Research Strategy--Spring 2020

• Finding the Law

• Reading the Law

• Updating the Law

• Christopher & Jill Wren, The Legal Research Manual (2d ed. 1986)
Goal

• Find mandatory authority. (Wren chart)

  Illinois Supreme Court

• Use persuasive authority when:
  – No mandatory exists
  – Weak mandatory
  – Challenge the mandatory
Research Issues

• Did the court err in convicting Anders of felony murder?

• Were Anders’ incriminating statements made during a “custodial interrogation” or during an “investigative interrogation”?
Thinking about the Problem

• You need search terms. Use TARP (things, action, relief, parties) to determine facts and legal theories

• May not succeed at first, but must start somewhere.
Finding the Law—Search Methods

• Index

• Topic (Table of Contents)

• Known-authority (start with a known primary or secondary source on point)

• Full text searching (online only)

• Some combination of these
Finding the Law

• Start with secondary sources?

• Check for constitutional provisions and statutes.

  2. Forcible felony: 720 ILCS 5/2-8
  3. Residential burglary: 720 ILCS 5/19-3(a)

• Try to find leading case(s).

• Use leading case(s) to find cases from your jurisdiction.
Narrative Secondary Sources

• Books
• American Law Reports (ALR)
• Encyclopedias (national & state)
• Legal periodicals
• Restatements
Why Use Secondary Sources?

- To determine what law applies
- For analysis of the law
- To find jargon in the area
- To learn the black letter rules
- To identify important primary sources
Lexis/Westlaw/Bloomberg Law Search Methods

Terms and Connectors

v.

Natural Language
Terms and Connectors

• Must link **terms** with **connectors** (/p, /s, +3)

• Phrases in quotation marks

• Allows truncation (*, ?, and !)

• Only retrieves docs within search parameters

• No term-dropping
Natural Language

- String together words that might be relevant
- No truncation or connectors
- Enclose phrases in quotation marks
- String alternative terms together
- Some term-dropping to achieve results
Felony Murder Issue

Secondary Sources > Leading Cases > Headnotes & Controlled Indexing > TOA > Citators > Cases & Secondary Sources
Searched an Illinois encyclopedia on Westlaw
Relevant entry on felony murder

1. § 7. Murder in commission of forcible felony

Illinois Law & Practice
Illinois encyclopedia refers to a law review article

Use the article for context and cites to primary authorities
A person who kills an individual without lawful justification commits murder if, in performing the acts which cause the death, such person is attempting or committing a forcible felony other than second-degree murder. ¹ The felony-murder doctrine establishes culpability for deaths that are the direct and foreseeable consequences of criminal acts. ² The proximate cause theory, rather than agency theory, applies to the imposition of liability under the felony-murder rule. ³
Secondary source cites relevant cases
This is an Illinois case of felony murder during a robbery. Is there a case involving “residential burglary”? The headnote’s topic seems good. Lowery topic and key number is 203k607. Is there a better key number?
Search the Westlaw Key Numbers

Lowery: 203K607

Felony murder during burglary
Limit the 9 burglary/trespass cases to 3 “residential burglary” cases.
Recent Illinois case citing the relevant statutes and providing a good topic and key number
<table>
<thead>
<tr>
<th>5</th>
<th>Homicide</th>
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<td><strong>To sustain a conviction for felony murder, the state need not prove the defendant contemplated that his actions would result specifically in death, only that he or she intended to commit the underlying felony. S.H.A. 720 ILCS 5/9-1(a)(3).</strong></td>
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<tr>
<td>1 Case that cites this headnote</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>6</th>
<th>Homicide</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>To sustain its burden of showing that victim’s death was foreseeable, as required to support felony murder conviction, the state must prove the defendant set in motion a chain of events which were or should have been within his contemplation; it is unimportant that defendant did not anticipate the precise sequence of events that followed the forcible felony. S.H.A. 720 ILCS 5/9-1(a)(3).</strong></td>
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<td>1 Case that cites this headnote</td>
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</tbody>
</table>

| 203 | Homicide |
| 203III | Homicide in Commission of or with Intent to Commit Other Unlawful Act |
| 203III(B) | Murder |
| 203k81 | Intent or mens rea |

| 203 | Homicide |
| 203III | Homicide in Commission of or with Intent to Commit Other Unlawful Act |
| 203III(B) | Murder |
| 203k82 | Predicate Offenses or Conduct |
| 203k87 | Dangerousness of offense in general |

Other seemingly relevant headnotes and key numbers
Brown is recent (2015). Check its TOA for earlier cases on point.
Use Shepard’s, KeyCite or BCite to find additional cases and secondary sources
A person who kills an individual without lawful justification commits murder if, in performing the acts which cause the death, such person is attempting or committing a forcible felony other than second-degree murder. ¹ The felony-murder doctrine establishes culpability for deaths that are the direct and foreseeable consequences of liability under the felony-murder rule. ²

Under the proximate cause theory of felony murder, the defendant’s actions are sufficient to establish causation if they are a substantial factor in bringing about the death, and the death was a reasonably foreseeable result of those actions. ³

Footnote 3

You can limit your citator search by headnotes.
Six citing cases for Headnote #1

<table>
<thead>
<tr>
<th>Treatment</th>
<th>Title</th>
<th>Date</th>
<th>Type</th>
<th>Depth</th>
<th>Headnote(s)</th>
</tr>
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<tr>
<td>Examined by</td>
<td>1. People v. Nash</td>
<td>May 10, 2012</td>
<td>Case</td>
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<td>1 2</td>
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<tr>
<td>Cited by</td>
<td>2. People v. Jones</td>
<td>Dec. 21, 2018</td>
<td>Case</td>
<td>1</td>
<td>1 2</td>
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<td>Cited by</td>
<td>3. People v. O'Neal</td>
<td>Sep. 29, 2016</td>
<td>Case</td>
<td>1</td>
<td>1 3</td>
</tr>
</tbody>
</table>

Criminal justice - Homicide. Self-defense instructions were warranted in felony murder case to explain why intended victim was not liable for co-lon’s death.

1 Held: (1) Trial counsel did not provide ineffective assistance for not requesting a jury instruction on intervening cause. (2) The trial court properly instructed the jury on...
Note the citing Secondary Sources under Citing References

For purposes of comparing the time of the commission of the felony with the time of the homicide, when is the time of the felony? Robbery is first committed when the defendant...


A person who kills an individual without lawful jurisdiction commits first-degree murder if, in performing the acts which cause the death, he is attempting or committing a forcible...

8. Wharton's Criminal Law s 150, § 150. Felony-murder—Homicide during or after commission of felony

The felony-murder rule applies if a homicide is committed during the perpetration of a felony, as where a death occurs while a rape, arson, kidnapping, burglary, larceny, or...
2. What constitutes termination of felony for purpose of felony-murder rule

58 A.L.R.3d 851

This annotation collects the cases in which a defendant, charged with felony-murder, contended that the felony-murder rule was inapplicable because the killing occurred after the...
Look for Illinois cases in the ALR
See Illinois cases under these topics

§ 6 View that killing committed while attempting to escape may be felony-murder
§ 7 New York cases

2 Factors affecting determination whether killing is felony-murder

§ 8 Generally; caveat
§ 9[a] Separation of felony and homicide by time and distance—Generally
§ 9[b] Separation of felony and homicide by time and distance—Requirement of appreciable interval between felony and killing
§ 9[c] Separation of felony and homicide by time and distance—Presence at scene of felony at time of killing
§ 9[d] Separation of felony and homicide by time and distance—Absence from scene of felony at time of killing
§ 9[e] Separation of felony and homicide by time and distance—Re-establishment of felony terminated by time or distance
§ 10 Technical completion of felony prior to killing
§ 11 Arrest of felon prior to killing

§ 12[a] Possession of proceeds at time of killing—Generally
§ 12[b] Possession of proceeds at time of killing—Dominion or control

$A$ Robbery
Updating the Law

• Cases
  -- Shepard’s, KeyCite or BCite: Watch for negative history and treatment cases.

• Statutes
  -- Shepard’s or KeyCite: Watch for legislative and judicial treatment
  -- BCite: Can only watch for judicial treatment
Check citator for validity of your case

Notice the KeyCite yellow flag
Check citator for validity of your case

Many cases cite Klebanowski positively
Full Text Journals & Law Reviews

- Westlaw: Secondary Sources > Law Reviews and Journals


- Bloomberg Law: All Legal content Search > U.S. Secondary Sources > Law Reviews & Journals

- Selected journals

- HeinOnline: More comprehensive coverage than Lexis Advance, Westlaw, Bloomberg Law (PDF)
Searching for journal articles on Lexis:

- Advanced search on Lexis: 3 articles

1. **NOTES: People v. Dekens: The Expansion of the Felony-Murder Doctrine in Illinois**
   - Loyola University Chicago Law Journal | Jan 01, 1999 | 30 Loy. U. Chi. L.J. 357 | 16859 words
   - Notes: People v. Dekens: The Expansion of the Felony-Murder Doctrine in Illinois

2. **ARTICLE: Felony Murder in Illinois: The “Agency Theory” vs. the “Proximate Cause Theory”: The Debate Continues**
   - Article: Felony Murder in Illinois: The “Agency Theory” vs. the “Proximate Cause Theory”: The Debate Continues

3. **COMMENT: THE FELONY MURDER RULE IN ILLINOIS: THE INJUSTICE OF THE PROXIMATE CAUSE THEORY EXPLORED VIA RESEARCH IN COGNITIVE PSYCHOLOGY**
   - Journal of Criminal Law and Criminology | Jan 01, 2008 | 98 J. Crim. L. & Criminology 621 | 17934 words
   - Comment: The Felony Murder Rule in Illinois: The Injustice of the Proximate Cause Theory Explored via Research in Cognitive Psychology
Searching for journal articles on Westlaw

Advanced search on Westlaw: 4 articles

1. ILLINOIS GETS AWAY WITH FELONY MURDER
   Illinois Bar Journal · January, 2020

2. THE FELONY MURDER RULE IN ILLINOIS: THE INJUSTICE OF THE PROXIMATE CAUSE THEORY EXPLORED VIA RESEARCH IN COGNITIVE PSYCHOLOGY
   Journal of Criminal Law and Criminology · Winter 2008

3. FELONY MURDER IN ILLINOIS THE “AGENCY THEORY” VS. THE “PROXIMATE CAUSE THEORY”: THE DEBATE CONTINUES
   Southern Illinois University Law Journal · Winter, 2001

4. PEOPLE V. DEKENS: THE EXPANSION OF THE FELONY-MURDER DOCTRINE IN ILLINOIS
   Loyola University Chicago Law Journal · Winter, 1999
These bills are one of the reasons for statute’s yellow flag

Senate Bill 2392 was introduced Oct. 28 by Sen. Robert Peters (D-Chicago) during the first day of veto session. It is similar to House Bill 1612, which was introduced by Rep. Justin Slaughter (D-Chicago) on Jan. 31, 2019. Neither bill made it to a committee vote.
Custodial Interrogation

Secondary source > Leading Cases > Headnotes & Controlled Indexing > Lexis Topic Summaries > Secondary Source
Begin with same state encyclopedia

...A criminal defendant has a constitutional right to counsel at all custodial interrogations as provided by both the United States and Illinois Constitutions.[...

4. § 393. Custodial interrogation
Illinois Law & Practice - IL-LP CRIMLAW § 393

Under Miranda, the prosecution may not use statements, whether exculpatory or inculpatory, stemming from a custodial interrogation of the defendant unless it first demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. A custodial interrogation means questioning initiated by law enforcement...

...Evidence that defendant was given Miranda warnings before her second interview with police officers, which was recorded, along with officers' allusions to her inconsistent statements in her first interview, supported a reasonable inference that defendant was asked questions designed to elicit incriminating statements in the first interview, as required for the interview to be a "custodial interrogation" within meaning of statute requiring all custodial interrogations in murder investigations to be electronically recorded....

...As to the statutory definition of "custodial interrogation" for the purpose of a statute requiring electronic recording of interrogations for certain crimes, see § 393....
“Investigative” interrogation v. “custodial” interrogation
See Headnote #9 and its topic and key number: 110k411.22

Run 110k411.22 in Illinois to get more cases
Other seemingly relevant and recent cases under 110k411.22

8. People v. Fort
Appellate Court of Illinois, First District, Third Division.  April 30, 2014  -  2014 IL App (1st) 120037

Headnote: To determine whether police have taken a defendant into custody, the trial court must decide whether a reasonable person in the defendant's circumstances would have felt he or she was not at liberty to terminate the interrogation and leave; the court should consider (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused.  U.S.C.A. Const.Amend. 4.

1 Case that cites this legal issue

9. People v. Harris
Appellate Court of Illinois, First District, Fourth Division.  August 30, 2012  -  2012 IL App (1st) 100676

Headnote: When determining whether a defendant made a statement in a custodial setting requires an examination of the surrounding circumstances of the interrogation, which include: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused.

2 Cases that cite this legal issue
Document Preview: CRIMINAL JUSTICE - Counsel. Evidence supported finding that defendant invoked her right to counsel during police interrogation.
Let’s switch to Lexis’s controlled indexing for Dunn
Click “Get documents” to use Lexis’s controlled indexing

Headnote #6 seems relevant
Limit the cases to Illinois courts
Use “Search Within Results” to further limit cases retrieved

factors /s custodial
People v. Smith is the latest Illinois Supreme Court decision
been convicted and sentenced, a prisoner knows that the law enforcement officers who question him probably lack the authority to affect the duration of his sentence. Standard conditions of confinement and the associated restrictions on freedom will not necessarily implicate the same interests that the Miranda court sought to protect when it afforded special safeguards to persons subject to custodial interrogation. Consequently, the service of a term of imprisonment, without more, is not enough to constitute Miranda custody. More like this Headnote

**Shepardize - Narrow by this Headnote (0)**

Criminal Law & Procedure > ... > **Miranda Rights** > **Self-Incrimination Privilege** > **Custodial Interrogation**

**HN9** Self-Incrimination Privilege, Custodial Interrogation
The determination of whether an interrogation is a custodial interrogation requires an exam of the questioning. No single factor is determinative, but among the factors to be considered is the interrogation; the number of police officers present; any evidence of restraint; and the intentions of the officers and focus of their investigation. A trial court must examine and weigh those factors and then make an objective determination as to what a reasonable man would perceive if he were in the defendant's position. More like this Headnote

**Shepardize - Narrow by this Headnote (0)**

Criminal Law & Procedure > ... > **Interrogation** > **Miranda Rights** > **Notice & Warning**

**HN10** Miranda Rights, Notice & Warning
It is the element of coercion rather than the mere focus of an investigation that calls Miranda safeguards into play. More like this Headnote

**Shepardize - Narrow by this Headnote (0)**
Defaults to a federal summary, but see the Illinois summary

**Topic Summary: Custodial Interrogation**

**Practice Area:** Criminal Law & Procedure

**Jurisdiction:** U.S. Federal

**Context:**
Criminal Law & Procedure > ... > Miranda Rights > Self-Incrimination Privilege > Custodial Interrogation

**Definitions (1)**

1. **Custodial interrogation** is defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. The Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. [*United States v. Westbrook*, 125 F.3d 996]
1. Custodial interrogation is defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Thus, Miranda warnings are required only where there has been such a restriction on a person’s freedom as to render him "in custody." People v. Griffin, 385 Ill. App. 3d 202

Seminal Cases (8)

1. People v. Prude, 66 Ill. 2d 470
2. People v. McCauley, 163 Ill. 2d 414
3. People v. Savory, 105 Ill. App. 3d 1023

View more

Elements of (1)

1. The following factors are relevant in determining whether a statement was made in a custodial setting: (1) the location, time, length, mood, and mode of questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of formal arrest procedure, such as the show of weapons or force, physical restraint, booking, or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused. People v. Tyler G. (In re Tyler G.), 407 Ill. App. 3d 1089
“custodial interrogation” search in Lexis’s Illinois treatises

Secondary Materials

Treatises, Practice Guides & Jurisprudence

All Illinois Treatises, Practice Guides & Jurisprudence

Law Reviews & Journals

All Illinois Law Reviews and Journals

Top Sources

Illinois Jurisprudence

Illinois Criminal Defense

Gitlin on Divorce

Illinois Civil Procedure

Results for: custodial interrogation

Secondary Materials (52)

1. § 2.27 Renewal of Questioning After Assertion of Rights
   Illinois Criminal Procedure | 1 Illinois Criminal Procedure § 2.27
   § 2.27 Renewal of Questioning After Assertion of Rights

2. § 2.22 Custody Requirement of Miranda
   Illinois Criminal Procedure | 1 Illinois Criminal Procedure § 2.22
   § 2.22 Custody Requirement of Miranda

3. § 2.32 Statements Obtained in Violation of the Right to Counsel
   Illinois Criminal Procedure | 1 Illinois Criminal Procedure § 2.32
Language associated with footnote 40 seems relevant.

The question of whether a suspect is "in custody" depends on a review of the totality of the circumstances, including: the location, length, mood, and mode of interrogation; the number of police officers present; any indicia of formal restraint or arrest; the intention of the officers; and the extent of the knowledge of the officers. \( \text{Footnote 34} \) In *People v. Schoening*, \( \text{Footnote 35} \) the appellate court held that although a custodial setting may have existed, it had terminated by the time the officers questioned the accused. \( \text{Footnote 36} \) In *Schoening*, police officers had entered the accused's home, handcuffed him, and would not let him leave. \( \text{Footnote 37} \) After the officers questioned other members of the household, they released the accused. \( \text{Footnote 38} \) When the officers asked the defendant his name and birth date, he was not handcuffed, and the encounter then concluded. \( \text{Footnote 39} \) The court held that the officers' questioning was within the scope of routine on-the-scene questioning that occurs as an incident to the execution of a warrant. A reasonable person in the defendant's position would not have thought that he was in custody. \( \text{Footnote 40} \) Furthermore, the questions did not amount to interrogation as defined by express questioning or as actions by the police that they should have known would elicit an incriminating response. \( \text{Footnote 41} \) The judge must determine whether, under all of these circumstances, a reasonable person would believe that he or she was in custody. \( \text{Footnote 42} \) An assertion at the end of an interview that interviewee was "free to leave" may imply that the interviewee was not free to leave up to that time. \( \text{Footnote 43} \) In making this objective determination, interrogation; (2) "the number of times the police have approached their investigation. \( \text{Footnote 44} \) Under no circumstances should an officer ever assert he or she is free to leave. \( \text{Footnote 45} \) Miranda warnings do not apply. The only cause for arrest is evidence that in the absence of such warnings, a reasonable person would believe that he or she was in custody. \( \text{Footnote 46} \)
See Headnote #4 in Schoening about interrogation in a home
When Should I Stop?

• Stop when find same sources through independent means.

• Have you looked in the really important places?

• Did you update everything?

• Do you understand the law? If not, you are definitely not done!

• You are probably not going to find all law on an issue!
There is no one right way to do research.

Master a wide variety of research tools to develop an effective method.
THE END