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## Illinois Prosecutors Bar Association

### PBA Law Update – January 2019

*Carpenter v. United States*, 138 S. Ct. 2206 (2018)

**Police officers must obtain a search warrant before accessing historical cell phone records that chronicle an individual's prior movements**

Federal prosecutors obtained a court order for the defendant's cell phone records, which included cell-site location information. This information led to the defendant's conviction on multiple robbery and firearms charges. Reversing the decision below, the United States Supreme Court held that an individual has a reasonable expectation of privacy "in the whole of his physical movements." When the government accesses cell-site location information, it invades that expectation of privacy. The fact that the individual's movements are shared with a third party, *i.e.*, wireless carriers, is of no consequence due to the deeply revealing nature of cell-site location information; its depth, breadth, and comprehensive reach; and the inescapable and automatic nature of its collection. Therefore, in the absence of an exception, law enforcement must obtain a warrant supported by probable cause before acquiring such information.

*People v. Gocmen*, 2018 IL 122388

**A police officer need not be qualified as an expert in order to testify to his opinion that an individual is under the influence of drugs**

A police officer responded to a report of an unconscious person in a vehicle, possibly having a seizure. When he arrived at the scene, the officer observed the defendant in the driver's seat of a vehicle that was partially off the road. Inside the vehicle, the officer saw an uncapped syringe, a small plastic bag containing a brown granular substance, and a cut or torn Red Bull can with burn marks and brown residue. A "NARK swipe" of the brown residue showed the presence of opiates. There was also a fresh "track mark" on the defendant's arm. Based on these observations, the officer testified to his opinion that the defendant was under the influence of drugs. The Illinois Supreme Court held that the officer properly gave his opinion without being qualified as an expert. The court explained that the officer's testimony was admissible because it was based on his experience and personal familiarity with drugs rather than scientific, technical, or specialized knowledge. Had the officer based his opinion on field sobriety tests, which require experience and expertise in conducting such tests and interpreting their results, the court signaled that it would have reached a different result.

*People v. King*, 2018 IL App (2d) 151112

**A prosecutor may not tell jurors that it is acceptable to convict the defendant even if they have questions about the evidence**

During closing arguments at the defendant's trial for first degree murder, the prosecutor argued that it was "okay" for the jurors to have "questions" about the evidence and "still convict the defendant." The prosecutor gave an example of a permissible question dealing with the manner in which the defendant moved the victim's body onto a set of railroad tracks. The prosecutor then reiterated that the jurors could have questions, "as long as those questions don't amount to reasonable doubt." Noting the well-established rule that "reasonable doubt" needs no definition, the Illinois Appellate Court found that the prosecutor's argument was an improper attempt to define and dilute the State's burden of proof. Although the defendant's conviction was reversed for other reasons, the court cautioned that "nothing close" to such an argument would be permitted on retrial.

*People v. Long*, 2018 IL App (4th) 150919

**A prosecutor violates the rule against prior consistent statements by asking a witness if his prior statements to police matched his testimony at trial**

At a trial for conspiracy to manufacture methamphetamine, the prosecutor questioned a witness about his prior statements to police. The witness testified that he told police "the truth." The witness also acknowledged that he had an obligation to tell the truth "then and now," meaning during his police interview and at trial. On appeal, the Illinois Appellate Court held that the prosecutor violated the rule against prior consistent statements by asking the witness if his statements to police matched his trial testimony. The court explained that evidence of a prior consistent statement is admissible only when it has been suggested that the witness recently fabricated testimony or has a motive to testify falsely and the prior statement was made before the motive arose. Neither situation applied to this case. Nevertheless, given the strength of the evidence, the court found that the prosecutor's misstep did not amount to plain error.

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