

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

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

## TABLE OF CONTENTS

APPEAL .....	1
ARMED VIOLENCE .....	2
COLLATERAL REMEDIES .....	2
CONFESSIONS .....	3
COUNSEL .....	4
DEATH PENALTY .....	6
DOUBLE JEOPARDY .....	7
EVIDENCE .....	7
GUILTY PLEAS .....	10
HOMICIDE .....	10
INSANITY – MENTALLY ILL – INTOXICATION .....	11
JUDGE .....	11
JURY .....	12
JUVENILE .....	14
NARCOTICS .....	15
PROBATION .....	15
PROSECUTOR .....	16
SEARCH & SEIZURE .....	17
SENTENCING .....	19
SEX OFFENSES .....	21
STATUTES .....	22
THEFT .....	23
TRAFFIC OFFENSES .....	23
TRIAL PROCEDURES .....	23
WAIVER – PLAIN ERROR – HARMLESS ERROR .....	24

**TABLE OF AUTHORITIES**  
**(New Cases Appear in Bold and With an Asterisk)**

In re Lakisha M. . . . .	15	People v. Johnson . . . . .	21
People ex rel. Birkett v. Honorable James Konetski . . . . .	14, 22	People v. LaPointe . . . . .	2
People ex rel. Devine v. Honorable Paul Stralka . . . . .	14	<b>*People v. Lopez</b> . . . . .	3
People v. Andrew S. . . . .	14, 22	People v. McKown . . . . .	9, 23
People v. Baez . . . . .	4, 6	People v. Melchor . . . . .	8, 24
People v. Brown (99306) . . . . .	7, 11	People v. Mendoza . . . . .	17
People v. Brown (100956) . . . . .	10	<b>*People v. Mohr</b> . . . . .	10, 13
<b>*People v. Carpenter</b> . . . . .	22	People v. Oxford . . . . .	8
People v. Colon . . . . .	4, 7, 15	People v. O'Connell . . . . .	9
People v. Cosby . . . . .	17, 24	People v. Pearson . . . . .	12
<b>*People v. DeLeon</b> . . . . .	5, 21	<b>*People v. Perkins</b> . . . . .	3
People v. Delton . . . . .	3, 5	People v. Perry . . . . .	23
<b>*People v. Galan</b> . . . . .	18	People v. Piatkowski . . . . .	12
People v. Green . . . . .	20	People v. Pierce . . . . .	13
People v. Hampton . . . . .	19	People v. Reynolds . . . . .	15
<b>*People v. Harris (103796)</b> . . . . .	18, 25	People v. Stechly . . . . .	7
People v. Harris (102331) . . . . .	13	People v. Urdiales . . . . .	6, 10, 11, 16, 23
People v. Harrison . . . . .	1, 11	People v. Vincent . . . . .	2, 24
People v. Harvey . . . . .	20	People v. Wheeler . . . . .	16, 25
People v. Hauschild . . . . .	1, 2, 19	People v. Whitfield . . . . .	20
People v. Houston . . . . .	1, 5	People v. Wilson . . . . .	17

**APPEAL**

No. 102225

**People v. Houston**, Defense leave to appeal granted 5/24/06 from 363 Ill.App.3d 567, 843 N.E.2d 465 (3d Dist. 2006)

Whether reversible error occurred when the trial court invited counsel to waive the presence of a court reporter at *voir dire*, in violation of Supreme Court Rule 608(a)(9), which provides that in non-death penalty cases the court reporter “shall” take notes of *voir dire* and transcribe those notes if a party designates the proceedings to be included in the record on appeal. (§2-5(b))

Defense counsel: Sherry Silvern, Elgin OSAD

No. 102468

**People v. Hauschild**, Defense leave to appeal granted 9/27/06 from 364 Ill.App.3d 202, 845 N.E.2d 74 (2d Dist. 2006)

Whether **People v. Sharpe**, 216 Ill.2d 481, 839 N.E.2d 492 (2005), which abolished the “cross-comparison” test for proportionate penalties analysis, applies retroactively and thus voids sentences that were imposed before **Sharpe** was decided, when controlling authority invalidated certain sentencing enhancements. (§2-6(e))

Defense counsel: Paul Rogers, Elgin OSAD

No. 102859

**People v. Harrison**, Defense leave to appeal granted 9/27/06 from 366 Ill.App.3d 210, \_\_\_ N.E.2d \_\_\_ (1st Dist. 2006) (No. 1-04-1266, 5/12/06)

Whether a verdict of “not guilty by reason of insanity” constitutes an “acquittal,” so that the defendant cannot seek appellate review of the finding that he was proven guilty beyond a reasonable doubt of committing the underlying offense. (§2-6(a))

Defense counsel: Michael Davidson, Cook County Public Defender’s Office

## ARMED VIOLENCE

No. 102468

**People v. Hauschild**, Defense leave to appeal granted 9/27/06 from 364 Ill.App.3d 202, 845 N.E.2d 74 (2d Dist. 2006)

Whether P.A. 91-404 cured the defect identified in **People v. Lewis**, 175 Ill.2d 412, 677 N.E.2d 830 (1996), and revived the offense of armed violence predicated on robbery, when it increased the penalty for armed robbery with a firearm to exceed the penalty for armed violence based on robbery. (§3-1)

Defense counsel: Paul Rogers, Elgin OSAD

## COLLATERAL REMEDIES

No. 101477

**People v. Vincent**, Defense appeal granted 1/25/06 from unpublished order (No. 1-04-1802, 9/27/05) (1st Dist.)

1. Whether a trial court has authority to summarily dismiss a §2-1401 petition *sua sponte*. (§9-2)
2. If summary dismissal is unauthorized, whether the error is structural in nature and therefore not subject to harmless error analysis. (§9-2)

Defense counsel: Heidi Lambros, Chicago OSAD

No. 103095

**People v. LaPointe**, Defense leave to appeal granted 11/29/06 from 365 Ill.App.3d 914, 850 N.E.2d 893 (2d Dist. 2006)

Whether 725 ILCS 5/122-2.1(a), which requires the trial court to either dismiss a *pro se* petition within 90 days after docketing or set the petition for further proceedings, applies where the defendant failed to seek leave to file a successive petition under 725 ILCS 5/122-2.1(f). (§9-1(c))

Defense counsel: Paul Glaser, Elgin OSAD

No. 103420

**People v. Delton**, Defense leave to appeal granted 11/20/06 from unpublished order (No. 1-04-3729, 8/16/06) (1st Dist.)

When reviewing a *pro se* post-conviction petition to determine whether the gist of a violation of the right to the effective assistance of counsel has been alleged, whether the trial court may require the petitioner to demonstrate that he was prejudiced by counsel's actions. (§9-1(c))

Defense counsel: Kerry Goettsch, Chicago OSAD

**\*No. 103693**

**People v. Perkins**, State leave to appeal granted 1/24/07 from 367 Ill.App.3d 895, 856 N.E.2d 1178 (2d Dist. 2006)

1. Whether an attorney appointed to represent a post-conviction petitioner is required to investigate the reasons for an untimely filing and bring to the trial court's attention any facts that would avert a dismissal on timeliness grounds. (§9-1(c),(d))

2. Whether a post-conviction petitioner who alleges that post-conviction counsel provided less-than-reasonable assistance is required to show that counsel's actions caused prejudice in order to obtain relief. (§9-1(d))

3. Whether post-conviction counsel provided less than reasonable assistance where, in response to the State's motion to dismiss on timeliness grounds, counsel made arguments that were unsupported by the law and which suggested that counsel was unfamiliar with the applicable legal principles. (§9-1(d))

Defense counsel: John Greenlees, Post-Conviction Unit OSAD

## CONFESSIONS

**\*No. 103768**

**People v. Lopez**, Defense leave to appeal granted 1/24/07 from 367 Ill.App.3d 817, 856 N.E.2d 471 (1st Dist. 2006)

1. Whether the defendant was under arrest during his interrogation at the police station where: (1) three police officers came to the 15-year-old defendant's home and told him that he was going to

come with them to the station; (2) the officers did not tell defendant's mother that she could accompany him to the station; (3) defendant testified that he thought he had no choice but to go to the station; and (4) defendant was questioned in a closed room and never told he was free to leave. (§10-4(c))

2. Whether *Missouri v. Seibert*, 542 U.S. 600 (2004), which prohibits use of a "two-step" interrogation procedure by which an unwarned statement is followed by *Miranda* warnings and a second statement, was violated where the interrogating officers did not admit that they intentionally used the "two-step" technique, but one detective admitted that the officers did not administer *Miranda* warnings although they had evidence implicating defendant in a murder and would not have allowed defendant to leave the station. (§10-4(a))

Defense counsel: Mark Solock, Chicago

## COUNSEL

No. 98911

**People v. Baez**, Capital appeal (Cook)

1. Whether defendant's right to counsel was violated where the trial court removed defense counsel, over counsel's objection, in the erroneous belief that where the public defender can be appointed, the Capital Crimes Litigation Act prohibits the appointment of two private attorneys. (§13-1(b))

2. Whether defendant's right to self-representation was violated where his clear and unequivocal request to represent himself was denied. (§13-1(a))

Defense counsel: Kim Fawcett, Supreme Court Unit OSAD

No. 102003

**People v. Colon**, State petition for leave to appeal granted 3/29/06 from an unpublished order (No. 1-04-2778, 12/29/05)

Whether defense counsel was ineffective at trial for failing to object to a consolidated trial on a petition to revoke probation and the underlying criminal charge, where the trial court found that the probation violation

had been proven but the evidence was insufficient to establish guilt beyond a reasonable doubt, so that had the criminal case been tried first the acquittal would have precluded a hearing on the probation revocation. (§§13-4(a),(b),(c))

Defense counsel: Fred Cohn, Chicago

No. 102225

**People v. Houston**, Defense leave to appeal granted 5/24/06 from 363 Ill.App.3d 567, 843 N.E.2d 465 (3d Dist. 2006)

Whether defense counsel was ineffective for failing to tender a jury instruction on identification where the primary issue was whether the petitioner had been adequately identified as the offender. (§§13-4(a),(b),(c))

Defense counsel: Sherry Silvern, Elgin OSAD

No. 103420

**People v. Delton**, Defense leave to appeal granted 11/20/06 from unpublished order (No. 1-04-3729, 8/16/06) (1st Dist.)

When reviewing a *pro se* post-conviction petition to determine whether the gist of a violation of right to effective assistance of counsel has been alleged, whether the trial court may require the petitioner to demonstrate that he was prejudiced by counsel's actions. (§13-4(a))

Defense counsel: Kerry Goettsch, Chicago OSAD

**\*No. 103777**

**People v. DeLeon**, Defense leave to appeal granted 1/24/07 from unpublished order No. 1-04-2934, 9/29/06 (1st Dist.)

**Whether defendant received a fair sentencing hearing upon remand where appointed counsel, who had not represented defendant at trial or the first sentencing hearing, admitted that he had not read the transcript of the original sentencing hearing. (§§13-4(a),(b),(c))**

**Defense counsel: Joshua Tepfer, Chicago OSAD**



## DEATH PENALTY

No. 98911

**People v. Baez**, Capital appeal (Cook)

Whether the trial court committed reversible error where it applied a previous standard for determining the appropriateness of a death sentence, where that standard has been superseded by subsequent amendments to the Illinois death penalty statute. (Ch. 14)

Defense counsel: Kim Fawcett, Supreme Court Unit

No. 98996

**People v. Urdiales**, Capital appeal (Livingston)

1. Whether the trial court denied defendant the right to present relevant mitigating evidence to the sentencing jury, where it refused a request to give the jury the written reports of defense experts concerning their psychiatric evaluations of the defendant, where those reports had been admitted without objection and considered by the trial court at a plea hearing and bench trial. (Ch. 14)

2. Whether defendant's death sentence was "fundamentally unjust" under 720 ILCS 5/9-1(i), because the trial court failed to specifically instruct the jury that the defendant's background of extreme emotional or physical abuse was a mitigating factor. (Ch. 14)

Defense counsel: Duane Schuster, Supreme Court Unit OSAD

See also "PENDING DEATH PENALTY ISSUES IN THE ILLINOIS  
SUPREME COURT," by Charles M. Schiedel.

## DOUBLE JEOPARDY

No. 99306

**People v. Brown**, State appeal granted 11/24/04 from unpublished order (1st Dist.) (No. 1-01-3353, 8/30/04)

Whether a finding of “not guilty by reason of insanity” is an “acquittal” for double jeopardy purposes, precluding a remand for a new trial on the ground that defendant did not make a valid waiver of his right to trial by jury. (§17-4)

Defense counsel: Cook County Public Defender’s Office, Chicago

No. 102003

**People v. Colon**, State petition for leave to appeal granted 3/29/06 from an unpublished order (No. 1-04-2778, 12/29/05)

Whether defense counsel was ineffective at trial for failing to object to a consolidated trial on a petition to revoke probation and the underlying criminal charge, where the trial court found that the probation violation had been proven but that the evidence was insufficient to establish guilt beyond a reasonable doubt, so that had the criminal case been tried first the acquittal would have precluded a hearing on the probation revocation. (§17-6)

Defense counsel: Fred Cohn, Chicago

## EVIDENCE

No. 97544

**People v. Stechly**, Defense appeal granted 5/26/04 from unpublished order (No. 1-01-2869, 9/15/03) (1st Dist.)

1. In reviewing the determination of the reliability of hearsay evidence admitted under 725 ILCS 5/115-10, whether the reviewing court must consider evidence which was presented at trial and is crucial to determining reliability but which was not presented at the pretrial hearing. (§19-14(c))

2. Whether hearsay statements were sufficiently reliable to be admitted under §115-10 where the child identified the abuser only by a common first name, without specifying whether it was the defendant or another person by the same name, and the child did not testify at the §115-10 hearing. (§19-14(c))

3. Whether there was a sufficient showing that the child was unable to testify, as is required by §115-10, where the evidence showed only that the child was unwilling to talk to a psychologist and the trial court did not attempt to alleviate the stress of testifying. (§19-14(c))

4. Whether statements made by the alleged victim of child sexual abuse to a social worker and a hospital nurse were “testimonial” under **Crawford v. Washington**, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), where the statements were made during interviews intended to ascertain the identity of the offender. (§19-14(c))

5. Whether §115-10 violates **Crawford** because it admits certain out-of-court statements without distinguishing between “non-testimonial” and “testimonial” hearsay. (§19-14(c))

Defense counsel: Adrienne River, Chicago OSAD

No. 100640

**People v. Oxford**, State appeal as matter of right (Union)

1. Whether 725 ILCS 115/10, which authorizes the admission of certain hearsay statements by the alleged victims of sex offenses against children, violates **Crawford v. Washington** if the declarant is available to testify. (§19-14(c))

2. Whether a minor’s hearsay statements to her mother should be construed as “nontestimonial” for **Crawford** purposes. (§19-14(c))

Defense counsel: Gary Stark, Cape Girardeau, MO

No. 101772

**People v. Melchor**, State appeal granted 3/29/06 from 362 Ill.App.3d 335, 841 N.E.2d 420 (1st Dist. 2005)

1. Whether the “forfeiture by wrongdoing” doctrine should be applied, so that defendant is deemed to have forfeited his right to cross-examination, where a State’s witness died during the 10-year period which defendant was a fugitive, but there was no evidence that defendant’s absence procured or was intended to procure the witness’s unavailability. (§19-10(a))

2. Whether the Appellate Court erred by finding that Federal Rule 804(b)(6), which authorizes admission of a statement against a party that has “engaged or acquiesced in wrongdoing” which was “intended to, and did, procure the unavailability of . . . a witness,” defines the limits of the “forfeiture by wrongdoing” doctrine under Illinois law. (§19-10(a))

3. Whether defendant's gang affiliation and evidence of gang rivalry were relevant to the issue of defendant's consciousness of guilt in fleeing the jurisdiction of the court for 10 years. (§§19-2(a), 19-9(b))

4. Whether the trial court properly held that a statement by defendant's brother - which claimed that threats had been made - was non-hearsay because it was not offered for the truth of whether threats had been made, but only to prove the effect on defendant's state of mind when he decided to flee the jurisdiction of the court. (§19-10(a))

Defense counsel: Yasaman Navai, Chicago OSAD

No. 102372

**People v. McKown**, Defense leave to appeal granted 9/27/06 from unpublished order (No. 3-04-0433, 3/3/06)

Whether a **Frye** hearing is required before the trial court may admit HGN evidence at trial. (§19-27(a))

Defense counsel: Mark Fisher, Ottawa OSAD

No. 102707

**People v. O'Connell**, State leave to appeal granted 9/27/06 from 365 Ill.App.3d 872, 850 N.E.2d 872 (1st Dist. 2006)

1. Whether a guilty plea negates the issue of identity for purposes of 725 ILCS 5/116-3, which authorizes post-conviction DNA testing where identity was an issue at trial. (§19-27(g))

2. Whether the trial court has authority to summarily dismiss a motion for post-conviction DNA testing under §116-3. (§19-27(g))

Defense counsel: Heidi Lambros, Chicago OSAD

## GUILTY PLEAS

No. 98996

**People v. Urdiales**, Capital appeal (Livingston)

Whether the trial court abused its discretion by rejecting a plea of guilty but mentally ill where the defendant presented an overwhelming factual basis to establish that he suffered from a severe mental illness that significantly impaired his judgment at the time of the offense. (§24-1)

Defense counsel: Duane Schuster, Supreme Court Unit OSAD

No. 100956

**People v. Brown**, State appeal granted 12/1/05 from 358 Ill.App.3d 56, 831 N.E.2d 24 (1st Dist. 2005)

Whether a negotiated guilty plea is void *ab initio*, and therefore can be challenged in a subsequent post-conviction petition without regard to whether the “cause and prejudice” test can be satisfied, where the statute which authorized presumptive transfer of a minor to adult court was subsequently declared to have violated the single-subject rule. (§24-1)

Defense counsel: Heidi Lambros, Chicago OSAD

## HOMICIDE

**\*No. 103751**

**People v. Mohr**, State leave to appeal granted 1/24/07 from unpublished order No. 3-04-0816, 10/13/06 (3d Dist.)

**Whether the trial court erred by instructing the jury with the definition of “provocation” where: (1) the defendant was charged only with second degree murder, (2) the State conceded the existence of the mitigating factor of sudden and intense passion based on provocation, (3) no evidence had been presented on the issue of provocation, and (4) the IPI instructions intended for use where second degree murder is the only charge that does not include definitions of the mitigating factors which reduce first degree murder to second degree. (§26-1)**

Defense counsel: Tom Karalis, Ottawa OSAD

## INSANITY – MENTALLY ILL – INTOXICATION

No. 99306

**People v. Brown**, State appeal granted 11/24/04 from unpublished order (1st Dist.) (No. 1-01-3353, 8/30/04)

Whether a finding of “not guilty by reason of insanity” is an “acquittal” for double jeopardy purposes, precluding a remand for a new trial on the ground that defendant did not make a valid waiver of his right to trial by jury. (§29-4)

Defense counsel: Cook County Public Defender’s Office, Chicago

No. 102859

**People v. Harrison**, Defense leave to appeal granted 9/27/06 from 366 Ill.App.3d 210, \_\_\_ N.E.2d \_\_\_ (1st Dist. 2006) (No. 1-04-1266, 5/12/06)

Whether a verdict of “not guilty by reason of insanity” constitutes an “acquittal,” so that the defendant cannot seek appellate review of the finding that he was proven guilty beyond a reasonable doubt of committing the underlying offense. (§29-1(a))

Defense counsel: Michael Davidson, Cook County Public Defender’s Office

## JUDGE

No. 98996

**People v. Urdiales**, Capital appeal (Livingston)

1. Whether defendant was denied due process and fundamental fairness at his death penalty hearing where the trial judge informed the jury that he had rejected defendant’s insanity defense at trial, and the prosecutor reminded the sentencing jury in closing argument that the trial court had rejected the insanity defense. (§30-1(a))

2. Whether the trial court deprived the defendant of due process and fundamental fairness where it acted as an advocate for the State by assisting in cross-examination of a defense expert and in establishing a foundation to admit an exhibit that was highly prejudicial to the defense. (§30-1(a))

3. Whether defendant was denied due process and fundamental fairness where the trial court disparaged the motives and conduct of attorneys employed by the State Appellate Defender's Death Penalty Trial Assistance Unit, who were an integral part of the defense team. (§30-1(a))

Defense counsel: Duane Schuster, Supreme Court Unit, OSAD

## JURY

No. 100545

**People v. Pearson**, State appeal granted 9/29/05 from 356 Ill.App.3d 390, 826 N.E.2d 1099 (1st Dist. 2005)

Whether Supreme Court Rule 431(a), which requires the trial court to "acquaint prospective jurors with the general duties and responsibilities of jurors," requires the trial court to *sua sponte* inform prospective jurors of the presumption of innocence, that the defendant has no duty to present evidence, and that defendant may not be penalized for declining to testify, where Supreme Court Rule 431(b) provides that the trial court shall inform the jury of those matters upon a defense request. (§31-4(a))

Defense counsel: Jim Chadd, Chicago OSAD

No. 102087

**People v. Piatkowski**, Defense leave to appeal granted 5/24/06 from unpublished order (No. 1-01-3766, 12/28/05)

Whether plain error occurred where the trial court gave IPI Crim. No. 3.15, which lists five factors to be considered in evaluating eyewitness identification testimony, but incorrectly used "or" instead of "and" between each factor, where two eyewitnesses positively identified defendant on six different occasions. (§31-8(a))

Defense counsel: Mary Ellen Dienes, Des Plaines

No. 102331

**People v. Harris**, State leave to appeal granted 5/24/06 from 363 Ill.App.3d 586, 843 N.E.2d 502 (3d Dist. 2006)

Whether a voluntary and knowing waiver in a traffic case occurs where the defendant marks “trial by judge” on the reverse side of the uniform citation, but the purported waiver was not addressed by the judge in open court. (§31-3(a))

Defense counsel: Karlton Harris, Kankakee

No. 103272

**People v. Pierce**, Defense leave to appeal granted 11/29/06 from 367 Ill.App.3d 203, 854 N.E.2d 311 (4th Dist. 2006)

Whether the trial court erred by giving a modified version of IPI 13.09, which defines the offense of theft from a person, where at the time of trial there was a split in authority concerning whether the modified instruction reflected Illinois law. (§31-8(a))

Defense counsel: John McCarthy, Springfield OSAD

**\*No. 103751**

**People v. Mohr**, State leave to appeal granted 1/24/07 from unpublished order No. 3-04-0816, 10/13/06 (3d Dist.)

**Whether the trial court erred by instructing the jury with the definition of “provocation” where: (1) the defendant was charged only with second degree murder, (2) the State conceded the existence of the mitigating factor of sudden and intense passion based on provocation, (3) no evidence had been presented on the issue of provocation, and (4) the IPI instructions intended for use where second degree murder is the only charge that does not include definitions of the mitigating factors which reduce first degree murder to second degree. (§§31-8(a),(e))**

Defense counsel: Tom Karalis, Ottawa OSAD



## JUVENILE

No. 102667

**People ex rel. Birkett v. Honorable James Konetski, Mandamus** (DuPage)

Whether the Sex Offender Registration Act (730 ILCS 150/1) is unconstitutional as applied to juvenile sex offenders who have reached the age of 17, because: (1) minors are not afforded a jury trial on delinquency petitions which allege sex offenses that will require registration upon reaching adulthood, or (2) requiring registration by minors upon reaching adulthood is not sufficiently related to the goal of the Registration Act to satisfy due process and equal protection. (§32-4)

Defense counsel: Kathleen Weck, Elgin OSAD

No. 102962

**People ex rel. Devine v. Honorable Paul Stralka, Mandamus** (Cook)

Whether a juvenile court judge is authorized to vacate a delinquency finding of a minor who successfully completes the probation term ordered as a disposition, where the adjudication was based on the minor's admission. (§32-3)

Defense counsel: Lester Finkle, Cook County Public Defender's Office

No. 103092

**People v. Andrew S.**, Defense leave to appeal granted 9/27/06 from unpublished order (No. 3-04-0458, 6/15/06)

Whether equal protection is violated by application of the Sex Offender Registration Act to an 11-year-old classified as a sexual predator because he committed an offense against a younger sibling, because there is no rational basis for imposing a lifetime registration requirement on an 11-year-old while the same acts do not carry lifetime registration if committed by older persons against older victims. (§32-4)

Defense counsel: Jay Wiegman, Ottawa OSAD

No. 103541

**In re Lakisha M.**, Defense leave to appeal granted 11/29/06 from unpublished order (No. 1-05-2192, 9/12/06) (1st Dist.)

Whether the DNA extraction statute (730 ILCS 5/5-4-3(a)(3.5)), which mandates extraction of DNA samples from all convicted felons, violates the Fourth Amendment when applied to juveniles who have been adjudicated delinquent. (§32-4)

Defense counsel: Joshua Tepfer, Chicago OSAD

### NARCOTICS

No. 100813 (consolidated with No. 100469)

**People v. Reynolds**, Defense appeal granted 9/29/05 from 358 Ill.App.3d 286, 831 N.E.2d 1103 (2d Dist. 2005)

Whether, for purposes of determining the class of offense of unlawful manufacture of a controlled substance containing methamphetamine, the legislature intended the phrase “substance containing methamphetamine” to include the byproduct of the manufacturing process. (§§34-1, 34-3(a))

Defense counsel: Larry Wells, Mt. Vernon OSAD

### PROBATION

No. 102003

**People v. Colon**, State petition for leave to appeal granted 3/29/06 from an unpublished order (No. 1-04-2778, 12/29/05)

Whether defense counsel was ineffective at trial for failing to object to a consolidated trial on a petition to revoke probation and the underlying criminal charge, where the trial court found that the probation violation had been proven but that the evidence was insufficient to establish guilt beyond a reasonable doubt, so that had the criminal case been tried first the acquittal would have precluded a hearing on the probation revocation. (§40-4)

Defense counsel: Fred Cohn, Chicago

## PROSECUTOR

No. 98996

**People v. Urdiales**, Capital appeal (Livingston)

Whether the prosecutor erred in closing argument at a death penalty hearing by: (1) invoking the integrity of his office as a justification for seeking a death sentence, (2) referring to the families of the victims and speculating about the number of children and grandchildren who would not be born because of defendant's actions, and (3) emphasizing that the jurors had taken an oath to follow the law and arguing that the evidence in aggravation required them to impose a death sentence. (§§41-1, 41-3, 41-15)

Defense counsel: Duane Schuster, Supreme Court Unit, OSAD

No. 102550

**People v. Wheeler**, Defense leave to appeal granted 9/27/06 from unpublished order (No. 4-02-0131, 1/9/06)

1. Whether the prosecutor's repeated and intentional misconduct denied the defendant a fair trial, where in violation of the trial court's rulings the prosecutor: (1) vouched for the credibility of the police officers who supported the State's case but criticized the mental acuity of an officer who contradicted the State's case; (2) attacked the integrity, tactics and number of defense counsel (especially where the prosecution created the numerical imbalance by demanding death sentences for co-defendants and then successfully resisting a severance), and (3) argued that a sitting judge who had been the defendant's former defense counsel lied in her testimony and gave a "performance" that was "vintage Bill Clinton." (§§41-1, 41-11, 41-13)

2. Whether the Appellate Court erred by finding that the prosecutor's improper remarks did not constitute plain error where, without examining the prejudicial effect of the comments in view of the remaining evidence, it concluded that defendant was likely convicted because of the strength of the State's evidence and not due to the prosecution's misconduct. (§41-1)

Defense counsel: Martin Ryan, Springfield OSAD

## SEARCH & SEIZURE

No. 100681 (consolidated with No. 102584)

**People v. Cosby**, State leave to appeal granted 9/27/06 from unpublished order (No. 3-03-0681, 4/25/05)

1. Whether **People v. Gonzalez**, 204 Ill.2d 220, 789 N.E.2d 260 (2003), which provided a multi-part test to determine whether the Fourth Amendment is violated by police questioning after a traffic stop, was overruled by **Illinois v. Caballes**, 125 S.Ct. 834 (2005). (§45-12(c))

2. If so, whether the Fourth Amendment permits a request for consent to search a vehicle after the officer has returned defendant's license and the purpose of the stop has been completed. (§45-12(c))

Defense counsel: Verlin Mainz, Ottawa OSAD

No. 102562

**People v. Wilson**, State leave to appeal granted 9/27/06 from 364 Ill.App.3d 762, 847 N.E.2d 753 (1st Dist. 2006)

1. Whether in light of 730 ILCS 5/3-3-7(a)(2), which requires that as a condition of MSR a parolee must consent to a search of his person, property, or residence, the Appellate Court erred by finding that reasonable suspicion is required to justify the search of a person who is on mandatory supervised release. (§§45-1(b), 45-11(a))

2. Whether the State's interest in administering the MSR system constitutes a "special need" which justifies suspicionless searches of parolees. (§45-1(b))

Defense counsel: Melinda Palacio, Chicago OSAD

No. 102584 (consolidated with No. 102584)

**People v. Mendoza**, State leave to appeal granted 9/27/06 from 364 Ill.App.3d 564, 846 N.E.2d 169 (2d Dist. 2006)

1. Whether a traffic stop is terminated once the officer returns defendant's license, so that further questioning violates the Fourth Amendment only if it constitutes a second "seizure." (§45-12(c))

2. Whether a reasonable person would have felt free to leave where the two officers who questioned defendant after returning his documents approached defendant's car in a flanking maneuver, were dressed in dark, "special operations" clothing with visible weapons, shined a flashlight in the car, and questioned defendant concerning whether he had any illegal items in the car. (§45-12(c))

3. Whether the analytical framework of *People v. Gonzalez* was overruled by *Illinois v. Caballes*.  
(§45-12(c))

Defense counsel: Kathleen Colton, Batavia

**\*No. 103796**

**People v. Harris, State leave to appeal granted 1/24/07 from unpublished order No. 3-00-0190, 10/13/06  
(3d Dist.)**

**Whether the Appellate Court erred by finding that an officer conducting a traffic stop violated the Fourth Amendment by implying to a passenger, who was not suspected of any crime, that he was required to comply with the officer's request to provide identification. (§45-12(a))**

Defense counsel: Steve Omolecki, Ottawa OSAD

**\*No. 103845**

**People v. Galan, State leave to appeal granted 1/24/07 from 367 Ill.App.3d 876, 856 N.E.2d 511 (1st Dist. 2006)**

**Whether defendant's arrest was improper where Chicago officers arrested defendant in Indiana under that State's "fresh pursuit" statute, but failed to comply with the provision requiring that the arrestee be taken without unnecessary delay before an Indiana judge. (§45-3)**

Defense counsel: John DeLeon, Chicago

## SENTENCING

No. 102413

**People v. Hampton**, State leave to appeal as a matter of right granted 5/24/06 from 363 Ill.App.3d 293, 842 N.E.2d 1142 (1st Dist. 2006)

Whether the proportionate penalties clause is violated by the 15-year enhancement for aggravated criminal sexual assault while armed with a firearm, because that offense is composed of the same elements as armed violence predicated on criminal sexual assault, but carries a more severe sentence. (§46-1(c)(1))

Defense counsel: Barbara Kamm, Chicago OSAD

No. 102468

**People v. Hauschild**, Defense leave to appeal granted 9/27/06 from 364 Ill.App.3d 202, 845 N.E.2d 74 (2d Dist. 2006)

1. Whether P.A. 91-404 cured the defect identified in **People v. Lewis**, 175 Ill.2d 412, 677 N.E.2d 830 (1996), and revived the offense of armed violence predicated on robbery, when it increased the penalty for armed robbery with a firearm to exceed the penalty for armed violence based on robbery. (§45-1(c)(1))

2. Whether the penalty for armed robbery with a firearm violates the proportionate penalties clause because it is disproportionate to the penalty for an offense which involves identical elements - armed violence based on robbery. (§45-1(c)(1))

3. Whether **People v. Sharpe**, 216 Ill.2d 481, 839 N.E.2d 492 (2005), which abolished the "cross-comparison" test for proportionate penalties analysis, applies retroactively to void sentences which were imposed before **Sharpe** was decided, when controlling authority invalidated certain sentencing enhancements. (§45-1(c)(1))

4. Although a defendant who was convicted at trial is usually prohibited from basing a sentencing challenge on a comparison of his sentence to that of a co-defendant who entered a negotiated guilty plea, should such a challenge be permitted where the defendant who went to trial received an aggravated consecutive sentence that was more than five times that of the co-defendant, whose more favorable treatment occurred only because the State wanted to secure the co-defendant's testimony and therefore offered him a negotiated plea which it did not offer to the defendant. (§§46-13(a),(b))

Defense counsel: Paul Rogers, Elgin OSAD

No. 102751

**People v. Green**, State leave to appeal granted 9/27/06 from 364 Ill.App.3d 923, 848 N.E.2d 168 (2d Dist. 2006)

Whether the trial court violated **Apprendi** and committed plain error by imposing enhanced sentences for robbery of a person over the age of 60, where the jury verdict found that defendant was guilty only of robbery. (§46-1(c)(2))

Defense counsel: Tom Lilien, Elgin OSAD

No. 102901

**People v. Harvey**, State petition for appeal as a matter of right granted 9/27/06 from 366 Ill.App.3d 119, 851 N.E.2d 182 (1st Dist. 2006)

Whether the “identical elements” test of proportionate penalties analysis is violated by the 15 and 20 years-to-life firearm penalty enhancements for armed robbery while armed with a firearm and armed robbery while discharging a firearm and causing great bodily harm, because the penalties exceed those imposed for the identical offenses of armed violence predicated on robbery while armed with a dangerous weapon and armed violence predicated on robbery while discharging a firearm and causing great bodily harm. (§46-1(c)(1))

Defense counsel: Arianne Stein, Chicago OSAD

No. 102985

**People v. Whitfield**, State leave to appeal granted 9/27/06 from 366 Ill.App.3d 448, 851 N.E.2d 730 (1st Dist. 2006)

Whether the Appellate Court erred by remanding the cause for the trial court to consider whether to give defendant credit for eight months served on probation on a void sentence, which was subsequently vacated because it was unauthorized, where the law governing credit under such circumstances is uncertain and the record was unclear whether the trial court failed to consider granting credit or exercised its discretion and rejected the credit. (§46-15(a))

Defense counsel: Jonathan Krieger, Chicago OSAD

**\*No. 103777**

**People v. DeLeon, Defense leave to appeal granted 1/24/07 from unpublished order No. 1-04-2934, 9/29/06 (1st Dist.)**

**1. Whether the trial court's conclusion that the complainant suffered "severe bodily injury," which triggered mandatory consecutive sentencing for attempt murder, was supported by the record where there was no evidence of the severity of the gunshot injury suffered by the complainant, the length of any stay in the hospital, or the amount of pain was suffered, and where the complainant drove himself to the hospital. (§46-7(b))**

**2. Whether the trial court erred at sentencing by holding an *in camera* inspection of the defendant's prison records and alerting defense counsel to what the judge believed to be the "only mitigating evidence," but refusing to redact any confidential portions of the records so that defense counsel could make an independent judgment concerning the remaining portions. (§46-3(a))**

**3. Whether defendant received a fair sentencing hearing upon remand where appointed counsel, who had not represented defendant at trial or the first sentencing hearing, admitted that he had not read the transcript of the original sentencing hearing. (§46-2)**

**Defense counsel: Joshua Tepfer, Chicago OSAD**

## **SEX OFFENSES**

No. 102096

**People v. Johnson, State appeal as a matter of right or leave to appeal granted 3/29/06 from 363 Ill.App.3d 356, 843 N.E.2d 434 (1st Dist. 2006) (No. 1-04-1292, 1/31/06)**

Whether due process is violated by 730 ILCS 150/2(B)(1.5), which requires that a person convicted of aggravated kidnapping of a minor must register as a sex offender even where the offense was not sexually motivated. (§47-5)

Defense counsel: Kari Firebaugh, Chicago OSAD



No. 102667

**People ex rel. Birkett v. Honorable James Konetski, Mandamus** (DuPage)

1. Whether the requirement that a sex offender register under the Sex Offender Registration Act constitutes “punishment” for the underlying offense. (§47-5)

2. Whether the Sex Offender Registration Act (730 ILCS 150/1) is unconstitutional as applied to juvenile sex offenders who have reached the age of 17, because minors are not afforded a jury trial on delinquency petitions alleging sex offenses that will require registration upon reaching adulthood, and because requiring the registration of minors who reach adulthood is not sufficiently related to the purpose of the Registration Act to satisfy due process and equal protection. (§47-5)

Defense counsel: Kathleen Weck, Elgin OSAD

No. 103092

**People v. Andrew S.**, Defense leave to appeal granted 9/27/06 from unpublished order (No. 3-04-0458, 6/15/06)

Whether equal protection is violated by application of the Sex Offender Registration Act to an 11-year-old classified as a sexual predator because he committed an offense against a younger sibling, because there is no rational basis for imposing lifetime registration on a child while the same acts do not require lifetime registration if committed by older persons against older persons. (§47-5)

Defense counsel: Jay Wiegman, Ottawa OSAD

## STATUTES

**\*No. 103616**

**People v. Carpenter**, State leave to appeal as a matter of right allowed 1/24/07 from 368 Ill.App.3d 288, 856 N.E.2d 551 (1st Dist. 2006)

**Whether 625 ILCS 5/12-612(a),(b), which prohibits the knowing use of a secret compartment in a vehicle with the intent to conceal the compartment or its contents from law enforcement officers,**

violates substantive due process because no criminal mental state is required, permitting the punishment of innocent conduct. (§49-3(a))

Defense counsel: Pam Rubeo, Chicago OSAD

#### THEFT

No. 101612

**People v. Perry**, State appeal granted 1/25/06 from 361 Ill.App.3d 703, 836 N.E.2d 387 (2d Dist. 2005)

Whether the use of hotel room constitutes “property” under 720 ILCS 5/15-1, which defines the circumstances under which a person can be convicted of theft. (§§50-1, 50-3)

Defense counsel: Tom Lilien, Elgin OSAD

#### TRAFFIC OFFENSES

No. 102372

**People v. McKown**, Defense leave to appeal granted 9/27/06 from unpublished order (No. 3-04-0433, 3/3/06)

Whether a *Frye* hearing is required before the trial court may admit evidence of the defendant’s performance on a horizontal gaze nystagmus test. (§51-2(a))

Defense counsel: Mark Fisher, Ottawa OSAD

#### TRIAL PROCEDURES

No. 98996

**People v. Urdiales**, Capital appeal (Livingston)

Whether defendant was denied due process and fundamental fairness where: (1) he was shackled in a way that prevented him from using writing instruments during trial, (2) the shackling was based on a general policy of shackling defendants who were incarcerated, without any particularized findings concerning

defendant's predisposition to violence and likelihood of escape, and (3) the trial court instructed the jury that defendant was being restrained for security reasons. (§53-3)

Defense counsel: Duane Schuster, Supreme Court Unit OSAD

#### WAIVER – PLAIN ERROR – HARMLESS ERROR

No. 100681 (consolidated with No. 102584)

**People v. Cosby**, State leave to appeal granted 9/27/06 from unpublished order (No. 3-03-0681, 4/25/05)

Whether the Appellate Court erred by reaching an issue as plain error merely because it raised a constitutional question, without considering whether the error was “obvious or clear” or whether defendant had shown that the fairness of the trial and integrity of the judicial process were affected. (§57-4)

Defense counsel: Verlin Meinz, Ottawa OSAD

No. 101477

**People v. Vincent**, Defense appeal granted 1/25/06 from unpublished order (No. 1-04-1802, 9/27/05) (1st Dist.)

1. Whether a trial court has authority to summarily dismiss a §2-1401 petition *sua sponte*. (§57-5(a))
2. If summary dismissal is unauthorized, whether the error is structural in nature and therefore not subject to harmless error analysis. (§57-5(a))

Defense counsel: Heidi Lambros, Chicago OSAD

No. 101772

**People v. Melchor**, State appeal granted 3/29/06 from 362 Ill.App.3d 335, 841 N.E.2d 420 (1st Dist. 2005)

Whether the “forfeiture by wrongdoing” doctrine should be applied, so that defendant is deemed to have forfeited his right to cross-examination, where a State’s witness died during the 10-year period which

defendant was a fugitive but there was no evidence that defendant's absence procured or was intended to procure the witness's unavailability. (§§57-1, 57-3)

Defense counsel: Yasaman Navai, Chicago OSAD

No. 102550

**People v. Wheeler**, Defense leave to appeal granted 9/27/06 from unpublished order (No. 4-02-0131, 1/9/06)

Whether the Appellate Court erred by finding that the prosecutor's improper remarks were not plain error, where it failed to examine the prejudicial effect of the comments in view of the remaining evidence before concluding that defendant was likely convicted due to the strength of the State's evidence and not because of the prosecution's misconduct. (§57-4)

Defense counsel: Martin Ryan, Springfield OSAD

**\*No. 103796**

**People v. Harris**, State leave to appeal granted 1/24/07 from unpublished order No. 3-00-0190, 10/13/06)

Whether under *People v. Herron*, 215 Ill.2d 167, 830 N.E.2d 467 (2005), the Appellate Court erred by reaching an unpreserved issue without first determining that the evidence was either closely balanced or that the error was likely to have denied a fair trial. (§57-1)

Defense counsel: Steve Omolecki, Ottawa OSAD