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CH. 41 REASONABLE DOUBT

§41-1

General Rules

United States Supreme Court

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) After **In Re Winship**, the critical inquiry on review of the sufficiency of the evidence is not simply whether the jury was properly instructed, but whether the evidence could reasonably support a finding of guilt beyond a reasonable doubt. The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Eaton v. Tulsa, 415 U.S. 697, 94 S.Ct. 1228, 39 L.Ed.2d 693 (1974) The State reviewing court denied due process by upholding a contempt order on the basis of remarks not found to be contemptuous by the trial court.

In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) The due process clause protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

Illinois Supreme Court

People v. Cline, 2022 IL 126383 At defendant's bench trial on a charge of residential burglary, the victim testified that he arrived home on the date in question to find his apartment "ransacked" and discovered that several items were missing, including a set of headphones. The headphone case was recovered from the apartment, and a fingerprint examiner testified that he identified a partial print on that case as belonging to defendant. Defendant denied ever being in the area of the burglarized apartment. The circuit court judge found defendant guilty.

In a motion for new trial filed by new counsel, defendant argued that trial counsel was ineffective for not "vigorously cross-examining" the fingerprint examiner to undermine his conclusion that the print belonged to defendant. That motion was denied.

On appeal, defendant challenged the sufficiency of the evidence to convict where the evidence tying him to the offense was one partial fingerprint on a portable object and where the State did not offer evidence that the fingerprint examiner followed accepted methodology where there was no evidence that he had verified his results with another examiner.

Because defendant had not challenged the examiner's methodology and the lack of evidence of verification below, the Court held that it could not now consider "extra-record materials," specifically regarding the ACE-V methodology, that had not been introduced in the trial court.

The Court went on to reject defendant's challenge to the sufficiency of the evidence. The fingerprint examiner had been found qualified to testify as an expert and had explained the basis for his opinion that the print on the headphone case belonged to defendant. And, the court found the fingerprint examiner's testimony credible, which is a determination which the reviewing court must afford deference. Further, while the print was found on a portable object, the victim testified that he did not know defendant, that his headphones had been in the case in his locked apartment when he left that morning, and that the headphones were missing when he returned. From this evidence, it was reasonable for the judge to

conclude that the print had been left during the burglary rather than at some other time. Defendant's conviction for residential burglary was affirmed.

People v. King, 2020 IL 123926 The prosecutor did not commit error in closing arguments by telling the jurors that it was okay if they had questions so long as those questions did not rise to the level of reasonable doubt. These comments were not an improper attempt to define "reasonable doubt," but rather left it for the jurors to determine what reasonable doubt means.

People v. Murray, 2019 IL 123289 To prove a defendant guilty of possession of a firearm by a street gang member, the State must produce specific evidence in accordance with the statute's definition of a street gang; namely, that defendant belonged to a group of 3 or more persons with an established hierarchy that . . . engages in a course or pattern of criminal activity." **740 ILCS 147/10 (West 2012)**. "Course or pattern of criminal activity" is defined, in part, as (1) two or more gang-related criminal offenses committed in whole or in part within this State; (2) that at least one such offense was committed after January 1, 1993, the effective date of the Act; (3) that both offenses were committed within five years of each other; and (4) that at least one offense involved the solicitation to commit, conspiracy to commit, attempt to commit, or commission of any offense defined as a felony or forcible felony under the Criminal Code of 2012.

Here, the parties agreed that defendant identified as a member of the Latin Kings, and a police gang expert testified that the Latin Kings met the statutory definition of a "street gang." But the Illinois Supreme Court majority held that without evidence of two qualifying offenses under **section 147/10**, the State failed to prove defendant guilty of being a street gang member beyond a reasonable doubt. The legislature clearly insisted on proof of specific crimes, and the State's approach of allowing an expert opinion to stand in for that proof violated defendant's right to due process.

People v. Cunningham, 212 Ill.2d 274, 818 N.E.2d 304 (2004) When determining if the evidence was sufficient to establish guilt beyond a reasonable doubt, the reviewing court must determine whether, viewing the evidence most favorably to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Because the standard of review for reasonable doubt questions requires the court to determine whether the evidence could "reasonably" support a guilty verdict, the trial court's determinations of credibility are not conclusive.

When viewing the evidence most favorably to the prosecution, the reviewing court must indulge all *reasonable* inferences in favor of the prosecution. The court may not make *unreasonable* inferences, however. Thus, if the record supports only one inference, the court must accept it even if it favors defendant.

People v. Hall, 194 Ill.2d 305, 743 N.E.2d 521 (2000) A reviewing court may not reverse a conviction where the evidence, viewed most favorably to the prosecution, would permit a rational trier of fact to find that the essential elements of the crime had been proven beyond a reasonable doubt. Circumstantial evidence is sufficient to sustain a conviction where it provides proof beyond a reasonable doubt of all the elements of the crime.

The evidence was sufficient to prove defendant's guilt of first degree murder beyond a reasonable doubt where there was "credible evidence" that the weapon used to inflict the fatal blow was procured by defendant's wife and delivered to defendant shortly before the murders, a neutral witness testified that shortly before the offenses defendant used a shotgun to

angrily order the decedents out of their vehicle, and defendant made inculpatory statements shortly after the murders. In addition, circumstantial evidence showing that the crime had been committed by someone other than defendant was not credible.

People v. Hagberg, 192 Ill.2d 29, 733 N.E.2d 1271 (2000) Under appropriate circumstances a field test, standing alone, can establish the nature of a suspected controlled substance beyond a reasonable doubt.

People v. Hendricks, 137 Ill.2d 31, 560 N.E.2d 611 (1990) After defendant had been found guilty of murder by a jury, the trial judge said at sentencing, "Based on the evidence admitted on trial against the defendant I am not personally convinced that he has been proven guilty beyond a reasonable doubt." Defendant contended that based upon the foregoing statement, the trial judge should have directed a verdict of acquittal.

The "trial judge's statement that he, personally, would have acquitted the defendant is immaterial so long as the evidence was sufficient to prove guilt beyond a reasonable doubt." Conviction affirmed.

People v. Collins, 106 Ill.2d 237, 478 N.E.2d 267 (1985) A conviction will not be set aside on appeal unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. It is not the function of the reviewing court to retry the case. The relevant inquiry is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

People v. Weinstein, 35 Ill.2d 467, 220 N.E.2d 432 (1966) The prosecution has the burden of proving beyond a reasonable doubt all the material and essential facts constituting the crime. The burden of proof never shifts to the accused, but remains the responsibility of the prosecution throughout the trial.

People v. Jefferson, 24 Ill.2d 398, 182 N.E.2d 1 (1962) It is the function of the reviewing court to carefully examine the evidence, giving due consideration to the fact that the court and jury saw and heard the witnesses. If after such consideration the reviewing court is of the opinion that the evidence is not sufficient to establish defendant's guilt beyond a reasonable doubt, the conviction must be reversed.

People v. Green, 17 Ill. 2d 35, 160 N.E.2d 814 (1959) At sentencing, defendant made a statement admitting guilt and detailing the offense. Defendant's statement constituted a judicial confession and prevented him from raising a reasonable doubt issue on appeal.

People v. Coulson, 13 Ill.2d 290, 149 N.E.2d 96 (1958) If a conviction is to be sustained, it must rest on the strength of the People's case and not on the weakness of defendant's; this rule is a corollary of the presumption of innocence.

Illinois Appellate Court

People v. Hall, 2021 IL App (1st) 190959 Police officers responding to a kidnaping dispatch pulled over a car driven by defendant. A woman rode in the passenger seat. Defendant pulled into a gas station, exited the car, and entered the gas station. Detective Gibson followed defendant inside, where he told defendant he was investigating a kidnaping and asked defendant for identification. Defendant told him he had the wrong person, then, seeing

Officer Zurowski talking to the female in the passenger seat, ran back towards the car. He yelled at Zurowski to leave the woman alone before he was pushed back and detained.

The State charged defendant with obstruction of justice pursuant to [720 ILCS 5/31-1](#), alleging he obstructed Detective Gibson by disobeying a request for identification or to identify himself, during the course of a criminal investigation.

The trial court found defendant guilty. In denying a motion for new trial, the court explained that it believed the “gravaman” of the obstruction occurred when defendant ran towards Zurowski and attempted to interfere with the conversation with the passenger.

On appeal, defendant alleged: (1) insufficient evidence; and (2) a fatal variance between the complaint alleging obstruction of Gibson and the evidence showing obstruction of Zurowski. The State conceded the fatal variance. The Appellate Court, however, found no fatal variance. When, as here, the sufficiency of the charging instrument is attacked for the first time on appeal, defendant must show the variance to be material and of such character as to mislead the defense or expose defendant to double jeopardy. The Appellate Court found no distinction between the complaint and the evidence. The complaint alleged that defendant ignored the requests of Gibson, and the evidence supported those allegations. Although the trial court mentioned the “gravaman” of the obstruction occurred with regard to Zurowski, it would not interpret this comment to mean the court did not find obstruction of Gibson.

The Appellate Court did find the evidence insufficient. Finding the facts were not in dispute, it applied a *de novo* standard of review. While it noted that defendant ignored several orders by the officers, ultimately having to be pushed away and detained, the complaint strictly confined itself to defendant’s act of ignoring the request to identify himself. The Appellate Court held that this act, in and of itself, did not constitute obstruction of justice. Precedent such as [People v. Fernandez, 2011 IL App \(2d\) 100473](#) and [People v. Raby, 40 Ill. 2d 392, 399 \(1968\)](#), dictates that initial refusals to identify oneself, and arguing with officers, are not considered criminal acts. Nor did the refusal here materially hamper the investigation, where officers were able to immediately learn from the passenger that she was not in fact the victim of a kidnapping.

[People v. Penning, 2021 IL App \(3d\) 190366](#) Defendant was found guilty of endangering the life or health of a child in violation of [720 ILCS 5/12C-5](#), based on his overdosing on heroin while his five-year-old son was in his care. Defendant argued that his conduct was insufficient to prove endangerment because defendant’s half-brother was present with the child while defendant was in the bathroom using heroin.

The Appellate Court upheld defendant’s conviction. Defendant’s half-brother was under no obligation to stay with the child and had not been authorized to care for the child by his custodial parent. Further, the presence of another adult does not negate the inherent dangers to a child from his or her caregiver’s use of drugs. Such dangers include neglect, providing the child with access to drugs, subjecting the child to violent or other unlawful behavior by the drug user, and more.

[People v. Webb, 2020 IL App \(1st\) 180110](#) The State failed to prove that defendant was a streetgang member for purposes of AUUW under [720 ILCS 5/24-1.8\(a\)\(1\)](#). The defendant admitted he was in a gang, but under [People v. Murray, 2019 IL 123289](#), the State was required to introduce specific evidence about the course or pattern of criminal activity to prove that the defendant was a member of a street gang.

[People v. Figueroa, 2020 IL App \(2d\) 160650](#) State failed to prove defendant guilty of possession of a firearm by a street gang member where the State’s gang expert testified that

the Latin Kings were a street gang but did not present any evidence of a “course or pattern of criminal activity” as required by the statute. See [People v. Murray, 2019 IL 123289](#). The State requested that the court remand for a new trial, but the court declined. The proper remedy was reversal because the error was not that the expert’s testimony was inadmissible but rather that an element of the offense was not proved. Instead of reversing outright, however, the court reduced the conviction to the lesser-included offense of aggravated unlawful use of a weapon.

[People v. Bell, 2020 IL App \(4th\) 170804](#) To establish defendant’s guilt of escape, the State was required to prove beyond a reasonable doubt that defendant had the intent to commit the offense and that he took a “substantial step” toward its commission. Whether defendant took a substantial step is a fact-dependent question, and courts may look for guidance in case law as well as the Model Penal Code.

Defendant’s reliance on another attempt escape case, [People v. Willis, 204 Ill. App. 3d 590 \(1990\)](#), was unconvincing. While the defendant in [Willis](#) had been able to run out of his cell and to the elevator, and defendant here never made it out of his cell, such progress is not required to constitute a substantial step toward escape. Instead, the court looked to [Model Penal Code section 5.01\(2\)](#) and found the substantial step element satisfied by defendant’s (1) “lying in wait “ where he hid in his cell, (2) “reconnoitering” where he had drawn a detailed overhead map of the prison, and (3) “possession, collection or fabrication of materials to be employed” in the escape, where defendant constructed a “dummy” out of linens which he placed in his bed during an inmate count. Defendant’s attempt escape conviction was affirmed.

[People v. Collier, 2020 IL App \(1st\) 162519](#) The State charged defendant with animal cruelty under 50 ILCS 70/3.01(a). The statute provides that “[n]o person or owner may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal.” Defendant argued that the State failed to prove him guilty beyond a reasonable doubt because the dogs were kept in a house, fed, and in good health. The court affirmed, finding that by keeping several dogs in a house without heat or running water, filled with urine and feces, keeping one dog chained outside in 15 degree weather, and by failing to properly feed, groom, or provide medical attention for the dogs, a rational trier of fact could find that defendant abused the animals.

Defendant further argued that the statute is unconstitutionally vague because it fails to provide a mental state and criminalizes innocent conduct. The court disagreed, holding that by limiting criminal liability to “cruel or abusive conduct,” the legislature made clear that it was not criminalizing innocent conduct. Such language provides sufficient notice of prohibited conduct so as to prevent arbitrary enforcement. Also, when a statute lacks a specific mental state, a mental state of intent, knowledge, or recklessness is implied, and here the court chose to read a knowledge requirement into the statute. Because defendant’s abuse of the animals was clearly done with knowledge, the court upheld the conviction.

[People v. Gaines, 2019 IL App \(3d\) 160494](#) Defendant was not proved guilty beyond a reasonable doubt of criminal trespass to residence. The only substantive evidence presented was the testimony of defendant’s parents who had primary authority over the residence in question. Neither testified that defendant remained without authority, and the court found both parents not credible, regardless. Recording of 911 call did not provide any insight into the element of whether defendant remained without authority. And, responding officer’s

testimony was admitted only to impeach defendant's mother's testimony and was not substantive evidence.

[In re O.S., 2018 IL App \(1st\) 171765](#) Viewing the evidence in the light most favorable to the State, an officer's testimony that respondent did not possess a FOID card is sufficient to prove lack of a FOID card even if the officer does not provide a basis for that knowledge.

[People v. Webb, 2018 IL App \(3d\) 160403](#) Whether defendant's prior convictions for aggravated battery constituted "forcible felonies" for purposes of armed habitual criminal is a legal question for the court, and need not be put to a jury. Here, the State properly asked the trial court to judicially notice the indictments from defendant's prior aggravated battery convictions and conclude that the convictions were based on great bodily harm, making them forcible felonies. The fact that defense counsel successfully struck the mention of "great bodily harm" from the stipulation and jury instructions did not negate the court's finding.

[People v. Sanchez, 2018 IL App \(1st\) 143899](#) The Appellate Court reversed a murder conviction where the 18-year-old defendant's coerced, illegal, and false confession should have been suppressed and regardless, the evidence did not just fail to prove guilt beyond a reasonable doubt, it showed that defendant did not commit the crime.

Someone fired four shots into an apartment complex parking lot from the south, and one bullet struck and eventually killed the victim. A half-hour later, the police seized defendant, who was being chased through the complex by members of the victim's gang, and took him to the station. Detectives placed him in a windowless room and interrogated him for 12 hours. For the first several hours, the police did not record the interrogation. They falsely told defendant that his friends implicated him and that GSR tests were positive, and refused multiple requests from the defendant to call his mother. Defendant adamantly denied involvement for over 10 hours, but then agreed that he "accidentally" fired a gun, from a spot inconsistent with eyewitness accounts, after the police promised he could call his mother if he confessed.

At trial, the State relied on the statement and the statement of defendant's friend, Flores, which was given under similar circumstances and implicated defendant, but which was inconsistent with defendant's statement in several respects. The State asked the jury to believe defendant's statement that he fired the gun, but to disbelieve the majority of the statement's details, which were inconsistent with the physical evidence, eyewitness accounts, and Flores' statement. The State also criticized defense counsel in closing for suggesting that the police acted improperly in eliciting defendant's confession. A jury found defendant guilty.

The Appellate Court held that the statement should have been suppressed because: (1) the police lacked probable cause to arrest defendant; (2) they failed to provide **Miranda** rights during initial questioning; (3) they violated [725 ILCS 5/103-2.1\(b\)](#) by failing to record first part of the interrogation and the State could not meet the exception for voluntary and reliable statements; (4) the statement was involuntary where police used deception and conditioned a phone call to his mother on his confession; and (5) the police violated [725 ILCS 5/103-3\(a\)](#) by refusing defendant a phone call.

Regardless, the Appellate Court found insufficient evidence of guilt and strong evidence of innocence. Defendant confessed to shooting from a spot that did not match the location of the shooter. He was found running near the scene 30 minutes later from a different direction despite the fact that his car was parked near the location he said he shot from. His description of the gun did not match Flores' description, and the gun was not found in the pond where they said they left it. Portions of his exculpatory statements were corroborated

by physical evidence. GSR tests on defendant were negative. Clearly, the statement was false, and no physical or eyewitness evidence implicated him, so the conviction was reversed outright.

People v. Steger, 2018 IL App (2d) 151197 Defendant was proved guilty beyond a reasonable doubt of two counts of disorderly conduct. Defendant's 911 call to request assistance facilitating the custody exchange of his son was groundless where an officer was already present to assist, and they were just waiting for the child to change clothing. Any 911 call can result in an emergency response. Accordingly, defendant violated 720 ILCS 5/26-1(a)(6) by making a false 911 call knowing it could result in emergency response.

Likewise, defendant violated the misdemeanor disorderly conduct statute by standing across the street from his child's mother's house. While his conduct was facially innocuous, given this history of tension between the parties, his presence could be perceived as unreasonable and threatening.

In re Gabriel W., 2017 IL App (1st) 172120 To prove AUUW based on lack of a Firearm Owner's Identification (FOID) card, the State must establish that respondent had not been issued a FOID card, not just that he didn't have one in his possession. Testimony by a police officer that respondent did not present him with a FOID card is insufficient to prove that respondent has not been issued a FOID card. Therefore, the Appellate Court vacated respondent's adjudication for AUUW based on the lack of a FOID card.

To prove respondent's age for purposes of AUUW based on possession of a firearm while being under 21, and for UPF while under age 18, the State may rely on respondent's own testimony at a pretrial suppression hearing that he was 15 years old, as in **In re Brown**, 71 Ill. 2d 151 (1978). Moreover, respondent in this case stated he was 15 years old at arraignment, and stipulated to juvenile jurisdiction. Additionally, a police officer testified to respondent's age at trial without objection.

People v. Davis, 2016 IL App (1st) 142414 The State failed to prove that the delivery of controlled substances occurred within 1000 feet of a school. 720 ILCS 570/407(b)(2). The evidence showed that defendant sold heroin to an undercover officer at an alley behind a gas station. The parties stipulated that an investigator measured the distance from the gas station to a high school as 822 feet. There was no evidence as to precisely where in the alley the sale took place or where in the gas station the investigator made his measurement from.

The court held that in order to establish that a drug transaction took place within 1000 feet of a school, the State must present evidence of the distance from the actual site of the transaction to the school. Here the evidence failed to show where precisely the transaction took place in the alley. And there was no evidence where precisely in the gas station the technician took his measurements. The State thus did not meet its burden.

Although the investigator's evidence was presented by stipulation, that did not remedy the shortcomings in the proof. Stipulations are given their natural probative effect and do not include matters that are not necessarily implicated by the stipulation. Here the stipulation only showed that the measurement took place from some point in the gas station and did not show that the measurement was from the actual site of the transaction in the alley behind the station.

The court reduced the conviction to delivery of a controlled substance and remanded for resentencing.

People v. Gharrett, 2016 IL App (4th) 140315 Under 720 ILCS 5/12C-30(b)(i) a person who

is 21 or older commits the offense of contributing to the criminal delinquency of a minor where, with intent to promote or facilitate the commission of an offense, he or she solicits, compels or directs a minor who is under the age of 17 in the commission of a felony. The court concluded that video evidence did not establish that the defendant told a two-year-old child to run into an office from which items were subsequently found to be missing where the video showed only that defendant leaned toward the child before she ran into the office.

The court noted that the child had previously wandered around the building, which was a Secretary of State facility, without any prompting from the defendant. In fact, the child “seemed to defy any commands to stay near” her parents. Under these circumstances, the evidence was insufficient to prove beyond a reasonable doubt that the child ran to the office area at defendant’s direction.

Defendant’s conviction for contributing to the criminal delinquency of a minor was reversed.

People v. Smith, 2015 IL App (1st) 122306 (modified upon denial of rehearing 11/13/15) The improper admission of evidence does not automatically require an outright reversal, even if the evidence would have been insufficient to convict if the erroneously admitted evidence was not considered. Remand for a new trial is the appropriate remedy where all the evidence at trial, including the improperly admitted evidence, viewed in the light most favorable to the State, is sufficient to allow a rational trier of fact to find the defendant guilty beyond a reasonable doubt.

Here, the State failed to properly establish that the breathalyzer machine was certified as accurate within 62 days of defendant’s test, and thus the breathalyzer test results (showing that defendant’s alcohol concentration exceeded .08) were improperly admitted. The court rejected defendant’s request for an outright reversal of his conviction. Instead, the court held that the proper remedy in this case was to reverse and remand for a new trial, since the evidence, including the improperly admitted breath test, was sufficient to prove defendant guilty of driving with an alcohol concentration of .08 or more.

In re S.M., 2015 IL App (3d) 140687 Defendant was charged in juvenile court with unlawful possession of a concealable handgun by a person under 18 years of age. **720 ILCS 5/24-3.1(a)(1)**. The State did not present any evidence establishing defendant’s age, which was an element of the offense. During closing argument, defendant pointed out this failure, and in rebuttal the State asked the trial court to take judicial notice of the court record showing that the court’s juvenile jurisdiction attached for minors under 18 years of age. The trial court agreed with the State, finding that as a matter of jurisdiction defendant was under 18, otherwise he would have been tried in adult court.

The Appellate Court reversed defendant’s adjudication, holding that the State failed to prove defendant was under 18, an element of the offense, and that the trial court could not properly fill in that missing proof by taking judicial notice of defendant’s age.

Illinois Rule of Evidence 201 allows a trial court to take judicial notice of certain facts which are not subject to reasonable dispute, meaning they are generally known in the local population or are capable of accurate and ready determination by consulting sources of unquestioned accuracy. A court may take judicial notice of its own records, including the status of pleadings in a juvenile proceeding.

The State charged defendant in juvenile court, which has exclusive jurisdiction to adjudicate criminal offenses committed by minors under the age of 18, and defendant did not file a motion to dismiss the charges. But procedural silence regarding allegations in a charging document cannot be construed as a judicial admission to an element of the offense.

The failure of defendant to contest specific allegations in the charge did not absolve the State of its obligation to prove the elements of an offense.

Additionally, defendant's age was not technically a jurisdictional requirement since juvenile court is simply a division of the circuit court. Defendant's silence with respect to jurisdiction thus did not constitute an admission that he was under 18 at the time of the offense.

The Appellate Court rejected the State's argument, made for the first time on appeal, that the trial court could fill in the State's missing proof by taking judicial notice of defendant's unsworn statement during arraignment that he was 16 years old. Not only was the statement unsworn, it was also self-incriminating, since defendant gave the answer in response to a direct question from the court about his age, an element of the offense. If this statement could be considered on appeal to provide the necessary proof of age, it would prevent defendant from any meaningful opportunity to challenge this element at trial, or to challenge the admission of his statement as violating his right against self-incrimination.

People v. Thomas, 2014 IL App (2d) 121203 The failure to correctly instruct the jury on the State's burden to prove defendant guilty beyond a reasonable doubt is a violation of due process. The proper inquiry is not whether the jury could have applied a particular instruction in an unconstitutional manner, but whether there is a reasonable likelihood that the jury actually applied the instruction improperly.

The United States Supreme Court has held that as a matter of federal constitutional law a trial court is neither prohibited from nor required to define reasonable doubt. Under Illinois law, however, courts are discouraged from defining reasonable doubt for a jury. There is no recommended jury instruction providing such a definition, and the committee notes recommend that courts give no instruction defining the term.

But defining reasonable doubt does not necessarily constitute reversible error. Instead, the question is whether the instructions taken as a whole created a reasonable likelihood that the jury believed it could convict under a lesser standard than reasonable doubt.

Here, the trial court answered the jurors' request for the legal definition of reasonable doubt by telling them that "it is for you to decide." The Appellate Court held that this response was "unquestionably correct." The court did not attempt to define reasonable doubt for the jury. Instead, it left the jurors to wrestle with its meaning themselves, which is in keeping with our legal system's confidence that jurors will act diligently and thoughtfully in applying the law. "[A]bsent any concrete demonstration of error or confusion, jurors should be trusted to apply the reasonable doubt standard appropriately."

The court disagreed with the decisions in **People v. Thurman, 2011 IL App (1st) 0911019** and **People v. Franklin, 2012 IL App (3d) 100618**, to the extent that they held that simply instructing jurors that they must determine for themselves the meaning of reasonable doubt is *per se* reversible error.

People v. Brooks, 2012 IL App (4th) 100929 Violation of an order of protection is a Class 4 felony if the defendant has a prior conviction for unlawful restraint. **720 ILCS 5/12-30(d)**. Where the prosecution intends to seek an enhanced sentence based on a prior conviction, it is required to notify the defendant of such intention in the charging instrument. "However, the fact of such prior conviction and the State's intention to seek an enhanced sentence are not elements of the offense and may not be disclosed to the jury during trial unless otherwise permitted. . . ." **725 ILCS 5/111-3(c)**.

Defendant was properly convicted of the Class 4 felony of violating an order of protection based on a prior unlawful conviction for unlawful restraint. The State properly disclosed its intent to seek the enhancement based on that conviction in the indictment. The trial court took judicial notice of the conviction outside the presence of the jury.

The court rejected defendant's reliance on [People v. Palmer, 104 Ill.2d 340, 472 N.E.2d 795 \(1984\)](#), as support for the argument that the unlawful restraint conviction was an element of the offense that had to be proved to the jury. **Palmer** was decided prior to the legislature's enactment of [725 ILCS 5/111-3\(c\)](#).

[People v. McPeak, 2012 IL App \(2d\) 110557](#) The State bears the burden of proving all elements of the offense beyond a reasonable doubt. Where a statutory exception to an offense is "part of the body of the substantive offense," the State's burden includes disproving the exception beyond a reasonable doubt. Even where an exception appears within the statutory definition of an offense, however, it is "part of the body" of the offense only if it is "so incorporated with the language of the definition that the elements of the offense cannot be accurately described without reference to the exception."

By contrast, a statutory exception which merely withdraws certain acts or persons from the operation of the statute is not part of the body of the offense. The defense has the burden of proof concerning such exceptions.

[625 ILCS 5/6-303\(a\)](#) defines the offense of driving with a suspended or revoked license as driving or being in actual physical control over a motor vehicle while one's license is revoked or suspended, "except as may be specifically allowed by" statutes authorizing a "monitoring device driving permit," which authorizes the offender to drive upon installation of a device which prevents the vehicle from starting if the driver's breath alcohol exceeds a specified level. The Secretary of State must issue such a permit to first offenders unless the offender declines.

The court concluded that the MDDP provision merely withdraws drivers who receive an MDDP from the scope of the statute defining the offense of driving with a revoked or suspended license, and that the provision is therefore not part of the body of the offense. Thus, the State need not present evidence affirmatively showing that the defendant was not granted an MDDP. Because the defendant did not raise as a defense that she had been issued and was driving in compliance with an MDDP, the State met its burden of proof concerning the offense despite its failure to present evidence whether defendant had been granted an MDDP.

[People v. Mocaby, 378 Ill.App.3d 1095, 882 N.E.2d 1162 \(5th Dist. 2008\)](#) Convictions for unlawful delivery of a controlled substance containing diazepam and unlawful delivery of a controlled substance containing hydrocodeinone reversed. The evidence that the substance was diazepam was insufficient where the forensic scientist noted the markings on the tablets, looked up the markings in a publication, and concluded from that information that the tablets were diazepam. Likewise, the evidence that the other substance was hydrocodeinone was insufficient where the scientist looked them up in a publication and then "took the tablets and did analytical analysis." The scientist did not explain what sort of "analytical analysis" she performed. The testimony was too vague and speculative to sustain the convictions.

[People v. Williams, 376 Ill.App.3d 875, 876 N.E.2d 235 \(1st Dist. 2007\)](#) Defendant was convicted of two counts of unlawful use of recorded sounds or images in violation of [720 ILCS 5/16-7\(a\)\(2\)](#) and two counts of unlawful use of unidentified sound or audiovisual recordings in violation of [720 ILCS 5/16-8](#). The former statute prohibits the intentional, knowing or

reckless transfer of sounds or images without the consent of the copyright owner, while the latter statute prohibits the intentional, knowing or reckless distribution of recorded material if the packaging fails to contain the actual name and address of the manufacturer and the names of the performers.

Defendant was allegedly engaged in the “street sale” of illegally-copied CD’s and DVD’s. At trial, an employee of the Recording Industry Association of America testified that he examined between 10 and 20 of the approximately 200 CD’s seized from defendant. The expert concluded that the CD’s he examined were illegal, counterfeit and “pirated” copies of actual CD’s. He based this conclusion on the type and identifying marks on the media used for the recording, the fact that the artwork on the outside of the CD case had been photocopied and improperly cut, and the absence of the name and address of the manufacturer on the cover. The witness did not look at any of the DVD’s that had been seized from defendant.

The convictions based on the sale of illegal music could stand. Although the CD’s were not played in court or introduced into evidence, an expert in determining counterfeit CD’s testified that his examination led him to conclude that the CD’s contained sounds by artists who were covered by the major recording labels. Taking the evidence in the most favorable light for the State, there was a sufficient basis for a reasonable person to conclude that the CD’s contained recorded sounds.

However, there was insufficient evidence to sustain the convictions based on the sale of illegal DVD’s, because there was no evidence that the discs contained any images. The expert did not examine the DVD’s and offered no testimony concerning whether they contained illegal material. The only other testimony concerning the DVD’s merely described the photocopied cover art of the case, not the DVD’s themselves.

People v. Dorsey, 362 Ill.App.3d 263, 839 N.E.2d 1104 (4th Dist. 2005) Despite defendant’s admissions that he intended to acquire additional chemicals and produce 100 grams of methamphetamine, a conviction for unlawful possession of a methamphetamine manufacturing chemical with intent to manufacture methamphetamine could be entered only for the quantity of meth that could be produced from the chemicals in defendant’s possession at the time of his arrest.

People v. Reher, 361 Ill.App.3d 697, 838 N.E.2d 206 (2d Dist. 2005) Defendant was prosecuted for violating an order of protection which, among other things, precluded him from “harass[ing] or having any kind of contact” with the protected persons. The evidence showed that the persons protected by the order lived directly across a highway from a K Mart store. As one of the protected persons was walking toward the K Mart one evening, she found defendant “fiddling” with his bicycle at the entrance to the store. Defendant testified that he had just made a purchase and was trying to attach the merchandise to his bike.

Because defendant was at the K Mart for a legitimate purpose, had no reason to know that the beneficiary of the order of protection would come to the store while he was there, and did not appear to have gone to the store in the hope or with the intention of seeing her, the evidence was insufficient to sustain the conviction.

People v. Mills, 356 Ill.App.3d 438, 825 N.E.2d 1227 (2d Dist. 2005) Defendant’s conviction for theft of labor or services was reversed. Defendant had been a repeat customer at a Maaco shop. He had the locks on his truck replaced and months later returned complaining about how they were working. Over the telephone, he was told that they would have to be repaired. A verbal authorization for the repairs was made over the telephone. When defendant came to pick up the truck, he was presented a bill and disputed whether he should pay. He drove

away without paying.

The evidence only established that there was an honest dispute about the cost of the services, and no evidence beyond a reasonable doubt that defendant knew he was going to be charged for the repairs.

People v. Bailey, 333 Ill.App.3d 888, 776 N.E.2d 824 (3d Dist. 2002) Although defendant's credibility was "called into question" because he allegedly gave conflicting statements, "a lack of credibility is not enough to establish that [defendant] had knowledge of the presence of the weapon in the vehicle."

People v. Rodgers, 322 Ill.App.3d 199, 748 N.E.2d 849 (2d Dist. 2001) Under 625 ILCS 5/6-303(a), which defines driving while license revoked as driving on a public highway when one's license is revoked but exempts persons with driving permits issued by other states, the defense bears the burden to show that a valid driving permit has been issued by another State. The State is not required to prove the absence of a restricted driving permit from another state in order to establish the offense.

People v. Hawkins, 311 Ill.App.3d 418, 723 N.E.2d 1222 (4th Dist. 2000) Where the charging instrument failed to denote which of several subsections of a statute has allegedly been violated, the conviction should be affirmed if the evidence was sufficient to support conviction under any of the subsections.

People v. Hodogbey, 306 Ill.App.3d 555, 714 N.E.2d 1072 (1st Dist. 1999) The jury could not have convicted defendant because they disbelieved his testimony denying the offense. "Because the burden of proof never shifts, a reasonable doubt is created by the insufficiency of the evidence introduced by the State. . . That the jury may have disbelieved the testimony of defendant will not excuse the State's failure to produce evidence sufficient to carry its burden of proof."

People v. Pendleton, 307 Ill.App.3d 966, 719 N.E.2d 320 (3d Dist. 1999) Where the State charged defendant with only one of two alternative methods under which the crime could be committed, the Appellate Court refused to affirm the conviction on the theory that had not been charged. The State "may not offer a new theory of guilt for the first time on appeal"; it would be "manifestly unfair to uphold a conviction based on a charge defendant was never given the opportunity to defend." See also, **People v. Smith**, 183 Ill. 2d 425, 701 N.E.2d 1097 (1998) (on appeal, State could not argue new predicate offense for felony murder).

People v. Zizzo, 301 Ill.App.3d 481, 703 N.E.2d 546 (2d Dist. 1998) Defendant did not waive his reasonable doubt argument by failing to raise the issue in the trial court. Under Illinois law, the sufficiency of the evidence may be challenged for the first time on appeal.

People v. Devine, 295 Ill.App.3d 537, 692 N.E.2d 785 (1st Dist. 1998) The trial court erred at a bench trial for theft by stating that defendant had failed to rebut the State's *prima facie* case of guilt. Because the trial court improperly shifted the burden of proof to defendant and deprived him of the presumption of innocence and the right to have his guilt proven beyond a reasonable doubt, a new trial was required.

People v. Arcos, 282 Ill.App.3d 870, 668 N.E.2d 1177 (1st Dist. 1996) A conviction based on prior inconsistent statements admitted as substantive evidence was reversed where the

declarant testified at trial and disavowed the prior statements. The corroborating evidence was insufficient to establish defendant's guilt.

People v. Davis, 278 Ill.App.3d 532, 663 N.E.2d 39 (1st Dist. 1996) Guilt cannot be inferred merely from motive and opportunity to commit the offense. Furthermore, it is unfair to attribute motive without a factual basis.

People v. Thomas, 277 Ill.App.3d 214, 660 N.E.2d 184 (1st Dist. 1995) Although the issue had not been raised by either party, the Appellate Court held *sua sponte* that the evidence was insufficient to prove defendant's guilt beyond a reasonable doubt.

People v. Peterson, 273 Ill.App.3d 412, 652 N.E.2d 1252 (1st Dist. 1995) In a joint bench trial, codefendants were convicted of aggravated discharge of a firearm, aggravated battery with a firearm, armed violence and aggravated battery of a senior citizen. The evidence showed that codefendants became engaged in an altercation and started shooting at each other. A bullet struck an innocent bystander; however, it was unclear which defendant had fired the shot in question. Because the identity of the defendant who fired the shot could not be determined, the elements of aggravated battery with a firearm could not be proven against either defendant.

People v. Virella, 256 Ill.App.3d 635, 628 N.E.2d 268 (1st Dist. 1993) In announcing the verdict, the trial court said that the "totality of the State's evidence was clear and convincing." In addition, in ruling on the post-trial motion the trial judge said three times that the State's evidence had been "clear and convincing." By making four separate references to his belief that the evidence was "clear and convincing," the trial judge gave "strong affirmative evidence" that he had applied the wrong standard of proof.

People v. Sullivan, 234 Ill.App.3d 328, 600 N.E.2d 457 (2d Dist. 1992) Conviction for battery of defendant's mother reversed. A prior inconsistent statement is admissible as substantive evidence only if the witness acknowledges under oath that the statement was made. Here, the mother denied having made the statement to the officer, and there was no other evidence of guilt.

However, the conviction for battery of defendant's father was affirmed. A reasonable trier of fact could have convicted based on the blood on the father's lower lip, a broken beer bottle found at the scene, the mother's testimony that defendant had been drinking and there had been an argument, and the father's prior inconsistent statement and motive to falsify.

People v. Phillips, 127 Ill.2d 499, 538 N.E.2d 500 (1989) Defendant's conviction for murder and other offenses was upheld, though largely based on the testimony of a jail inmate who claimed that defendant had confessed to him. The inmate's testimony contained information about the crimes that was not known to the public, and other evidence tended to corroborate his testimony.

§41-2

Function of Trier of Fact – Believing or Disregarding Testimony

Illinois Supreme Court

People v. Harris, 2018 IL 121932 Where multiple eyewitnesses identified defendant as the individual who shot at the murder and attempt murder victims, defendant was proved guilty

beyond a reasonable doubt of first degree murder even though the bullet recovered from the decedent was of a different caliber from those recovered at the shooting scene. The trial court found one of the eyewitnesses particularly credible, and the evidence did not exclude the possibility that defendant had fired more than one gun, especially where one eyewitness described a chrome handgun and another said he observed a dark-colored gun. The court also rejected defendant's argument that the victim could not have fled to a parking lot a half-block away if he had already been shot because it was based on speculation about the victim's physical capabilities and because no evidence suggested a second shooting had occurred in that parking lot.

People v. Sanchez, 115 Ill.2d 238, 503 N.E.2d 277 (1986) It is the function of the jury, as trier of fact, to determine the credibility of witnesses and resolve any conflicts or inconsistencies in the evidence. It is not the function of the reviewing court "to retry the defendant."

People v. Locascio, 106 Ill.2d 529, 478 N.E.2d 1358 (1985) Determining the credibility of witnesses and weight of testimony is primarily for the trier of fact. The "trier of fact may disregard exculpatory accounts or other evidence that tends to support or be consistent with a defendant's innocence and rest its decision instead on the circumstantial evidence of guilt presented by the State."

People v. Akis, 63 Ill.2d 296, 347 N.E.2d 733 (1976) It is the function of the trier of fact to determine the credibility of witnesses, the weight to be given their testimony and the inferences to be drawn from the evidence. Where the evidence is merely conflicting, a court of review will not substitute its judgment for that of the trier of fact.

People v. Novotny, 41 Ill.2d 401, 244 N.E.2d 182 (1969) The testimony of one witness, if positive and credible, is sufficient to convict even if contradicted by the accused. It is not the duty or privilege of a reviewing court to substitute its judgment of weight or credibility for that of the trier of fact, which heard the evidence and observed the demeanor of the witnesses.

People v. McGee, 21 Ill.2d 440, 173 N.E.2d 434 (1961) Evidence of alibi cannot be disregarded where the sole evidence contradicting it rests on a less than positive identification of defendant.

People v. Setzke, 22 Ill.2d 582, 177 N.E.2d 168 (1961) The trier of fact is not required to believe alibi testimony over a positive identification, even though the alibi testimony came from a greater number of witnesses.

People ex rel. Brown v. Baker, 88 Ill.2d 81, 430 N.E.2d 1126 (1981) The credibility of witnesses and the weight to be given their testimony are typically jury considerations; however, a jury cannot arbitrarily or capriciously reject the testimony of an unimpeached witness. "Where the testimony of a witness is neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached, that testimony cannot be disregarded even by a jury." See also, **People v. Tomasello**, 166 Ill.App.3d 684, 520 N.E.2d 1134 (2d Dist. 1988) (jury could not disregard defendant's unimpeached and uncontradicted testimony).

Illinois Appellate Court

People v. Phillips, 2022 IL App (1st) 181733 The State alleged that defendant committed felony murder by causing the death of an 81-year-old woman during the course of a sexual assault and residential burglary. The woman died four days after the attack. Despite conflicting expert opinions on the cause of death, the Appellate Court found sufficient evidence to uphold defendant's murder conviction.

To prove murder, the State must establish that defendant's act caused death, but the act need not be the sole or immediate cause of death; rather, it is sufficient if the defendant's act contributed to cause the death. Even "where the victim's existing health condition contributed to the victim's death," there is still sufficient proof of causation "so long as the defendant's acts contribute to the death."

Here, the State's experts opined that the death occurred because the attack caused stress and injuries which exacerbated the victim's heart disease. A defense expert testified that heart disease alone likely caused the death. The Supreme Court found **People v. Brackett, 117 Ill. 2d 170 (1987)**, analogous. In **Brackett**, the Supreme Court analyzed a similar set of facts and concluded that because defendant set in motion a chain of events that led to the victim's death, the State proved causation beyond a reasonable doubt.

In this case, the trier-of-fact could reasonably credit the State's expert's opinion that the attack set in motion a chain of events culminating in death. The expert testified that the attack was sufficiently traumatic to induce enough stress in an 81-year-old, 80-pound woman with an enlarged heart, to cause a heart attack. He cited a study showing an increase in heart attacks following traumatic events such as earthquakes, and while the study showed most deaths occurred within a few hours of the event, and conceded a cardiac event occurring four days after the event would be unusual, it was not so unreasonable for a jury to conclude that, given the age and health of the victim, the attack here led to her death. And while the expert agreed on cross that it would be reasonable for a medical examiner to find the cause of death undetermined, the jury had a right to conclude that the expert's own opinion was credible even if that expert concluded that others might disagree.

People v. Wigger, 2021 IL App (3d) 180486 The Appellate Court criticized the trial court's finding that the responding officer was more credible than defendant, the victim, and other eyewitnesses simply because the officer had "no axe to grind" and was the only "independent" witness to testify. The Appellate Court noted that "[s]uch a cursory assessment of the evidence runs the risk of indiscriminately elevating the testimony of responding officers over that of witnesses whose perception or recollection may be more accurate even though they are interested in the outcome."

The court affirmed defendant's conviction of domestic battery, however, rejecting her claim that her actions were excused under the affirmative defense of defense of dwelling. Defense of dwelling requires a reasonable belief both that the victim's entry to the dwelling is unlawful and that use of force is necessary to prevent or terminate that entry. Here, defendant's own testimony was that she did not use force against the victim, her ex-boyfriend, and that she only made contact with him as she tripped and fell. Defendant made no claim that she was attempting to remove the victim from her home. And, the victim waited to enter the home in an effort to retrieve his dog until after the police arrived. The officer's presence made it difficult to conclude that defendant reasonably believed force was necessary.

People v. Feliciano, 2020 IL App (1st) 171142 Defendant was proved guilty beyond a reasonable doubt of murder of 94-year-old victim where the conviction rested primarily on the victim's testimony and was not supported by any physical evidence connecting defendant to the offense. Evidence at trial showed a prior dispute between the victim and defendant,

who was a tenant in the victim's home at the time. And, while the defense suggested that the victim suffered from dementia, that claim was not clearly established, and the jury was entitled to determine whether to credit the victim's statements implicating defendant or not.

People v. Macklin, 2019 IL App (1st) 161165 The majority upheld defendant's armed robbery conviction after finding the two victims' identification testimony sufficiently reliable. The victims disagreed as to whether they saw the assailant for a few seconds or a few minutes, but gave consistent if generic descriptions, and independently identified defendant in a lineup 10 days later.

Justice Hyman, writing in dissent, would have reversed. He first disputed the majority's premise that it owes deference to the finder of fact where the issue is identification reliability, as defendant was not questioning the victims' credibility. Rather, the question was whether an objective analysis of the **Biggers** factors showed the identifications to be reliable. Here, the dissent found the identifications unreliable because of the brief opportunity to observe, the limited degree of attention given stress and weapon focus, and generic prior descriptions that evolved by the time of trial. The fact that the victims expressed certainty was of little value in light of recent research. The dissent was also troubled by the fact that the police failed to provide a Spanish lineup advisory form to a non-English-speaking victim.

People v. Denis, 2018 IL App (1st) 151892 The State provided sufficient evidence of criminal sexual assault despite the fact that the complainant, who was seven years-old at the time of the incident, waited 10 years before her first outcry and suffered from bipolar disorder. The complainant explained her reluctance to come forward earlier, stating that she was afraid and that she did not understand what happened. The defense provided no details about her bipolar disorder, and therefore offered no evidence it compromised her ability to testify accurately.

The State also provided sufficient evidence that defendant would have known the complainant was unable to understand the nature of the sexual act and give knowing consent, as required by **720 ILCS 5/12-13(a)(2)**. Although knowledge of the complainant's age alone is generally insufficient to prove this element, in this case defendant knew the complainant (his cousin) her entire life and would have observed her long enough to know she was unable to understand the nature of the sexual act.

People v. Scott, 2018 IL App (2d) 151056 While the burden of proof beyond a reasonable doubt never shifts from the State to the defense, a trier of fact may draw negative inferences where a defendant chooses to testify and then gives an implausible or inconsistent version of events. Defendant's incredible testimony generally cannot be the sole evidence to sustain a guilty verdict, but it can be weighed in the State's favor when considering the sufficiency of the evidence as a whole.

Here, defendant accepted delivery of a package at his residence even though the package was addressed to someone defendant claimed he did not know. Unbeknownst to defendant, the police had already opened the package, determined it contained drugs, and outfitted the package with an alarm that would let the police know when it had been opened. When the alarm was triggered, the police descended upon the residence quickly, before defendant had the opportunity to open the interior packaging that actually contained the drugs. Defendant challenged the State's proof with regard to his knowledge of the presence of drugs.

The Appellate Court noted that defendant gave inconsistent statements regarding when he opened the package and implausible testimony about his reason for leaving the house and taking two very short trips around the neighborhood after the package was delivered. Defendant's testimony about the timing of opening the package was properly viewed as an effort to distance himself from knowledge of its contents. And, the trier of fact could reasonably infer that defendant was engaged in counter-surveillance when he left the house and circled the area because the reasons he gave for his short trips through the neighborhood were unbelievable. Coupled with the State's other evidence, including that a search of defendant's home revealed materials and supplies commonly used in the drug trade, the evidence was sufficient to sustain his conviction of possession of a controlled substance with intent to deliver.

People v. Gray, 2017 IL 120958 Evidence that a witness was consuming alcohol near the time of the event she testifies about is probative of her sensory capacity and affects the weight given to her testimony. But the fact that a witness was drinking does not necessarily preclude the trier of fact from finding her credible.

Defendant argued that the State failed to prove his guilt beyond a reasonable doubt since the victim, who had consumed a pint of whiskey and 40 ounces of beer, was so intoxicated at the time of the offense that she could not even remember being stabbed in the chest by defendant.

The court rejected this argument, holding that the jury was well-aware of how much alcohol the victim consumed. Her credibility was properly a question for the jury which had the opportunity to view her testimony at trial.

Defendant's conviction was affirmed.

People v. Bennett, 2017 IL App (1st) 151619 Following a car accident, the two drivers, the defendant and the decedent, engaged in a fistfight before the defendant shot and killed the decedent. The Appellate Court held that the trial court did not err in rejecting a self-defense claim, or in not reducing the conviction to second-degree murder based on an unreasonable belief in the need for self-defense. A rational trier-of-fact could have found defendant guilty of first degree murder where the evidence established that the fight ended before defendant ran several feet away, retrieved a gun, and shot the decedent. No witnesses corroborated defendant's account that decedent pursued him; rather, the State's witnesses testified that the decedent neither pursued nor threatened defendant after the fight, and defendant returned to within arm's length of the decedent before firing the gun.

The Appellate Court also rejected defendant's argument that the trial court erred in not finding defendant guilty of second-degree murder based on serious provocation. A defendant's claim of self-defense can negate an inference that a person acted under a sudden and intense passion. In this case, defendant specifically testified that he shot the decedent because he believed in the need to defend himself and his friend. This suggests his conduct was deliberate, and not the result of a sudden, intense passion.

People v. Fein, 2017 IL App (1st) 152091 At defendant's jury trial for armed robbery, the complainants testified that defendant took her purse by threatening her with a gun, while defendant testified that he actually tricked the complainant into giving her his money. The jury convicted defendant of the lesser-included offense of theft by obtaining unauthorized control of property.

The Appellate Court affirmed defendant's conviction. It rejected defendant's contention that the jury's decision to find him not guilty of armed robbery showed that it

believed his testimony, not the complainant's, and under his testimony, he did not exert "unauthorized" control of the complainant's money. The Appellate Court refused to interpret the jury's verdict in this manner. The armed robbery acquittal did not mean that the jury rejected the entirety of the complainant's testimony; the jury could have found that defendant obtained unauthorized control by taking the money but disbelieved the complainant's testimony that defendant used a gun.

(Defendant was represented by Assistant Defender David Harris, Chicago.)

People v. Gullens, 2017 IL App (3d) 160668 The commission of an offense may be justified by reason of necessity where a defendant reasonably believes that his conduct was necessary to avoid a public or private injury greater than the injury that might result from his own conduct. 720 ILCS 5/7-13.

Defendant, who had a prior felony conviction, discovered that either his brother or his friend had stolen a firearm from a gun store. Defendant took possession of the firearm for approximately 10 minutes while he returned it to the store. The trial court revoked his conditional discharge for committing the offense of possession of a firearm by a felon.

The Appellate Court held that the defense of necessity applied to defendant's conduct. Defendant reasonably believed that returning the firearm was necessary to avoid a greater injury. Returning the firearm to its rightful owner "undoubtedly promoted a higher value than refraining from being a felon in possession of a weapon for the 10 minutes it took to return the gun to the store."

The court reversed the revocation of defendant's conditional discharge.

People v Olaska, 2017 IL App (2d) 150567 Defendant stabbed three people in a bar in February 2012; one of those people (Wild) died from his injuries and the other two (Hayes and Castaneda) survived. Hayes was stabbed while he was in a booth with defendant. Wild was stabbed when he tried to stop defendant who had exited the booth and headed toward the door. And, Castaneda, who was a bouncer at the bar, was stabbed when he intervened and disarmed defendant. Defendant claimed self-defense, while the State's theory was that defendant had grown frustrated and belligerent after a woman at the bar had spurned his advances. The jury returned verdicts of guilty of intentional, knowing, and felony murder of Wild (predicated on aggravated battery of Hayes) and of unlawful use of a weapon (UW) but not guilty of attempt murder of Hayes and Castaneda.

While there were varying witness accounts of the incident, the testimony and surveillance videos were sufficient to prove beyond a reasonable doubt that defendant was not acting in self-defense. Defendant's own testimony was that he told Hayes to "f— off" while seated across from him in a booth at the bar. The video showed that defendant calmly took a drink with one hand before stabbing Hayes with the other. Defendant could have left the booth or could have displayed his knife as a warning, but he did not make any effort to remove himself from the situation. Further, the court could have properly rejected defendant's claim of self-defense to the knowing murder of Wild based solely on the evidence that defendant stabbed Wild while he was escaping the aggravated battery of Hayes.

Defendant's convictions and sentences were affirmed.

In re Nasie M., 2015 IL App (1st) 151678 Generally, the trier of fact is in the best position to judge credibility and it is not the function of the reviewing court to retry the case. A finding of guilt will only be reversed where the proof was so improbable, implausible, or unsatisfactory that reasonable doubt exists.

Following a bench trial, defendant was convicted of several gun offenses, all of which required proof that he possessed a gun. The State's evidence showed that the police spoke with defendant at a vacant lot where he had been shot in the foot. Defendant was taken to the hospital and the police went to his girlfriend's apartment, where they found a gun under a mattress. The gun contained a live, unfired cartridge.

An officer interviewed defendant at the hospital where he was being treated and was on pain medication. Defendant initially told the officer that he had been shot by two assailants who were behind him. The officer observed that the wound was to the top of defendant's foot and questioned defendant's version of events. He also told defendant that a gun had been recovered from his girlfriend's house. Defendant then admitted the gun was his. He told the officer that he had been carrying the gun, accidentally shot himself in the foot and then took the gun back to his girlfriend's house.

Defendant, by contrast, testified that two men fired several shots at him as he attempted to flee from them. He had two gunshot wounds to the bottom of his foot and one wound to the top. The hospital gave him medication for his extreme pain, which put him in and out of sleep. He did not recall speaking to any officers at the hospital and denied telling the police that he shot himself in the foot.

In finding defendant guilty, the trial court acknowledged that the police could have done a more thorough investigation, including testing defendant for gunshot residue and test-firing the gun. But the court found that the officer who questioned defendant was believable and defendant was not, and that defendant "admits shooting himself."

The Appellate Court reversed outright defendant's convictions for the weapons offenses holding that the State failed to prove that defendant possessed a firearm. The court observed that the State had provided no reason why defendant's admission that he possessed the gun should be presumed to be more credible than his trial testimony denying that possession. Moreover, the version of events in the admission were "not necessarily corroborated" by the other evidence. Under that version, defendant would have had to shoot himself in the foot, run or hop to his girlfriend's apartment, get rid of the gun, and then return to the scene of the shooting where he spoke to the police, all within a short span of time.

The court gave little weight to the significance of the officer's observation of a gunshot wound to the top of defendant's foot since the officer was not an expert in gunshot wounds. The court also noted the absence of eyewitness testimony, forensic evidence and medical evidence. The court thus concluded that the State failed to prove defendant's guilt beyond a reasonable doubt.

In re Vuk R., 2013 IL App (1st) 132506 Great deference is accorded on review to a trial judge's resolution of factual disputes.

At the conclusion of trial, the trial judge made no findings of fact but found respondent guilty of aggravated battery (great bodily harm) and not guilty of aggravated battery (public way). But at the sentencing hearing, the trial judge made the observation, "As far as I am concerned on both the government's case and the defense case, every one of those witnesses lied." The court attributed the lies to the fact that a civil case was pending, remarked that the complainant had been injured, "[b]ut it certainly did not occur the way any of these witnesses testified to."

The Appellate Court reversed. The trial judge found that the State had proved that the complainant had been injured, but not the manner of the injury. Because the respondent had introduced evidence that he was defending himself at the time of the altercation, it was also the State's burden to disprove this affirmative defense beyond a reasonable doubt. In

light of the judge's stated belief that all of the witnesses had lied, the State did not sustain its burden.

People v. Rivera, 409 Ill.App.3d 122, 947 N.E.2d 819 (1st Dist. 2011) A person commits the offense of child pornography where “with knowledge of the nature or content thereof, [he] possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child . . . whom the person knows or reasonably should know to be under the age of 18 . . . , engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.” 720 ILCS 5/11-20.1(a)(6).

Images and videos speak for themselves in determining whether such media constitutes child pornography. A trier of fact can determine the age of a child from a photograph.

Defendant was convicted of child pornography based on his possession of a compact disc labeled “Jose’s stuff” containing a video clip depicting a female performing oral sex on a male. A State’s Attorney investigator, who the parties stipulated was an expert in the area of computer forensic analysis, testified that the video was labeled “13-year-old give head” and depicted “a young adolescent,” “small in stature,” with “underdeveloped breasts” performing fellatio.

The Appellate Court noted that the State’s witness was not an expert in any field that would allow him to determine the age of an individual in the video clip. Contrary to his testimony, the female in the video was not obviously adolescent or juvenile in appearance. She was depicted in the video fully clothed wearing a sweater and bra, and only her shoulders, face and right hand were visible during the act of fellatio, so nothing indicated that her breasts were underdeveloped. Also contrary to the investigator’s testimony, nothing in the file name of the disc referred the age of the female. The disc was numbered 13 in a group of consecutively-numbered videos and photographs, and thus that number was not an apparent reference to the age of the person depicted therein. The literal file name was “13givehead” rather than “13-year-old gives head.”

The court acknowledged the great deference ordinarily accorded to jury determinations. Where the evidence at issue does not involve credibility determinations or observations of demeanor, the deference afforded is logically less. Because a simple viewing of the video clip itself created a reasonable doubt of defendant’s guilt, the court reversed the conviction.

People v. Szymanowski, 182 Ill.App.3d 885, 538 N.E.2d 729 (1st Dist. 1989) The circumstantial evidence upon which defendant's guilt was premised was directly contrary to the victim's testimony, who testified that defendant was not her attacker. The victim’s testimony was not impeached or directly contradicted. Because the victim's testimony established that a third party beat her, the evidence was insufficient to sustain defendant's guilt beyond a reasonable doubt despite defendant’s statement that he struck the victim.

People v. Weeks, 115 Ill.App.3d 524, 450 N.E.2d 1351 (2d Dist. 1983) Testimony cannot be disregarded where it is not contradicted by other witnesses or by the circumstances and is not inherently improbable, and where the witness has not been impeached.

People v. Flores, 41 Ill.App.3d 96, 353 N.E.2d 131 (1st Dist. 1976) Defendant's conviction for DUI was reversed; defendant’s uncontradicted and unimpeached testimony (that he drank *after* the accident) was substantiated by another witness.

People v. Harling, 29 Ill.App.3d 1053, 331 N.E.2d 653 (1st Dist. 1975) Defendant's conviction for voluntary manslaughter following a bench trial was reversed. Defendant's claim of self-defense was in part corroborated by eyewitnesses, and defendant's testimony was not incredible or improbable. "A trier of fact should not disregard or reject testimony by defendant which is not improbable or contradicted in its material parts, especially where it is corroborated at least in part."

People v. Holsapple, 30 Ill.App.3d 976, 333 N.E.2d 683 (5th Dist. 1975) The jury was justified in disregarding defendant's alibi testimony because it was "just not believable." However, "an incredible explanation denying guilt is not an admission of guilt — even though it may not aid the defendant, it does not supplement the proof required of the State." See also, **People v. Kinsloe**, 281 Ill.App.3d 799, 666 N.E.2d 872 (1st Dist. 1996) (defense witness's incredible testimony exonerating defendant does not justify inference that defendant must have been guilty).

People v. Cortez, 26 Ill.App.3d 829, 326 N.E.2d 232 (1st Dist. 1975) Defendant's conviction for shoplifting was reversed. Defendant was stopped near the store exit (past the checkout counters) and was wearing a heavy jacket with price tags hanging from the sleeve. Defendant testified that he was looking for his friend, from whom he was going to borrow money to buy the coat.

State failed to contradict defendant's innocent explanation. The trial judge erred by rejecting defendant's explanation simply by concluding that defendant's testimony was incredible. "Evidence given in court under oath may not be simply disregarded where it is neither contradicted nor impeached nor inherently improbable."

§41-3

Presumptions – Affirmative Defenses

United States Supreme Court

Smith v. United States, 568 U.S. 106, 133 S. Ct. 714, 184 L. Ed. 2d 570 (2013) Although the prosecution has the burden to prove beyond a reasonable doubt every fact necessary to constitute the crime with which the defendant is charged, the constitution does not require that the prosecution disprove all affirmative defenses raised by the defense. Instead, the burden of proof may be assigned to the defendant if the affirmative defense in question does not negate an element of the crime. Although the legislative branch may choose to assign the burden of proof concerning other affirmative defenses to the prosecution, the constitution does not require it to do so.

Where a defendant was charged with conspiracy and claimed that he had withdrawn from the conspiracy at such time that the statute of limitations expired before the prosecution was brought, the constitution did not require that the prosecution bear the burden of disproving the affirmative defense of withdrawal. A withdrawal defense does not negate an element of conspiracy, but merely determines the point at which the defendant is no longer criminally responsible for acts which his co-conspirators took in furtherance of the conspiracy. Because the defense did not negate any elements of conspiracy, the constitution was not violated because Congress followed the common law rule by assigning to the defendant the burden to prove he had withdrawn from the conspiracy.

The court also noted the "informational asymmetry" between the defense and the prosecution concerning the defense of withdrawal. "The defendant knows what steps, if any, he took to dissociate from his associates," while it "would be nearly impossible for the Government to prove the negative that an act of withdrawal never happened."

Fiore v. White, 528 U.S. 23, 120 S.Ct. 469, 145 L.Ed.2d 353 (2001) The due process clause of the federal constitution requires that a conviction be vacated where after the conviction became final, the State Supreme Court held that the statute defining the offense did not apply to defendant's conduct.

Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985) At defendant's trial for murder, the jury was instructed that: "The acts of a person of sound mind and discretion are presumed to be the product of the person's will, but the presumption may be rebutted," and that "a person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts, but the presumption may be rebutted." These instructions violated the due process requirement that the State prove every element of the offense, since a reasonable juror could have understood the instructions as creating a mandatory presumption that shifted to the defense the burden of persuasion on the element of intent.

County Court v. Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979) A "permissive" presumption that all occupants of an auto are in possession of any firearm found therein was upheld. The presumption was proper because, as applied to the facts of this case, there was a "rational connection between the basic facts proved and the ultimate fact presumed and the latter is more likely than not to flow from the former."

The validity of a permissive presumption is not judged by a reasonable doubt test (as is a mandatory presumption), but by the "more likely than not" standard. See also, **People v. Housby**, 84 Ill.2d 415, 420 N.E.2d 151 (1981).

Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979) Jury instruction in deliberate homicide case (that "the law presumes that a person intends the ordinary consequences of his acts") violated due process. The jury may have interpreted the instruction as either a "burden-shifting" presumption or a "conclusive" presumption, both of which would deprive a defendant of due process.

Patterson v. New York, 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977) Due process was not denied by a state statute that placed on a second degree murder defendant the burden of proving, by a preponderance of the evidence, the affirmative defense of acting under extreme emotional distress (so as to reduce the crime to manslaughter). **Mullaney v. Wilbur** was distinguished. See also, **Martin v. Ohio**, 107 S.Ct. 1098, 94 L.Ed.2d 267 (1987) (self-defense).

Hankerson v. North Carolina, 432 U.S. 233, 97 S.Ct. 2339, 53 L.Ed.2d 306 (1977) **Mullaney v. Wilbur** is to be applied retroactively.

Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975) Under the statutory scheme in question, all intentional or criminally reckless killings, unless justified, constituted felonious homicide and were murder, punishable by life imprisonment. However, if defendant proved by a preponderance of the evidence that the killing was committed in the heat of passion or sudden provocation, the offense was manslaughter, punishable by imprisonment not to exceed 20 years or by a fine.

This statutory scheme was unconstitutional. Due process requires the prosecution to prove beyond a reasonable doubt every fact necessary to constitute the crime charged. Thus, the prosecution must prove beyond a reasonable doubt the absence of heat of passion.

Barnes v. U.S., 412 U.S. 837, 93 S.Ct. 2357, 37 L.Ed.2d 380 (1973) Possession of recently stolen property, if not satisfactorily explained, creates an inference that the person in possession knew that the property was stolen. That inference is well-founded in history, common sense and experience. See also, **People v. Housby**, 84 Ill.2d 415, 420 N.E.2d 151 (1981).

U.S. v. International Minerals, 402 U.S. 558, 91 S.Ct. 1697, 29 L.Ed.2d 178 (1971) Shippers of dangerous materials are presumed to know of a regulation for safe transportation of such materials – "The principle that ignorance of the law is no defense applies whether the law be a statute or a published regulation."

Leary v. U.S., 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969) Due process violated by statutory presumption that permits jury to infer from possession of marijuana that defendant knew the substance had been illegally imported. A presumption is irrational or arbitrary unless it can be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact.

Illinois Supreme Court

People v. Newton, 2018 IL 122958 Section 407(b)(2) of the Controlled Substances Act enhances the penalty for delivering controlled substances within 1000 feet of a "church, synagogue, or other building, structure, or place used primarily for religious worship." Defendant alleged that the State failed to prove he delivered drugs within 1000 feet of a church because the State did not offer particularized evidence that the building was used for religious worship. Instead, the State relied on an officer's testimony that the building had a sign identifying it as a church, and that he had seen cars in its parking lot.

The Supreme Court interpreted the statute using the dictionary definition of "church," finding it to be a building used primarily for religious worship. It held that the State must prove that the building is used primarily for religious worship, but that "the legislature has already determined that a church or a synagogue meets that requirement." Thus, in this case, the State merely had to prove that the building could reasonably be identified as a "church." In light of the sign and the cars seen entering the parking lot, a rational trier of fact could find beyond a reasonable doubt that the building met the statutory definition of "church."

In dissent, Justice Burke, with Justice Neville, found that the majority's analysis read into the statute an unconstitutional mandatory rebuttable presumption, whereby if the State could show that a building had certain (undefined) traditional characteristics of a church, the burden shifted to the defendant to disprove that the building was used primarily for religious worship. Absent this presumption, the evidence was insufficient. The officer never verified that any of the people driving the cars entering the lot were using the building for religious worship, never spoke with a pastor or anyone else associated with the church, and never personally witnessed any religious ceremonies inside the building.

People v. Way, 2017 IL 120023 A person commits driving under the influence when she drives a vehicle and there is any amount of cannabis in her system. 625 ILCS 5/11-501(a)(6). A person commits aggravated DUI when she violates the DUI statute, is involved in a motor vehicle accident that causes great bodily harm to another, and "the violation was a proximate

cause of the injuries.” 625 ILCS 5/11-501(d)(1)(c). Aggravated DUI is a strict liability offense and does not require any proof of impairment; it only requires a causal link between the physical act of driving and the injuries to another person.

Defendant was driving her car while she had cannabis in her system. She started to fall asleep at the wheel and drove her car into oncoming traffic, striking another car and causing great bodily harm to the passengers. There was no evidence that she was impaired. The trial court found her guilty of aggravated DUI and would not allow her to present the testimony of her physician that defendant had low blood pressure and it was possible that the loss of consciousness was caused by this condition and not by any drug.

The Supreme Court held that nothing in the framework of the DUI statute prevents a defendant from raising as an affirmative defense that the collision resulting in serious bodily injury was caused solely and exclusively by a sudden unforeseeable medical condition that rendered the defendant incapable of controlling the vehicle. A defendant who raises this affirmative defense bears the burden of showing that the unforeseen condition constituted the sole proximate cause of the accident and the injuries.

Here defendant’s physician could not have testified that defendant’s low blood pressure was the sole cause of her falling asleep or losing consciousness, only that it was a possibility. Defendant was thus unable to show that her medical condition was the sole proximate cause of the collision.

Defendant’s conviction was affirmed.

People v. Jordan, 218 Ill.2d 255, 843 N.E.2d 870 (2006) Under Illinois law, all mandatory presumptions are unconstitutional *per se*. 720 ILCS 5/12-21.6(b), which provides that “[t]here is a rebuttable presumption that a person committed the offense [of endangering the life and health of a child] if he or she left a child 6 years of age or younger unattended in a motor vehicle for more than 10 minutes,” constitutes a mandatory rebuttable presumption. However, subsection (b) is severable from the remainder of the statute, which can be enforced.

People v. Woodrum, 223 Ill.2d 286, 860 N.E.2d 259 (2006) The child abduction statute (720 ILCS 5/10-5(b)(10)) defines the offense as intentionally luring or attempting to lure “a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose.” Subsection (10) also provides that “the luring or attempted luring of a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the parent or lawful custodian of the child shall be *prima facie* evidence of other than a lawful purpose.”

By using the phrase “shall be *prima facie* evidence,” the legislature created a mandatory presumption which shifts the burden of production of evidence concerning an element of the offense. Because all mandatory presumptions are unconstitutional under Illinois law, the (b)(10) presumption is unconstitutional.

The mandatory presumption could be severed from the remainder of the statute. An unconstitutional presumption may be severed if what remains of the statute is complete in itself and capable of being executed independently of the severed portion. Statutory provisions are not severable if: (1) they are essentially and inseparably connected in substance, and (2) the legislature would not have passed the valid portions of the statute without the invalid portions. Because the first sentence of §10-5(b)(10) contains all of the elements of the offense of child abduction and is capable of being executed without the mandatory presumption, which operates only to ease the State’s burden of proving an element of the offense, the presumption can be severed.

Further, application of the presumption in this case was harmless error because it did not contribute to the verdict. When determining whether an unlawful presumption constitutes reversible error, a two-part test is followed. First, the reviewing court must determine what evidence the trier of fact actually considered in reaching the verdict. Second, the court must weigh the probative value of that evidence against the probative weight of the presumption standing alone, to determine whether the verdict was based on evidence that, independently of the presumption, established the presumed fact beyond a reasonable doubt. Use of an unconstitutional presumption is harmless where the weight of the evidence considered by the trier of fact is so overwhelming as to establish guilt beyond a reasonable doubt.

Here, defendant was tried by a judge rather than a jury. In announcing the verdict, the trial court mentioned the presumption, but also mentioned other evidence. The other evidence considered by the trial court, including defendant's statements, was sufficient to establish guilt even without the presumption.

People v. Dinelli, 217 Ill.2d 387, 841 N.E.2d 968 (2005) Due process permits the use of permissive inferences in criminal cases if three conditions are satisfied: (1) there is a rational connection between the basic facts and the presumed fact; (2) the presumed fact is more likely than not to flow from the basic facts; and (3) the inference is supported by corroborating evidence. If there is no corroborating evidence, the link from the basic to the presumed facts must be proven beyond a reasonable doubt.

The constitutionality of a permissive inference can be tested only as applied to a particular defendant, under a particular charge, and in light of the evidence in the record. Where defendant pleaded guilty under a stipulated statement of facts but then withdrew his plea, the trial court erred by holding, in a pretrial ruling, that due process was violated by the permissive inference in question. Because it was unclear whether defendant would stand trial even after the plea was withdrawn, the record had not been subjected to adversarial testing, and the trial court had not heard any contrary evidence, it was "not at all apparent" that the inference could or would be applied to defendant.

People v. Funches, 212 Ill.2d 334, 818 N.E.2d 342 (2004) Although "inference" and "presumption" are sometimes used interchangeably, an "inference" is a deduction which the trier of fact may but need not draw, while a "presumption" is a rule of law which requires the fact finder to "take as established the existence of a fact . . . after certain . . . other facts . . . have been established." Statute which provides that it "may be inferred" that a person who exercises exclusive unexplained possession over a stolen or converted vehicle has knowledge that the vehicle has been stolen or converted, creates a mere evidentiary inference rather than a presumption.

A party who challenges the constitutionality of an inference must show that the inference is unconstitutional as applied to his conduct, and not merely in the abstract. The trial court erred by declaring the inference unconstitutional in a pretrial ruling, as defendant would have difficulty establishing that under the circumstances of this case, a reasonable trier of fact could not infer that he knew the vehicle was stolen. The trial court erred by finding the inference unconstitutional on its face.

People v. Greco, 204 Ill.2d 400, 790 N.E.2d 846 (2003) Where there is some corroborating evidence of guilt, a permissive inference (i.e., one which allows but does not require the finder of fact to infer the ultimate or presumed fact and which does not place any burden on defendant) satisfies due process if the presumed fact is more likely than not to flow from the

predicate fact. Where a permissive presumption is the lone basis for a finding of guilt, the presumption satisfies the constitution only if the presumed fact flows beyond a reasonable doubt from the predicate fact.

[625 ILCS 5/4-103.2\(b\)](#), which permits the trier of fact to infer that a person who exercises exclusive, unexplained possession over a stolen vehicle has knowledge that the vehicle is stolen, without regard to whether the theft was recent or remote, violates due process as applied to “special mobile equipment” (vehicles which are not designed or used primarily for the transportation of persons or property, and which are only incidentally operated or moved over a highway (such as earth movers and road construction equipment)). Under Illinois law, the unexplained, exclusive possession of *recently* stolen property gives rise to an inference that possession was obtained by theft or burglary. Thus, only when the theft is recent is there a rational connection between possession of stolen property and the knowledge that it has been stolen.

The presumption of §4-103.2(b) is unconstitutional as it pertains to special mobile equipment, which can be acquired and transferred without registration and title requirements.

People v. Pomykala, 203 Ill.2d 198, 784 N.E.2d 784 (2003) Whether a defendant is denied due process by a jury instruction that embodies a presumption is determined by whether a reasonable juror could have interpreted the instruction as creating an unconstitutional presumption.

[720 ILCS 5/9-3\(b\)](#), which provided that in reckless homicide cases “being under the influence of alcohol or any other drug or drugs at the time of the alleged violation shall be presumed to be evidence of a reckless act unless disproved by evidence to the contrary,” could be reasonably interpreted by a jury to require a finding of recklessness based upon the presence of alcohol or drugs, even where there is no factual connection between the intoxication and the reckless act, unless the presumption is disproved by defendant. Thus, the statute creates a mandatory rebuttable presumption and an instruction based on the statute violates due process.

However, §9-3(b) may be severed from the remainder of the reckless homicide statute. Section 9-3(b) embodies an evidentiary rule on the issue of recklessness, but does not render the remainder of the statute unenforceable.

People v. Watts, 181 Ill.2d 133, 692 N.E.2d 315 (1998) [815 ILCS 515/3](#), which enacts a “rebuttable presumption” that a defendant charged with home repair fraud did not intend to perform agreed-upon work where he failed to perform the services promised, refused to return payments made under the contract, and took one of seven specified actions, including failing to employ qualified personnel or notify the customer of a change in the business’s name, is unconstitutional. Section 3(c) creates a “mandatory, rebuttable presumption of intent” because the trier of fact is required to presume that defendant lacked intent to perform the contract unless defendant presents evidence to overcome the presumption, and shifts both the burden of production and the burden of persuasion.

Due process is violated where mandatory rebuttable presumptions are used in criminal cases to shift the burden of production to the defense. The presumption provision is severable from the rest of the statute. Therefore, although the presumption of intent may not be used, the statute creating the offense of home repair fraud is valid.

People v. Smith, 71 Ill.2d 95, 374 N.E.2d 472 (1978) Once the issue of an affirmative defense is raised, the burden is on the prosecution to prove that issue (as well as all other elements

of the offense) beyond a reasonable doubt. Exemptions are distinct from affirmative defenses, and defendant may be required to prove an exemption by a preponderance of the evidence.

People v. Weinstein, 35 Ill.2d 467, 220 N.E.2d 432 (1966) The burden of proof never shifts to the accused, but remains the responsibility of the prosecution throughout the trial.

Illinois Appellate Court

People v. Shepherd, 2020 IL App (1st) 172706 At defendant's trial for aggravated UUV, the defendant testified that the gun in her purse did not belong to her. She had given her purse to someone else to hold while she used the bathroom in a nearby business. Upon her return she received her purse back and noticed that it contained a gun. At this point, she saw the police, causing her to drop her purse, which led to the officers' discovery of the gun.

On appeal, defendant argued her possession of the gun was justified by necessity. The State argued that necessity is an affirmative defense that must be raised at trial. Defendant countered that counsel was ineffective for failing to assert a necessity defense. A majority of the Appellate Court agreed. At least some evidence satisfied the three elements of necessity: (i) defendant's testimony indicated she was "without blame in occasioning or developing the situation" leading to criminal conduct, (ii) maintaining possession "was necessary to avoid a public or private injury" as evidenced by defendant's testimony that she did not want her fingerprints on the gun, and the fact that dropping it on the sidewalk would expose it to passers-by; and (iii) these public or private injuries were "greater than the injury caused by the defendant's own conduct." The failure to advance the necessity defense was prejudicial where defense counsel's argument at trial – that defendant possessed the gun but did not own it – left the trial court no choice but to convict.

The dissent would have found that the necessity defense was presented at trial through defendant's testimony and rejected as not credible by the trial judge. Therefore, defendant was not prejudiced by trial counsel's failure to formerly assert the affirmative defense.

People v. Kirkpatrick, 2020 IL App (5th) 160422 Aggravated cruelty to a companion animal, 510 ILCS 70/3.02(a), is committed where an individual intentionally commits an act causing a pet to suffer serious injury or death. The offense requires proof of specific intent to kill or seriously injure the animal. Defendant's act of operating on an animal in unsterile conditions was not such an intentional act even though the animal died the next day from an infection. Defendant was a veterinarian, and her actions were at least reckless, and possibly knowing, but did not show an intent to kill or seriously injure the animal.

The court declined the State's request to apply the doctrine of "presumed malice and intent" on the basis that defendant used a deadly weapon, a scalpel, on the animal. Defendant's scalpel was a surgical tool, and was not employed as a deadly weapon here, so there was no presumption that defendant intended to seriously injure or kill the dog when she performed surgery to remove a tumor. Defendant's aggravated cruelty conviction was reversed.

People v. Haiman, 2018 IL App (2d) 151242 A defendant has the right to the meaningful opportunity to present a defense, but evidence of a purported defense can be excluded if its probative value is outweighed by its prejudicial impact, if the evidence would lead to confusion of the issues, or if the evidence has the potential to mislead the jury. Where defendant was charged with unlawful possession of a controlled substance, the court did not

abuse its discretion in prohibiting defendant from testifying that she had a prescription for the pills in question. Defendant disclosed the proposed defense to the State but did not provide a copy of a prescription and said she would not name the prescribing doctor or date of prescription.

It is defendant's burden, pursuant to [720 ILCS 570/506](#), to establish her right to possession of the substance pursuant to a lawful prescription under [720 ILCS 570/302\(c\)\(3\)](#). Defendant's proposed self-serving testimony would have verged on a conclusion of ultimate fact and would have rendered the burden of proof meaningless. Her testimony also would have been legally insufficient because the pills were not in their original container and the statutory defense requires proof that the prescription was issued by a "practitioner" which could not be established on defendant's non-specific testimony.

People v Olaska, 2017 IL App (2d) 150567 Defendant stabbed three people in a bar in February 2012; one of those people (Wild) died from his injuries and the other two (Hayes and Castaneda) survived. Hayes was stabbed while he was in a booth with defendant. Wild was stabbed when he tried to stop defendant who had exited the booth and headed toward the door. And, Castaneda, who was a bouncer at the bar, was stabbed when he intervened and disarmed defendant. Defendant claimed self-defense, while the State's theory was that defendant had grown frustrated and belligerent after a woman at the bar had spurned his advances. The jury returned verdicts of guilty of intentional, knowing, and felony murder of Wild (predicated on aggravated battery of Hayes) and of unlawful use of a weapon (UW) but not guilty of attempt murder of Hayes and Castaneda.

While there were varying witness accounts of the incident, the testimony and surveillance videos were sufficient to prove beyond a reasonable doubt that defendant was not acting in self-defense. Defendant's own testimony was that he told Hayes to "f— off" while seated across from him in a booth at the bar. The video showed that defendant calmly took a drink with one hand before stabbing Hayes with the other. Defendant could have left the booth or could have displayed his knife as a warning, but he did not make any effort to remove himself from the situation. Further, the court could have properly rejected defendant's claim of self-defense to the knowing murder of Wild based solely on the evidence that defendant stabbed Wild while he was escaping the aggravated battery of Hayes.

Defendant's convictions and sentences were affirmed.

People v. Brace, 2017 IL App (4th) 150388 To be guilty of the offense of unlawful possession of methamphetamine precursors without a prescription, the State must prove that a defendant with a prior conviction for a methamphetamine offense knowingly possesses any substance containing a methamphetamine precursor without a prescription. [720 ILCS 646/120\(a\)](#). Pseudoephedrine is a methamphetamine precursor. [720 ILCS 646/10](#).

At a bench trial, the parties stipulated that defendant had a prior conviction for unlawful possession of methamphetamine and had purchased pseudoephedrine. There was no evidence about whether defendant had a prescription. On appeal, defendant argued that the State failed to prove her guilty beyond a reasonable doubt because it failed to prove that she lacked a prescription.

The court rejected this argument. The statute criminalizes the knowing possession of a methamphetamine precursor after being convicted of a methamphetamine offense. Persons with a valid prescription are exempted. The prescription exception is not a part of the body of the offense. Instead, it merely withdraws certain people from the operation of the statute. Thus the exception is a matter of defense and the State has no burden to disprove it.

Defendant's conviction was affirmed.

People v. Gullens, 2017 IL App (3d) 160668 The commission of an offense may be justified by reason of necessity where a defendant reasonably believes that his conduct was necessary to avoid a public or private injury greater than the injury that might result from his own conduct. [720 ILCS 5/7-13](#).

Defendant, who had a prior felony conviction, discovered that either his brother or his friend had stolen a firearm from a gun store. Defendant took possession of the firearm for approximately 10 minutes while he returned it to the store. The trial court revoked his conditional discharge for committing the offense of possession of a firearm by a felon.

The Appellate Court held that the defense of necessity applied to defendant's conduct. Defendant reasonably believed that returning the firearm was necessary to avoid a greater injury. Returning the firearm to its rightful owner "undoubtedly promoted a higher value than refraining from being a felon in possession of a weapon for the 10 minutes it took to return the gun to the store."

The court reversed the revocation of defendant's conditional discharge.

People v. Cannon, 2015 IL App (3d) 130672 When a criminal statute contains an exemption, the State has the burden of proving that the exemption does not apply, unless the statute specifically places the burden of proving the existence of the exemption on defendant.

The Liquor Control Act prohibits the consumption of alcohol by anyone under age 21, unless they are under the direct supervision and approval of a parent in the privacy of a home. [235 ILCS 5/6-20\(e\), \(g\)](#). The majority held that it was the State's burden to prove that defendant's mother did not supervise and approve her son's consumption of alcohol in their home. Since there was no evidence on this issue, the State failed to prove defendant guilty of unlawful consumption of alcohol by a minor beyond a reasonable doubt.

The dissent believed the majority incorrectly equated an exemption with an affirmative defense. The State has the burden of disproving an affirmative defense once defendant presents sufficient evidence to raise the defense, but the State does not have the burden of disproving the existence of an exemption. Since the statute at issue created an exemption, not an affirmative defense, the dissent would have affirmed the conviction.

People v. Costello, 2014 IL App (3rd) 121001 Where an offense involves a failure to perform an act, the defendant may raise an affirmative defense of impossibility if he or she could not have performed the act. Because the facts relevant to an impossibility defense are uniquely within the knowledge of the accused, impossibility is an affirmative defense which must be raised by the defense. In other words, the State is not required to prove in every case involving a failure to act that it was possible for the defendant to perform the act in question.

Thus, unless the State's evidence raises the issue, to assert the affirmative defense of impossibility the defendant must present at least some evidence showing that it was not possible to perform the act in question. Once the issue of impossibility is raised, the State must prove beyond a reasonable doubt that it was possible for the defendant to perform the act in question.

Where defendant was charged with violating an order of protection by failing to turn over several weapons which the order of protection stated were kept in a gun safe at his home, defendant did not assert the defense of impossibility by showing that those firearms were not in the safe when police arrived. The mere fact that the firearms were not in the safe did not constitute evidence that the defendant was incapable of complying with the order of protection, as defendant could have hidden the firearms or given them to a friend. "A criminal defendant may not circumvent the provisions of an order of protection by failing to turn over

items specified in an order of protection without offering any sort of explanation for his failure to produce the items.”

Because defendant failed to present any evidence that it was impossible for him to comply with the order of protection, the burden of proof was not placed on the State. The conviction for violating an order of protection was affirmed.

People v. Natal, 368 Ill.App.3d 262, 858 N.E.2d 923 (1st Dist. 2006) Under **People v. Housby**, 84 Ill.2d 415, 420 N.E.2d 151 (1981), the mere possession of recently stolen property is insufficient to sustain a burglary conviction. Here, other than defendant’s possession of the property, there was no corroborating evidence of defendant’s guilt. Residential burglary conviction reversed.

People v. Miles, 344 Ill.App.3d 315, 800 N.E.2d 122 (2d Dist. 2003) Under 720 ILCS 250/16, the offense of possession of a counterfeit credit card occurs where, with intent to defraud a credit card issuer, merchant or other person, defendant possesses a purported credit card with knowledge that it has been counterfeited. Section 250/16 provides that the possession “of 2 or more credit cards or debit cards which have been counterfeited is *prima facie* evidence that the person intended to defraud or that he knew the credit cards or debit cards to have been so counterfeited.”

Section 250/16 creates an unconstitutional mandatory presumption of intent to defraud. In this case defendant’s intent to defraud was shown only by her possession of counterfeit credit cards. Thus, the error was not harmless.

The sentence creating the improper presumption was severable from the remainder of §16. Defendant’s conviction was reversed and the cause remanded for a new trial.

People v. Taylor, 344 Ill.App.3d 929, 801 N.E.2d 1005 (1st Dist. 2003) 720 ILCS 5/16A-4, which provides that in retail theft prosecutions a person who conceals and removes merchandise beyond the last pay station shall be presumed to have acted with the state of mind required for the offense of retail theft, creates an unconstitutional mandatory presumption. The remainder of the retail theft statute can be severed from the unconstitutional presumption.

Because the record was devoid of any indication that the trial court relied on the unconstitutional presumption in finding defendant guilty of retail theft, the conviction could stand. A trial judge is presumed to have followed the law except where the record affirmatively shows otherwise.

People v. McQueen, 241 Ill.App.3d 509, 608 N.E.2d 1333 (4th Dist. 1993) Defendant was convicted of residential picketing based on evidence that he picketed a home at which a roofing subcontractor was performing repairs. Defendant, a member of a sheet metal workers union, carried a sign stating that the subcontractor was not complying with applicable labor regulations. 720 ILCS 5/21.1-2 provides that it is unlawful to picket "before or about the residence or dwelling of any person, except where the residence or dwelling is used as a place of business."

The State failed to establish that the residence was not used as a "place of business." The prosecution has the burden of disproving statutory exceptions which are "descriptive of the offense," while defendant must prove exceptions which remove certain acts or classes of persons from the operation of the statute. The "place of business" exception is descriptive of the offense, because use of a residence as a place of business removes the special protection afforded to residences.

§41-4

Circumstantial Evidence – Presence at Crime Scene Illinois Supreme Court

Illinois Supreme Court

People v. McLaurin, 2020 IL 124563 An officer observed defendant carrying a chrome object she believed to be a gun. Defendant entered a van, the officer followed, and the van was stopped by other officers. These officers patted down defendant and the other occupants but found no gun. Shortly thereafter, officers recovered a gun under the van. While no officers saw the defendant place the gun there, the initial officer testified that it looked like the object she saw defendant carrying. However, the gun was not introduced into evidence at trial. The Appellate Court reversed the conviction, finding an insufficient nexus between the object defendant was seen carrying and the gun under the van.

The Supreme Court reversed the Appellate Court and upheld the conviction. Although not overwhelming, and although the State “took a risk” by not introducing the gun at trial, the State did provide sufficient circumstantial evidence to withstand a reasonable doubt challenge on appeal. The officers’ descriptions, which were based on clear observations and were not impeached, as well as the proximity of the gun to the van, satisfied the standards enunciated in similar cases such as **People v. Washington**, 2012 IL 107993 and **People v. Wright**, 2017 IL 119561.

People v. Pintos, 133 Ill.2d 286, 549 N.E.2d 344 (1989) The standard of proof necessary to convict defendant with circumstantial evidence is no different than with direct evidence. The “reasonable hypothesis of innocence standard,” which was previously used for reviewing the sufficiency of evidence in cases which were entirely circumstantial, is “no longer viable in Illinois.”

People v. Eyler, 133 Ill.2d 173, 549 N.E.2d 268 (1989) State need not exclude every “reasonable hypothesis of innocence” to sustain a conviction based entirely on circumstantial evidence. The reasonable doubt test is the same, whether the evidence is direct or circumstantial.

People v. Rhodes, Van Zant & P.W., 85 Ill.2d 241, 422 N.E.2d 605 (1981) These consolidated cases presented the issue whether the accused's fingerprint, found at the scene of a burglary, was sufficient to prove guilt of burglary beyond a reasonable doubt (**Rhodes; Van Zant**) or a preponderance of the evidence at a probation revocation proceeding (**P.W.**).

A fingerprint is circumstantial evidence which connects defendant to an offense, and is sufficient to sustain a conviction when “found in the immediate vicinity of the crime under such circumstances as to establish beyond a reasonable doubt that the fingerprints were impressed at the time the crime was committed.” Here, the evidence showed that the fingerprints were impressed at the time of burglaries.

In **Rhodes**, defendant's fingerprint was found on a glass fragment near a broken kitchen door window, the point of the illegal entry. The kitchen door was not accessible to the public, and according to the victim defendant had never been in the house. In **Van Zant**, defendant's fingerprint was found on a radio which had been moved during the burglary. In **P.W.**, defendant's fresh thumb print was found on a glass fragment which had caulking on it and which was found near a broken garage window, the point of entry. “It is readily inferable that the print was impressed while the glass was being lifted out of the window, so the burglar could enter without being cut.” It was not reasonable to hypothesize that

defendant casually walked past the window, which faced a walkway, and pressed his thumb on the corner of the window.

People v. Fletcher, 72 Ill.2d 66, 377 N.E.2d 809 (1978) Defendant's conviction for attempt burglary upheld; the evidence established more than "mere presence and flight." Defendant was "positively identified" by two witnesses as one of two men running from the vicinity of an attempt burglary, one witness identified defendant as being in the area in the same car two days earlier, defendant attempted to prevent police entry into his hotel room, and defendant attempted to alter his appearance at a lineup.

People v. Morehead, 45 Ill.2d 326, 259 N.E.2d 8 (1970) When a defendant elects to explain his presence at the scene of an offense, it is incumbent upon him to tell a reasonable story or be judged by its improbabilities. The trier of fact is entitled to disbelieve defendant's explanation, especially when he told a different story at the time of arrest.

People v. Boyd, 17 Ill.2d 321, 161 N.E.2d 311 (1959) Mere presence at the scene of a crime is not in itself sufficient to establish guilt beyond a reasonable doubt. See also, **People v. Wilson**, 19 Ill.App.3d 625, 312 N.E.2d 30 (4th Dist. 1974).

Illinois Appellate Court

People v. Johnson, 2021 IL App (1st) 171885 Defendant was found guilty of first degree murder on a theory of accountability based on the fact that he was driving the vehicle that was used in the shooting of the victims. The evidence at trial showed that defendant operated a "freelance taxi service," providing rides to people he knew for a fee ranging from \$5 to \$40. On the date of the shooting, defendant's passenger, Mason, paid him \$10 for a ride. Mason directed defendant to a specific location, where he pulled out a gun and fired several shots. Defendant then drove away from the scene, let Mason out of the car, and went home. The shooting victims were members of the Gangster Disciples, Mason was a member of the Vice Lords, a rival gang, and defendant was not a gang member.

There was no direct evidence that defendant knew of, or intended to aid, Mason's plan on the date in question. A single eyewitness testified that defendant pointed a gun at him as the vehicle fled from the shooting, but that eyewitness gave a variety of inconsistent accounts of the incident and did not claim that defendant had a gun during either of his two 911 calls or his initial statement to police. Significantly, the eyewitness testified that he only saw one person in the vehicle, which was contradicted by all of the other evidence at trial that both defendant and Mason were in the vehicle. The eyewitness's testimony on this fact was "so obviously inaccurate that it casts doubt on the rest of his testimony."

The State failed to prove beyond a reasonable doubt that defendant aided or abetted Mason either before or during the offense. Defendant had no gang affiliation, had recently graduated, and was actively seeking employment. Driving Mason away from the scene after the fact was insufficient to establish accountability. The court found it "preposterous to suggest that defendant accepted payment of \$10 to assist Mason in a double murder." Defendant's convictions were reversed outright.

People v. Delhaye, 2021 IL App (2d) 190271 The State charged defendant with felony and misdemeanor charges for aggravated unlawful use of an electronic communication device. Defendant had previously pled guilty to a traffic citation issued for the same incident. The subsequent charges were not subject to compulsory joinder.

Defendant rear-ended a stopped vehicle, killing one passenger and seriously injuring the driver. He was issued a traffic citation at the scene for failing to reduce speed to avoid an accident. He also turned over his cell phone to the police. After pleading guilty to the citation, the State brought subsequent charges for both misdemeanor and felony aggravated unlawful use of an electronic communication device. Based on forensic analysis of defendant's phone, including the retrieval of deleted text messages, combined with expert reconstruction of the accident, and eyewitness accounts, the State alleged that defendant struck the stopped car at a speed of 65 mph while engaged in a text conversation with his girlfriend. He was found guilty of the subsequent charges and sentenced to 180 days in jail and 36 months' probation.

If the subsequent charges were subject to compulsory joinder, they would have been filed outside the speedy trial window that began with the citation. The appellate court held that they were not subject to compulsory joinder under [720 ILCS 5/3-3\(b\)](#). In [People v. Jackson](#), 118 Ill. 2d 179 (1987), the Supreme Court held that compulsory joinder does not apply to felony charges filed after a traffic citation. The court found that the legislature did not intend "that a driver could plead guilty to a traffic offense on a traffic ticket issued by a police officer and thereby avoid prosecution of a serious offense brought by the State's Attorney." The court reasoned that under 3-3(b), a police officer is not a "proper prosecuting officer" for the subsequent charges, as only the State may bring felony charges. Moreover, section 3-3(b) requires that the subsequent charges be known to the prosecuting authority at the time of the initial charges.

Here, while defendant provided his cell phone to the police on the day of the accident, he had already deleted the information showing that he was texting around the time of the accident. It took weeks to retrieve the texts, and additional time, including time after the guilty plea, to perform the accident reconstruction analysis. Thus, the State would not have known the facts which formed the basis for the subsequent charges at the time of the citation.

The State also proved the crime beyond a reasonable doubt. The defendant argued that while the evidence showed defendant had been texting back and forth for several minutes prior to the crash, the State could not prove that he was actually reading or composing a text at the exact moment of the crash. However, the court noted that the statute had been expanded to bar any use of the device, not just reading or sending texts, and that this unlawful use is aggravated when coupled with the causation of injury or death. Based on the circumstantial evidence, including the fact that texts were sent and received within seconds of the estimated time of the accident, and the fact that defendant never slowed down, suggesting he was not looking at the road, a rational trier of fact could have found defendant's use of his phone proximately caused the accident.

[People v. Cline](#), 2020 IL App (1st) 172631 A partial print on a portable object at the crime scene was insufficient to prove defendant guilty beyond a reasonable doubt of residential burglary. The fingerprint examiner did not follow standard analytical procedure where there was no evidence of verification of his findings. This was particularly problematic where there were only nine points of comparison between the partial latent print and the known print. And, the print was the only evidence potentially connecting defendant to the offense. The court reversed defendant's conviction of residential burglary.

In a supplemental opinion issued on denial of the State's petition for rehearing, the court clarified that fingerprint verification is substantive evidence and not merely foundational. The court refused to presume verification based on the absence of evidence to the contrary. It was the State's burden to present verification evidence, and the State failed to meet that burden.

People v. McVay, 2019 IL App (3d) 150821 Circumstantial evidence proved beyond a reasonable doubt that the decedent was a victim of murder and did not die by accidental means. Medical evidence established only that the cause of death was asphyxia of some sort. But, other evidence included that body was found outdoors in cold weather, in a remote location, unclothed, and that the victim had not died in that location but rather had been moved after death. Defendant was in possession of the victim's ATM card and her car, and the body was found out-of-state, within five miles of the residence of a woman with whom defendant had a relationship.

People v. Tatum, 2019 IL App (1st) 162403 Where the State's evidence was entirely circumstantial, defendant was proved guilty beyond a reasonable doubt despite conflicts in witness testimony and the fact that multiple witnesses had a history of drug use or a criminal record. The fact that one witness's testimony contradicts another's does not render each of them unworthy of belief. While the witnesses' testimony varied here, the witnesses did agree on certain essential facts. And, the trier of fact is free to accept as much or as little of a witness's testimony as it chooses.

People v. Monteleone, 2018 IL App (2d) 170150 Defendant owned a smoke shop where he sold commercially-packaged products labeled "Mary Joy" and "Mary Joy Dead and Berried" to an undercover officer. Those products tested positive for illegal synthetic cannabinoids, although the ingredients listed on the package did not include any illegal substance. Defendant argued that the State did not prove beyond a reasonable doubt that he had the requisite knowledge to support convictions of unlawful delivery of a controlled substance and unlawful possession of controlled substance with intent to deliver. The Appellate Court concluded that there was sufficient circumstantial evidence of defendant's knowledge, including that the products were not on public display, he sold them out of a back office rather than in the retail space of his shop, he did not ring up the sales through the cash register and did not provide a receipt, and he made statements indicating that he knew the effects of the products were like those of controlled substances.

People v. Robards, 2018 IL App (3d) 150832 Aggravated cruelty to a companion animal requires proof that the offender intended to seriously injure or kill the animal. The stipulated evidence established that defendant moved out of her rental house but left two dogs behind, that she was the only person who had been caring for the dogs, that she told her new roommate that she had been returning to the house daily to care for the dogs, that there was no water source at the house, and that the dogs were found five months later, emaciated and dead of dehydration and starvation. From this evidence, it was properly inferred that defendant knew she needed to provide food and water to the dogs but had failed to do so for some time. Because a person intends "the natural and probable consequences" of her acts and omissions, the Appellate Court found sufficient evidence of intent and affirmed defendant's conviction.

In *dicta*, the Appellate Court also noted that defendant was "very fortunate" to have received a sentence of only 12 months of probation. The trial court found in mitigation that defendant had not caused or threatened serious harm to another person, but the Appellate Court would have concluded that that particular mitigating factor has no application to a case involving harm to an animal. Defendant's sentence was "unjustly and inexplicably lenient," and the Appellate Court would have imposed a harsher penalty had it been in a position to do so.

People v. Sanchez, 2018 IL App (1st) 143899 The Appellate Court reversed a murder conviction where the 18-year-old defendant's coerced, illegal, and false confession should have been suppressed and regardless, the evidence did not just fail to prove guilt beyond a reasonable doubt, it showed that defendant did not commit the crime.

Someone fired four shots into an apartment complex parking lot from the south, and one bullet struck and eventually killed the victim. A half-hour later, the police seized defendant, who was being chased through the complex by members of the victim's gang, and took him to the station. Detectives placed him in a windowless room and interrogated him for 12 hours. For the first several hours, the police did not record the interrogation. They falsely told defendant that his friends implicated him and that GSR tests were positive, and refused multiple requests from the defendant to call his mother. Defendant adamantly denied involvement for over 10 hours, but then agreed that he "accidentally" fired a gun, from a spot inconsistent with eyewitness accounts, after the police promised he could call his mother if he confessed.

At trial, the State relied on the statement and the statement of defendant's friend, Flores, which was given under similar circumstances and implicated defendant, but which was inconsistent with defendant's statement in several respects. The State asked the jury to believe defendant's statement that he fired the gun, but to disbelieve the majority of the statement's details, which were inconsistent with the physical evidence, eyewitness accounts, and Flores' statement. The State also criticized defense counsel in closing for suggesting that the police acted improperly in eliciting defendant's confession. A jury found defendant guilty.

The Appellate Court held that the statement should have been suppressed because: (1) the police lacked probable cause to arrest defendant; (2) they failed to provide **Miranda** rights during initial questioning; (3) they violated [725 ILCS 5/103-2.1\(b\)](#) by failing to record first part of the interrogation and the State could not meet the exception for voluntary and reliable statements; (4) the statement was involuntary where police used deception and conditioned a phone call to his mother on his confession; and (5) the police violated [725 ILCS 5/103-3\(a\)](#) by refusing defendant a phone call.

Regardless, the Appellate Court found insufficient evidence of guilt and strong evidence of innocence. Defendant confessed to shooting from a spot that did not match the location of the shooter. He was found running near the scene 30 minutes later from a different direction despite the fact that his car was parked near the location he said he shot from. His description of the gun did not match Flores' description, and the gun was not found in the pond where they said they left it. Portions of his exculpatory statements were corroborated by physical evidence. GSR tests on defendant were negative. Clearly, the statement was false, and no physical or eyewitness evidence implicated him, so the conviction was reversed outright.

People v. Scott, 2018 IL App (2d) 151056 While the burden of proof beyond a reasonable doubt never shifts from the State to the defense, a trier of fact may draw negative inferences where a defendant chooses to testify and then gives an implausible or inconsistent version of events. Defendant's incredible testimony generally cannot be the sole evidence to sustain a guilty verdict, but it can be weighed in the State's favor when considering the sufficiency of the evidence as a whole.

Here, defendant accepted delivery of a package at his residence even though the package was addressed to someone defendant claimed he did not know. Unbeknownst to defendant, the police had already opened the package, determined it contained drugs, and outfitted the package with an alarm that would let the police know when it had been opened. When the alarm was triggered, the police descended upon the residence quickly, before

defendant had the opportunity to open the interior packaging that actually contained the drugs. Defendant challenged the State's proof with regard to his knowledge of the presence of drugs.

The Appellate Court noted that defendant gave inconsistent statements regarding when he opened the package and implausible testimony about his reason for leaving the house and taking two very short trips around the neighborhood after the package was delivered. Defendant's testimony about the timing of opening the package was properly viewed as an effort to distance himself from knowledge of its contents. And, the trier of fact could reasonably infer that defendant was engaged in counter-surveillance when he left the house and circled the area because the reasons he gave for his short trips through the neighborhood were unbelievable. Coupled with the State's other evidence, including that a search of defendant's home revealed materials and supplies commonly used in the drug trade, the evidence was sufficient to sustain his conviction of possession of a controlled substance with intent to deliver.

People v. Escort, 2017 IL App (1st) 151247 The evidence failed to prove defendant guilty of first-degree murder beyond a reasonable doubt. In 1989, Mary Smith was found dead in an abandoned warehouse. She was naked and some of her clothes were on the roof of the building. No arrests were made until nearly 23 years later, when defendant was arrested based on a cold-hit DNA comparison. The DNA testing revealed multiple male profiles from Smith's vaginal swab and clothing.

Although circumstantial evidence can be sufficient to sustain a conviction, the State's evidence in this case merely established that defendant, along with at least one other person, had sexual relations with the victim at some time during the 72-hour period prior to her death. While the presence of a high number of the defendant's sperm cells on the victim's vaginal swab suggested a more recent encounter, it did not establish that he was the last, let alone that he killed her.

People v. Fernandez, 2016 IL App (1st) 141667 A defendant has constructive possession of contraband where he knows the contraband was present and exercised "immediate and exclusive" control over the area where the contraband was found.

The police obtained a search warrant for a house and garage. On the evening before they conducted the search, the police saw defendant get out of car and engage in a suspected narcotics transaction. The police arrested defendant and found him in possession of suspected heroin. They also recovered keys from defendant. They found suspected heroin and a woman inside defendant's car. (The State never charged defendant with any offenses related to the heroin recovered from defendant or his car.)

The following morning the police searched the home and garage. The keys found on defendant opened the locks to both the home and the garage. The police found an unidentified man in the house. In a bedroom, the police found a gun underneath a mattress, a passport and insurance cards with defendant's name, and framed photographs of defendant and the woman in the car. The closet had men's and women's clothing. The police found more framed photographs of defendant and the woman in the living room. In the garage, the police found three guns, ammunition, and heroin in a broken van with flat tires. The parties stipulated that defendant received mail at another address.

The court held that the State failed to prove defendant was in constructive possession of the heroin and guns found inside the house and garage. The court noted that evidence of residency, which often takes the form of rent receipts, utility bills, or mail, did not link defendant to the house and garage. Instead, the only mail addressed to defendant linked him

to another residence. Although the police found numerous personal effects tied to defendant in the house (insurance cards, passport, framed pictures) and defendant's keys unlocked the house and garage doors, none of this evidence showed defendant's control over the premises. And the presence of another man in the house weighed against a finding that defendant controlled the premises.

Even if defendant had some connection with the residence, no evidence placed him there on the date of the search. All the contraband was concealed, either under a mattress or inside the inoperable van. Even assuming defendant had access to the house and garage, nothing suggested he knew about the hidden contraband.

The court reversed defendant's convictions.

People v. Bates, 2016 IL App (1st) 140619 To convict a defendant of possession of controlled substances, the State must prove that the drugs were in defendant's immediate and exclusive control. Constructive possession does not require actual dominion over the drugs, but can be inferred from an intent and capability to maintain control. Control of the location where the drugs are found is not essential to prove constructive possession.

The police executed a search warrant on a single family house. Inside they found several men including defendant and another man who were sitting at a dining room table covered with drugs and packaging materials. There was no evidence defendant was touching any of the items on the table. When the police entered, all the men fled and defendant was arrested outside the house. No weapons, drugs, or money were found on defendant.

The court held that the State failed to prove that defendant possessed the controlled substances. There was no evidence that defendant exercised control over the premises such that a trier of fact could infer his control over the drugs. Although defendant was sitting at the dining room table when the police entered, there was no evidence he touched any of the drugs or other materials on the table. While defendant must have been aware of the drugs, nothing proved that he was in possession of them.

Defendant's conviction for possession of controlled substances was reversed.

In re Gregory G., 396 Ill.App.3d 923, 920 N.E.2d 1096 (2d Dist. 2009) There is an irreconcilable split of Illinois Supreme Court authority concerning whether the three-part test of **People v. Housby**, 84 Ill.2d 415, 420 N.E.2d 151 (1981) applies to all inferences from circumstantial evidence, or only to the inference from possession of recently stolen property. The court declined to resolve the split of authority here, finding that under both **Housby** and the "rational trier of fact" standard, the evidence was insufficient to convict defendant of battery for striking a security guard over the head with a bottle.

The evidence consisted of the following: (1) the guard was struck by a bottle that was held, not thrown; (2) the bottle broke; (3) a group of 100 people were in the vicinity; (4) several other members of the crowd carried beer bottles; and (5) two minutes after the incident, the guard saw defendant holding a broken bottle. The court concluded that it was unreasonable to infer from such evidence that defendant was the person who struck the guard.

Defendant's delinquency of adjudication was reversed.

People v. Zizzo, 301 Ill.App.3d 481, 703 N.E.2d 546 (2d Dist. 1998) Under **People v. Gomez**, 215 Ill.App.3d 208, 574 N.E.2d 822 (2d Dist. 1991), where fingerprint evidence is the sole evidence of guilt, the fingerprints "must have been found in the immediate vicinity of the crime and under such circumstances that they could have been made only at the time the crime occurred." The **Gomez** rule was inapplicable here, however, because the conviction was not based solely on fingerprint evidence.

People v. Gomez, 215 Ill.App.3d 208, 574 N.E.2d 822 (2d Dist. 1991) Circumstantial evidence was insufficient to prove defendant guilty of murder here.

Although defendant's fingerprint was found in a kitchen drawer in the decedent's home, the fingerprint was not found in the immediate vicinity of the crime and under such circumstances that it could only have been made at the time of the crime. Defendant lived in a rooming house owned by the decedent and admitted that he had been in the victim's kitchen on at least two occasions when he paid his rent.

Blood, hair, and paint samples did not establish defendant's guilt; the blood was found in a public hallway at the rooming house, the paint was an extensively distributed house brand of a national hardware chain, and the hair differed in several respects from that of defendant. Because the hair and paint did not have sufficient unique qualities to allow positive identification, they had "relatively little probative value."

People v. Gnat, 166 Ill.App.3d 107, 519 N.E.2d 497 (2d Dist. 1988) Defendant's conviction for delivery of cocaine was reversed because it was based solely on the inherently suspicious testimony of an accomplice. The accomplice was a drug user who obtained leniency in return for his testimony; in addition, the accomplice did not tell the purchaser at the time of the transaction that the cocaine was being supplied by defendant.

Although defendant was present in the bowling alley when the delivery was made and was seen talking to the accomplice before the transaction, other people present did not hear their conversation and did not see anything change hands.

People v. Bolden, 59 Ill.App.3d 441, 375 N.E.2d 898 (1st Dist. 1978) Involuntary manslaughter convictions reversed because the evidence showed mere presence at the scene and flight.

People v. Mitchell, 59 Ill.App.3d 367, 375 N.E.2d 531 (1st Dist. 1978) Bench trial conviction for criminal damage to property was reversed; the evidence showed, at best, mere presence at the scene and flight.

People v. Abendroth, 52 Ill.App.3d 359, 367 N.E.2d 571 (4th Dist. 1977) Convictions for three counts of arson reversed. Where the only evidence connecting defendant to the fires was a statement admitting setting a fire at the property in November or early December, 1975, defendant could not be convicted for setting fires in February, 1976.

People v. Huth, 45 Ill.App.3d 910, 360 N.E.2d 408 (1st Dist. 1977) Defendant and two others were in an automobile in which cannabis was found partially concealed under a seat. Defendant was a passenger, but was closest to the cannabis.

Since defendant was merely a passenger, he "lacked sufficient dominion over the vehicle to warrant his constructive possession of the contraband." Furthermore, "mere proximity is not sufficient evidence of actual possession."

People v. Thomas, 47 Ill.App.3d 402, 362 N.E.2d 7 (5th Dist. 1977) Defendant was arrested about ½ mile from a salvage yard which had been burglarized about three hours earlier. At the time of the arrest, defendant had mud on his shoes and vegetation on his clothes.

Conviction reversed. Defendant was not identified as having been at the scene, and there was no evidence that the mud and vegetation on defendant was comparable to any substance within the salvage yard. Furthermore, a comparison of a shoe print found in the

salvage yard and defendant's shoe was not conclusive, since an expert admitted that "there were insufficient individual characteristics for a positive identification to be made."

People v. Curtis, 45 Ill.App.3d 771, 360 N.E.2d 122 (4th Dist. 1977) Three defendants were convicted of burglary based primarily on the fact that they were in an automobile in which stolen property had been removed from the trunk. Driver's conviction upheld because he had the use of the car (which was owned by his girlfriend) and did not explain the fact that the stolen property was in the car trunk. The convictions of the passengers were reversed; the evidence against them amounted to "mere presence" in a car containing stolen property.

People v. Whittenburg, 37 Ill.App.3d 793, 347 N.E.2d 103 (1st Dist. 1976) Delinquency adjudication for burglary reversed. Circumstantial evidence of defendant's presence near the scene and his flight was insufficient to sustain the finding of guilt.

People v. Holsapple, 30 Ill.App.3d 976, 333 N.E.2d 683 (5th Dist. 1975) Defendant's conviction for murder was reversed. The evidence was wholly circumstantial and did not exclude the possibility that someone other than defendant entered the cabin in question and killed the deceased. "It is difficult to believe the defendant could have done so much in so little time; that human hair matching neither the deceased nor defendant was found on the dress and torn, blood-stained underpants of the deceased[,] no blood of defendant was found in the blood-splattered cabin[,] and no fingerprints of defendant were found," especially where the State conceded that there had been no effort to destroy prints.

People v. Turner, 13 Ill.App.3d 1079, 302 N.E.2d 365 (5th Dist. 1973) Circumstantial evidence was insufficient to convict — "to sustain this conviction, we must believe" that defendant was considerate enough to warn the intended victim of the burglary but "foolish enough to voluntarily turn over the fruits and evidence of his crime to the police."

§41-5

Conflicting, Confusing, Unbelievable Testimony

Illinois Supreme Court

People v. Gray, 2017 IL 120958 Evidence that a witness was consuming alcohol near the time of the event she testifies about is probative of her sensory capacity and affects the weight given to her testimony. But the fact that a witness was drinking does not necessarily preclude the trier of fact from finding her credible.

Defendant argued that the State failed to prove his guilt beyond a reasonable doubt since the victim, who had consumed a pint of whiskey and 40 ounces of beer, was so intoxicated at the time of the offense that she could not even remember being stabbed in the chest by defendant.

The court rejected this argument, holding that the jury was well-aware of how much alcohol the victim consumed. Her credibility was properly a question for the jury which had the opportunity to view her testimony at trial.

Defendant's conviction was affirmed.

People v. Brooks, 187 Ill.2d 91, 718 N.E.2d 88 (1999) The evidence was sufficient to prove guilt of first degree murder and attempt first degree murder. Although two of the four eyewitnesses who testified recanted their identifications of defendant, the first recantation was not credible where the witness said he was being forced to change his testimony, the

recantation came during a “truce” between rival gangs involved in the shooting, the witness denied having come to court in the company of a particular individual with whom he subsequently left, and there was testimony that the witness had been threatened.

Similarly, the second recantation was not sufficient to vitiate the convictions. Because there were two different versions of what the witness allegedly saw, it was for the trier of fact to determine which to believe. Viewing the evidence in a light most favorable to the State, a reasonable trier of fact could have found defendant guilty. See also, **People v. Brown**, 303 Ill.App.3d 949, 709 N.E.2d 609 (1st Dist. 1999) (whether recanted prior inconsistent statements are sufficient to sustain a conviction depends on whether, after reviewing the evidence most favorably to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt; evidence consisting solely of disavowed statements made nearly two years after the crime by a witness who feared that he was about to be charged with a drug offense was insufficient); **People v. Zizzo**, 301 Ill.App.3d 481, 703 N.E.2d 546 (2d Dist. 1998) (evidence was sufficient where jury could have reasonably concluded that prior statement was true and subsequent statements were false).

People v. Smith, 185 Ill.2d 532, 708 N.E.2d 365 (1999) The testimony of the State’s principal witness was insufficient to permit a rational trier of fact to conclude that the elements of the crime had been proven beyond a reasonable doubt. The witness was rebutted by several other witnesses, and one theory of the guilt was both unsupported by any direct evidence and presented by the State only in rebuttal closing argument, when the defense could not respond. Furthermore, the credibility of the State’s witness was severely impeached, and she had a motive to lie in order to deflect suspicion from her sister and exonerate her sister’s boyfriend.

Although the positive and credible testimony of a single witness is sufficient to convict, “no reasonable trier of fact” could have found the witness credible in light of the “serious inconsistencies” in her testimony and repeated impeachment. Further, the circumstantial evidence linking defendant to the murder - his presence at the scene and dark clothing - “merely narrowed the class of individuals who may have killed the victim, without pointing specifically to defendant.” The court concluded:

“While a not guilty finding is sometimes equated with a finding of innocence, that conclusion is erroneous. Courts do not find people guilty or innocent. They find them guilty or not guilty. A not guilty verdict expresses no view as to a defendant’s innocence. Rather, it indicates simply that the prosecution has failed to meet its burden of proof. While there are those who may criticize courts for turning criminals loose, courts have a duty to ensure that all citizens receive those rights which are applicable equally to every citizen who may find himself charged with a crime, whatever the crime and whatever the circumstances.

“When the State cannot meet its burden of proof, the defendant must go free. This case happens to be a murder case carrying a sentence of death against a defendant where the State has failed to meet its burden. It is no help to speculate that the defendant may have killed the victim. No citizen would be safe from prosecution under such a standard.”

People v. Schott, 145 Ill.2d 188, 582 N.E.2d 690 (1991) The previous standard of review for sex offenses (that the testimony of the sex-offense victim be “clear and convincing or

substantially corroborated”) should no longer be followed. Instead, courts are to apply to sex offenses the same standard applied to other criminal cases - whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See also, **People v. Jendras**, 216 Ill.App.3d 149, 576 N.E.2d 229 (1st Dist. 1991) (it is doubtful that any one-on-one crime can be proven without either clear and convincing testimony by the victim or independent corroboration; where the complainant’s testimony is vague, unconvincing, or uncorroborated, defendant’s denial of guilt should be given the benefit of the doubt).

The evidence here was “so unsatisfactory that no rational trier of fact could have found the defendant guilty beyond a reasonable doubt.” The State’s key evidence was the testimony of the complainant, which was impeached numerous times and contained so many inconsistencies and contradictions that it lacked credibility. The complainant admitted lying “a lot,” making several inconsistent statements about the offense, and telling several people that the accusations were false. She also admitted being sexually active with other children and told the police that she had been molested by another man and boy, although she later recanted this allegation. The complainant was impeached to such a degree that the evidence was insufficient to establish guilt beyond a reasonable doubt.

People v. Fields, 135 Ill.2d 18, 552 N.E.2d 791 (1990) Murder conviction upheld despite discrepancies in the testimony of State witnesses, most of whom were rival gang members. The trial judge, as trier of fact, was aware of the problems in the testimony and was able to observe the demeanor of the witnesses.

People v. Yarbrough, 67 Ill.2d 222, 367 N.E.2d 666 (1977) Although there was a conflict between the testimony of two State witnesses, the resolution of that conflict was for the trier of fact. The jury “obviously preferred” the testimony of one witness over the other, and there is nothing to suggest that the first witness was not to be judged credible. Furthermore, the testimony of one credible witness is sufficient to convict. Armed robbery conviction affirmed.

People v. Hister, 60 Ill.2d 567, 328 N.E.2d 531 (1975) Evidence was insufficient to prove defendant guilty of murder beyond a reasonable doubt where the testimony was inconsistent pertaining to the description of defendant and the co-defendant, their clothing, the number of persons with them, the type of automobile they were driving, whether they were armed and with what type of weapon, what witnesses were present, the sequence and location of the events leading up to the shooting and the number of shots fired.

People v. Kilgore, 59 Ill.2d 173, 319 N.E.2d 489 (1974) Conviction for murder reversed. There were three different descriptions of the man who fled the scene, the actual identification of defendant was contradicted by two other occurrence witnesses, and three of the four occurrence witnesses testified that the assailant had a “bush” haircut though a police officer who talked with defendant 30 minutes after the crime testified that defendant did not have such a haircut.

People v. Pellegrino, 30 Ill.2d 331, 196 N.E.2d 670 (1964) Bench trial conviction based on testimony of a drunk and a witness who had changed her story was reversed. Trial judge’s finding on credibility of witnesses is entitled to great weight, but is not conclusive.

People v. Dawson, 22 Ill.2d 260, 174 N.E.2d 817 (1961) Bench trial conviction reversed. It was incredible that defendant, a person of good character and reputation, would go to an

office where he was known, identify himself by his police badge, demand money at gunpoint, and make no attempt to flee.

People v. Coulson, 13 Ill.2d 290, 149 N.E.2d 96 (1958) Testimony of alleged victim and another witness, which contained numerous inconsistencies and improbabilities, was insufficient to sustain the conviction. Where testimony is contrary to the laws of nature or universal human experience, the reviewing court is not bound to believe it.

Illinois Appellate Court

People v. Powell, 2021 IL App (1st) 181745 A police officer testified that he engaged in a controlled purchase of narcotics and identified defendant as the individual who sold heroin to him. On appeal, defendant challenged the sufficiency of the State's evidence. The officer used prerecorded funds during the purchase, but those funds were not recovered from defendant when he was arrested minutes later. Further, the officer testified to purchasing the drugs for an amount significantly below their estimated street value without any explanation for the disparity in pricing and value. There was surveillance video from a nearby business, but the video did not corroborate the officer's version of events. And, the officer's identification of defendant was unreliable where he interacted with the seller for no more than 10 seconds and subsequently identified the seller only by his clothing from a distance more than half a block away because he did not want to get close enough to reveal his identity as an undercover officer.

Any one of these deficiencies, alone, likely would not be enough to require reversal. However, "taking the totality of the evidence in a light most favorable to the State, the evidence lacks the probative force necessary for the trier of fact to conclude beyond a reasonable doubt" that defendant was guilty of unlawful delivery of a controlled substance. Defendant's conviction was reversed outright.

People v. Ramos, 2020 IL App (1st) 170929 The State failed to prove defendant guilty of first-degree murder. The State alleged that defendant acted as the principal in a shooting. However, at trial it became apparent that its identification testimony was unreliable; its first witness identified different people at different time, defendant no longer fit the description of the shooter at the time of key line-up identifications, the witnesses noted another suspect looked like the shooter, and the line-ups occurred over a year after the incident. The judge still convicted defendant, however, because it believed that defendant's custodial statement suggested he provided both the van and the gun used by the shooter, with knowledge of his intent to commit the offense.

The Appellate Court reversed, holding that the portion of the statement relied upon by the trial court did not establish defendant's accountability for the offense. Although defendant admitted to providing the shooter with the gun and the van, and knew rival gang members were in the area at the time he did so, nothing in the statement suggested that the shooter told defendant of his plans or that defendant otherwise knew of an intent to commit an offense. Defendant did state that he "figured it was a drive-by," but, contrary to the trial court's belief, this did not establish foreknowledge, as defendant was clearly referencing his belief as to what occurred *after* he heard gunshots and *after* he was told by gang members that he should not drive his van for several hours.

And while defendant admitted that he refused the shooter's request to participate in "something like that" at the time he handed over the gun, "that" could have simply been a gang confrontation, not necessarily a shooting. The court refused to accept the State's invitation to infer from this language that defendant must have known the offender's purpose

in retrieving a van and his gun; as the defense noted, defendant may have simply believed the offender sought self-protection. Finally, the court noted that while it's permissible for the State to secure a conviction on accountability even if the original theory and charge alleges defendant acted as the principal, it was notable in this case that the State switched its theory only after it presented its case, by which time it was clear that the original theory was falling apart.

People v. Tatum, 2019 IL App (1st) 162403 Where the State's evidence was entirely circumstantial, defendant was proved guilty beyond a reasonable doubt despite conflicts in witness testimony and the fact that multiple witnesses had a history of drug use or a criminal record. The fact that one witness's testimony contradicts another's does not render each of them unworthy of belief. While the witnesses' testimony varied here, the witnesses did agree on certain essential facts. And, the trier of fact is free to accept as much or as little of a witness's testimony as it chooses.

People v. Campbell, 2019 IL App (1st) 161640 Defendant, the backseat passenger in a vehicle subject to a traffic stop was convicted of aggravated unlawful use of a weapon based on a firearm that was found under the backseat. At defendant's trial, a police officer testified that he saw defendant toss a gun onto the vehicle floor while the vehicle's back door was open. On appeal, defendant argued that it was incredible that he would drop the gun in plain view of the police officers.

The Appellate Court acknowledged the inherent credibility problems created by "dropsy" testimony, but affirmed the conviction citing to the light-most-favorable standard of review. The court suggested, however, that dropsy testimony generally should be scrutinized by looking to whether the officer had motive to lie to cover up a fourth amendment violation:

Critical whenever an officer testifies that the defendant dropped contraband in plain view is this question: would the officer's detention or search of the defendant have violated the fourth amendment if he or she had not seen the defendant drop the contraband in plain view? If the answer is "no," there is far less reason to doubt the credibility of the officer's testimony because the officer has nothing to gain by lying about the drop. If, however, the answer is "yes," both trial courts and courts of review should take care to analyze the credibility of the officer because the incentive to lie to avoid suppression of the evidence is at its highest.

People v. Shaw, 2015 IL App (1st) 123157 The testimony of a single witness is sufficient to support a conviction, but only if it is "positive and credible." Such testimony is insufficient where no reasonable person could accept it beyond a reasonable doubt. Although great deference is given to the factual findings of the trier of fact, when those findings are against the manifest weight of the evidence, the reviewing court is required to reject them.

The Appellate Court reversed defendant's conviction finding that the victim's testimony, which made up almost all of the State's case, contained so many material inconsistencies, including inconsistencies with the surveillance videos and testimony from police officers, that it was "too improbable, unconvincing, and contrary to human experience to sustain the conviction." In particular, the victim specifically testified that defendant was armed with a weapon and pointedly displayed the weapon to the victim. No weapon, however, was ever recovered and the remainder of the evidence, especially the surveillance videos, demonstrated that defendant never had an opportunity to dispose of the weapon. Under these

circumstances, no reasonable trier of fact could have found the victim's testimony credible, and thus the State failed to prove defendant guilty beyond a reasonable doubt.

People v. Gonzalez, 2015 IL App (1st) 132452 Two police officers in a squad car approached a group of 10 men standing in the middle of the street. One of the officers testified that all of the men were throwing bricks and bottles into the street at passing cars while shouting gang slogans. The other officer saw the men in the middle of the street, but did not see any of them throw bricks.

Both officers testified that a group of pedestrians approached the 10 men and then turned and walked the other direction. When the officers exited their car, six of the 10 men ran away while the other four, including defendant, dropped their bricks and approached the officers. On cross, the officer testified that he did not actually see any of the four men who approached the officers throw a brick at a car.

The Appellate Court held that the State failed to prove defendant guilty of reckless conduct, which requires proof that defendant recklessly performed an act that endangered the safety of another person. **720 ILCS 5/12-5(a)(1)**. The first officer testified inconsistently, at one point saying he saw the defendants throwing bricks and at another point saying he did not see them throwing bricks. Even his testimony about seeing "the defendants" throwing bricks concerned the actions of the 10 men as a group and did not distinguish between defendant and any of the other men. And the second officer testified that he didn't see anyone throwing bricks. Under these circumstances, the State failed to prove defendant guilty of reckless endangerment.

Even assuming defendant threw bricks at passing cars, the State also failed to prove that these actions endangered the safety of other people. There was no evidence of any complaints about personal or property damage, and no testimony that the bricks struck any cars or pedestrians. None of the pedestrian who turned around and walked the other way testified that they believed their safety was endangered. Under these facts, it would have been mere speculation that anyone felt endangered by defendant's alleged actions.

Defendant's conviction was reversed.

People v. Herman, 407 Ill.App.3d 688, 945 N.E.2d 54 (1st Dist. 2011) The court reversed the convictions of a Chicago police officer for criminal sexual assault, official misconduct, and kidnaping on the ground that the flaws in the testimony of the complaining witness made it impossible for any fact finder reasonably to accept any part of it.

The physical evidence was as consistent with defendant's testimony of a consensual encounter as it was with the complainant's testimony of force. Complainant was a crack addict and was admittedly high during the entire night of the encounter.

Her testimony was fraught with inconsistencies and contradictions, particularly with respect to the time line of events. Although complainant initially reported to police and medical personnel that the offenses occurred anywhere from 3 a.m. to 5 a.m., at trial she testified that the events occurred after she left her apartment at 5:25 a.m. This time period happened to coincide with the 25-minute gap from 5:58 a.m. and 6:23 a.m. during which defendant could not provide independent corroboration of his whereabouts. Complainant's version of the time line was also contradicted by the testimony of her daughter; her testimony regarding her presence in defendant's police car was contradicted by her previous sworn statement regarding where she sat in the car; she described the vehicle as being caged, but defendant's car had no cage; she observed no boombox in the car, although an evidence technician found one in the back seat when the car was sequestered that morning; and she testified defendant wore an ankle holster, but no holster was recovered. Contrary to the

trial court's findings, these inconsistencies were not minor and shed significant doubt on her testimony.

The trial court's finding that defense witnesses' testimony was not credible was not grounded in the evidence. The court rejected evidence that the complainant sought \$5000 to "make the case go away" because if that had occurred, complainant would have been immediately arrested. This was mere speculation based on the trial court's perception of what would have been required. Also, contrary to the trial court's finding, a witness had documented the attempted bribe in her report and reported it to her supervisor. The trial court's rejection of defendant's internally consistent, unimpeached, and unrebutted testimony was also unsupported.

People v. Rivera, 2011 IL App (2d) 091060 The court reversed defendant's conviction for first-degree murder, concluding that no rational trier of fact could have found the evidence sufficient to convict.

Not only was there no physical evidence linking defendant to the offense, defendant was excluded as the source of the male DNA profile derived from a vaginal swab of the victim. While "DNA does not trump all other evidence," it may raise a reasonable doubt as to the identity of the perpetrator. Where there was evidence that the offender engaged in sexual relations with the victim shortly before she died, the DNA exclusion of defendant "embedded reasonable doubt deep into the State's theory."

The court rejected as speculative the State's argument that the DNA evidence was contaminated. It also rejected the argument that the DNA exclusion evidence was not exculpatory on the theory that the explanation for the exclusion was that the victim had engaged in intercourse with another male before she was sexually assaulted and murdered by defendant. It was unreasonable to expect the jury to believe that the defendant violently perpetrated the sexual assault and murder, without leaving any physical trace of his presence at the scene or on the victim, yet left intact in the victim's body the DNA of the unidentified male.

The State also presented evidence of admissions made by defendant to jailhouse informants. No reasonable trier of fact could have found their testimony credible in the face of the DNA evidence and the effective cross-examination by defense counsel that exposed their motivations. One witness hoped to profit financially by involving himself in the case. The other was a drug user who came forward only after defendant's family turned their backs on him for using drugs while staying in their house.

The remaining piece of evidence was defendant's statements. When an individual charged with a crime confesses, the "corroboration rule requires that the *corpus delicti* be proved by some evidence *aliunde* admission of a defendant." The independent evidence and details of the confession are not required to correspond in every particular, but the State's independent evidence must inspire belief in the defendant's confession. Because the statements were the only remaining piece of evidence, given the DNA evidence, the State failed in its burden to present evidence *aliunde* the statements to establish the offense.

The court rejected the State's argument that defendant's statements including a "damning knowledge of the facts." Over the course of four days, no fewer than ten law enforcement personnel discussed the crime with defendant or interrogated him. The police also used leading questions incorporating the facts of the case in their interrogation of the defendant. The record supports the inference that details of the offense were provided to the defendant, intentionally or unintentionally, during the investigative process.

Many of the facts referenced in the defendant's statements had also been published in the newspapers, and defendant's father read those reports and discussed them with

defendant. The State did not prove that defendant had not learned those details independent of news reports.

People v. Williams, 383 Ill.App.3d 596, 891 N.E.2d 904 (1st Dist. 2008) In considering a challenge to the sufficiency of the evidence, the relevant question is whether, viewing the evidence most favorably to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Here, the evidence was insufficient to sustain a conviction for aggravated kidnaping as an accomplice. The only evidence of guilt - the testimony of two children - was “riddled with internal inconsistencies and self-contradictions” was “hesitant” and “vague,” and was “impeached by the testimony of other witnesses and . . . telephone records.”

People v. Delacruz, 352 Ill.App.3d 801, 817 N.E.2d 191 (2d Dist. 2004) Where both of the State’s witnesses in a home invasion case admitted that defendant had lived in the complainant’s apartment until at least 17 days before the offense and there was conflicting testimony as to whether defendant was still living at the apartment on the date of the offense, there was “at least a reasonable doubt” whether defendant resided in the dwelling on the date of the offense.

Because the evidence was “so unsatisfactory and unsettled,” a rational trier of fact, viewing the evidence in a light most favorable to the prosecution, could not have concluded beyond a reasonable doubt that defendant entered the “dwelling place of another.”

People v. Kinsloe, 281 Ill.App.3d 799, 666 N.E.2d 872 (1st Dist. 1996) Fact that defense witness was impeached merely removed her testimony from the jury’s consideration, and did not justify an inference that because her testimony exonerating defendant was unbelievable, defendant must be guilty.

People v. Johnson, 191 Ill.App.3d 940, 548 N.E.2d 433 (1st Dist. 1989) Defendant and a codefendant (Acosta) were jointly tried, at a bench trial, for delivery of cocaine. An undercover police officer testified that he and an informant arranged to purchase cocaine. The officer talked with Acosta, who agreed to sell him the cocaine. When the officer and the informant arrived at the location of the sale, a tavern parking lot, Acosta introduced defendant to the officer. Defendant stated that the cocaine had not arrived but that he could get some in the tavern. Defendant went into the tavern. When he returned, he handed the officer several paper packets. The officer asked for defendant's phone number, and defendant gave him a slip of paper containing defendant's name and the tavern’s phone number.

The officer testified that he delivered the packets to a crime lab two weeks later. It was stipulated that the packets contained cocaine. After the State rested, the trial judge granted a directed verdict as to the codefendant. The judge gave no reasons for the directed verdict. Defendant testified that the informant had tried to get him involved in drugs, but he had refused. On the night of the incident, defendant was in the tavern when the informant entered and said he wanted defendant to meet some friends outside. When defendant went outside, a man who possibly was the officer waved from a car. When the informant mentioned that this concerned drugs, defendant said he did not want to be involved and went back into the tavern. Defendant looked back outside and saw the informant hand something to the man in the car.

Defendant was arrested about 16 months after the above incident. Although the officer claimed that other agents had seen the transaction, none testified. Finally, defendant had made a pretrial request that the informant be produced for trial. The State responded

that it did not want to produce the informant for such a small case. Although the State was ordered to produce the informant, it failed to do so.

This evidence was insufficient to prove guilt. The unexplained absence of an informant who was allegedly present at the transaction gives rise to an unfavorable inference that his testimony would be unfavorable to the State. See, **People v. Guido**, 25 Ill.2d 204, 184 N.E.2d 858 (1962).

The record failed to show why the informant was not produced for an interview or called at trial. No slip of paper in defendant's handwriting was produced, nor was its absence explained. The officer never explained the lapse of two weeks between the time he allegedly received narcotics from defendant and the time he brought the narcotics to the crime laboratory. None of the other eleven agents who were part of the surveillance team testified. The officer failed to explain why he waited almost 16 months before he filed any charges.

Finally, if the case was decided on "credibility," as the trial judge said, it was inconsistent that the codefendant was acquitted. The officer's testimony, if believed, established the codefendant's guilt as a co-conspirator.

People v. Wright, 147 Ill.App.3d 302, 497 N.E.2d 1261 (1st Dist. 1986) Defendant was convicted at a bench trial of rape, robbery, and unlawful restraint. The State's crucial witness was the complainant, who testified that defendant accosted her at a bus stop in the afternoon, pushed and pulled her along several streets, raped her twice in buildings, and took her into two liquor stores to make purchases. After about four hours, the complainant and defendant ended up on a playground.

The complainant's testimony was unbelievable - her "narration of the events has greater value as fiction than as credible evidence," noting, *inter alia*, the complainant's lack of resistance or outcry, her failure to attempt to escape though on the public streets, and the absence of physical evidence such as bruising or torn or disheveled clothing. Also, it was unbelievable that defendant would have escorted the complainant into a liquor store if he had committed the acts which she claimed he did. Reversed. See also, **People v. Yeager**, 229 Ill.App.3d 219, 593 N.E.2d 699 (1st Dist. 1992) (conviction reversed where the complainant's testimony concerning defendants' actions and physical positions seemed suspect, the physical evidence was consistent with defendants' version of events, complainant was neither injured nor had torn clothing despite allegedly being subjected to repeated forcible intercourse, complainant did not resist despite her large size, and complainant had a motive to lie if defendants failed to pay her for acts of prostitution); **People v. Anderson**, 20 Ill.App.3d 840, 314 N.E.2d 651 (1st Dist. 1974) (doubtful that attacker could accost complainant in daylight and force her across busy street without attracting attention; it also incongruous that complainant was afraid to make outcry but engaged in veritable wrestling match with the attacker).

People v. McCarthy, 102 Ill.App.3d 519, 430 N.E.2d 135 (1st Dist. 1981) Defendant, an off-duty police officer, was convicted at a bench trial of aggravated battery. The incident arose following a collision between defendant's car and a car in which the alleged victim was riding. Defendant and a passenger in his car testified that defendant shot in self-defense after the alleged victim pointed a gun at him. The alleged victim and the four occupants of that vehicle testified that the victim did not use a gun. Following the incident, a toy gun was found in the glove compartment of the alleged victim's vehicle.

Though the case was basically one of credibility, the testimony of the State witnesses was insufficient to prove guilt. There were "too many instances of witnesses changing their

stories, too many details that are inconsistent, and too many details that are exactly the same in the testimony of several witnesses.” Conviction reversed.

People v. Lindsey, 73 Ill.App.3d 436, 392 N.E.2d 278 (1st Dist. 1979) Defendant's convictions for murder, rape and arson were reversed in light of the numerous inconsistencies and contradictions in the testimony of the State witnesses. "The inconsistencies in the testimony . . . were not only contradictory but diluted this evidence to the level of palpable improbability and incredulity, thereby creating a reasonable doubt” of guilt.

People v. Villalobos, 53 Ill.App.3d 234, 368 N.E.2d 556 (1st Dist. 1977) A conviction cannot rest solely upon the impeachment of a defense witness and of the State's own witness.

People v. Sowers, 36 Ill.App.3d 599, 344 N.E.2d 800 (5th Dist. 1976) Defendant's conviction for armed robbery of a gas station was reversed. The station attendant testified that near closing time, a masked person came into the station with a shotgun. The robber took money from the cash drawer, sat at a desk, removed his mask, and counted the money. In the meantime, a customer came to the station to buy gas, and the robber gave the attendant money to make change. Although the attendant was with the customer about 35 feet from the robber for about five minutes, he never mentioned the robbery. The robber took only \$60, and returned the remaining money.

After the robber left, the attendant counted the money and closed the station. As he was going home he flagged down a police car. The attendant failed to find the robber in two police mug books, but after pressure from the police said that he thought the robber had been "Sowers." He subsequently identified a photo of defendant and identified him at a one-man showup.

The attendant's testimony was "at least improbable if not incredible." In addition, defendant was found 1½ hours after the incident with nothing incriminating in his possession, and he gave the police an alibi which he repeated without contradiction at trial. Police contacted only two of defendant's alibi witnesses, both of whom corroborated the alibi, and apparently did not attempt to contact the other alibi witnesses.

People v. Warren, 40 Ill.App.3d 1008, 353 N.E.2d 250 (1st Dist. 1976) Defendant's conviction for possession of marijuana was reversed because the trial judge, after hearing the evidence, indicated continuous doubts as to defendant's guilt. The only witnesses were a police officer and defendant, and though the judge disbelieved defendant's testimony he also found it difficult to believe the policeman.

People v. Smiley, 32 Ill.App.3d 948, 337 N.E.2d 290 (1st Dist. 1975) Defendant was convicted of battery, at a bench trial. Only the complaining witness and defendant testified. The complaining witness said that he heard a noise in the alley behind his house and saw defendant looking through garbage cans. When he asked what defendant was doing, defendant hit the complainant.

Defendant testified that he was walking down the alley when the complaining witness asked what he was doing, to which defendant responded that he did not have to answer questions. The complaining witness then threw defendant against a fence, and a scuffle ensued.

The testimony of the complaining witness was "unconvincing and contrary to human experience," and defendant's testimony was "more consistent with human experience." Conviction reversed.

People v. Poltrock, 18 Ill.App.3d 847, 310 N.E.2d 770 (1st Dist. 1974) Bench trial conviction reversed due to cumulative effect of contradictions — each of the three complainants claimed he was hit first by defendant and that only defendant landed blows.

People v. Carter, 19 Ill.App.3d 21, 311 N.E.2d 213 (1st Dist. 1974) Conviction reversed. Crucial testimony was by two brothers of the deceased, who testified that defendant said "shoot man shoot" to his accomplice. The brothers' testimony was improbable since neither of them mentioned those words to the police when they reported the shooting or at the coroner's inquest, and at the grand jury one brother testified that the attackers "didn't say nothing."

People v. Mixer, 8 Ill.App.3d 531, 290 N.E.2d 705 (1st Dist. 1972) Bench trial conviction reversed. Incredible that after the incident defendant took alleged rape victim to police station to ask directions.

People v. Smith, 3 Ill.App.3d 64, 278 N.E.2d 551 (1st Dist. 1971) Conviction reversed where the testimony of the State's prime witness was contradictory, impeached and incomplete. In addition, there were about 18 other witnesses to the incident whose names and addresses were known to the State, but who were not called as witnesses.

People v. Newson, 133 Ill.App.2d 511, 273 N.E.2d 478 (1st Dist. 1971) Numerous conflicts in testimony of State witnesses created a reasonable doubt; there were discrepancies in descriptions of defendant, his clothing and the type of weapon used.

People v. Broome, 130 Ill.App.2d 227, 264 N.E.2d 772 (1st Dist. 1970) Conviction reversed where State's case rested on one witness's observation of the figure of a man, an identification made by a 15-year-old under adverse circumstances, and another witness whose testimony directly conflicted with that of the 15-year-old.

People v. Quintana, 91 Ill.App.2d 95, 234 N.E.2d 406 (1st Dist. 1968) Bench trial conviction reversed. Uncorroborated testimony of police officer was insufficient to convict of possession of marijuana where officers admittedly "shook down" defendant five times in four months and repeatedly importuned defendant to become an informer.

People v. Brown, 99 Ill.App.2d 281, 241 N.E.2d 653 (1st Dist. 1968) Complainant's testimony was insufficient where it was impeached in part by her own statements and where she changed her version of the events. In addition, her story reached the realm of unreality when she claimed defendant was doing four different things with his hands at the same time.

§41-6

Doubtful Identification

United States Supreme Court

Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972) There are five factors to consider in evaluating eyewitness identifications: (1) the opportunity the witness had to view the offender at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description; (4) the witness's level of certainty; and (5) the length of time between the crime and the identification. See also, **People v. Lewis**, 165 Ill.2d 305, 651 N.E.2d 72 (1995) (same).

Illinois Supreme Court

People v. Slim, 127 Ill.2d 302, 537 N.E.2d 317 (1989) The victim, the only occurrence witness, testified that as he walked from his car about 1:45 a.m., a man approached, stuck a gun in his face, took his wallet, and drove away in his car. The victim described the robber as 28 years old, 135 pounds, and 5'3" tall.

Ten days later, the victim's car was found in Milwaukee. Defendant was a passenger in the car. Defendant was arrested, and on the following day was placed in a lineup and identified by the victim. The victim also identified defendant at trial.

Defendant's father testified that on the night of the robbery defendant was at home in Milwaukee. The father also stated that defendant had distinctive features - teeth braces and unusually thick lips. The father described defendant as 22 years old, 165 pounds, and 5'9" tall. Another defense witness testified that defendant wore braces at the time of the crime and estimated defendant's height as 5'2".

The discrepancies and omissions as to facial or other physical characteristics were not fatal, but simply affected the weight of the identification testimony which the trier of fact must assess. Furthermore, discrepancies regarding height and weight were not uncommon; "few persons are trained as keen observers," and persons in criminal cases are under stress when their impressions are formed. In addition, defendant's father and the other defense witness who knew defendant "gave sharply different estimates" as to his height." Finally, the 11-day interval between the crime and the lineup was not significant, and defendant's arrest in the victim's stolen car was corroborating evidence.

People v. Johnson, 114 Ill.2d 170, 499 N.E.2d 1355 (1986) A positive identification by a single witness, who has ample opportunity for observation, is sufficient to support conviction.

People v. Ash, 102 Ill.2d 485, 468 N.E.2d 1153 (1984) Evidence was insufficient to prove defendant guilty beyond a reasonable doubt.

The evidence connecting defendant to the crimes (armed robbery, home invasion, and unlawful restraint) consisted of the testimony of an accomplice and the victim's identification. The accomplice was seeking lenient treatment, agreed to testify against defendant only after the State threatened to rescind the prior plea agreement, and admitted that he would "do just about anything," including lie, to avoid imprisonment.

In addition, the complainant's identification of defendant was vague and doubtful. Defendant was six inches shorter than the description given by the victim, who did not identify defendant from mug shots shown to her the day after the incident. At a suppression hearing, the complainant misidentified two attorneys seated in court as the perpetrator, and though defendant was in custody within four days of the crime, the victim did not view him until four months later.

People v. Charleston, 47 Ill.2d 19, 264 N.E.2d 199 (1970) Where witness gave a description of the assailant to police after the incident but failed to disclose that she knew defendant's name, a reasonable doubt existed.

People v. Cullotta, 32 Ill.2d 502, 207 N.E.2d 444 (1965) A conviction cannot be sustained if the identification of the accused is vague, doubtful and uncertain. Here, police officers looking inside a building from a passing car were not afforded a favorable opportunity for positive identification.

People v. Bartley, 25 Ill.2d 175, 182 N.E.2d 726 (1962) Conviction reversed where only eyewitness was unable to identify defendant, the other evidence was circumstantial, and defendant presented alibi testimony.

Illinois Appellate Court

People v. Kindle, 2021 IL App (1st) 190484 The State presented sufficient evidence to convict defendant of murder despite relying primarily on the prior statement of a 7-year-old witness, Jalen. Defendant argued that Jalen’s identification was unreliable where he observed the crime from an apartment window across the street at night, did not know defendant, and did not recall making the identification by the time he testified at trial seven years later.

The Appellate Court held that Jalen’s vantage point allowed him to observe the entire crime without fear for his safety, likely increasing his powers of observation. Defendant had come to Jalen’s house prior to the attack so Jalen had ample opportunity to observe him. Jalen also consistently identified defendant as a participant in the attack soon after it occurred. While the distance from Jalen’s apartment to the scene of the crime was approximately 180 feet, a streetlight was located directly above the bus stop. Finally, Jalen’s testimony mirrored that of another eyewitness who, although he couldn’t identify defendant, provided several details that matched Jalen’s account.

People v. Powell, 2021 IL App (1st) 181745 A police officer testified that he engaged in a controlled purchase of narcotics and identified defendant as the individual who sold heroin to him. On appeal, defendant challenged the sufficiency of the State’s evidence. The officer used prerecorded funds during the purchase, but those funds were not recovered from defendant when he was arrested minutes later. Further, the officer testified to purchasing the drugs for an amount significantly below their estimated street value without any explanation for the disparity in pricing and value. There was surveillance video from a nearby business, but the video did not corroborate the officer’s version of events. And, the officer’s identification of defendant was unreliable where he interacted with the seller for no more than 10 seconds and subsequently identified the seller only by his clothing from a distance more than half a block away because he did not want to get close enough to reveal his identity as an undercover officer.

Any one of these deficiencies, alone, likely would not be enough to require reversal. However, “taking the totality of the evidence in a light most favorable to the State, the evidence lacks the probative force necessary for the trier of fact to conclude beyond a reasonable doubt” that defendant was guilty of unlawful delivery of a controlled substance. Defendant’s conviction was reversed outright.

In re O.F., 2020 IL App (1st) 190662 The State failed to prove defendant guilty of possession of a stolen motor vehicle where the lone eyewitness did not have an adequate opportunity to observe the driver of the vehicle.

The police officer who saw the driver testified he was driving his squad car 15 feet away from the stolen vehicle, both vehicles were moving, it was raining out, and he could see the driver only from the waist up. He admitted he did not know the car was stolen until after this observation, which calls into question his degree of attention. He did not provide a description, and when he later saw a suspect walking, the clothing description he provided did not match the description of the man ultimately apprehended. When asked how he knew the suspect in the show-up was the same man driving the stolen vehicle, the officer replied,

“Face” without elaboration. In light of these facts, the **Biggers** factors weighed in favor of an unreliable identification and the respondent’s juvenile adjudication was vacated.

People v. Ramos, 2020 IL App (1st) 170929 The State failed to prove defendant guilty of first-degree murder. The State alleged that defendant acted as the principal in a shooting. However, at trial it became apparent that its identification testimony was unreliable; its first witness identified different people at different time, defendant no longer fit the description of the shooter at the time of key line-up identifications, the witnesses noted another suspect looked like the shooter, and the line-ups occurred over a year after the incident. The judge still convicted defendant, however, because it believed that defendant’s custodial statement suggested he provided both the van and the gun used by the shooter, with knowledge of his intent to commit the offense.

The Appellate Court reversed, holding that the portion of the statement relied upon by the trial court did not establish defendant’s accountability for the offense. Although defendant admitted to providing the shooter with the gun and the van, and knew rival gang members were in the area at the time he did so, nothing in the statement suggested that the shooter told defendant of his plans or that defendant otherwise knew of an intent to commit an offense. Defendant did state that he “figured it was a drive-by,” but, contrary to the trial court’s belief, this did not establish foreknowledge, as defendant was clearly referencing his belief as to what occurred *after* he heard gunshots and *after* he was told by gang members that he should not drive his van for several hours.

And while defendant admitted that he refused the shooter’s request to participate in “something like that” at the time he handed over the gun, “that” could have simply been a gang confrontation, not necessarily a shooting. The court refused to accept the State’s invitation to infer from this language that defendant must have known the offender’s purpose in retrieving a van and his gun; as the defense noted, defendant may have simply believed the offender sought self-protection. Finally, the court noted that while it’s permissible for the State to secure a conviction on accountability even if the original theory and charge alleges defendant acted as the principal, it was notable in this case that the State switched its theory only after it presented its case, by which time it was clear that the original theory was falling apart.

People v. Macklin, 2019 IL App (1st) 161165 The majority upheld defendant’s armed robbery conviction after finding the two victims’ identification testimony sufficiently reliable. The victims disagreed as to whether they saw the assailant for a few seconds or a few minutes, but gave consistent if generic descriptions, and independently identified defendant in a lineup 10 days later.

Justice Hyman, writing in dissent, would have reversed. He first disputed the majority’s premise that it owes deference to the finder of fact where the issue is identification reliability, as defendant was not questioning the victims’ credibility. Rather, the question was whether an objective analysis of the **Biggers** factors showed the identifications to be reliable. Here, the dissent found the identifications unreliable because of the brief opportunity to observe, the limited degree of attention given stress and weapon focus, and generic prior descriptions that evolved by the time of trial. The fact that the victims expressed certainty was of little value in light of recent research. The dissent was also troubled by the fact that the police failed to provide a Spanish lineup advisory form to a non-English-speaking victim.

In re Christian W., 2017 IL App (1st) 162897 The court held that the State failed to prove defendant guilty of attempt first degree murder. The State's entire case rested upon a single eyewitness identification and there were several factors which made the identification so unreliable that it could not provide proof beyond a reasonable doubt.

First, the witness, who had known defendant for several years, did not identify defendant as the offender when he made his initial statement to the police, and provided no plausible explanation for that failure. Second, the witness's testimony about what he told the officer in his first statement differed substantially from the officer's testimony. And finally, the witness made confusing and inconsistent statements about his identification of the second offender. Under these circumstances, the court found that this witness was so unreliable that no rational trier of fact could believe his testimony.

In reaching its decision, the court specifically held that it did not need to use the five-factor balancing test used in **Biggers** 409 U.S. 188 (1972) and **Slim** 127 Ill. 2d 302 to reverse defendant's conviction. It is only necessary for a reviewing court to use this test when it affirms a conviction.

The court reversed defendant's conviction.

People v. Tomei, 2013 IL App (1st) 112632 Five factors are used by Illinois courts to evaluate the reliability of an eyewitness identification: (1) the witness's opportunity to view the suspect during the offense; (2) the witness's degree of attention; (3) the accuracy of any prior descriptions; (4) the witness's level of certainty at the time of the identification; and (5) the length of time between the crime and the identification. The court concluded that the identification in this case was sufficient to prove beyond a reasonable doubt that defendant was guilty of criminal trespass to property and criminal damage to property.

1. The first factor was satisfied in that the witness had an adequate opportunity to view the crime although he observed the offense at his home over a live video feed from his business. When considering whether a witness had an adequate opportunity to view the offender at the time of the offense, courts consider whether the witness was close to the accused for a sufficient period of time under conditions adequate for observation. Here, the witness testified that he observed the suspects over a live video feed as they were committing the crimes at his business, that the camera was positioned eight feet off the ground with spotlights that brightened the field of vision, and that the feed was sufficiently clear that he recognized the defendant's face. In addition, a few minutes later he identified defendant after the latter's apprehension by police. The court concluded that under these circumstances, the witness had an adequate opportunity to observe the crime.

The court rejected the argument that the identification was unreliable because the State offered no evidence of the size, clarity, resolution, or zoom of the live video feed. The court analogized the situation to viewing a crime through a telescope. "As long as the telescope was functioning properly, we see no reason why [the witness] would not be able to testify as to what [he or she] observed."

The court also found that the identification testimony did not require foundational proof that the video camera was functioning properly. First, even had there been evidentiary flaws in the foundation, those flaws would have gone only to the weight of the testimony and not to its admissibility. Second, viewing the facts in a light most favorable to the prosecution, in the absence of any evidence that the camera system was malfunctioning there was sufficient evidence for a rational trier of fact to conclude that the camera system was working properly.

2. The second factor was satisfied in that the witness was shown to have paid attention to the video although he was talking to a police dispatcher on the telephone and dressing to

go to the crime scene. The witness testified he viewed the feed for a few minutes and recognized the defendant's face at the showup a few minutes later. The court concluded that a rational trier of fact could have concluded that the witness paid sufficient attention to make a positive identification.

3. The third factor was satisfied because the witness gave an adequate description to support the identification. The witness stated that the perpetrators were white males wearing short jackets and dark hats. Despite minor discrepancies, the court concluded that the general descriptions were adequate to allow the trier of fact to find that the identification was reliable.

4. Concerning the witness's level of certainty in the identification, the court found that the witness expressed no uncertainty. The court distinguished this case from those cited by the defendant, in which the defendant was precluded by the trial court from presenting expert evidence concerning the ability of an eyewitness to make an identification. Here, defendant did not attempt to present such evidence and the trial court did not exclude it. Given that the witness consistently claimed that he was able to identify defendant, this factor was satisfied.

5. The amount of time between the crime and the identification indicated a reliable identification where only 15 minutes elapsed and the defense did not claim that the passage of time affected the identification. The court rejected the argument that the identification was unreliable because it occurred during a showup. The court concluded that the evidence was sufficient to permit a reasonable trier of fact to find that the identification was reliable.

Defendant's convictions were affirmed.

People v. Hernandez, 312 Ill.App.3d 1032, 729 N.E.2d 65 (1st Dist. 2000) Identification testimony of the single eyewitness was insufficient to establish guilt beyond a reasonable doubt. Although the eyewitness saw the decedent and another man arguing from a distance of about 90 feet, he saw only the backs of the two men's heads "until the shooter momentarily exposed his profile." In addition, the witness told officers he was "unsure" if he could identify anyone because he had mostly been looking at the backs of the individuals' heads, and a description the witness gave three weeks after the offense substantially conflicted with his description at trial. Finally, the witness did not identify defendant until he viewed a lineup some three months after the shooting, and only after he had twice seen photo arrays including defendant's picture. Under the "totality of the circumstances" test, such testimony was insufficient to sustain the conviction. See also, **People v. Rodriguez**, 312 Ill.App.3d 920, 728 N.E.2d 695 (1st Dist. 2000) (conflicting identification testimony insufficient to sustain conviction).

People v. Williams, 244 Ill.App.3d 669, 614 N.E.2d 367 (1st Dist. 1993) Defendant was convicted of threatening a public official after a 911 operator received a call threatening Mayor Daley. The operator immediately called back the number displayed on her computer screen, talked to defendant, and confirmed that the telephone number was his.

At trial, the State presented a tape recording of these two calls separated by several conversations of police officers. The 911 operator testified that the voices on the two calls were identical. However, an expert could not reach an opinion on whether the voices were the same and testified that the evidence was "far from conclusive."

Defendant testified that he did not make the 911 call. A defense expert testified that the call might be shown as originating from defendant's apartment if placed by a certain brand of cordless phone or if someone had attached a phone to defendant's phone jack in an open panel in the basement. The defense also presented evidence that on a prior occasion

when he was in jail and his apartment was empty, a phone call had been listed as originating from his phone.

Conviction reversed. Because the voice expert was unable to come to a conclusion, a prior call had been credited to the apartment when defendant was not present, and the call could have originated through a cordless phone or from the basement, the evidence did not conclusively establish defendant's guilt.

People v. Parker, 234 Ill.App.3d 273, 600 N.E.2d 529 (5th Dist. 1992) Defendant was convicted of murder, armed robbery, attempt murder, and aggravated battery based upon the out-of-court statements of three eyewitnesses who identified defendant as the shooter. At trial, all three witnesses repudiated their earlier statements and denied that defendant was responsible. Two of the witnesses claimed that their earlier statements had been coerced, and the third, who had been shot in the incident, testified that he was recovering from surgery and was in great pain when he was interviewed.

The prior inconsistent statements did not establish guilt beyond a reasonable doubt. Although prior inconsistent statements may be considered as substantive evidence by statute, these statements were entitled to little substantive weight in light of the witnesses' subsequent testimony exculpating defendant and challenging the authenticity of their earlier statements.

People v. Dowaliby, 221 Ill.App.3d 788, 582 N.E.2d 1243 (1st Dist. 1991) Following a jury trial, defendant was convicted of the first degree murder of his seven-year-old daughter. Defendant's wife was also tried for the same offense, but her motion for directed verdict was granted.

Defendant's motion for directed verdict should have been granted because the probative evidence against him was no greater than that against his wife.

The State presented evidence that from 75 yards away, a witness observed a "dark-colored car" near the location where the victim's body was discovered. This witness also saw a person in the driver's seat and the profile of a large nose, but he was not sure of the person's race. The witness testified that the person's nose was similar to defendant's and that one of defendant's cars, a "light-blue Malibu," resembled the car he saw. This identification testimony "was doubtful, vague, unreliable and of no probative value."

People v. Ford, 195 Ill.App.3d 673, 553 N.E.2d 33 (1st Dist. 1990) Defendant's conviction of delivery of a controlled substance was reversed because the identification of defendant was so vague and doubtful as to create a reasonable doubt.

The undercover officer failed to notice severe scarring on defendant's face or mention the skull cap and bandage covering part of his face. In addition, the initial description of defendant differed somewhat from defendant's actual description. Also, on direct examination the officer testified as to a purchase of cocaine, while on cross-examination he clarified that he had bought heroin. While no single factor was enough to justify reversal, when all the weaknesses and discrepancies were viewed together, the identification testimony was vague and doubtful.

People v. Newbern, 183 Ill.App.3d 995, 539 N.E.2d 875 (4th Dist. 1989) Defendant was tried *in absentia* and convicted of retail theft. A store security guard testified that he saw a black male put cigarettes in his pocket and attempt to leave the store without paying. During a struggle, the guard ripped off the suspect's coat. The suspect then fled. In the coat pocket, the guard found a driver's license bearing the name Carlos Newbern and a

photograph. The guard and two other employees identified the photograph as that of the suspect.

An identification at a trial *in absentia* is difficult because the eyewitness cannot point to an in-court defendant as the offender. Here, the evidence established that the offense had been committed by the person pictured on the driver's license, but the evidence did not prove beyond a reasonable doubt that defendant was the person pictured. The similarity of names, without corroboration, was insufficient to sustain the conviction.

People v. Byas, 117 Ill.App.3d 979, 453 N.E.2d 1141 (3d Dist. 1983) Both the photo and lineup identifications by complainant were equivocal, and the identification at the preliminary hearing was made hesitatingly. In addition, the complainant's description of the assailant differed from defendant's appearance. Convictions reversed because the identification was not positive.

People v. Hughes, 59 Ill.App.3d 860, 376 N.E.2d 372 (2d Dist. 1978) Conviction for robbery reversed where the identification testimony of the complainant was dubious and uncertain. The complainant never saw her attackers' faces and observed only their backs and clothing from a distance of 500 yards, and the mode of dress of the perpetrators was not so distinctive as to justify a positive identification.

The State emphasized the numerous inconsistencies in the testimony of the defense alibi witnesses, however the inconsistencies in defendant's case are irrelevant in light of the State's failure to prove guilt beyond a reasonable doubt.

People v. White, 56 Ill.App.3d 757, 372 N.E.2d 691 (2d Dist. 1978) Defendant's conviction for armed robbery reversed where it rested solely on the identification testimony of one witness, who expressed "some doubt" as to his identification and who failed to identify defendant's photo about five months after the incident.

People v. Fillyaw, 26 Ill.App.3d 486, 325 N.E.2d 315 (1st Dist. 1975) Defendant's conviction for armed robbery at a bench trial was reversed. Defendant, who was arrested in the complaining witness's car (which had been taken during the robbery), was identified by the complainant based upon clothing, dark skin, and large natural hairstyle. However, the complainant had been told by police that all the men in the lineup had been found in her car, and she admitted she had not viewed her assailant "face-to-face."

People v. Lonzo, 20 Ill.App.3d 721, 315 N.E.2d 256 (1st Dist. 1974) Conviction reversed where identification was by two elderly people whose testimony was perfunctory, fragmentary, and almost incoherent.

People v McKibben, 24 Ill.App.3d 692, 321 N.E.2d 362 (1st Dist. 1974) Defendant's conviction of murder (following a bench trial) was reversed for insufficient evidence. The sole identification witness was a narcotics addict who was blind in one eye and "high" on alcohol at the time of the incident. In addition, the witness made a prior statement contradicting portions of his trial testimony and identified defendant from viewing a single photograph.

People v. Hughes, 17 Ill.App.3d 404, 308 N.E.2d 137 (1st Dist. 1974) Conviction reversed. The identification testimony by two witnesses lacks credibility; one witness failed to tell

police she was present when it would have been natural to do so, and though she knew defendant she required two viewings at lineup to make an identification. The other witness's testimony contained inconsistencies, and he claimed to be uncertain of his lineup identification because of defendant's hair length, which had not changed since the time of the incident.

People v. King, 10 Ill.App.3d 652, 295 N.E.2d 258 (1st Dist. 1973) Bench trial conviction reversed where complainant, who identified defendant, failed to mention that the assailant had been in her office previously. In addition, she saw defendant in a bar after the incident but did not call the police or tell anyone he had raped her.

People v. Moore, 6 Ill.App.3d 932, 287 N.E.2d 130 (1st Dist. 1972) Where defendant was arrested near the crime scene and was identified by his clothes (t-shirt, dark pants, and gym shoes), the Court took judicial notice that defendant and assailant were both dressed in a "frequently used mode of masculine dress." The evidence was insufficient to convict. See also, **People v. Kincy**, 72 Ill.App.2d 419, 219 N.E.2d 662 (1st Dist. 1966) (identification based on jacket was insufficient in light of uncontradicted alibi evidence); **People v. Reed**, 103 Ill.App.2d 342, 243 N.E.2d 628 (1st Dist. 1968) (evidence held insufficient where identification was made by means of a "dark coat").

People v. Barney, 60 Ill.App.2d 79, 208 N.E.2d 378 (1st Dist. 1965) Reasonable doubt created by discrepancies between defendant's actual height, weight, age, and posture and the description given after the incident. See also, **People v. Marshall**, 74 Ill.App.2d 483, 221 N.E.2d 133 (1st Dist. 1966) (discrepancies in height and weight, plus witness failed to notice mustache).

§41-7

Accomplice Testimony

Illinois Supreme Court

People v. Brown, 185 Ill.2d 229, 705 N.E.2d 809 (1998) Though the testimony of an accomplice has inherent weaknesses, it is sufficient to convict if it convinces the jury of defendant's guilt beyond a reasonable doubt. Here, the accomplice's testimony provided a reasonable basis to convict. First, the accomplice gave a detailed account of the events leading up to the crimes. Second, the accomplice testimony was corroborated in many important respects by both physical and scientific evidence. Third, the jury was made aware of the accomplice's plea agreement and received IPI Crim. No. 3.17, the cautionary instruction on the weight to be given accomplice testimony.

People v. McLaurin, 184 Ill.2d 58, 703 N.E.2d 11 (1998) Though the testimony of an accomplice has inherent weaknesses and should be accepted only with caution, such testimony, whether corroborated or uncorroborated, will sustain a conviction if it convinces the jury of defendant's guilt beyond a reasonable doubt. Here, the jury was informed of the accomplice's prior inconsistent statements, attempts to conceal her participation in the crimes, and agreement for a reduced sentence in return for her testimony. The jury was also instructed that the testimony of an accomplice is subject to suspicion. Also, there was evidence to corroborate the accomplice's testimony. Under these circumstances, the evidence was sufficient to sustain the conviction.

People v. Rivera, 166 Ill.2d 279, 652 N.E.2d 307 (1995) Defendant was convicted, in a bench trial, of first degree murder. The conviction was reversed in federal *habeas corpus* proceedings, and the cause was remanded for a new trial. At the second trial the State introduced the transcript of testimony of an accomplice, Meger. Meger had testified at defendant's first trial, but he died before the second trial. According to Meger's testimony, defendant and a third accomplice (Norman) had committed the murder.

Norman testified for the defense at the second trial and said that he had committed the murder alone, without any involvement by defendant. However, the State impeached Norman with his testimony from his own trial, at which he claimed not to have been involved in the offense and that the crime had been committed by defendant and Meger.

On appeal, defendant argued that he had not been proven guilty beyond a reasonable doubt. He argued that under **People v. Newell**, 103 Ill.2d 465, 469 N.E.2d 1375 (1984), the conflicting testimony of several accomplices is not sufficient to convict. **Newell** was distinguishable. **Newell** was a "very fact-specific case" in that the accomplice who implicated defendant testified under immunity. In addition, his testimony was directly contradicted by two other accomplices and there was no corroborating evidence for either version. Here, by contrast, Meger's testimony was corroborated by the injuries to the victim's body and by Norman's testimony from his own trial, which was admitted as both substantive and impeachment evidence. Therefore, the evidence was sufficient to convict.

People v. Williams, 147 Ill.2d 173, 588 N.E.2d 983 (1991) The testimony of an accomplice has "inherent weaknesses," is "fraught with dangers of motives such as malice towards the accused, fear, threats, promises or hopes of leniency," and should be accepted "only with utmost caution and suspicion." However, such testimony is sufficient to sustain a criminal conviction if it convinces the jury of defendant's guilt beyond a reasonable doubt. The critical inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Here, the accomplice gave an "explicit eyewitness account of the killings, the details of which were not shaken under cross-examination." In addition, her trial account was essentially corroborated by grand jury testimony she gave just after the offenses, thus rebutting any inference that her testimony was a recent fabrication. Furthermore, many aspects of her testimony were corroborated by other evidence, and the weaknesses of the testimony were apparent to the jury, which believed it nonetheless.

People v. Jimerson, 127 Ill.2d 12, 535 N.E.2d 889 (1989) Although accomplice testimony is to be viewed with suspicion, it may be sufficient, even in the absence of corroboration, to sustain a conviction.

Here, the jury was given the IPI instruction on accomplice testimony and was aware of the accomplice's prior inconsistent statements. In addition, the accomplice's trial testimony "found corroboration" in a statement she gave police shortly after the murders, which "tended to rebut the inferences, suggested by the defense, that [she] had a motive to testify falsely in this case and that her testimony here was a recent fabrication." Furthermore, though "the State was not able to provide independent corroboration of [her] identification of the defendant as a participant in the offenses, the State was able to corroborate many other important aspects of her testimony."

The jury was entitled to credit the accomplice's testimony and disregard the alibi evidence even though the alibi was supported by a greater number of witnesses. Also, a State

witness contradicted the alibi evidence by testifying that he saw defendant in the area of the crime scene at the time defendant claimed he was elsewhere.

People v. Titone, 115 Ill.2d 413, 505 N.E.2d 300 (1986) Defendant and two codefendants were charged with a double murder, armed robbery and aggravated kidnapping.

The principal witness for the State was a woman named DeWulf. She testified that on the night in question she received a call from Gacho, her boyfriend, and was asked to bring a car to his house. She further explained that she saw the defendants bring two people, with their hands tied, out of the house. The people were placed in a car with defendant.

Gacho got into DeWulf's car, stating that "they were going to have to waste 'em." DeWulf followed the other car to a gravel or dirt road, where she heard some shots. Defendant and the other codefendant came to DeWulf's car, and defendant said "they're dead."

A police officer found the two victims in the trunk of the car. One of them was still alive, and when asked who had shot them, he replied, "Robert Gott or Gotch." There was no physical evidence to connect defendant to the murders.

The day after the crimes, DeWulf voluntarily went to the police station. She was told by police that if she told the truth about the incident she would not be charged. DeWulf testified that after asking a police officer for money, she gave a statement that was consistent with her trial testimony. Later, DeWulf gave a contrary statement to Gacho's attorney.

Defendant contended that the evidence was insufficient to prove him guilty because the only evidence connecting him to the crime came from the uncorroborated testimony of an accomplice (DeWulf). There was no evidence to show that by implicating defendant, DeWulf had hopes of reward from the prosecution. "[T]he only thing asked of her in order to avoid being charged with a crime was that she tell the truth." Conviction affirmed.

People v. Newell, 103 Ill.2d 465, 469 N.E.2d 1375 (1984) Defendant was convicted of burglary, on the basis of accountability, for the actions of three co-defendants. The co-defendants, who were using defendant's truck, broke into a house, removed property and divided the proceeds. One of the co-defendants testified for the State and said that defendant participated in the decision to commit the burglary, advised the others of the location of the house and received part of the proceeds. In exchange for his testimony, this witness was not prosecuted. The other two co-defendants testified that defendant took no part in the decision to burglarize the house. It was undisputed that the State's witness used defendant's truck every day.

The uncorroborated testimony by one accomplice was not sufficient to prove guilt. "[W]here the only evidence is the testimony of three accomplices, all convicted felons, one of whom says defendant is guilty and two of whom say he is not, with no corroboration of either view, we simply cannot say there has been proof of guilt beyond a reasonable doubt." See also, **People v. Marshall**, 26 Ill.App.3d 905, 326 N.E.2d 246 (1st Dist. 1975) (direct contradiction of accomplice's testimony is entitled to great weight).

People v. Ash, 102 Ill.2d 485, 468 N.E.2d 1153 (1984) The evidence connecting defendant to the crimes consisted of the testimony of an accomplice and the identification of defendant by the victim. The accomplice was seeking lenient treatment and agreed to testify against defendant only after the State threatened to rescind a prior negotiated plea agreement. In addition, the accomplice admitted that he would "do just about anything," including lie, to avoid imprisonment. Also, the identification of defendant by the victim was vague and doubtful. Conviction reversed.

People v. Pittman, 93 Ill.2d 169, 442 N.E.2d 836 (1982) Defendant was convicted of unlawful delivery of a controlled substance. He contended that the evidence was insufficient in that his conviction was based upon the uncorroborated testimony of an informant who had several narcotics convictions.

The credibility of witnesses is a matter for the trier of fact. The jury was aware of the informer's background, but chose to believe him rather than defense witnesses. In addition, there was no basis in the record to reject the informer's testimony as incredible, and there was "some degree" of corroboration of his testimony. Conviction affirmed.

In re Brown, 71 Ill.2d 151, 374 N.E.2d 209 (1978) The evidence was insufficient to support an adjudication of delinquency based on aggravated battery. The finding was based solely on the uncorroborated testimony of a person who himself had originally been charged with the crime. In addition, the testimony varied from prior statements and was improbable, there was no physical evidence, and the defense alibi witnesses were consistent in their testimony.

People v. Wilson, 66 Ill.2d 346, 362 N.E.2d 291 (1977) Defendant's conviction for robbery, which was based on the uncorroborated testimony of an accomplice, was reversed. The accomplice was incarcerated pending the outcome of other indictments, admitted instigating the robbery and was promised immunity. The testimony of the complainant and a police officer helped determine what occurred, but "did not aid in establishing who committed the robbery."

People v. Hansen, 28 Ill.2d 322, 192 N.E.2d 359 (1963) The uncorroborated testimony of an accomplice, if it satisfies the court or jury beyond a reasonable doubt, is sufficient to sustain a conviction. However, such testimony is attended with serious infirmities, which require the utmost caution in relying upon it alone.

Illinois Appellate Court

People v. Jones, 2020 IL App (4th) 190909 The State's primary witness in a prosecution for unlawful delivery of a controlled substance was a drug user and dealer testifying pursuant to a cooperation agreement. She was also impeached several times on the stand. Citing precedent, defendant argued that her involvement in the drug trade with defendant made her an accomplice whose testimony "should be accepted only with utmost caution and suspicion." The defendant asserted such testimony must have "the absolute conviction of its truth" to be sufficient. He asked the court to reverse his conviction based on this witness' failure to meet that standard.

The Appellate Court affirmed, noting the "absolute conviction" language had been undermined in more recent cases, which suggest that all witnesses should be evaluated according to the deferential **Jackson** standard. This standard requires an evaluation of witness testimony in the context of the entire record to determine whether any rational trier of fact could find defendant guilty. Here, looking at the flawed testimony in the context of the entire record, the court found extensive corroborating evidence supported the testimony of the State's key witness.

In re D.R.S., 267 Ill.App.3d 621, 643 N.E.2d 839 (5th Dist. 1994) The uncorroborated testimony of a 16-year-old accomplice was insufficient to prove respondent guilty of residential burglary. Although a conviction can be based on accomplice testimony, such

testimony must be cautiously scrutinized, especially where it is the sole evidence of guilt. Most convictions based solely on uncorroborated accomplice testimony have been reversed for insufficiency of evidence.

Here, the accomplice's testimony was especially suspect because he had been granted immunity and because there was no corroboration of his claim that the respondent had been involved in the offense. He also admitted that he had instigated the crime, lied to the authorities "to get out of trouble," and faced other charges. In addition, his testimony about the events contradicted that of the victim. Finally, the trial court inexplicably found that the evidence established residential burglary but was insufficient to prove theft of a firearm, although the evidence connecting respondent to either offense was identical.

People v. Ray, 83 Ill.App.3d 1029, 404 N.E.2d 1073 (3d Dist. 1980) Defendant's conviction for burglary was reversed because it was based solely on the testimony of a companion who had pleaded guilty to the same offense. The companion was a reluctant witness, was declared a hostile witness on a narrow issue, repudiated a prior statement, was intoxicated at the time of the offense, couldn't remember the events clearly, and admitted that it was possible that she had committed the crime alone.

People v. Savory, 62 Ill.App.3d 750, 379 N.E.2d 373 (3d Dist. 1978) Defendant's conviction for indecent liberties with a child was reversed because it was based solely on the uncorroborated testimony of a self-proclaimed accomplice, who accused defendant only after defendant had previously accused him of rape.

People v. Price, 21 Ill.App.3d 665, 316 N.E.2d 289 (1st Dist. 1974) Bench trial conviction reversed. The testimony of accomplices was not significantly corroborated, and was insufficient considering the rewards offered in exchange for their testimony and the comparative backgrounds of the accused and accusers.

§41-8

Variance

United States Supreme Court

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) Due process is violated by conviction on a charge not made or tried.

People v. Bueno, 35 Ill.2d 545, 221 N.E.2d 270 (1966) Where defendant and codefendant were charged with sale of narcotics to a third person, but the evidence established at most that defendant sold narcotics to the codefendant, there was insufficient evidence to support the conviction. "The question is not one of variance but of whether the State proved the charge set forth in the indictment."

Garner v. Louisiana, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207 (1961) It is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there was no evidence. See also, **People v. Smith**, 183 Ill.2d 425, 701 N.E.2d 1097 (1998) (error for Appellate Court to affirm felony murder conviction based on predicate that had not been charged).

Illinois Supreme Court

People v. Bohm, 95 Ill.2d 435, 448 N.E.2d 175 (1983) Defendant was convicted of theft. On appeal, he contended for the first time that there was a fatal variance between the charge and proof. The theft complaint alleged that defendant stole gasoline owned by Town and Country Food Store; however, the evidence at trial proved that the gasoline was owned by a Shell service station.

When challenged for the first time on appeal, a variance will require reversal if it misled the accused in making his defense or exposes him to double jeopardy. Here, defendant was not misled, and the trial court record was available to protect against double jeopardy. Consequently, the variance was not fatal.

People v. Alexander, 93 Ill.2d 73, 442 N.E.2d 887 (1982) Defendant was charged with theft in Will County for exerting unauthorized control over a certain automobile "on or about October 31, 1979." The evidence at the bench trial established that defendant exerted unauthorized control over the automobile on November 11, 1979. (Though the evidence showed that defendant stole the automobile on October 31st, the theft occurred in Cook County). The trial judge found defendant guilty, stating that November 11, 1979 was "on or about" October 31, 1979.

The date alleged in an information "need not ordinarily be proved precisely," and proof establishing the offense on another date is "not a fatal variance." Here, the particular time was not an essential element, and the tolling of the statute of limitations was not at issue. In addition, the information was sufficiently specific to allow defendant to prepare his defense, and the information and the record would be sufficient to bar subsequent prosecution for the offense on November 11, 1979.

People v. Davis, 82 Ill.2d 534, 413 N.E.2d 413 (1980) Defendant alleged that there was a fatal variance between the complaint and the evidence at trial. The complaint alleged disorderly conduct "by threatening Pearl Robinson with bodily harm to her grandson." The evidence at trial showed that defendant threatened Pearl Robinson, but there was no proof of any specific threat to the grandson's physical safety.

Where defendant attacks the complaint for the first time on appeal, a variance will vitiate a trial only if it is "material" and of "such character as may mislead the accused in making his defense or expose him to double jeopardy." Here, the variance was not material and did not mislead defendant in preparing his defense, and the complaint was sufficiently precise to protect from double jeopardy. Consequently, the phrase referring to the grandson "was unnecessary and could be disregarded as surplusage."

People v. Johnson, 65 Ill.2d 332, 357 N.E.2d 1166 (1976) There was a variance between the charge against defendant (that she agreed to perform an act of deviate sexual conduct) and the State's proof at trial (that she offered to do such act). However, the variance was not fatal. When a variance is raised for the first time on appeal, reversal is required only if the variance misled the accused in making her defense or exposed her to double jeopardy. Here, defendant was neither misled nor subjected to the risk of double jeopardy.

People v. Hubbard, 46 Ill.2d 563, 264 N.E.2d 144 (1970) Proof that offense was committed on a date other than the precise date alleged in indictment is not a fatal variance.

People v. Nelson, 17 Ill.2d 509, 162 N.E.2d 390 (1959) Variance between name of robbery victim in indictment (Verduzco) and proof at trial (Verdusco) was not fatal. Such a variance is not material unless it causes substantial injury to the accused.

Illinois Appellate Court

People v. Okoro, 2022 IL App (1st) 201254 A grand jury indicted defendant for home invasion, alleging *inter alia* that he entered the complainant's dwelling without authority. The evidence at trial showed that defendant entered the apartment with the complainant, A.B.. A.B. alleged that he tried to sexually assault her, causing her to flee the apartment and hide in a stairwell. She returned to her apartment after she believed defendant left, but defendant was still in the apartment and attacked her again.

At the instruction conference, the State asked for two versions of IPI 11.53, one using the "entered without authority" language and the other using the "remained in the dwelling place" language. The defense objection was overruled, and defendant was convicted. He did not raise the issue in his post-trial motion.

On appeal, defendant, citing the lack of the "remained" language in the indictment, alleged a violation of his right to a grand jury under the Fifth Amendment, and a fatal variance. The court rejected his Fifth Amendment claim, because the grand jury clause applies only to federal trials.

The Appellate Court next found that defendant had not forfeited his fatal variance claim. A challenge to the sufficiency of the charging instrument may be raised for the first time on appeal, because due process concerns are implicated.

When the indictment or information is challenged for the first time on appeal, review is limited to determining whether the indictment apprised defendant of the precise offense charged with sufficient specificity to prepare his defense, and allowed defendant to plead a resulting conviction as a bar to future prosecution arising out of the same conduct.

Here, an Appellate Court majority found no fatal variance. While the indictment did not contain the "remains in the dwelling place" language, it did cite to the home invasion statute which does contain said language. An indictment that cites a statute should be read together with the statute. This citation would give defendant sufficient notice that any and all provisions of the home invasion statute were alleged. Nor could any variance prejudice his preparation of a defense, because defendant learned of A.B.'s version of events in discovery. The probable cause statement included A.B.'s allegation that defendant remained in her apartment after she returned from the stairwell and attacked her again.

People v. Hall, 2021 IL App (1st) 190959 Police officers responding to a kidnaping dispatch pulled over a car driven by defendant. A woman rode in the passenger seat. Defendant pulled into a gas station, exited the car, and entered the gas station. Detective Gibson followed defendant inside, where he told defendant he was investigating a kidnaping and asked defendant for identification. Defendant told him he had the wrong person, then, seeing Officer Zurowski talking to the female in the passenger seat, ran back towards the car. He yelled at Zurowski to leave the woman alone before he was pushed back and detained.

The State charged defendant with obstruction of justice pursuant to [720 ILCS 5/31-1](#), alleging he obstructed Detective Gibson by disobeying a request for identification or to identify himself, during the course of a criminal investigation.

The trial court found defendant guilty. In denying a motion for new trial, the court explained that it believed the "gravamen" of the obstruction occurred when defendant ran towards Zurowski and attempted to interfere with the conversation with the passenger.

On appeal, defendant alleged: (1) insufficient evidence; and (2) a fatal variance between the complaint alleging obstruction of Gibson and the evidence showing obstruction of Zurowski. The State conceded the fatal variance. The Appellate Court, however, found no fatal variance. When, as here, the sufficiency of the charging instrument is attacked for the

first time on appeal, defendant must show the variance to be material and of such character as to mislead the defense or expose defendant to double jeopardy. The Appellate Court found no distinction between the complaint and the evidence. The complaint alleged that defendant ignored the requests of Gibson, and the evidence supported those allegations. Although the trial court mentioned the “gravaman” of the obstruction occurred with regard to Zurowski, it would not interpret this comment to mean the court did not find obstruction of Gibson.

The Appellate Court did find the evidence insufficient. Finding the facts were not in dispute, it applied a *de novo* standard of review. While it noted that defendant ignored several orders by the officers, ultimately having to be pushed away and detained, the complaint strictly confined itself to defendant’s act of ignoring the request to identify himself. The Appellate Court held that this act, in and of itself, did not constitute obstruction of justice. Precedent such as [People v. Fernandez, 2011 IL App \(2d\) 100473](#) and [People v. Raby, 40 Ill. 2d 392, 399 \(1968\)](#), dictates that initial refusals to identify oneself, and arguing with officers, are not considered criminal acts. Nor did the refusal here materially hamper the investigation, where officers were able to immediately learn from the passenger that she was not in fact the victim of a kidnapping.

[In re Jonathan T., 2021 IL App \(5th\) 200247](#) The State charged petitioner with 10 crimes involving the sexual abuse of a child. While nine of the counts alleged a date range, one count alleged a specific date. The Appellate Court rejected petitioner’s claim that the State failed to prove the latter because it hadn’t shown the act occurred on the specific date contained in the indictment. The date of the offense is not an essential element of child sex offenses, and discrepancies in dates are not fatal variances. While an inaccurate date may become prejudicial if the variance is so great as to deny defendant adequate notice, or where defendant alleges an alibi defense, neither occurred here.

[People v. Roe, 2015 IL App \(5th\) 130410](#) An indictment must apprise a defendant of the precise offense he is charged with, and a fatal variance between the indictment and the evidence is a violation of due process and requires reversal of the conviction. To be fatal, a variance must be material and mislead the defendant in making his defense or expose him to double jeopardy.

The State charged defendant with failing to register as a sex offender “within three days of his conviction,” but the evidence showed that he failed to register within three days of his release from imprisonment. The court held that this was a nonfatal variance and did not violate due process.

The indictment and the relevant criminal statute must be read together, and both must be interpreted as a whole. The sex offender registration statute requires a convicted offender to register within three days after his conviction or if he is unable to register because he is incarcerated, within three days of his release from imprisonment. [730 ILCS 150/3\(c\)\(3\),\(4\)](#). When read as a whole, the statute provides a clear alternative to the three-day time limit for registering after conviction when it is impossible for an imprisoned offender to register. The indictment charged defendant with the “functional equivalent” of this alternative since defendant had been incarcerated after his conviction and could not have registered. The indictment thus did not have a fatal variance.

Even if the indictment did not specifically apprise defendant of the charge against him, the court found that any variance would not require reversal because it was not material or misleading, and would not expose defendant to double jeopardy. At no point did defendant express a misunderstanding of the charges or argue that he could not register because he

was incarcerated. And defendant could not be exposed to double jeopardy since the State would not be able to charge him again with failure to register during the time frame at issue here.

Defendant's conviction was affirmed.

People v. Lattimore, 2011 IL App (1st) 093238 The State must prove the essential elements of the charging instrument. For a variance between the charging instrument and the proof at trial to be fatal, the difference must be material and of such a character as may mislead the defendant in making his defense, or expose the defendant to double jeopardy.

Defendant was charged with aggravated battery, a violation of 720 ILCS 5/12-4(b)(15), in that he "struck James Lee about the body, knowing him to be a merchant, to wit: an employee of Family Dollar Store, who was detaining James Lattimore for an alleged commission of retail theft." Section 12-4(b)(15) makes it unlawful to knowingly and without lawful justification and by any means cause bodily harm to a merchant who detains a person for an alleged commission of retail theft.

Rather than proving that defendant struck Lee about the body as alleged in the indictment, the State proved that he caused Lee to be struck about the body when he struggled with Lee, causing Lee to suffer bodily harm when he was thrown into an object. Because the crime of aggravated battery can be committed by several different acts, a variance between the act charged in the indictment and the act proved at trial is not fatal. The difference between whether defendant struck Lee about the body or caused Lee to be struck about the body relates only to the manner in which defendant caused bodily harm to Lee. Defendant did not demonstrate that the variance between pleading and proof was material, such that it affected the adequacy of the notice of the charge or exposed defendant to double jeopardy.

Similarly, even though the indictment alleged that Lee was an employee of the store, and the evidence proved that he was an employee of a security agency, the variance was not fatal. Defendant has not shown how this difference misled him in preparation of his defense or exposed him to double jeopardy.

People v. Durdin, 312 Ill.App.3d 4, 726 N.E.2d 120 (1st Dist. 2000) A variance between the charge and the proof is not fatal unless it is material and misleads defendant in mounting a defense or exposes him to double jeopardy. A fatal variance existed where defendant was charged with delivery of less than a gram of cocaine on a public way within 1000 feet of a public school, but the evidence showed that defendant delivered heroin. Because the variance concerned an element of the most serious offense with which defendant was charged, the court refused to "speculate" whether the defense might have changed had the evidence supported the indictment. Instead, because it could not be determined "that no actual prejudice or no realistic possibility of prejudicial uncertainty existed," the conviction was reversed.

People v. Harper, 251 Ill.App.3d 801, 623 N.E.2d 775 (4th Dist. 1993) Defendant, who was charged with aggravated criminal sexual abuse for having sexual intercourse with a 14-year-old girl, gave a statement after his arrest indicating that both oral sex and intercourse had occurred. The jury instructions required that the State establish "sexual penetration," which was defined as "any contact, however slight, between the sex organ of one person and the sex organ of another person, including but not limited to cunnilingus, fellatio, or anal penetration." Defendant claimed that the instructions were improper because the jury could convict him even if it did not unanimously agree on the type of penetration that had occurred.

The jury is required to reach a unanimous conclusion only as to a defendant's ultimate guilt or innocence. Thus, where a general verdict is returned on an offense which can be committed in various ways, unanimity as to the means of commission is unnecessary.

People v. Harris, 146 Ill.App.3d 632, 497 N.E.2d 177 (2d Dist. 1986) A defendant cannot be convicted of an uncharged offense that is not a lesser included crime of the offense for which he was charged.

People v. Steele, 124 Ill.App.3d 761, 464 N.E.2d 788 (2d Dist. 1984) A variance between the date of the offense as specified in the bill of particulars and the date as proved at trial was not reversible error. The record failed to show that defendant was prejudiced by the variance.

Such a variance is not reversible error "unless the date is an essential ingredient of the crime or relates to the running of the statute of limitations." Also, some cases have established that the variance is reversible error where "it misled the defendant in the preparation of his defense" or "where an alibi defense has been used to counter the time or date specified in the bill of particulars," because defendant "may have been misled into failing to gather evidence and witnesses regarding the time and the date the State actually proved."

People v. Noll, 109 Ill.App.3d 306, 440 N.E.2d 335 (4th Dist. 1982) Variance between the bill of particulars (crime occurred at 1:30) and proof (crime occurred at 12:30) was not prejudicial.

People v. Kuykendall, 108 Ill.App.3d 708, 439 N.E.2d 521 (4th Dist. 1982) Defendant was charged with home invasion and unlawful restraint. The evidence showed that defendant and others forced their way into the complainant's apartment. Two persons held the complainant while defendant struck him with fists and a chain. The trial judge directed a verdict on the home invasion charge, and the jury found defendant guilty of unlawful restraint.

The restraint was only incidental to a battery committed against the complainant, and persons other than defendant restrained the complainant. Thus, if defendant was guilty of unlawful restraint it was on the basis of accountability. However, since no such instruction was given, the conviction was reversed.

People v. Hobson, 77 Ill.App.3d 22, 396 N.E.2d 53 (3d Dist. 1979) Defendant was improperly convicted of aggravated assault, since he was only charged with aggravated kidnapping. Aggravated assault is not a lesser included offense of aggravated kidnapping. Compare, **People v. Roberts**, 71 Ill.App.3d 124, 389 N.E.2d 596 (5th Dist. 1979) (aggravated assault was a lesser included offense of aggravated kidnapping as charged).

People v. Daniels, 75 Ill.App.3d 35, 393 N.E.2d 667 (1st Dist. 1979) The armed robbery indictment against defendant alleged that defendant took "U.S. Currency" from the victim. However, the evidence at trial proved, at best, that only a watch was taken.

The State has the burden of proving "all material facts of the offense as charged by the indictment." By "utterly failing to introduce proof to conform to the charge in the indictment," the State failed in its burden at trial. Reversed.

People v. Townsend, 27 Ill.App.3d 101, 326 N.E.2d 417 (1st Dist. 1975) Defendant was convicted, at a bench trial, of criminal damage to property on September 12 and 15 and

October 29. Defendant was charged with breaking glass windows of a Democratic Organization Office. The crucial evidence was by a court bailiff-precinct captain, who testified that defendant admitted breaking the windows. That testimony did not specify the dates of such incidents.

Even if defendant's statement conclusively demonstrated that he at some time broke the windows, there is nothing in the record to indicate that he was referring to his activities on the dates charged in the complaints. Thus, the State failed to prove defendant guilty of the offenses with which he was charged.

People v. Arenibar, 18 Ill.App.3d 67, 309 N.E.2d 273 (1st Dist. 1974) Conviction for theft reversed. There was a fatal variance where the complaint alleged that property belonged to one individual and the proof showed that it belonged to another.

§41-9

Corpus Delicti

Illinois Supreme Court

People v. Austin M., 2012 IL 111194 In concurring opinions in a juvenile delinquency proceeding, Justices Freeman and Karmeier found that the State failed to meet its burden of proof in establishing the *corpus delicti* of the crime. *Corpus delicti* cannot be established solely based on the defendant's statement. Instead, the statement must be corroborated by independent evidence.

The concurring justices concluded that where the trial court specifically found that the only corroborating evidence offered by the State was not credible, the prosecution failed to carry its burden of proof to prove that a crime had occurred. Thus, the delinquency adjudication should be reversed outright.

People v. Lara, 2012 IL 112370 Under Illinois law, proof of an offense requires that the State prove two propositions beyond a reasonable doubt: (1) that a crime occurred (*i.e.*, the *corpus delicti*); and (2) that the crime was committed by the person charged. Although the defendant's confession may be considered in proving *corpus delicti*, it cannot be the only evidence of *corpus delicti*. Thus, where the defendant's statement is used to prove *corpus delicti*, the prosecution must produce independent evidence which corroborates the statement.

The corroborating evidence need not, in and of itself, prove the existence of a crime beyond a reasonable doubt. Instead, the independent corroborating evidence need only tend to show that a crime occurred. At that point, the independent evidence and the defendant's confession are considered together to determine whether the State has sufficiently established the *corpus delicti* to support a conviction.

The *corpus delicti* rule arose from historical mistrust of out-of-court confessions, due to concerns that some individuals may confess to crimes they did not commit or which did not occur and that a confession may have been coerced and is therefore not reliable.

In **People v. Sargent**, 239 Ill. 2d 166, 940 N.E.2d 1045 (2010), the Supreme Court held that the corroborating evidence must relate to the specific events on which the prosecution is predicated. Under **Sargent**, if a defendant confesses to multiple offenses there must be independent evidence tending to show that the defendant committed each offense.

Here, the court found that the **Sargent** rule does not apply to all situations involving multiple offenses, but only to the situation that was present in **Sargent**, where the offenses

in question alleged distinctly different criminal acts (predatory criminal sexual assault based on digital penetration and aggravated criminal sexual abuse based on fondling). Under the **Sargent** rule, evidence which established digital penetration could not be used to corroborate the offense involving fondling, because the latter crime concerned “an entirely different type of assault affecting a different part of the victim’s body.”

Here, by contrast, defendant was charged with two counts of predatory criminal sexual assault of a child involving the same type of conduct and the same area of the complainant’s body, but occurring on different days. The court concluded that the same evidence may corroborate a confession to multiple offenses where the offenses are so closely related that corroboration of one tends to corroborate the other. Whether the corroborating evidence is sufficient to establish multiple offenses is a fact-intensive inquiry which must be decided on a case-by-case basis.

The court rejected the defendant’s argument that as part of the *corpus delicti* rule, corroboration is required for each element of each alleged offense. So long as there is evidence tending to show that an offense occurred, the defendant’s confession is to be considered along with the independent corroborating evidence to determine whether the *corpus delicti* rule has been satisfied.

Furthermore, there need not be an exact match between the independent evidence and the details of the defendant’s confession. Instead, the corroboration is sufficient if the evidence and its reasonable inferences tend to show the commission of a crime that is “at least closely related to the charged offense.” Thus, even if the confession involves an element of the crime, the independent evidence need not specifically corroborate that element so long as the corroborating evidence “corresponds” with the confession.

Where the defendant was charged with penetrating the complainant’s vagina with his finger on two occasions, and stated in his confession that he had done so, the *corpus delicti* rule was satisfied although in her out-of-court statements and testimony the complainant stated only that the defendant had touched her “private part,” without stating that penetration had occurred. Under these circumstances, the corroborating evidence (the complainant’s statements and testimony) generally corresponded with the defendant’s confession. Thus, the *corpus delicti* rule was satisfied although other than the defendant’s confession there was no evidence of penetration.

The Appellate Court’s judgment was reversed, and the defendant’s convictions and sentences were reinstated. However, the cause was remanded for the Appellate Court to reach two issues it had not previously considered.

In a concurring opinion, Justice Thomas argued that **People v. Sargent** was wrongly decided and should be overruled.

People v. Vaughn, 2011 IL App (1st) 092834 The State must prove the *corpus delicti* of an offense beyond a reasonable doubt. *Corpus delicti* cannot be proved by defendant’s confession alone. There must be some evidence independent of the confession tending to show that the crime did occur, but that independent evidence need not by itself prove the existence of the crime beyond a reasonable doubt. This corroboration requirement exists due to a general mistrust of extrajudicial statements, which may be unreliable. This mistrust does not extend to in-court testimony.

The defendant’s own in-court testimony on cross-examination admitting that he committed an act of penetration provided sufficient corroboration for his confession to that act of penetration. Any confusion on defendant’s part could have been cleared up on redirect examination, but none was conducted.

People v. Sargent, 239 Ill.2d 166, 940 N.E.2d 1045 (2010) Under Illinois law, proof of an offense requires evidence of two distinct propositions beyond a reasonable doubt: (1) that a crime occurred (i.e., the *corpus delicti*); and (2) that the crime was committed by the person charged. A defendant's confession may be integral to proving *corpus delicti*. However, *corpus delicti* may not be proven exclusively by a defendant's extrajudicial confession or statement. Thus, where the defendant's statement is used to prove *corpus delicti*, the prosecution must also produce independent evidence which corroborates the statement.

The corroborating evidence need not, in and of itself, prove the existence of a crime beyond a reasonable doubt. Instead, the corroborating evidence and the defendant's statement are considered together to determine whether the crime, and the fact that defendant committed it, are proven.

The court also stressed that statements which merely corroborate the circumstances related in the confession, without showing that a crime occurred, are insufficient to satisfy the *corpus delicti* requirement. Instead, the corroborating evidence must relate to the specific events on which the prosecution is predicated. Thus, where a defendant confesses to multiple offenses, there must be independent evidence tending to show that the defendant committed each of the offenses.

The court concluded that there was insufficient evidence to satisfy the *corpus delicti* rule concerning two convictions for aggravated criminal sexual abuse and two counts of predatory criminal sexual assault.

A. The counts of aggravated criminal sexual abuse were based on allegations that defendant fondled the penis of one of his stepsons. The court noted that other than defendant's confession - which he repudiated at trial - there was no evidence that defendant had ever touched the stepson's penis. Thus, the two counts of aggravated criminal sexual abuse were vacated.

B. Defendant was also charged with two counts of predatory criminal sexual assault based on penetrating the stepson's anus with his finger; the court concluded that the *corpus delicti* was satisfied only concerning one count.

At trial, the stepson testified that he could not remember whether defendant had ever done anything to him that he did not like. The sole corroboration of defendant's confession consisted of hearsay testimony from a DCFS investigator, who testified that the stepson told him that the defendant "puts [his] finger in the [stepson's] butt." The court concluded that the statement, which was admitted under 725 ILCS 5/115-10, could support only a single count of predatory criminal sexual assault.

The court rejected the argument that use of the term "puts" indicated that the conduct occurred multiple times. First, the court found that adding an "s" to a verb does not indicate a plural form.

Furthermore, while the word "puts" could be interpreted as indicating habitual action, it cannot be assumed that the language skills of a seven-year-old child are susceptible to such a precise interpretation. Finally, because the investigator described the statement differently in a pretrial hearing, it could not be assumed that he was accurately describing the declarant's exact language.

Because the *corpus delicti* rule was satisfied only for one count of predatory criminal sexual assault, two counts of predatory criminal sexual assault were reversed.

The court rejected the State's argument that it should abandon the *corpus delicti* rule.

People v. Lambert, 104 Ill.2d 375, 472 N.E.2d 427 (1984) A defendant may not be convicted of a crime based solely on his confession. The law "requires that the prosecution introduce evidence outside the confession that tends to prove that the offense occurred." See also, **People v. Wright**, 286 Ill.App.3d 456, 677 N.E.2d 494 (1st Dist. 1997) (request to "relax or dispense" with *corpus delicti* rule must be addressed to the Illinois Supreme Court).

People v. Willingham, 89 Ill.2d 352, 432 N.E.2d 861 (1982) A conviction may not be based upon a confession alone. Instead, "in order for a conviction based upon a confession to be sustained the confession must be corroborated." This "corroboration requirement is satisfied by proof of the *corpus delicti*." To establish the *corpus delicti* there must be some evidence, independent of the confession, demonstrating that a crime occurred; once such a showing is made, the same independent evidence may be considered along with the confession in determining whether the State proved beyond a reasonable doubt that a crime was committed and that the accused committed it.

Here, defendant's confession was corroborated by his trial testimony that a robbery had been discussed and that, though he objected to the robbery, he accompanied the accomplices to the scene. Additional corroborating evidence consisted of testimony that placed defendant's car and a person who resembled defendant at the crime scene.

Illinois Appellate Court

People v. McKown, 2021 IL App (4th) 190660 One of defendant's convictions of aggravated criminal sexual abuse was vacated under the *corpus delicti* rule where the only evidence of the particular conduct alleged in that count came from defendant's own statement. Defendant was charged with multiple sex offenses based on distinct sexual acts. With regard to the conduct alleged in Count IV (victim's hand/defendant's penis), the victim never described such conduct and in fact expressly denied touching defendant's penis with anything but his mouth. Without corroboration of defendant's own statement admitting such conduct, the conviction on Count IV had to be vacated.

The Appellate Court noted that the trial judge appeared to have confused the allegations in Count IV with those in Count VI (defendant's hand/victim's penis) at the bench trial. Specifically, in acquitting defendant of Count VI, the judge stated that the victim "essentially...said it never happened. The defendant said it did happen. That is all the testimony. I can't make a finding of beyond a reasonable doubt based on those two statements." While the trial court may have intended to acquit defendant of Count IV, the acquittal was actually entered on Count VI. The Appellate Court could not affirm the conviction on Count IV where it was only supported by defendant's uncorroborated statements.

People v. Milan, 2020 IL App (1st) 172181 Defendant's confession to possessing a firearm was insufficiently corroborated and therefore his conviction violated the *corpus delicti* rule. Officers responding to reports of a domestic disturbance went to a house where they found defendant, his son and nephew, a gun, a holster, and a bullet hole in the wall. Defendant confessed to pointing a gun at his son and nephew. But the son and nephew did not testify, and the officers' testimony about the reports they received about the domestic disturbance were hearsay, admitted only to show the course of investigation. As for the gun itself, it was found hidden in a crawlspace and the evidence did not show defendant lived in the house. In the Appellate Court's view, this evidence did not sufficiently corroborate defendant's confession to possession of a weapon, so it reversed his conviction.

People v. Walker, 2020 IL App (1st) 162305 The State failed to prove defendant's constructive possession of ammunition beyond a reasonable doubt. The ammo was found in a dresser in his family's house, at which he sometimes slept and where he was discovered by police. Although defendant made statements suggesting ownership of the ammo, the Appellate Court found insufficient corroborating evidence in violation of the *corpus delicti* rule.

The only connection that the defendant had to the bullets was that he was sleeping in the apartment where they were found. The State could not establish defendant had constructive possession – knowledge or immediate and exclusive control – where he was in a different room, the bullets were inside a dresser drawer in the bedroom and not in plain view, two other individuals were in the room where the bullets were found when the police entered, there was nothing linking the defendant to the residence, such as bills, clothing, or personal belongings, and defendant introduced evidence that he lived at a different residence.

People v. Underwood, 2019 IL App (3d) 170623 The State's evidence satisfied the *corpus delicti* rule and established driving on a suspended license beyond a reasonable doubt. A police officer testified that he arrived at the scene of an accident at which time defendant described how she was driving her car when another vehicle struck her. The Appellate Court rejected defendant's contention that this statement provided the only evidence that she was actually driving the car. The court found that defendant's description of the accident matched the damage to the vehicle, and that defendant was the only person in the area. Thus, the confession was sufficiently corroborated to satisfy the *corpus delicti* rule.

People v. Lenz, 2019 IL App (2d) 180124 Defendant's convictions of failure to reduce speed to avoid an accident and disobeying a traffic control device did not violate the *corpus delicti* rule. While there was no eyewitness testimony as to the manner in which defendant drove his vehicle, defendant's statements about his driving were adequately corroborated by the condition of defendant's vehicle and the other vehicle involved.

People v. Sanchez, 2019 IL App (3d) 160643 Defendant was arrested at his home after his abandoned vehicle was found to have been involved in a single-vehicle accident. Defendant's admission that he consumed alcohol before driving the vehicle was sufficiently corroborated to establish the *corpus delicti* of the offense of DUI. Defendant showed signs of intoxication when he was arrested, he was in possession of the keys to the vehicle, and the vehicle was found on the raised median of a bridge less than four blocks from his home.

People v. Herring, 2018 IL App (1st) 152067 The *corpus delicti* requirement simply asks if there is some evidence that a crime actually occurred to corroborate defendant's confession. It's meant to ensure that defendants aren't convicted of nonexistent crimes, such as a murder conviction without a dead body. In this case, where two people were found dead by gunshot wound, no further corroboration was required. Any issue concerning the sufficiency of the evidence beyond this corroboration is not reviewed as a *corpus delicti* challenge, but rather as a typical reasonable doubt challenge.

People v. Hurry, 2013 IL App (3d) 100150-B Illinois law requires proof of two distinct propositions beyond a reasonable doubt to convict: 1) that a crime occurred, *i.e.* the *corpus delicti*; and 2) that the crime was committed by the person charged. While defendant's confession may be integral to proving the *corpus delicti*, proof of the *corpus delicti* may not rest exclusively on the defendant's extrajudicial statement.

The *corpus delicti* is not required to be proved beyond a reasonable doubt by evidence independent of the statement. If there is evidence of corroborating circumstances tending to prove the *corpus delicti* and corresponding with the circumstances related in the statement, both the circumstances and the statement may be considered in determining whether the *corpus delicti* is sufficiently proved.

Where defendant confesses to multiple offenses, the corroboration rule requires that there be independent evidence tending to show that defendant committed each of the offenses for which he was convicted.

Defendant was convicted of predatory criminal sexual assault for placing his finger in the vagina of a child. Defendant admitted committing that act of penetration. The child's testimony that defendant touched her on the outside of her vagina provided corroborating circumstances that tended to prove defendant's statement was accurate because it placed defendant's fingers directly on her vagina.

Other counts charged defendant with predatory criminal sexual assault by placing his penis in the mouth of the child. Although defendant admitted committing this act on multiple occasions, the child's testimony established only one instance of such conduct. Therefore, only one conviction based on that conduct could stand.

People v. Sykes, 2012 IL App (4th) 111110 To prove that a crime was committed beyond a reasonable doubt, the State must prove: (1) a crime occurred, *i.e.*, the *corpus delicti*, and (2) the crime was committed by the defendant. Theft requires proof that the defendant obtained unauthorized control over the property of another with intent to permanently deprive the owner of the use or benefit of the property. [720 ILCS 5/16-1\(a\)](#).

Defendant was convicted of misdemeanor theft for removing \$100 from a cash register of a store where he was an employee. To prove that a theft occurred, a loss prevention manager testified that it was store policy to leave \$200 in the register overnight as a starting fund for the next day during the holiday season and on busy days, but he had no knowledge that the register actually started with \$200 and did not testify that the policy was consistently followed. He also testified that he "became aware" that the register was \$100 short, but no evidence was introduced to show how this discrepancy was brought to his attention or that it was verified. The only remaining evidence was a videotape that was of such poor quality that it failed to demonstrate that defendant actually removed anything from the register.

The Appellate Court reversed defendant's conviction because the State failed to prove that the store was missing property over which defendant could have exercised unauthorized control.

People v. Harris, 2012 IL App (1st) 100077 Proof of an offense requires evidence of two distinct propositions beyond a reasonable doubt: (1) that a crime occurred (*i.e.*, the *corpus delicti*); and (2) that the crime was committed by the person charged. Proof of the *corpus delicti* may not rest solely on a defendant's statement or confession. If a defendant's statement is part of the *corpus delicti*, the State must also present independent evidence which corroborates the statement. Such evidence itself need not prove the crime beyond a reasonable doubt, but must tend to confirm the elements of the defendant's statement.

Here, there was insufficient evidence to corroborate defendant's statement concerning the *corpus delicti* of aggravated unlawful use of a weapon. Defendant was charged with having a loaded, uncased firearm "on or about his person" while on a public street. Defendant told police that after a friend was struck by gunshots, defendant retrieved his weapon from

his car and returned fire. The only evidence to corroborate that statement was testimony by a police officer that an anonymous eyewitness reported that he saw the defendant run to his car, get a black object, and then return the black object to the car after the shooting.

The Appellate Court concluded that an anonymous eyewitness's hearsay statement is insufficient to corroborate a defendant's statement for the purposes of proving *corpus delicti*. Although the hearsay statement was produced without objection, "the probative effect of a statement given to police by an anonymous witness is minimal without evidence corroborating the witness's information."

The court distinguished [People v. Anderson](#), 42 Ill.App.3d 1040, 356 N.E.2d 1076 (1st Dist. 1976), where the corroborating evidence consisted of hearsay concerning statements which the victim made in the defendant's presence at the time of the arrest. Here, the corroboration came from an unnamed witness rather than a known victim, and the accusations were not made in the defendant's presence.

[People v. Rivera](#), 2011 IL App (2d) 091060 The court reversed defendant's conviction for first-degree murder, concluding that no rational trier of fact could have found the evidence sufficient to convict.

Not only was there no physical evidence linking defendant to the offense, defendant was excluded as the source of the male DNA profile derived from a vaginal swab of the victim. While "DNA does not trump all other evidence," it may raise a reasonable doubt as to the identity of the perpetrator. Where there was evidence that the offender engaged in sexual relations with the victim shortly before she died, the DNA exclusion of defendant "embedded reasonable doubt deep into the State's theory."

The court rejected as speculative the State's argument that the DNA evidence was contaminated. It also rejected the argument that the DNA exclusion evidence was not exculpatory on the theory that the explanation for the exclusion was that the victim had engaged in intercourse with another male before she was sexually assaulted and murdered by defendant. It was unreasonable to expect the jury to believe that the defendant violently perpetrated the sexual assault and murder, without leaving any physical trace of his presence at the scene or on the victim, yet left intact in the victim's body the DNA of the unidentified male.

The State also presented evidence of admissions made by defendant to jailhouse informants. No reasonable trier of fact could have found their testimony credible in the face of the DNA evidence and the effective cross-examination by defense counsel that exposed their motivations. One witness hoped to profit financially by involving himself in the case. The other was a drug user who came forward only after defendant's family turned their backs on him for using drugs while staying in their house.

The remaining piece of evidence was defendant's statements. When an individual charged with a crime confesses, the "corroboration rule requires that the *corpus delicti* be proved by some evidence *aliunde* admission of a defendant." The independent evidence and details of the confession are not required to correspond in every particular, but the State's independent evidence must inspire belief in the defendant's confession. Because the statements were the only remaining piece of evidence, given the DNA evidence, the State failed in its burden to present evidence *aliunde* the statements to establish the offense.

The court rejected the State's argument that defendant's statements including a "damning knowledge of the facts." Over the course of four days, no fewer than ten law enforcement personnel discussed the crime with defendant or interrogated him. The police also used leading questions incorporating the facts of the case in their interrogation of the

defendant. The record supports the inference that details of the offense were provided to the defendant, intentionally or unintentionally, during the investigative process.

Many of the facts referenced in the defendant's statements had also been published in the newspapers, and defendant's father read those reports and discussed them with defendant. The State did not prove that defendant had not learned those details independent of news reports.

In re D.A., 114 Ill.App.3d 522, 448 N.E.2d 1036 (2d Dist. 1983) Respondent's delinquency adjudication for commission of arson was reversed on the ground that the *corpus delicti* of the offense was not proved by any evidence independent of respondent's admission.

A State witness testified that the respondent admitted setting the fire. The witness also identified a letter from respondent that acknowledged setting the fire. However, the State failed to introduce any other evidence tending to prove that someone was criminally responsible for the fire. (The State's expert witness, a fire investigator, testified that the fire started in a certain location, but did not testify that it appeared to have been deliberately started.)

People v. Kokoraleis, 149 Ill.App.3d 1000, 501 N.E.2d 207 (2d Dist. 1986) At a jury trial, defendant was convicted of murder and rape. The rape conviction was reversed on the ground that defendant's confession was not corroborated by other evidence.

While there was corroboration of murder, "independent evidence of one offense does not allow use of a defendant's confession for all crimes for which the defendant is charged regardless of whether or not independent evidence of the other crimes exists in the record."

People v. Harris, 333 Ill.App.3d 741, 776 N.E.2d 743 (1st Dist. 2002) In **People v. Dalton**, 91 Ill.2d 22, 434 N.E.2d 1127 (1982), the Supreme Court found that the corroboration requirement was unnecessary where defendant's statements are inherently reliable, such as statements about one's age. The **Dalton** court refused to abolish the corroboration rule for other statements, however.

Here, defendant's uncorroborated statement (that he had been living at a new address for more than a month) was insufficient to establish the offense of failure to report a change of address within ten days, as required by the Sex Offender Registration Act (730 ILCS 150/6). The only corroborating evidence offered - that a detective had talked to an unidentified "person" at the probation department and was told that defendant had been living at the new address "for some time" - was too vague to corroborate defendant's statement that he had failed to register within ten days of moving to the new address.

§41-10

Mens Rea

United States Supreme Court

Rehaif v. United States, _____ U.S. _____ (No. 17-9560, 6/21/19) Defendant came from the United Arab Emirates to the United States on a student visa but was later dismissed from school and was informed at that time that his "immigration status" would be terminated. Subsequently, he engaged in shooting firearms at a gun range. That conduct led to defendant's prosecution and conviction under federal statutes making it illegal for felons and illegal aliens to possess firearms [18 USC §922(g)] and providing for imprisonment up to 10 years for anyone who "knowingly violates" section 922(g). 18 USC §924(a)(2).

The Supreme Court concluded that the "knowingly" requirement applies both to defendant's conduct and status; that is, the government must show that defendant knew that

he possessed a firearm and that he knew he was a person barred from possessing a firearm. There is a longstanding presumption that Congress intends a culpable mental state regarding each statutory element of an offense, especially where the statute includes a general mental state provision as it does here. Because [section 924\(a\)\(2\)](#) speaks in terms of “knowingly violat[ing]” [section 922\(g\)](#), and because a violation of 922(g) requires both a conduct and a status element, knowingly applies to both elements.

The Court rejected the State’s argument that ignorance of the law is no excuse, a maxim which generally applies where a defendant claims he did not know his conduct was illegal but not where an individual has a mistaken belief about something which negates an element of the offense.

Because the jury was erroneously instructed that the government was not required to prove that defendant knew he was illegally in the United States, the Court reversed and remanded the matter for further proceedings.

[Francis v. Franklin](#), 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985) At defendant's trial for murder, the jury was instructed that: "The acts of a person of sound mind and discretion are presumed to be the product of the person's will, but the presumption may be rebutted," and that "a person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts, but the presumption may be rebutted." These instructions violated the due process requirement that the State prove every element of the offense, since a reasonable juror could have understood the instructions as creating a mandatory presumption that shifted to the defense the burden of persuasion on the element of intent.

Illinois Supreme Court

[People v. Leib](#), 2022 IL 126645 Defendant was convicted of a being child sex offender in a school zone. The statute criminalized being on “real property comprising any school . . . when persons under the age of 18 are present . . . on the grounds. . . .” [720 ILCS 5/11-9.3\(a\)](#). Defendant appealed, arguing that his presence at a carnival held in a parking lot across the street from a parish church and school did not violate the statute. The supreme court disagreed. Although defendant argued that the parking lot did not “comprise” the school because it was separated from the school by a public street and was therefore not contiguous, the supreme court held that the statute did not require the property to be contiguous. Moreover, the statute barred presence on “real property comprising any school” when children are present “on the grounds.” The court concluded that the legislature therefore intended to bar sex offenders from all school grounds. Because the parish owned both the school and parking lot, the entire area comprised the school grounds.

Defendant also argued that the State failed to prove he knew he was on real property comprising a school. He pointed to the testimony of his brother, who invited defendant to the carnival and who, like two other witnesses, believed that it was on church property only. He also argued that, from the carnival, one would not necessarily be able to see the school, which was across the street and behind a gymnasium. The supreme court, over a dissent, rejected the claim, finding sufficient circumstantial evidence that defendant was aware he was on school grounds. Maps of the carnival showed that rides and vendors were located not just in the parking lot, but across the street in the alley behind the school. The school was open for people to walk through. The reverend testified that residents of the neighborhood generally viewed the parish church and school as synonymous, and the lot was closer to the school than it was the church. When an officer told defendant he shouldn’t be there and asked him to leave, defendant agreed.

The two dissenting justices would have found the State failed to prove knowledge, which, it pointed out, “is not the same as ‘should have known.’” Here, the State introduced no evidence to establish defendant’s knowledge of the facts making his conduct illegal, including the fact that the festival extended to the school and that the school was open. There were no visible signs indicating he was in a school parking lot. Rather, the only sign advertised a church function—bingo and raffles on Thursday evenings. The flyer advertised the “Queen of Martyrs Fest” and did not mention the school at all. Nor was there any evidence that defendant was familiar with the property or had ever set foot on the property before that night. Finally, the fact that defendant attended the festival, then left when an officer asked, shows the opposite of consciousness of guilt.

People v. Lloyd, 2013 IL 113510 The court reversed several criminal sexual assault convictions after finding that the record was completely devoid of any evidence to support a finding that defendant knew the victim was unable to understand the nature of the acts or give knowing consent. Although the State presented evidence from which a rational trier of fact could have concluded that defendant committed aggravated criminal sexual abuse, it chose not to charge that offense. In the course of its opinion, the court stated that in evaluating a defendant’s challenge to the sufficiency of the evidence “we can only consider the evidence regarding the actual charges the State chose to bring against him, and not the fact that he may be guilty of [an] uncharged offense . . .” that is not a lesser included crime.

Illinois Appellate Court

People v. Elizondo, 2021 IL App (1st) 161699 The State charged defendant with the first-degree murder of his sister’s boyfriend. Several witnesses testified that the incident occurred when the boyfriend attempted to intervene in an argument between defendant and his sister. Defendant punched the boyfriend, who fell and lost consciousness when his head hit the sidewalk. The defendant continued to strike the boyfriend's head against the pavement. None of these witnesses saw the boyfriend physically attack defendant. Defendant testified, however, that the boyfriend did attack him, and that he punched him in self-defense. The jury found defendant guilty of second-degree murder.

Defendant alleged on appeal that his conviction should be reduced to involuntary manslaughter. He further alleged that counsel erred in failing to request pattern jury instruction 5.01B(2), defining “knowledge,” where the distinction between murder and manslaughter required the jury to determine whether defendant acted with knowledge.

The Appellate Court affirmed. A defendant commits involuntary manslaughter when, without lawful justification, he unintentionally kills an individual by recklessly performing acts that are likely to cause death or great bodily harm. Here, a rational trier of fact could have found that defendant’s conduct constituted knowing murder where the evidence showed that defendant intended to do great bodily harm. Eyewitnesses saw defendant strike the head of the unconscious boyfriend on the sidewalk. Defendant admitted to striking him, and the autopsy reports confirmed the type of severe head trauma that would result from a head striking the pavement multiple times. Defendant’s statements after the offense, including threats to his sister and mother, and a comment that the boyfriend got what he deserved, further undermine the argument that defendant acted recklessly. The jury received verdict forms for first-degree murder, second-degree murder, and involuntary manslaughter, and it chose second-degree murder. This verdict was supported by the evidence and would not be disturbed on appeal.

Nor was counsel's failure to request a "knowledge" instruction deficient. A court need not define the term "knowledge" in an original set of jury instructions, because the term is within the jury's common knowledge; a court should instead provide the instruction when asked by the jury. Here, there was no request for further definition by the jury and the instruction was not otherwise required to be given.

People v. Kirkpatrick, 2020 IL App (5th) 160422 Aggravated cruelty to a companion animal, 510 ILCS 70/3.02(a), is committed where an individual intentionally commits an act causing a pet to suffer serious injury or death. The offense requires proof of specific intent to kill or seriously injure the animal. Defendant's act of operating on an animal in unsterile conditions was not such an intentional act even though the animal died the next day from an infection. Defendant was a veterinarian, and her actions were at least reckless, and possibly knowing, but did not show an intent to kill or seriously injure the animal.

The court declined the State's request to apply the doctrine of "presumed malice and intent" on the basis that defendant used a deadly weapon, a scalpel, on the animal. Defendant's scalpel was a surgical tool, and was not employed as a deadly weapon here, so there was no presumption that defendant intended to seriously injure or kill the dog when she performed surgery to remove a tumor. Defendant's aggravated cruelty conviction was reversed.

People v. Ramos, 2020 IL App (1st) 170929 The State failed to prove defendant guilty of first-degree murder. The State alleged that defendant acted as the principal in a shooting. However, at trial it became apparent that its identification testimony was unreliable; its first witness identified different people at different time, defendant no longer fit the description of the shooter at the time of key line-up identifications, the witnesses noted another suspect looked like the shooter, and the line-ups occurred over a year after the incident. The judge still convicted defendant, however, because it believed that defendant's custodial statement suggested he provided both the van and the gun used by the shooter, with knowledge of his intent to commit the offense.

The Appellate Court reversed, holding that the portion of the statement relied upon by the trial court did not establish defendant's accountability for the offense. Although defendant admitted to providing the shooter with the gun and the van, and knew rival gang members were in the area at the time he did so, nothing in the statement suggested that the shooter told defendant of his plans or that defendant otherwise knew of an intent to commit an offense. Defendant did state that he "figured it was a drive-by," but, contrary to the trial court's belief, this did not establish foreknowledge, as defendant was clearly referencing his belief as to what occurred *after* he heard gunshots and *after* he was told by gang members that he should not drive his van for several hours.

And while defendant admitted that he refused the shooter's request to participate in "something like that" at the time he handed over the gun, "that" could have simply been a gang confrontation, not necessarily a shooting. The court refused to accept the State's invitation to infer from this language that defendant must have known the offender's purpose in retrieving a van and his gun; as the defense noted, defendant may have simply believed the offender sought self-protection. Finally, the court noted that while it's permissible for the State to secure a conviction on accountability even if the original theory and charge alleges defendant acted as the principal, it was notable in this case that the State switched its theory only after it presented its case, by which time it was clear that the original theory was falling apart.

People v. Frazier, 2019 IL App (1st) 172250 Defendant failed to establish that he was justified in shooting at another vehicle during a traffic dispute. While defendant suffered from PTSD, evidence showed that defendant repeatedly “brake-checked” the other driver and then pulled to the side of the road in order to shoot at the other vehicle. And, although defendant testified that he thought the other driver might have been reaching for a gun, he also testified that he saw the other driver with one arm out the window and the other on the steering wheel, and the court was free to resolve that conflict in the evidence against defendant. The trial court did not err in concluding that the incident was essentially a case of road rage and finding defendant guilty of aggravated discharge of a firearm.

People v. Mangana-Ortiz, 2019 IL App (3d) 170123 Defendant’s conviction of child abduction, based on an incident involving her biological son, was reversed. The child abduction statute prohibits the intentional violation of any terms of a valid court order granting sole or joint custody, care, or possession to another by concealing or detaining the child or removing the child from the jurisdiction of the court. As a matter of law, the State must establish that defendant knew a valid custody order had been entered and what that order provided. Here, the evidence was clear that defendant had not been served notice of the court order granting sole custody to the child’s father, did not know the terms of the order, and was not present for the hearing preceding the order’s entry. Accordingly, the State failed to meet its burden of proof, and defendant’s child abduction conviction was reversed outright.

And, defendant’s conviction of aggravated battery based on physical contact of an insulting or provoking nature was upheld. The evidence established that defendant drove her vehicle away with the victim hanging off of it and, when the victim fell off, ran over the victim’s leg. This evidence was sufficient to establish physical contact with the victim, by means of the vehicle’s striking her.

People v. Jamison, 2018 IL App (1st) 160409 The State established that defendant acted knowingly when he committed aggravated battery. Defendant’s claim that his odd behavior, which involved fighting people on a bus and at a bus stop for no reason, removing his shirt, and attacking a police officer who pointed a gun at him and shot him, constituted a mental breakdown to the point of involuntariness. But where the defense did not call an expert to testify to defendant’s mental health, and did not seek a verdict of guilty but mentally ill, a rational jury could find that defendant acted knowingly despite defendant’s irrational behavior.

Defendant could not challenge his second aggravated battery conviction on appeal, because the trial court did not enter sentence on the conviction and it was therefore not a final judgment.

People v. Denis, 2018 IL App (1st) 151892 The State provided sufficient evidence of criminal sexual assault despite the fact that the complainant, who was seven years-old at the time of the incident, waited 10 years before her first outcry and suffered from bipolar disorder. The complainant explained her reluctance to come forward earlier, stating that she was afraid and that she did not understand what happened. The defense provided no details about her bipolar disorder, and therefore offered no evidence it compromised her ability to testify accurately.

The State also provided sufficient evidence that defendant would have known the complainant was unable to understand the nature of the sexual act and give knowing consent, as required by [720 ILCS 5/12-13\(a\)\(2\)](#). Although knowledge of the complainant’s age alone is generally insufficient to prove this element, in this case defendant knew the complainant (his

cousin) her entire life and would have observed her long enough to know she was unable to understand the nature of the sexual act.

People v. Robards, 2018 IL App (3d) 150832 Aggravated cruelty to a companion animal requires proof that the offender intended to seriously injure or kill the animal. The stipulated evidence established that defendant moved out of her rental house but left two dogs behind, that she was the only person who had been caring for the dogs, that she told her new roommate that she had been returning to the house daily to care for the dogs, that there was no water source at the house, and that the dogs were found five months later, emaciated and dead of dehydration and starvation. From this evidence, it was properly inferred that defendant knew she needed to provide food and water to the dogs but had failed to do so for some time. Because a person intends “the natural and probable consequences” of her acts and omissions, the Appellate Court found sufficient evidence of intent and affirmed defendant’s conviction.

In *dicta*, the Appellate Court also noted that defendant was “very fortunate” to have received a sentence of only 12 months of probation. The trial court found in mitigation that defendant had not caused or threatened serious harm to another person, but the Appellate Court would have concluded that that particular mitigating factor has no application to a case involving harm to an animal. Defendant’s sentence was “unjustly and inexplicably lenient,” and the Appellate Court would have imposed a harsher penalty had it been in a position to do so.

People v. Scott, 2018 IL App (2d) 151056 While the burden of proof beyond a reasonable doubt never shifts from the State to the defense, a trier of fact may draw negative inferences where a defendant chooses to testify and then gives an implausible or inconsistent version of events. Defendant’s incredible testimony generally cannot be the sole evidence to sustain a guilty verdict, but it can be weighed in the State’s favor when considering the sufficiency of the evidence as a whole.

Here, defendant accepted delivery of a package at his residence even though the package was addressed to someone defendant claimed he did not know. Unbeknownst to defendant, the police had already opened the package, determined it contained drugs, and outfitted the package with an alarm that would let the police know when it had been opened. When the alarm was triggered, the police descended upon the residence quickly, before defendant had the opportunity to open the interior packaging that actually contained the drugs. Defendant challenged the State’s proof with regard to his knowledge of the presence of drugs.

The Appellate Court noted that defendant gave inconsistent statements regarding when he opened the package and implausible testimony about his reason for leaving the house and taking two very short trips around the neighborhood after the package was delivered. Defendant’s testimony about the timing of opening the package was properly viewed as an effort to distance himself from knowledge of its contents. And, the trier of fact could reasonably infer that defendant was engaged in counter-surveillance when he left the house and circled the area because the reasons he gave for his shorts trips through the neighborhood were unbelievable. Coupled with the State’s other evidence, including that a search of defendant’s home revealed materials and supplies commonly used in the drug trade, the evidence was sufficient to sustain his conviction of possession of a controlled substance with intent to deliver.

People v. Jackson, 2017 IL App (1st) 142879 A defendant commits battery when he knowingly makes physical contact of an insulting or provoking nature with another person. 720 ILCS 5/12-3(a)(2). A defendant resists a police officer when he knowingly resists the performance of a person known to be a peace officer. 720 ILCS 5/31-1(a). A defendant acts knowingly when he is consciously aware that a result is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b). A defendant's knowing state of mind may be proved through circumstantial evidence and may be inferred from a defendant's actions and the conduct surrounding it.

Defendant called 911 from his apartment building asking for an ambulance. Two paramedics soon arrived and entered the building where they encountered defendant, who appeared nervous and upset. He told them he needed an ambulance but refused to believe they were really paramedics. Defendant again called 911 asking for an ambulance even though the dispatcher told him an ambulance was already there. Both paramedics could smell marijuana on defendant.

Since defendant was agitated and not acting rationally, the paramedics called the police for assistance. When the first officer arrived, defendant was inside the apartment building's vestibule screaming profanities and saying "I'm not going." The paramedics told the officer that defendant was mentally unstable and possibly under the influence of drugs. The officer tried to calm defendant, but when he reached for defendant's shoulder, defendant pulled away, fell to the floor, and began punching and kicking in defense. The officer tried but failed to handcuff defendant. He then used his taser on defendant about 10 times but it had "no affect whatsoever."

A second officer arrived and tried to help handcuff defendant. The second officer thought defendant was irrational and could smell cannabis in the vestibule. As the two officers were trying to handcuff defendant, he kicked the second officer several times in the leg. After struggling for several minutes, the officers finally handcuffed defendant. They put defendant in the ambulance, which took him to the hospital where he was still "unhinged and screaming."

Defendant's girlfriend testified that she had seen him have 10-20 seizures over the previous seven years. She saw defendant as he was being placed in the ambulance and believed he was having a seizure. The two paramedics testified that they did not believe defendant was having a seizure.

The jury convicted defendant of battery and resisting a police officer.

The Appellate Court, with one justice dissenting, held that the evidence was insufficient to prove that defendant acted knowingly when he kicked the officer. Both paramedics observed that defendant was nervous and agitated and believed that defendant had an altered mental state. The second officer thought that defendant's behavior was irrational. Since all the witnesses thought that defendant was not behaving normally, the court stated it could not infer from defendant's actions that he was consciously aware of what he was doing. Instead, the evidence showed that defendant was not consciously aware of the results of his actions.

The court reversed defendant's conviction outright.

People v. Jones, 2014 IL App (3d) 121016 Defendant was convicted of cannabis trafficking, 720 ILCS 550/5.1(a), an offense requiring the State to prove that defendant knowingly possessed the cannabis. Defendant argued on appeal that the State failed to prove he knew the FedEx package he possessed contained cannabis.

Knowledge can rarely be shown through direct proof and may instead be established by defendant's acts, declarations, or conduct supporting the inference that he knew about the

cannabis. While a trier of fact may infer knowledge from suspicious behavior, mere possession of an unopened package containing cannabis is insufficient to prove knowledge.

Here, there were numerous suspicious circumstances that would have allowed a trier of fact to find that defendant knew about the cannabis in the FedEx package. Defendant picked up the package from his stepmother's house where it had been delivered. He then took possession of the package even though it did not have his name or address on it. He claimed it was wrongly delivered and left with the package to ostensibly return it to FedEx, but was not driving in the direction of the FedEx facility when he was stopped. Defendant also made a series of false statements about the package after he was arrested. Based on these factors, a rational trier of fact could easily infer that defendant knew the package contained cannabis.

The court rejected defendant's reliance on the First District's decision in **People v. Hodogbey**, 306 Ill. App. 3d 555 (1999) for the proposition that "suspicious behavior in the vicinity of narcotics will not suffice as proof of knowledge as to their presence." The court agreed with the Second District's decision in **People v. Brown**, 2012 IL App (2d) 110640, pointing out that the proposition stated in **Hodogbey** was actually based on a misreading of an Illinois Supreme Court case, **People v. Jackson**, 23 Ill. 2d 360 (1961), which stated the exact opposite, *i.e.*, that suspicious behavior *may* constitute proof of knowledge.

Defendant's conviction was affirmed.

People v. Johnson, 2014 IL App (1st) 122459-B Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if "either before or during the commission of an offense, with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant's mere presence at the scene of the crime even if coupled with defendant's flight from the scene or his knowledge that a crime has occurred.

Here, the State's evidence showed that defendant was driving a car with his co-defendant as a passenger. At some point, co-defendant saw a man named Brandon driving another vehicle. Co-defendant identified Brandon as the "dude that shot me," and told defendant to chase him. Defendant pursued the other car and eventually stopped in front of it. Co-defendant got out of the car, pulled out a gun, and fired several shots at Brandon. Brandon tried to dive away and in the process struck defendant's car. Defendant drove down the street and while co-defendant was still firing the gun, told him to "come on or I'm going to leave you." Co-defendant ran towards defendant's car still firing his gun. Co-defendant got back in the car and defendant drove away. Brandon eventually died from the gunshots. Defendant later told an acquaintance that co-defendant had been armed, and they had "made a move" on (meaning shot) a man in another vehicle.

The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant had a prior intent to facilitate the shooting since defendant did not know the victim would be shot before the offense occurred, nor even that the co-defendant was armed. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight. And there can be no common design to shoot someone if the defendant does not know his co-defendant is armed.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked

him to do this. Defendants statement to an acquaintance that co-defendant was armed and they “made a move” on Brandon were merely after-the-fact accounts of the events and do not establish what defendant’s intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant’s first degree murder conviction.

People v. Reher, 361 Ill.App.3d 697, 838 N.E.2d 206 (2d Dist. 2005) Defendant was prosecuted for violating an order of protection which, among other things, precluded him from “harass[ing] or having any kind of contact” with the protected persons. The evidence showed that the persons protected by the order lived directly across a highway from a K Mart store. As one of the protected persons was walking toward the K Mart one evening, she found defendant “fiddling” with his bicycle at the entrance to the store. Defendant testified that he had just made a purchase and was trying to attach the merchandise to his bike.

Because defendant was at the K Mart for a legitimate purpose, had no reason to know that the beneficiary of the order of protection would come to the store while he was there, and did not appear to have gone to the store in the hope or with the intention of seeing her, the evidence was insufficient to sustain the conviction.

People v. Shaw, 63 Ill.App.3d 227, 379 N.E.2d 949 (4th Dist. 1978) The police came to defendant’s residence about midnight and said they had arrest warrants for defendant’s brothers. Defendant made a "quick look" through her house, and told police that her brothers were not there. She then consented to a search of the premises. The police subsequently found the brothers in the basement.

Any inferences which reasonably show that defendant had the intent to prevent her brothers' apprehension conflicted with her voluntary consent to the search. Conviction for obstructing justice reversed.

Updated: June 27, 2022