ROLL CALL NEWS

IN THIS ISSUE

Odor of cannabis alone insufficient for vehicle warrantless search

A long-awaited decision from the Illinois Supreme Court on the **odor of cannabis** in a vehicle as the basis for a vehicle search has finally been decided. The case has not yet been approved for release but it has already abrogated caselaw decided in prior years on the issue. In **People v. Redmond, 2024 IL 129201**, an officer saw a car with an improperly secured license plate traveling at a speed of 73 in a 70 mph zone. The officer stopped the defendant's vehicle, and smelled burnt cannabis when the defendant rolled down the passenger-side window. The officer searched the car and found one gram of cannabis in the center console in a plastic bag. There was no evidence that anything was lit or smelled like cannabis during the search. The officer did not smell the cannabis coming from the defendant's person.

The Illinois Supreme Court said that because the laws on cannabis have changed in such a drastic way in the past few years, the smell of burnt cannabis, standing alone, is insufficient to provide probable cause for police to search a vehicle without a warrant. Odor does not reliably point to who used the cannabis, or when or where the cannabis was used. It can be one factor an officer can consider before searching a vehicle but cannot stand alone without other inculpatory facts. The Court concluded that the officer's detection of the strong odor of burnt cannabis coming from the vehicle certainly established a reasonable suspicion to investigate further as to whether the defendant had violated the Vehicle Code and whether he was driving impaired. Further investigation did not yield any inculpatory facts. The quantity of evidence

never advanced on the continuum from reasonable suspicion to probable cause to search. Therefore, it was unreasonable and unlawful, and the circuit court properly granted the motion to suppress the evidence in this case.

There was **probable cause to arrest** the defendant in **People v. Hatcher, 2024 IL App (1st) 220455, 476 Ill.Dec. 737, 241 N.E.3d 497(2024)** for aggravated unlawful use of a weapon. The defendant was a passenger who was arrested after being ordered out of the vehicle after a traffic stop and after the police had arrested another passenger engaged in suspicious behavior at ATMs at 2 banks. The officer also found an ATM card in the car that did not belong to anyone in it. The police had probable cause to believe the defendant was involved in a bank fraud. The officers also found a firearm in open sight in the defendant's backpack.

An officer did not impermissibly **prolong a traffic stop** in **People v. Vences, 2023 IL App (4th) 220035, 474 Ill.Dec. 856, 237 N.E.3d 1041(2023)**. The defendant was a passenger in a vehicle stopped by the police for no rear license plate. While the officer spoke to the driver, a sheriff's deputy performed a canine sniff around the vehicle. When the defendant stepped out of the car, a methamphetamine pipe fell to the ground. He then ran away and a handgun was found near the defendant. The defendant was charged with armed violence and possession of methamphetamine. The court found that the defendant **constructively possessed** the drugs.

In **People v. Tennort, 2023 IL App (2d) 220313, 474 Ill.Dec. 709, 237 N.E.3d 541(2023)**, a police officer observed the defendant driving at a high rate of speed, followed him, and saw him abruptly stop his vehicle at a two-way four-lane street. The defendant remained stopped for several seconds, and he lost his balance and stumbled when he got out of his vehicle. He also needed help getting out from his 2 passengers. The officer had a basis for a **Terry stop**. The defendant was found guilty of driving under the influence of alcohol.

A police officer did not have a **reasonable suspicion** to make an investigatory stop in **People v. Maxfield, 2023 IL App (1st) 151965-C, 476 Ill.Dec. 396, 240 N.E.3d 595(2023)**. The officer knew two male suspects were involved in an armed robbery and that the police had shot at a white van but the suspects got away. There was no description of physical characteristics. The officer saw the defendant walking down an alley and only stopped him because he was sweating when the weather was warm. The case was remanded for a new trial.

DUI and DWLR decisions

In **People v. Lee, 2023 IL App (4th) 220779, 475 Ill.Dec. 748, 239 N.E.3d 646(2023)**, a defendant was found guilty of driving under the influence of cannabis where two people were killed, he fell asleep while he was driving, he failed to stop at a stop sign, and he struck another vehicle. The defendant contended that the DUI cannabis law violated **equal protection** because card holding medical cannabis users were treated differently by the law than regular cannabis users. The court found that there was a rational basis for this treatment. Drivers with a THC concentration in their persons whole blood or other bodily substance within two hours of driving or being in actual physical control of a vehicle are subject to prosecution, but not those who qualify under the Medical Cannabis Act for a registry

card unless they are impaired. The court found that this did not violate the equal protection clause.

A defendant was charged with felony DWLR in **People v. Brown, 2023 IL App (3d) 210460, 475 Ill.Dec. 711, 239 N.E.3d 609(2023)** and tried to use the **defense of necessity.** He contended that he was driving because his old girlfriend was following him and he was trying to protect his new girlfriend from threats from the old one. The court found that the defendant did not drive to prevent greater injury but to escape "drama" because of the confrontation with his ex-girlfriend. Video taken at the scene did not support his contention that the ex-girlfriend was a serious and immediate threat.

A defendant's statutory **speedy trial rights** were not violated in **People v. Stevenson, 2023 IL App (3d) 22055, 474 Ill.Dec. 437, 236 N.E.3d 670(2023)**. The State filed new charges of aggravated driving while under the influence 334 days after the defendant was initially charged with felony DWLR. Even though the defendant was in jail for a month, he still needed to make an effective demand for trial but there was nothing in the record that showed he had done that.

The appellate court lacked jurisdiction over a **village's appeal** regarding the granting of a motion to suppress in a DUI case in **Village of Lisle v. French, 2024 IL App (3d) 230002, 475 Ill.Dec. 275, 238 N.E.3d 573(2024)**. The defendant had filed a petition to rescind his statutory summary. After it was granted, he filed the motion to quash and suppress evidence which was granted. The appellate court lacked jurisdiction because the rules governing appeals by the State do not include appeals by municipalities, and the village admitted he was being prosecuted under a village ordinance and not under the Vehicle Code. Because the village did not mislead the court, the request for sanctions, on the grounds that the appeal was frivolous, was denied.

Confession cases

A defendant was told by a DCFS worker that she needed to do a reenactment of her child's death that would be video recorded in **People v. Logan, 2024 IL 129054, 476 Ill.Dec. 349, 240 N.E.3d 548(2024).** While she was resistant to participating, she did not refuse to do so in her apartment. She answered questions, and was allowed to leave afterwards. She was not Mirandized during the reenactment. There was no evidence that the police officers blocked her way or harassed her in anyway. There was no show of force or any evidence of a formal arrest procedure. The investigators wore civilian clothes. While the defendant did attend special education classes in high school, she was a high school graduate and had attended some college. Upon appeal from the appellate court, the Illinois Supreme Court found that the defendant's **Miranda rights** were violated but it did not amount to plain error because it was not a structural error and the evidence of guilt presented at trial was not closely balanced.

A defendant did not clearly and unequivocally invoke his **right to remain silent** in **People v. Reichert, 2023 IL App (5th) 180537, 475 Ill.Dec. 830, 239 N.E.3d 728(2023).** During a custodial interrogation he stated, "Can we get off the record then because I'm not going to say anything else on the record" and "that's the honest God's truth". He was being questioned about conspiracy to possess with intent to deliver

cannabis and cannabis trafficking. He never said he didn't want to speak at all. He also said, "I'm not saying nothing right now though" while he was being recorded. The officers didn't need to agree to his condition for speaking or tell him they would terminate the conversation if they wouldn't agree to this condition.

Pretrial Release Cases

There have been at least 16 appellate cases published since the last edition of Roll Call News about pretrial release. The following are the ones of most interest:

In **People v. Andino-Acosta, 2024 IL App (2d) 230463, 475 Ill.Dec. 172, 238 N.E.3d 470(2024),** the appellate court found that the trial court's **oral findings** were sufficient to satisfy the Act's requirement for a written order for the denial of pretrial release. And, a court's lengthy and adequate explanation in **open court** for its reasons to grant the State's petition for detention was as sufficient as making written findings in **People v. Gooden, 2024 IL App (4th) 231523, 476 Ill.Dec. 11, 239 N.E.3d 1209(2024)**.

In **People v. Hodge, 2024 IL App (3d) 230543, 476 Ill.Dec. 169, 240 N.E.3d 77(2024)** a **preprinted check-the-box form** that the court used to summarize its reasons satisfied the written findings requirement. However, in **People v. Martin, 2023 IL App (4th) 230826, 473 Ill.Dec. 998, 235 N.E.3d 745(2023)**, the trial court **failed to make adequate findings** on the record about whether there were less restrictive conditions of release so the decision on detention was reversed.

The residual clause, 725 ILCS 5/110-6.1(a)(1.5), defining **"forcible felony"** for purposes of detainable offenses does not require the State to prove the defendant contemplated and was willing to use force sufficient to cause great bodily harm, permanent disability or disfigurement in a prosecution for unlawful possession of a stolen motor vehicle and aggravated fleeing and attempting to elude a police officer. Therefore, the State had proven that the defendant committed a qualifying offense and the defendant could be detained. **People v. Delaney, 2024 IL App (5th) 240231, 475 Ill.Dec. 322, 238 N.E.3d 620(2024)**

There is **no statutory basis** to detain a defendant who has allegedly violated his probation for reasons that do not include a new criminal charge. **People v. Dyer, 2024 IL App (4th) 231524, 475 Ill.Dec. 249, 238 N.E.3d 547(2024)** The defendant was entitled to pretrial release pending a hearing on the PTR, however, he obtained a new criminal charge thereafter and could be detained on an amended PTR based on the criminal violation.

The State is only required to disclose **evidence** it relies on for a detention petition, not everything in its possession prior to the hearing. **People v. Morales, 2023 IL App (2d) 230334, 474 Ill.Dec. 875, 237 N.E.3d 1060(2023)**

Random Rulings

If the State wants to introduce evidence under the **"forfeiture by wrongdoing"** exception to the hearsay rule which occurs when the defendant takes actions that are intended to make the witness unavailable, it must show that the witness is unavailable and reasonable, good-faith efforts were made to procure the witness's attendance by a preponderance of the evidence. In **People v. Chatman, 2024 IL 129133, 475 Ill.Dec. 354,**

238 N.E.3d 1055(2024), a felony murder prosecution, the State sought to introduce a statement from a witness who said that he had been with the defendant the morning after the shooting when the defendant bragged about killing the victim and his plan to rob him. The witness fled the state after receiving threatening text messages and social media posts from people associated with the defendant. The State also claimed that in recorded jail phone calls the defendant spoke to persons who indicated they would try to ensure the witness would not testify. Local law enforcement tried to find the witness, an officer searched various databases trying to find the witness but without success, and an officer served a subpoena on the witness's relative who said she had no contact with him. The Illinois Supreme Court found that the State met its burden of proof and the prior statement could be admitted.

State law, 65 ILCS 5/1-2.1-2, does not preempt a home rule municipality's power from using an **administrative adjudication system** to decide its local ordinances. Commercial truck drivers had filed complaints for review after a city administrative hearing officer found drivers liable for driving semi-truck trailers on the city's roadways in violation of the posted weight limit. However, because Joliet's local ordinance prohibited its hearing officers from adjudicating ordinance violations that are required to be reported to the Secretary of State, those cases could not be heard at administrative hearings. **Cammacho v. City of Joliet, 2024 IL 129263, 476 Ill.Dec. 525, 240 N.E.3d 1137(2024)**

A defendant was charged with **vehicular invasion**, domestic battery and aggravated domestic battery in **People v. Padilla, 2023 Il App (3d) 220432, 472 Ill.Dec. 76, 230 N.E.3d 172(2023).** The court merged the vehicular invasion and aggravated domestic battery counts so the defendant was sentenced on a single conviction of vehicular invasion. Vehicular invasion can be committed by entering or by reaching into the inside of a motor vehicle. In this case the indictment and jury instruction stated that the defendant used force when he reached into the victim's car. The evidence showed that he reached into the interior while stabbing the victim. This constituted force for purposes of the vehicular invasion charge.

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