

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

June 24, 2003

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

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APPEAL

No. 93163

People v. Johnson, State petition for leave to appeal as a matter of right granted 4/3/02 from unpublished order (No. 1-00-1988, 12/21/01)

Whether the Appellate Court acted without jurisdiction where, in considering the State's appeal from an order granting defendant's motion to suppress evidence on Fifth Amendment grounds, it suppressed additional evidence (which the trial court had not suppressed) on Fourth Amendment grounds. (§2-6(a))

Defense counsel: Debra Loevy-Reyes, Chicago OSAD

No. 92922

Lucien v. Briley, Direct appeal (Will)

1. Whether **Apprendi v. New Jersey** is violated by the "exceptionally brutal and heinous" extended term eligibility factor. (§2-6(e))

2. Whether **Apprendi** applies retroactively to cases in which the conviction became final before the **Apprendi** decision was issued. (§2-6(e))

Defense counsel: Gregory A. Sager, Chicago
Steven Block, Chicago

COLLATERAL REMEDIES

No. 90137

People v. Williams, Capital appeal (Post-Conviction) (Will)

Where a post-conviction petitioner claimed that one of his jurors had discussed the case with her husband and informed other jurors of that conversation, whether the trial court erred by limiting discovery of information about the jury and ordering defense counsel not to contact the jurors directly. (§9-1(c))

Defense counsel: Kathryn Saltmarsh, Supreme Court Unit OSAD

No. 92058

Kubat v. Sterns, Motion to file original writ of *habeas corpus* in the Illinois Supreme Court (briefing held in abeyance)

Whether **Apprendi** applies retroactively to petitions for original writs of *habeas corpus* filed in the Illinois Supreme Court. (§§9-4, 9-5(d))

Defense counsel: Jane Raley, Chicago

No. 92843

People v. Morgan, Capital appeal (Post-Conviction) (Cook)

Whether the trial court erred by denying defendant's post-conviction and §2-1401 petitions where newly discovered evidence showed that the prosecutor knew, or should have known in light of a witness's conflicting stories and refusal to cooperate until threatened with prosecution, that the witness's testimony was perjured. (§§9-1(a), 9-2)

Defense counsel: Matthew O'Hara and Shobha Mahadez, Chicago

No. 92922

Lucien v. Briley, Direct appeal (Will)

1. Whether a State *habeas corpus* proceeding may be utilized to contest whether an extended term sentence violated **Apprendi v. New Jersey**, which held that factors increasing the authorized sentencing range must be determined by the jury under the reasonable doubt standard. (§9-4)

2. Whether **Apprendi** applies retroactively to cases in which the conviction became final before the **Apprendi** decision was issued. (§9-5(d))

Defense counsel: Gregory A. Sager, Chicago
Steven Block, Chicago

No. 94528

Dean v. Hockaday, Direct appeal (St. Clair)

1. Whether the **Apprendi** rule applies retroactively to convictions which became final before the **Apprendi** decision was issued. (§9-5(d))

2. Whether the **Apprendi** decision by the United States Supreme Court constitutes “cause” for an untimely post-conviction petition for which the defendant is not culpably negligent. (§9-1(a))

3. Whether state *habeas corpus* is an appropriate remedy to raise an **Apprendi** challenge where the conviction became final before **Apprendi** was issued by the United States Supreme Court. (§9-4)

Defense counsel: P.K. Johnson, Belleville

***No. 95713**

People v. Thompson, Defense appeal granted 6/4/03 from 335 Ill.App.3d 1027, 782 N.E.2d 946 (4th Dist. 2003)

1. Whether an extended term imposed on a conviction that was not the most serious class of which defendant was convicted is a void judgment, and can therefore be challenged in a post-conviction proceeding although the issue is not of constitutional dimension. (§9-1(a))

2. Whether the issue was waived where it was not raised in the post-conviction petition filed in the trial court. (§9-1(b))

Defense counsel: Martin Ryan, Springfield OSAD

CONFESSIONS

No. 87645

People v. Morris, Capital appeal (Cook)

Whether defendant’s confession should have been suppressed where his arrest, which was based solely on his “look . . . of fear” and flight from police, was unsupported by probable cause or any articulable, reasonable suspicion. (§10-7)

Defense counsel: Allen Andrews, Supreme Court Unit OSAD

CONSPIRACY

No. 95574

People v. Hopp, State appeal granted 4/2/03 from 336 Ill.App.3d 523, 783 N.E.2d 1055 (3d Dist. 2002)

Whether plain error occurred where, although the defendant was charged with conspiracy to commit first degree murder, the trial court failed to instruct the jury on the elements of first degree murder. (§11-1)

Defense counsel:

COUNSEL

No. 87645

People v. Morris, Capital appeal (Cook)

Whether trial counsel was ineffective where, although the court prohibited evidence concerning a murder allegedly committed by defendant 36 hours before this offense, defense counsel mistakenly believed that the court had ruled that the State could present evidence of the murder in rebuttal, and consequently both discussed the murder in her opening statement and introduced evidence about it. (§13-4(b)(c))

Defense counsel: Allen Andrews, Supreme Court Unit OSAD

No. 87958

People v. Moore, Capital appeal (Cook)

Whether the trial court erred by failing to inquire into defendant's *pro se* post-trial motion for counsel other than the public defender, in which defendant asserted that the assistant public defender who represented him at trial and sentencing was ineffective, and by failing to inquire into the substance of defense counsel's post-trial assertions concerning his own ineffectiveness. (§13-4(a))

Defense counsel: Charles Hoffman, Supreme Court Unit OSAD

No. 89942

People v. Sims, Capital appeal (Post-Conviction) (Cook)

Whether defendant was denied effective assistance of counsel at sentencing because his attorney failed to conduct an adequate investigation of available mitigating evidence. (§13-4(a)(c))

Defense counsel: Joshua Sachs, Chicago

No. 93806

People v. Morales, State appeal granted 10/2/02 from 329 Ill.App.3d 97, 768 N.E.2d 84 (1st Dist. 2002) (consolidated with No. 93834)

1. Whether a *per se* conflict of interest existed where, with defendant's knowledge, retained counsel contemporaneously represented a potential State's witness on federal charges, where the witness did not testify at defendant's trial. (§13-5(d))

2. Whether defendant's waiver of conflict-free counsel was intelligent and knowing where the trial court failed to question defendant concerning his understanding of the conflict or ascertain that defendant fully comprehended the significance of counsel's conflicting loyalties. (§13-5(d))

Defense counsel:

No. 93834

People v. Ortega & Natal, State appeal granted 10/2/02 from 329 Ill.App.3d 114, 768 N.E.2d 244 (1st Dist. 2002) (consolidated with No. 93806)

1. Whether there was a *per se* conflict of interest where defense counsel had previously represented the confidential informant on the facts underlying the charge against the defendant. (§13-5(d))

2. Whether the trial court properly denied the State's motion to disqualify defense counsel due to a *per se* conflict of interest where, after complete admonishments by the trial court, defendant elected to waive the conflict of interest. (§13-5(d))

Defense counsel:

DEATH PENALTY

No. 90631

People v. Davis, Capital appeal (Cook)

Whether the sentencing judge erred by cross-examining a defense expert mitigation witness concerning an irrelevant matter - the witness's attitude toward the death penalty. (Ch. 14)

Defense counsel: Steve Clark Supreme Court Unit OSAD

No. 91904

People v. Johnson, Capital appeal (Cook)

1. Whether the trial court abused its discretion by refusing to exclude, at defense counsel's request, a witness who stated that he would automatically vote to impose a death sentence. (Ch. 14)

2. Whether the trial court abused its discretion by excusing a potential juror for cause, at the request of the prosecutor, where the veniremember stated that although she was not in favor of the death penalty she would not automatically vote against it regardless of the facts. (Ch. 14)

Defense counsel: Larry Bapst, Supreme Court Unit OSAD

***No. 94564**

People v. Blue, Interlocutory appeal (Cook)

Whether double jeopardy principles prohibit the State from seeking a death sentence on a murder conviction that was previously used, as a prior conviction, to establish a death penalty aggravating factor in another case. (Ch. 14)

Defense counsel: Allen Andrews, Supreme Court Unit OSAD

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

DISCOVERY

No. 92843

People v. Morgan, Capital appeal (Post-Conviction) (Cook)

Whether the trial court erred by denying defendant's post-conviction and §2-1401 petitions where newly discovered evidence showed that the prosecutor knew, or should have known in light of a witness's conflicting stories and refusal to cooperate until threatened with prosecution, that the witness's testimony was perjured. (§15-1)

Defense counsel: Matthew O'Hara and Shobha Mahadez, Chicago

DOUBLE JEOPARDY

***No. 94564**

People v. Blue, Interlocutory appeal (Cook)

Whether double jeopardy principles prohibit the State from seeking a death sentence on a murder conviction that was previously used, as a prior conviction, to establish a death penalty aggravating factor in another case. (§§17-1, 17-6)

Defense counsel: Allen Andrews, Supreme Court Unit OSAD

***No. 95740**

People v. Milka, Defense appeal granted 6/4/03 from 336 Ill.App.3d 206, 783 N.E.2d 51 (2d Dist. 2003)

Whether the State's *nolle prosequi* of a forcible felony charge after jeopardy has attached operates as an "acquittal" of that felony, which cannot subsequently serve as the predicate for a felony murder conviction entered at the same trial. (§17-4)

Defense counsel: Tom Lilien, Elgin OSAD

***No. 95750**

People v. Gray, Defense appeal granted 6/4/03 from 336 Ill.App.3d 356, 783 N.E.2d 170 (4th Dist. 2003)

Whether double jeopardy precluded prosecution in Champaign County for conduct to which defendant had previously entered a negotiated guilty plea in Coles County, where the evidence suggested that the offenses had actually occurred in Champaign County. (§17-6)

Defense counsel: Reino C. Lanto, Rantoul

EVIDENCE

No. 90278 (Consol. with 89106 & 89760)

People v. Lyons, Defense appeal granted 6/6/01 from 315 Ill.App.3d 959, 735 N.E.2d 162 (4th Dist. 2001)

In a prosecution for vehicular invasion, whether the trial court erred by excluding evidence concerning the complainant's prior purchases of drugs in store parking lots, because such testimony corroborated defendant's claim that he and the complainant arranged to meet that night so she could purchase cocaine. (§§19-2(b)(1),(2))

Defense counsel: Arden Lang, Springfield OSAD

No. 90693

People v. Cowley, State appeal granted 4/4/01 from 317 Ill.App.3d 834, 740 N.E.2d 492 (1st Dist. 2000) (No. 1-97-3850, 11/17/00) (Consolidated with Nos. 90678 & 90706)

Whether a defendant who was tried simultaneously in the same courtroom as the defendant whose conviction was reversed in **People v. Blue**, 189 Ill.2d 99, 724 N.E.2d 920 (2000), is likewise entitled to a new trial. (§§19-2(b)(2), 19-5, 19-7)

Defense counsel: Cook County Public Defender's Office

No. 90706

People v. Parker, State appeal granted 4/4/01 from 317 Ill.App.3d 845, 740 N.E.2d 485 (1st Dist. 2000) (No.

1-98-0385, 11/17/00) (Consolidated with Nos. 90678 & 90693)

Whether defendant is entitled to a new trial because at trial the State displayed a mannequin wearing a slain police officer's uniform. (§§19-2(b)(2), 19-5, 19-7)

Defense counsel: Darrell Widen, Chicago

No. 93758

People v. Lopez, Defense appeal granted 10/2/02 from 328 Ill.App.3d 563, 766 N.E.2d 329 (2d Dist. 2002)

1. Whether due process and fundamental fairness require that in a sexual assault case, the defense be given the same opportunity as the State to have a physical examination conducted of the complainant. (§19-1)

2. Whether the Appellate Court erred by holding that a trial court may grant a defense request for a physical examination of the complainant in a sexual assault case only upon a showing of compelling reasons. (§§19-1, 19-23(b))

Defense counsel: Dev Parikh, Elgin OSAD

No. 94780

People v. Hanna, Price & O'Laughlin, State appeal granted 12/5/02 from 332 Ill.App.3d 527, 773 N.E.2d 178 (5th Dist. 2002) (Consolidated with No. 94900, **People v. Vaughn & Johnson**, State appeal granted 12/5/02 from unpublished order (No. 5-01-0912, 8/29/02))

Whether the Appellate Court erred by finding that certain breathalyzer machines were not properly approved for use in Illinois because Illinois administrative rules required testing by the Illinois Department of Public Health, but the department relied on previous federal tests rather than conduct independent testing. (§19-27(a))

Defense counsel:

No. 95218

People v. Griffith, Defense appeal granted 2/5/03 from 334 Ill.App.3d 98, 777 N.E.2d 459 (1st Dist. 2002)

Whether the trial court erred where, in admitting other crimes evidence, it failed to instruct the jury that such evidence could be considered only on certain counts of the indictment. (§19-24(a))

Defense counsel: Cook County Public Defender's Office

No. 95285

People v. Walker, State appeal granted 2/5/03 from 335 Ill.App.3d 102, 779 N.E.2d 268 (2d Dist. 2002)

Whether, under the rationale of *Old Chief v. U.S.*, 519 U.S. 172 (1997), the trial court and State must accept a stipulation to the defendant's status as a felon where a prior felony conviction is an element of the offense charged. (§19-2(b)(2))

Defense counsel: Josette Skelnik, Chicago OSAD

No. 95491

People v. Cookson, Defense appeal granted 4/2/03 from 335 Ill.App.3d 786, 780 N.E.2d 807 (4th Dist. 2002)

1. Whether the trial court erred by precluding a defendant who was charged with predatory criminal sexual assault of a child from introducing evidence that the eight-year-old complainant had previously made an unfounded allegation of sexual abuse against her natural father, particularly where the complainant's statements were the only evidence that an offense had occurred. (§19-2(b)(1))

2. Whether the trial court erred by admitting an eight-year-old complainant's hearsay statements concerning alleged sexual abuse, pursuant to 725 ILCS 5/115-10, because the statements were not reliable in light of the complainant's motive to fabricate and inconsistent statements, the fact that the alleged offense occurred several months before the statements were made, and the officers' failure to record the interview with the complainant although a video recording system was available. (§19-14(c))

Defense counsel: Robert Markfield, Springfield OSAD

GUILTY PLEAS

No. 87138

People v. Westray, Capital appeal (Williamson)

Whether defendant should have been allowed to withdraw his guilty plea where his attorney failed to explain that a plea to intentional and felony murder made defendant eligible for a death sentence, and defendant had a defense to the felony murder aggravating factor. (§24-5)

Defense counsel: Allen Andrews, Supreme Court Unit OSAD

No. 94721

People v. Flowers, State appeal granted 12/5/02 from 333 Ill.App.3d 60, 775 N.E.2d 96 (3d Dist. 2002)

1. Whether **People v. Belcher**, 199 Ill.2d 378, 769 N.E.2d 920 (2002), created a broad “ends of justice” exception to *Wilk*’s mandatory requirement that the filing of a Rule 604(d) motion is a condition precedent for appealing from a guilty plea. (§24-8(a))

2. Whether, under Supreme Court Rule 604(d), defendant waived any issue concerning the propriety of a restitution order where she failed to raise that issue in any post-plea motion. (§24-8(a))

Defense counsel: Verlin Mainz, Ottawa OSAD

No. 94823

People v. Stroud, State appeal granted 12/5/02 from 333 Ill.App.3d 416, 775 N.E.2d 1038 (3d Dist. 2002)

1. Whether a defendant who failed to file a motion to withdraw his guilty plea is permitted to challenge that plea for the first time in a post-conviction petition. (§24-8(a))

2. Whether the trial court had jurisdiction to accept a guilty plea over closed circuit television rather than by having the defendant personally brought to the courtroom. (§24-1)

Defense counsel: Carrie Marche, Ottawa OSAD

No. 95043

People v. Henderson, State appeal granted 2/5/03 from 334 Ill.App.3d 290, 777 N.E.2d 1048 (3d Dist. 2002)

Whether the trial court abused its discretion by refusing to consider a guilty plea solely because it was tendered after the trial court's deadline for a negotiated plea, and on the morning scheduled for jury selection. (§24-1)

Defense counsel: Kerry Bryson, Ottawa OSAD

***No. 95725**

People v. Townsell, State appeal granted 6/4/03 from 336 Ill.App.3d 340, 783 N.E.2d 164 (3d Dist. 2003)

Whether the Appellate Court may, as a matter of plain error, elect to consider an *Apprendi* challenge to a sentence imposed on a guilty plea. (§24-9)

Defense counsel: Mark Fisher, Ottawa OSAD

***No. 95750**

People v. Gray, Defense appeal granted 6/4/03 from 336 Ill.App.3d 356, 783 N.E.2d 170 (4th Dist. 2003)

Whether double jeopardy precluded prosecution in Champaign County for conduct to which defendant had previously entered a negotiated guilty plea in Coles County, where the evidence suggested that the offenses had actually occurred in Champaign County. (24-1)

Defense counsel: Reino C. Lanto, Rantoul

HOMICIDE

No. 95218

People v. Griffith, Defense appeal granted 2/5/03 from 334 Ill.App.3d 98, 777 N.E.2d 459 (1st Dist. 2002)

Where the defendant was charged with knowing and intentional murder and felony murder, whether the trial court erred by giving a non-IPI instruction directing the jury to first consider felony murder charges and end deliberations if it found defendant guilty of felony murder, and to consider knowing and intentional murder and voluntary manslaughter only if it determined that defendant was not guilty of felony murder. (§§26-1, 26-2, 26-4(b))

Defense counsel: Cook County Public Defender's Office

No. 95311

People v. Ehlert, State appeal granted 2/5/03 from 335 Ill.App.3d 467, 781 N.E.2d 500 (1st Dist. 2002)

1. Whether, in order to prove homicide of a newborn child, Illinois law requires that the prosecution show that the mother "completely delivered the baby alive and the baby established a separate and independent life." (§26-1)

2. Whether the State proved beyond a reasonable doubt that the newborn was completely separated from the mother during birth, where a witness heard a brief cry just after defendant stated that her labor was almost finished. (§26-1)

Defense counsel: Cook County Public Defender's Office

No. 95574

People v. Hopp, State appeal granted 4/2/03 from 336 Ill.App.3d 523, 783 N.E.2d 1055 (3d Dist. 2002)

Whether plain error occurred where, although the defendant was charged with conspiracy to commit first degree murder, the trial court failed to instruct the jury on the elements of first degree murder. (§26-1)

Defense counsel:

No. 95614

People v. Davis, Defense appeal granted 4/2/03 from 335 Ill.App.3d 1102, 782 N.E.2d 310 (5th Dist. 2002)

1. Whether the trial court erred, after the State dismissed an intentional murder charge and chose

to proceed only on felony murder, by refusing to give a tendered instruction on involuntary manslaughter, on the ground that involuntary manslaughter is not a lesser included offense of felony murder premised on mob action. (§26-5(b))

2. (*Pro se* petition for leave to appeal) Whether a forcible felony that is not committed knowingly or intentionally may serve as the predicate felony for a felony murder charge. (§26-2)

Defense counsel: Joyce Randolph, Mt. Vernon OSAD

JUDGE

No. 90072

People v. Evans, Capital appeal (Macon)

Whether a motion for automatic substitution of judge should have been allowed where the courtroom assignment practices of the court prevented the defense from knowing until shortly before jury selection which judge would try the case. (§30-3)

Defense counsel: Steve Clark, Supreme Court Unit OSAD

JURY

No. 94895

People v. Carter, State appeal granted 12/5/02 from unpublished order (No. 3-00-0512, 8/28/02)

Whether, in a prosecution for first degree murder, the trial court erred by failing to give jury instructions for the included offense of involuntary manslaughter, where evidence to support the instruction had been introduced, but against defense counsel's advice defendant declined to request an involuntary manslaughter instruction. (§31-8(i))

Defense counsel: Fletcher Hamill, Ottawa OSAD

No. 95135

People v. Herron, State appeal granted 2/5/03 from unpublished order (No. 1-01-3889, 11/7/02) (1st Dist.)

1. Whether the Appellate Court erred by holding that an erroneous jury instruction constituted plain

error, on the basis that the evidence was close, where defense counsel affirmatively agreed to the instruction. (§31-8(a))

2. Whether a version of IPI Crim. No. 3.15 which included the word “or” between paragraphs, and thereby erroneously informed the jury that an identification was reliable if any one of several factors was present, was improper because Illinois law requires the jury to consider all factors in evaluating identification testimony. (§31-8(a))

Defense counsel:

No. 95218

People v. Griffith, Defense appeal granted 2/5/03 from 334 Ill.App.3d 98, 777 N.E.2d 459 (1st Dist. 2002)

Where the defendant was charged with knowing and intentional murder and felony murder, whether the trial court erred by giving a non-IPI instruction which directed the jury to first consider felony murder charges and end its deliberations if it found defendant guilty of felony murder, and to consider knowing and intentional murder and voluntary manslaughter only if it determined that defendant was not guilty of felony murder. (§§31-8(a),(h))

Defense counsel: Cook County Public Defender's Office

No. 95574

People v. Hopp, State appeal granted 4/2/03 from 336 Ill.App.3d 523, 783 N.E.2d 1055 (3d Dist. 2002)

Whether plain error occurred where, although the defendant was charged with conspiracy to commit first degree murder, the trial court failed to instruct the jury on the elements of first degree murder. (§31-8(a))

Defense counsel:

No. 95614

People v. Davis, Defense appeal granted 4/2/03 from 335 Ill.App.3d 1102, 782 N.E.2d 310 (5th Dist. 2002)

Whether the trial court erred, after the State dismissed an intentional murder charge and chose to proceed only on felony murder, by refusing to give a tendered instruction on involuntary manslaughter on the

ground that involuntary manslaughter is not a lesser included offense of felony murder premised on mob action. (§31-8(i))

Defense counsel: Joyce Randolph, Mt. Vernon OSAD

JUVENILE

***No. 95803**

City of Champaign v. Montrell D.H., Defense appeal granted 6/4/03 from 336 Ill.App.3d 558, 784 N.E.2d 435 (4th Dist. 2003)

Whether 705 ILCS 405/5-125, which exempts ordinance violations committed by juveniles from the procedures set forth in the Juvenile Court Act, violates equal protection and due process by denying to youthful offenders constitutional safeguards afforded by the Act. (§32-4)

Defense counsel: Erica Clinton, Springfield OSAD

***No. 95902**

In re Jermaine J., Defense appeal granted 6/4/03 from 336 Ill.App.3d 900, 784 N.E.2d 428 (3d Dist. 2003)

Whether a minor is entitled to credit for predisposition custody against an indeterminate commitment to the Department of Corrections. (§32-4)

Defense counsel: Sherry Silvern, Ottawa OSAD

ONE ACT - ONE CRIME

No. 89760 (Consol. with 89106 & 90278)

People v. Barefield, Defense appeal granted 6/6/01 from unpublished order (No. 4-98-0838, 5/22/01) (4th

Dist.)

Whether a conviction for the aggravated offense of possession of four stolen motor vehicles within a one-year period and four convictions for unlawful possession of a stolen motor vehicle were based upon the same physical acts. (Ch. 36)

Defense counsel: Judith Libby, Springfield OSAD

PROBATION

No. 93699

People v. Lampitok, Defense appeal granted from unpublished order (No. 4-01-0085, 3/18/02) (4th Dist.)

Whether the Fourth Amendment was violated by the search of a hotel room temporarily occupied by a probationer, where: (1) a probation condition required defendant to consent to a search “as directed by her Probation Officer,” but defendant was not present at the time of the search and did not give valid consent, and (2) the officers had no information to indicate that defendant was committing a crime. (§40-3)

Defense counsel:

PROSECUTOR

No. 89760 (Consol. with 89106 & 90278)

People v. Barefield, Defense appeal granted 6/6/01 from unpublished order (No. 4-98-0838, 5/22/01) (4th Dist.)

Whether it is improper for the prosecutor to comment on a defendant’s failure to produce non-alibi witnesses, on the ground that witnesses who are family and friends of the defendant are “inaccessible” to the State. (§41-10)

Defense counsel: Judith Libby, Springfield OSAD

No. 92843

People v. Morgan, Capital appeal (Post-Conviction) (Cook)

Whether the trial court erred by denying defendant’s post-conviction and §2-1401 petitions where newly discovered evidence showed that the prosecutor knew, or should have known in light of a witness’s

conflicting stories and refusal to cooperate until threatened with prosecution, that the witness's testimony was perjured. (§41-1)

Defense counsel: Matthew O'Hara and Shobha Mahadev, Chicago

No. 95218

People v. Griffith, Defense appeal granted 2/5/03 from 334 Ill.App.3d 98, 777 N.E.2d 459 (1st Dist. 2002)

Whether the Appellate Court erred by affirming defendant's murder conviction, on the ground that there was overwhelming evidence, where the prosecutor misrepresented facts concerning records relied upon by an expert before testifying, used an unrelated offense to convince the jury that the defendant was a violent and dangerous man, continued improper arguments after objections were sustained, attacked the defendant, defense counsel and defense witnesses, and engaged in conduct which the Appellate Court regarded as "unprofessional" and which called "into question the State's commitment to fair and just enforcement of the law." (§§41-1, 41-3, 41-4, 41-7, 41-11, 41-12, 41-13)

Defense counsel: Cook County Public Defender's Office

REASONABLE DOUBT

No. 94971

People v. Cunningham, State appeal granted 2/5/03 from 333 Ill.App.3d 1045, 777 N.E.2d 478 (1st Dist. 2002)

Whether the Appellate Court erred by reversing a conviction on the ground that the State's witness was incredible and unworthy of belief, because the standard for reviewing the sufficiency of evidence - whether viewing the evidence in the light most favorably to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt - precludes reviewing courts from considering credibility. (§43-5)

Defense counsel:

***No. 95740**

People v. Milka, Defense appeal granted 6/4/03 from 336 Ill.App.3d 206, 783 N.E.2d 51 (2d Dist. 2003)

Whether the evidence was sufficient to prove defendant guilty of murder beyond a reasonable doubt where it showed only an opportunity to commit the crime, and did not establish that defendant was the assailant. (§43-1)

Defense counsel: Tom Lilien, Elgin OSAD

SEARCH & SEIZURE

No. 87645

People v. Morris, Capital appeal (Cook)

Whether defendant's confession should have been suppressed where his arrest, which was based solely on his "look . . . of fear" and flight from police, was unsupported by probable cause or any articulable, reasonable suspicion. (§§45-4(b), 45-6(a))

Defense counsel: Allen Andrews, Supreme Court Unit OSAD

No. 91547

People v. Caballes, Defense appeal granted 6/29/01 from unpublished order (No. 3-99-0932, 3/6/01)

1. Whether reasonable suspicion is required before an officer may use a drug sniffing dog to conduct a walk-around of a car stopped for a routine traffic violation. (§§45-4(a), 45-12(c))

2. Whether the trial court erred by holding that the detention of the defendant past the time reasonably necessary to issue a warning for traffic violation was minimal, so that evidence obtained as the result of a walk around of the defendant's car by a drug sniffing dog was admissible. (§§45-4(c)(d))

Defense counsel: Ralph E. Meczyk, Chicago

No. 92783

People v. Harris, State appeal granted 2/6/02 from 325 Ill.App.3d 262, 758 N.E.2d 469 (3d Dist. 2001)

Whether a reasonable passenger in a vehicle stopped for a traffic violation would have felt free to refuse to disregard a police officer's request for identification where the officer gave no explanation for the request, did not indicate that he merely wanted to ascertain if the passenger could drive the vehicle, and in the opinion of the lower court conveyed the message that compliance was required. (§§45-1(c), 45-12(c))

Defense counsel: Steve Omolecki, Ottawa OSAD

No. 93472

People v. Bunch, State appeal granted 5/30/02 from 327 Ill.App.3d 979, 764 N.E.2d 1189 (1st Dist. 2002)

1. Whether a police officer conducting a traffic stop had a reasonable basis to detain and request identification from a passenger who was not suspected of any crime, especially where the officer admitted that he was merely "curious" to learn defendant's identity. (§§45-1(a), 45-4(a)(b), 45-12(c))

2. Whether the officer had probable cause to arrest the defendant for possession of narcotics where, when he saw a plastic bag in defendant's mouth, he "had . . . suspicions that it was heroin or cocaine." (§§45-6(d)(e))

Defense counsel: Cook County Public Defender's Office and
Richard Dvorak, Chicago

No. 93699

People v. Lampitok, Defense appeal granted from unpublished order (No. 4-01-0085, 3/18/02) (4th Dist.)

Whether the Fourth Amendment was violated by the search of a hotel room temporarily occupied by a probationer, where: (1) a probation condition required defendant to consent to a search "as directed by her Probation Officer," but defendant was not present at the time of the search and did not give valid consent, and (2) the officers had no information to indicate that defendant was committing a crime. (§45-1(b))

Defense counsel:

*No. 95783

People v. Pitman, Defense appeal granted 6/4/03 from unpublished order (No. 4-01-0620, 1/3/03)

1. Whether the area surrounding defendant's barn was part of the "curtilage" where the barn was 40 to 60 yards from the closest residence, was not within an enclosure surrounding any residence, was used for storage and not for agricultural purposes, and was open to observation by persons standing in the open field, and where the land between the barn and the residences was open. (§45-16)

2. Whether the State waived its "open fields" argument where it failed to present that issue in the trial court, thereby precluding the defendant from presenting relevant evidence. (§45-16)

3. Whether the barn was "essentially abandoned," so that defendant did not have a reasonable expectation of privacy, where the structure was open on one side, used only for storage, and had unlocked doors. (§§45-2, 45-16)

Defense counsel: Judith Libby, Springfield OSAD

SENTENCING

No. 87645

People v. Morris, Capital appeal (Cook)

Whether 730 ILCS 5-8-4, which mandates consecutive sentences under certain circumstances, violates *Apprendi v. New Jersey*? (§46-7(b))

Defense counsel: Allen Andrews, Supreme Court Unit OSAD

No. 90865

People v. Kaczmarek, State's petition for leave to appeal or as a matter of right granted 5/30/02 from 318 Ill.App.3d 340, 741 N.E.2d 1131 (1st Dist. 2000)

Whether the authorized sentencing range for first degree murder is twenty years to death, so that *Apprendi* is not violated by 730 ILCS 5/5-8-1(a)(1)(b), which authorizes a natural life sentence for "exceptionally brutal or heinous" first degree murder. (§46-8(d))

Defense counsel: Debra Salinger, Chicago OSAD

No. 92058

Kubat v. Sterns, Motion to file original writ of *habeas corpus* in the Illinois Supreme Court (briefing held in abeyance)

1. Whether **Apprendi** is violated by the “exceptionally brutal or heinous behavior indicative of wanton cruelty” extended term factor. (§46-8(c)(2))

2. Whether **Apprendi** applies retroactively to petitions for original writs of *habeas corpus* filed in the Illinois Supreme Court. (§45-8(a))

Defense counsel: Jane Raley, Chicago

No. 92922

Lucien v. Briley, Direct appeal (Will)

1. Whether **Apprendi v. New Jersey** is violated by the “exceptionally brutal and heinous” extended term eligibility factor. (§46-8(c)(2))

2. Whether **Apprendi** applies retroactively to cases in which the conviction became final before the **Apprendi** decision was issued. (§46-8(c)(1))

Defense counsel: Gregory A. Sager, Chicago
Steven Block, Chicago

No. 93221

People v. Lee, Defense appeal granted 4/3/02 from 326 Ill.App.3d 882, 762 N.E.2d 18 (3d Dist. 2001)

After finding that an extended term sentence based on the “exceptionally brutal and heinous” factor violated **Apprendi v. New Jersey**, should the Appellate Court have remanded the cause for resentencing rather than reducing the sentence to the maximum non-extended term authorized for the offense. (§46-8(a))

Defense counsel: Carrie Marche, Ottawa OSAD

No. 93285

People v. Rodriguez, Direct appeal (Kane)

Whether the 15, 20, and 25-year additional penalties for attempt first degree murder with a firearm violate the proportionate penalty clause of the Illinois Constitution, because the minimum penalties which result are more severe than the minimum penalty for first degree murder with intent to kill when accomplished by means other than a firearm. (§46-2(c)(1))

Defense counsel: Mark Levine, Elgin OSAD

No. 93830

People v. Phelps, State appeal granted 10/2/02 from 329 Ill.App.3d 1, 768 N.E.2d 168 (1st Dist. 2002)

Whether 730 ILCS 5/5-8-4, which mandates consecutive sentences for offenses that were part of a single course of conduct during which there was no substantial change in the nature of the criminal objective, where one of the offenses was a Class X or Class 1 felony and the defendant inflicted severe bodily injury, applies where the “severe bodily injury” which triggered mandatory consecutive sentences was also an element of a crime of which defendant was convicted. (§46-7(b))

Defense counsel:

No. 94129

People v. Allen, Direct appeal (Sangamon)

Whether the proportionate penalties clause is violated by 720 ILCS 5/8-4(c)(1)(D), which mandates the addition of a sentence of at least twenty-five years and up to natural life where a person commits attempt first degree murder while personally discharging a firearm that causes great bodily harm, permanent disability, permanent disfigurement or death. (§46-1(c)(1))

Defense counsel: Susan Wilham, Springfield OSAD

No. 94528

Dean v. Hockaday, Direct appeal (St. Clair)

1. Whether **Apprendi** is violated by 730 ILCS 5/5-5-3.2(b)(2), which allows for imposition of an extended term where the offense was accompanied by “exceptionally brutal or heinous behavior indicative of wanton cruelty.” (§46-1(c)(2))

2. Whether **Apprendi** applies retroactively to convictions which became final before the **Apprendi** decision was issued. (§46-1(c)(2))

3. Whether the **Apprendi** decision by the United States Supreme Court constitutes “cause” for an untimely post-conviction petition for which the defendant is not culpably negligent. (§46-1(c)(2))

4. Whether state *habeas corpus* is an appropriate remedy to raise an **Apprendi** challenge to a conviction which became final before **Apprendi** was decided by the United States Supreme Court. (§46-1(c)(2))

Defense counsel:

No. 94633

People v. Graves, State appeal granted 12/5/02 from 332 Ill.App.3d 685, 773 N.E.2d 1243 (3d Dist. 2002)

Whether the proportionate penalties clause of the Illinois Constitution is violated because the elements of unauthorized theft (720 ILCS 5/16-1(a)(1)(A)(b)(5)) are indistinguishable from the elements of theft by deception (720 ILCS 5/16-1(a)(2),(b)(7)), yet the offenses carry different penalties. (§46-1(c)(1))

Defense counsel: Santiago Durango, Ottawa OSAD

***No. 95713**

People v. Thompson, Defense appeal granted 6/4/03 from 335 Ill.App.3d 1027, 782 N.E.2d 946 (4th Dist. 2003)

1. Whether an extended term imposed on a conviction that was not the most serious class of which defendant was convicted is a void judgment, and therefore can be challenged in a post-conviction proceeding although the issue is not of constitutional dimension. (§46-8(c)(1))

2. Whether the issue was waived where it was not raised in the post-conviction petition filed in the trial court. (§46-8(c)(1))

Defense counsel: Martin Ryan, Springfield OSAD

***No. 95725**

People v. Townsell, State appeal granted 6/4/03 from 336 Ill.App.3d 340, 783 N.E.2d 164 (3d Dist. 2003)

Whether the Appellate Court may, as a matter of plain error, elect to consider an *Apprendi* challenge to a sentence imposed on a guilty plea. (§46-1(c)(2))

Defense counsel: Mark Fisher, Ottawa OSAD

***No. 95902**

In re Jermaine J., Defense appeal granted 6/4/03 from 336 Ill.App.3d 900, 784 N.E.2d 428 (3d Dist. 2003)

Whether a minor is entitled to credit for predisposition custody against an indeterminate commitment to the Department of Corrections. (§46-15(b))

Defense counsel: Sherry Silvern, Ottawa OSAD

SEX OFFENSES

No. 93098

People v. Nicholas K., State appeal granted 4/3/02 from 326 Ill.App.3d 497, 761 N.E.2d 352 (2d Dist. 2001)

Whether the Sex Offender Registration Act (730 ILCS 150/1 *et seq.*), which contains a definition for "juvenile sex offender," requires such juveniles to register as sex offenders. (§47-6)

Defense counsel: Christopher White, Elgin OSAD

No. 94334

People v. Botruff, State appeal granted 10/2/02 from 331 Ill.App.3d 486, 771 N.E.2d 579 (3d Dist. 2002)

1. Whether 725 ILCS 207/1 *et seq.* is unconstitutional because it precludes a respondent from attending a probable cause hearing in a Sexually Violent Persons Commitment Act case. (§47-6)

2. Whether the Sexually Violent Persons Commitment Act requires that at the defendant's request, an independent evaluator must be appointed for any hearing. (§47-6)

Defense counsel:

No. 94620

People v. Santos, State appeal granted 12/5/02 from 333 Ill.App.3d 1, 774 N.E.2d 473 (2d Dist. 2002) (No. 2-00-1301, 8/7/02)

Whether the Rape Shield Statute (725 ILCS 5/115-17) precludes evidence concerning the complainant's inconsistent statements to emergency room personnel and police concerning her recent sexual conduct with a person other than the defendant, where those statements would impeach the complainant's credibility, which was a critical issue in light of the affirmative defense that defendant believed the complainant to be over the age of seventeen and the complainant's testimony that she told defendant she was only sixteen. (§47-1(b))

Defense counsel: Kathleen Hamill, Elgin OSAD

No. 95491

People v. Cookson, Defense appeal granted 4/2/03 from 335 Ill.App.3d 786, 780 N.E.2d 807 (4th Dist. 2002)

1. Whether the trial court erred by precluding a defendant who was charged with predatory criminal sexual assault of a child from introducing evidence that the eight-year-old complainant had previously made an unfounded allegation of sexual abuse against her natural father, particularly where the complainant's statements were the only evidence that an offense had occurred. (§47-1(c))

2. Whether the trial court erred by admitting an eight-year-old complainant's hearsay statements concerning alleged sexual abuse, pursuant to 725 ILCS 5/115-10, because the statements were not reliable in light of the complainant's motive to fabricate and inconsistent statements, the fact that the alleged offense occurred several months before the statements were made, and the officers' failure to record the interview with the complainant although a video recording system was available. (§47-1(c))

Defense counsel: Robert Markfield, Springfield OSAD

***No. 95987**

People v. Burns, State appeal granted 6/4/03 from 337 Ill.App.3d 224, 785 N.E.2d 1042 (3d Dist. 2003)

Whether a person who has been adjudicated a sexually dangerous person, and who files an application for recovery, has a due process right to an independent psychiatric examination. (§47-6)

Defense counsel:

STATUTES

***No. 95803**

City of Champaign v. Montrell D.H., Defense appeal granted 6/4/03 from 336 Ill.App.3d 558, 784 N.E.2d 435 (4th Dist. 2003)

Whether 705 ILCS 405/5-125, which exempts ordinance violations committed by juveniles from the procedures set forth in the Juvenile Court Act, violates equal protection and due process by denying to youthful offenders constitutional safeguards otherwise afforded by the Act. (§§49-3(a),(c))

Defense counsel: Erica Clinton, Springfield OSAD

THEFT

No. 94633

People v. Graves, State appeal granted 12/5/02 from 332 Ill.App.3d 685, 773 N.E.2d 1243 (3d Dist. 2002)

Whether the proportionate penalties clause of the Illinois Constitution is violated because the elements of unauthorized theft (720 ILCS 5/16-1(a)(1)(A)(b)(5)) are indistinguishable from the elements of theft by deception (720 ILCS 5/16-1(a)(2),(b)(7)), yet the offenses carry different penalties. (§50-1)

Defense counsel: Santiago Durango, Ottawa OSAD

TRAFFIC OFFENSES

No. 93970

People v. Sienkiewicz, State appeal granted 10/2/02 from unpublished order (No. 2-01-0349, 4/19/02) (2d Dist.)

1. Whether reckless driving is a lesser included offense of reckless homicide. (§51-1)
2. Whether the reckless homicide charge and reckless driving convictions were based on the same criminal act, despite the State's contention that reckless driving was based on improper stopping in traffic, failure to signal, improper lane usage and traveling above the speed limit and that reckless homicide involved leaving the roadway, striking another vehicle and causing the death of a passenger. (§51-1)

Defense counsel: Pete Wachowski, Park Ridge

No. 94780

People v. Hanna, Price & O'Laughlin, State appeal granted 12/5/02 from 332 Ill.App.3d 527, 773 N.E.2d 178 (5th Dist. 2002) (Consolidated with No. 94900, **People v. Vaughn & Johnson**, State appeal granted 12/5/02 from unpublished order (No. 5-01-0912, 8/29/02))

Whether the Appellate Court erred by finding that certain breathalyzer machines were not properly approved for use in Illinois because Illinois administrative rules required testing by the Illinois Department of Public Health, but the department relied on previous federal tests rather than conduct independent testing. (§51-2(c))

Defense counsel:

TRIAL PROCEDURES

No. 90523

People v. Umphrey, Capital appeal (Sangamon)

Whether the trial court erred by denying a pretrial request for a continuance where the prosecution continued to provide substantial discovery in the weeks leading to trial, and where one of the prosecution's key witnesses was discovered a short time before trial was to commence. (§53-6)

Defense counsel: Larry Bapst, Supreme Court Unit OSAD

No. 94823

People v. Stroud, State appeal granted 12/5/02 from 333 Ill.App.3d 416, 775 N.E.2d 1038 (3d Dist. 2002)

Whether the trial court had jurisdiction to accept a guilty plea over closed circuit television instead of by having the defendant personally brought to the courtroom. (§53-2(a))

Defense counsel: Carrie Marche, Ottawa OSAD

UNLAWFUL USE OF WEAPONS

No. 95285

People v. Walker, State appeal granted 2/5/03 from 335 Ill.App.3d 102, 779 N.E.2d 268 (2d Dist. 2002)

Whether, under the rationale of *Old Chief v. U.S.*, 519 U.S. 172 (1997), the trial court and State must accept a stipulation to the defendant's status as a felon where a prior felony conviction is an element of the offense charged. (§54-2)

Defense counsel: Josette Skelnik, Chicago OSAD

VERDICTS

No. 90364

People v. McCoy, Defense appeal granted 11/29/00 from unpublished order (No. 1-99-3176, 9/26/00)

Whether the Appellate Court erred by finding that although defendant's conviction of aggravated criminal sexual assault and acquittal of unlawful restraint were legally inconsistent, no relief was justified because defendant was convicted in a bench trial. (§56-2)

Defense counsel: Christopher Buckley, Chicago OSAD

No. 92966

People v. Pelt, State appeal granted 4/3/02 from unpublished order (No. 3-00-0255, 11/26/01)

Whether verdicts of guilty of aggravated battery of a child and not guilty of first degree (knowing) murder were legally inconsistent, because the verdicts required the jury to find that defendant had committed an act (throwing a child against a dresser) with knowledge of the possibility of great bodily harm, but had not committed that act with knowledge of a strong probability of death or great bodily harm. (§56-2)

Defense counsel: Dennis Doherty, Chicago

No. 93970

People v. Sienkiewicz, State appeal granted 10/2/02 from unpublished order (No. 2-01-0349, 4/19/02) (2d Dist.)

1. Whether reckless driving is a lesser included offense of reckless homicide. (§56-3(a))
2. Whether the reckless homicide charge and reckless driving convictions were based on the same criminal act, despite the State's contention that reckless driving was based on improper stopping in traffic, failure to signal, improper lane usage and traveling above the speed limit and that reckless homicide involved leaving the roadway, striking another vehicle and causing the death of a passenger. (§56-3(a))

Defense counsel: Pete Wachowski, Park Ridge

No. 94644

People v. Pinkonsly, State appeal granted 12/5/02 from 331 Ill.App.3d 984, 772 N.E.2d 855 (2d Dist. 2002)

Whether the predicate offenses for narcotics racketeering are lesser included offenses, on which convictions cannot be entered if a conviction for narcotics racketeering is also entered. (§56-3(c))

Defense counsel: Carol Anfinson, Panel Attorney OSAD

No. 95614

People v. Davis, Defense appeal granted 4/2/03 from 335 Ill.App.3d 1102, 782 N.E.2d 310 (5th Dist. 2002)

Whether the trial court erred, after the State dismissed an intentional murder charge and chose to proceed only on felony murder, by refusing to give a tendered instruction on involuntary manslaughter on the ground that involuntary manslaughter is not a lesser included offense of felony murder premised on mob action. (§56-3(a))

Defense counsel: Joyce Randolph, Mt. Vernon OSAD

WAIVER – PLAIN ERROR – HARMLESS ERROR

No. 90678

People v. Johnson, State appeal granted 4/4/01 from 317 Ill.App.3d 666, 740 N.E.2d 457 (1st Dist. 2000)
(Consolidated with Nos. 90693 & 90706)

Whether the Appellate Court has authority to treat as plain error unpreserved cumulative errors which in and of themselves do not warrant reversal. (§57-1)

Defense counsel: Cook County Public Defender's Office

No. 94721

People v. Flowers, State appeal granted 12/5/02 from 333 Ill.App.3d 60, 775 N.E.2d 96 (3d Dist. 2002)

Whether, under Supreme Court Rule 604(d), defendant waived any issue concerning the propriety of a restitution order where she failed to raise that issue in a post-plea motion. (§57-1)

Defense counsel: Verlin Mainz, Ottawa OSAD

No. 95135

People v. Herron, State appeal granted 2/5/03 from unpublished order (No. 1-01-3889, 11/7/02) (1st Dist.)

Whether the Appellate Court erred by holding that an erroneous jury instruction constituted plain error, on the basis that the evidence was close, where defense counsel affirmatively agreed to the instruction. (§57-4)

Defense counsel:

***No. 95783**

People v. Pitman, Defense appeal granted 6/4/03 from unpublished order (No. 4-01-0620, 1/3/03)

Whether the State waived its "open fields" argument where it failed to present that issue in

the trial court, precluding the defendant from presenting relevant evidence concerning that issue. (§§57-2, 57-3)

Defense counsel: Judith Libby, Springfield OSAD

WITNESSES

No. 89106 (Cons. with 89760 & 90278)

People v. Harvey, Defense appeal granted 6/6/01

Whether the defendant was entitled to a new trial where defense counsel offered to stipulate to the “mere fact” method of impeachment by prior convictions. (§58-7(e))

Defense counsel: *Pro se*

No. 89760 (Consol. with 89106 & 90278)

People v. Barefield, Defense appeal granted 6/6/01 from unpublished order (No. 4-98-0838, 5/22/01) (4th Dist.)

Whether the trial court’s use of the “mere-fact” method of impeachment by prior convictions was plain error. (§58-7(e))

Defense counsel: Judith Libby, Springfield OSAD

No. 90278 (Cons. 89106 & 89760)

People v. Lyons, Defense appeal granted 6/6/01 from 315 Ill.App.3d 959, 735 N.E.2d 162 (4th Dist. 2001)

Whether defendant is entitled to a new trial where, without objection by defense counsel, the trial court invoked the “mere fact” method of impeachment by prior convictions. (§58-7(e))

Defense counsel: Arden Lang, Springfield OSAD

No. 90523

People v. Umphrey, Capital appeal (Sangamon)

Whether defendant was denied due process and the right to confrontation where the trial court refused to allow cross-examination of State's witnesses concerning their prior drug use. (§58-7(d))

Defense counsel: Larry Bapst, Supreme Court Unit OSAD

No. 94425

People v. Campbell, Defense appeal granted 10/2/02 from 332 Ill.App.3d 808, 773 N.E.2d 218 (4th Dist. 2002)

Whether defendant was denied his constitutional right to confront his accuser where, without defendant's knowing consent, defense counsel stipulated to the testimony of the prosecution's principal witness. (§58-5)

Defense counsel: Gary Peterson, Springfield OSAD