred when it granted this defendant's motion to suppress.

OPINION: The appellate court agreed with the People and reversed the trial court's suppression order.

Justices Welch and Goldenhersh concurred in this Opinion.

ANALYSIS: This is truly an interesting Search and Seizure case. It deals with a very hot topic these days; the Community Caretaking Function of the police. In this case the Court ruled that when the officer first approached the defendant the officer was performing his community caretaking function. Consequently no seizure occurred.

Next, the appellate court ruled on exactly what is necessary for a police officer to place a suspect under arrest for DUI involving drugs.

Finally, this Court declared that in certain cases a police officer can make a search incident to an arrest before the arrest is made. All the officer has to have is sufficient probable cause to justify that arrest and a search can be made. This is somewhat of an unusual ruling.

The bottom line is that this case deals with perhaps a half-dozen different search and seizure issues. That makes it well worth studying.

SEARCH AND SEIZURE: ISSUE - - Did the trial court err when it denied the defendant's motion to suppress? ANSWER - - No.

People v. John Erby, 314 Ill. Dec. 492, (5th Dist., No. 5-06-0217, August 24, 2007) Participation in Methamphetamine Manufacturing - - Affirmed.

Justice Goldenhersh delivered the Opinion of the unanimous Court.

FACTS: A police officer was on patrol while outside of his jurisdiction when he came upon a car stopped in the middle of the road. The driver of the car was slumped over the car's steering wheel. The officer activated his emergency lights and the driver of the car woke up and rolled down his window. The officer detected a strong odor coming from the car. His training and experience told him it was anhydrous ammonia. Looking into the back of the car, the officer spotted, in addition to numerous other things, a mason jar with pills soaking in it and a metal funnel. Believing that this was a meth lab, the officer radioed the local police authorities and the defendant was placed under arrest. The defendant was charged with participating in methamphetamine manufacturing and, prior to his trial, he moved to suppress the evidence the police discovered when they arrested him. From the denial of his motion and from his subsequent conviction, the defendant brought this appeal.

ARGUMENT: The defendant argued the arresting officer in this case improperly arrested him while he was outside of his jurisdiction. Specifically, the defendant maintained that the officer has "used the powers of his office" while he was outside of his jurisdiction in order to arrest the defendant. These "powers" were, in fact, the officer's training and experience.

OPINION: The appellate court disagreed with the defendant and affirmed his conviction.

Justices Chapman and Spomer concurred in this Opinion.

ANALYSIS: Here the defendant tried a very interesting argument. In Illinois, a police officer with limited jurisdiction cannot use the "powers of his office" (generally this would be the officer's radar equipment) in order to assist the officer in gathering evidence that would be used to justify the detention or arrest of a suspect when that officer is outside of his jurisdiction. The defendant argued that but for the training and experience of the officer, he would not have recognized the items possessed by the defendant were things used to manufacture methamphetamine. The appellate court ruled that the officer did not use his training and experience to gather evidence against the defendant. He used his own senses of smell and vision. Once those senses detected methamphetamine related things, the training and experience of the officer could properly be used to analyze those things. This was a strange case all around.

ADDITIONAL PUBLISHED OPINIONS FOR AUGUST 2007

1. Jackson, Todd 314 Ill. Dec. 496, (3rd Dist., No. 3-05-0692, August 29, 2007)
Possession of Cocaine With the Intent to Deliver - - Affirmed; Sentence Vacated in Part.
ISSUES: 1) Sentences: Was the defendant improperly sentenced to a “lengthy” sentence? (No)
2) Sentences: Was the defendant improperly sentenced to pay three mandatory drug assessments? (No)

2. Morgan, Samuel 314 Ill. Dec. 627, (1st Dist., No. 1-05-4016, August 20, 2007)
Denial of Sentencing Hearing - - Affirmed.
ISSUE: Sentencing: Was the defendant properly denied another sentencing hearing after he received a limited pardon that removed the death penalty as a legal consequence of his murder conviction? (No)

3. In re Alex T. 314 Ill. Dec. 85, (2nd Dist., No. 2-06-0049, August 15, 2007)
Involuntary Commitment - - Reversed.
ISSUE: Involuntary Admission Petition: Was the defendant properly committed? (No)

4. Gone, Francisco 313 Ill. Dec. 951, (3rd Dist., No. 3-04-0938, August 13, 2007)
Aggravated Discharge of a Firearm - - Affirmed.
ISSUES: 1) Shackles: Was the defendant denied a fair trial when he was required to wear a stun belt without prior hearing? (No)
2) Jury Instructions: Did the trial court misinstruct the defendant’s jury about identification evidence? (No)

5. Jones, Larry 313 Ill. Dec. 938, (1st Dist., No. 1-05-0020, August 10, 2007)
Possession of a Controlled Substance - - Affirmed as Modified.
ISSUE: Fees and Fines: Were the defendant’s fees and fines improperly imposed? (Some were)

6. Jones, Terrence 315 Ill. Dec. 15, (1st Dist., No. 1-05-3883, August 10, 2007) 1st
Degree Murder and Aggravated Criminal Sexual Assault - - Affirmed and Mittimus Corrected.
ISSUES: 1) Reasonable Doubt: Was sufficient evidence introduced to support the defendant’s conviction? (Yes)
2) Sentencing: Was the defendant’s sentence excessive. (No)
3) Mittimus: Was the defendant’s mittimus incorrect? (Yes)

7. Kaszuba, Joshua 313 Ill. Dec. 932, (1st Dist., No. 1-05-2469, August 8, 2007) 1st
Degree Murder - - Affirmed.
ISSUE: Reasonable Doubt: Was the defendant accountable for personally discharging a firearm? (Yes)

8. In re Gilberto G. P. 313 Ill. Dec. 910, (2nd Dist., No. 2-04-0312, August 7, 2007)
Armed Robbery - - Affirmed.

ISSUES: 1) Juvenile Law: Did the trial court err in dismissing the defendant's petition forward ship? (No)
2) Indictments: Did the trial court err in denying the defendant's motion to dismiss his indictment? (No)

9. Cummings, Floyd 314 Ill. Dec. 66, (1st Dist., No. 1-05-2058, August 6, 2007)
Dismissal of a PCP - - Affirmed.

ISSUE: Post-Conviction Petitions : Did the trial court properly dismiss the defendant's PCP? (No)

10. In re P.M.C., 2007 WL 2264614, (5th Dist., No. 5-07-0127, August 3, 2007)
Termination of Parental Rights - - Affirmed in Part and Reversed in Part.

ISSUE: Parental Unfitness: Were the parental rights properly terminated? (Yes and No)

11. Marshall, Sharon 314 Ill. Dec. 48, (1st Dist., No. 1-05-2083, August 3, 2007)
Dismissal of PCP - - Affirmed.

ISSUE: Was the defendant's Post-Conviction Petition improperly dismissed? (No)

12. Sanchez, Ramiro 313 Ill. Dec. 885, (1st Dist., No. 1-05-2174, August 3, 2007)
Possession of a Controlled Substance - - Affirmed.

ISSUE: Reasonable Doubt: Was the defendant properly convicted of possessing the controlled substance? (Yes)

13. Houston, Aaron 314 Ill. Dec. 112, (Ill. Sup. Ct., No. 102225, August 2, 2007)
Armed Robbery - - Reversed and Remanded with Directions.

ISSUE: Trial Procedure: Did the trial court err in failing to record the voir dire? (Yes)

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