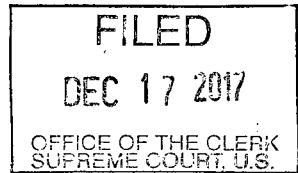


No. 18-7764 ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

MARCELLUS A. FRENCH — PETITIONER
(Your Name)

VS.

PEOPLE OF THE STATE — RESPONDENT(S)
OF ILLINOIS

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF ILLINOIS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARCELLUS A. FRENCH
(Your Name)

N21081 P.O. BOX 1000
(Address)

NENARD ILLINOIS 62259
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION WHERE THE COURT AFFIRMED THE APPELLATE COURT'S RULING THAT THE USAGE OF HEARSAY WITHIN THE PETITIONER'S CASE WAS ADMISSIBLE AND JUSTIFIED ACCORDING TO 725 ICS 10-15.1, WHEN CLEARLY THE APPELLATE COURT MISCONTROLLED AND MISAPPLIED THE CITED LAW.
2. DID THE ILLINOIS SUPREME COURT ERROR WHEN IT DENIED RELIEF ON PETITIONER'S PETITION FOR LEAVE TO APPEAL CONSIDERING THE CLOSELY BALANCED EVIDENCE WITHIN THE PETITIONER'S CASE.
3. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION OR ERROR BY AFFIRMING THE APPELLATE'S COURT RULING THAT THE MANNER IN WHICH THE TRIAL COURT APPLIED PETITIONER'S POST-TRIAL KRANKEL HEARING AND ITS PROBLEM DID NOT DENY DEFENDANT DUE PROCESS OF LAW.
4. DID THE ILLINOIS SUPREME COURT ERROR WHEN IT DENIED RELIEF ON PETITIONER'S PETITION FOR LEAVE TO APPEAL CONSIDERING PETITIONER'S TRIAL COUNSELOR'S FAILURE AND INEFFECTIVENESS CONCERNING COUNSEL'S FAILURE TO OBJECT TO THE ADMISSION OF HEARSAY EVIDENCE OF MOTIVE BASED ON LACK OF FOUNDATION.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:
-

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

☒ reported at 89 NORTH EASTERN 3d 758; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the APPELLATE court appears at Appendix A to the petition and is

☒ reported at 2017 IL APP (1st) 141815; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 09.27.2017.
A copy of that decision appears at Appendix B.

NO TIMELY PETITION FOR REHEARING WAS FILED.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT V OF THE CONSTITUTION (DUE PROCESS OF LAW)

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR TO BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

ARTICLE I SECTION 8.1 ILL. CONSTITUTION (BILL OF RIGHTS)

- (A) CRIME VICTIMS, AS DEFINED BY LAW, SHALL HAVE THE FOLLOWING RIGHTS AS PROVIDED BY LAW;
1. THE RIGHT TO BE TREATED WITH FAIRNESS AND RESPECT FOR THEIR DIGNITY AND PRIVACY THROUGHOUT THE CRIMINAL JUSTICE PROCESS.

STATEMENT OF THE CASE

PETITIONER (MARCELLUS FRENCH) AND HIS CO-DEFENDANT (BODEN COOK) WERE CHARGED WITH "INTERALIA", FIRST DEGREE MURDER AND AGGRAVATED BATTERY WITH A FIREARM. (CL 159 - 259). PETITIONER WAS CONVICTED FOLLOWING A JURY TRIAL AND SENTENCED TO A TOTAL OF SEVENTY YEARS IN THE DEPARTMENT OF CORRECTIONS (CL 339 - 341). PETITIONER FILED A TIMELY NOTICE OF APPEAL (CL 469). ON MARCH 10TH 2017 THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT AFFIRMED PETITIONER'S CONVICTION. (PEOPLE V. FRENCH 2017 ILL. APP. (1ST 141815) (A. 1-35). ON MARCH 30TH 2017 DEFENDANT FILED A TIMELY PETITION FOR REHEARING. THE PETITION FOR REHEARING WAS DENIED APRIL 6TH 2017. ON MAY 9TH 2017 DEFENDANT FILED A TIMELY PETITION TO LEAVE TO APPEAL. THE PETITION FOR LEAVE TO APPEAL WAS DENIED SEPTEMBER 27TH, 2017, NO PETITION FOR REHEARING WAS FILED. THIS PETITION FOR WRIT OF CERTIORARI WAS FILED TIMELY.

PETITIONER SHALL CITE TO THE APPELLATE RECORD AS FOLLOWS; THE COMMON LAW RECORD WILL BE DESIGNATED AS "CL —", THE APPELLATE COURT'S OPINION IS APPENDED TO THIS PETITION AND WILL BE DESIGNATED AS "A —" ALL OTHER REFERENCES WILL BE DESIGNATED AS "EXHIBIT —" AND ARE ATTACHED TO PETITION.

REASONS FOR GRANTING THE PETITION

1. THE TRIAL COURT COMMITTED PLAIN ERROR WHERE IT ADMITTED HEARSAY AND ALLOWED THE STATE TO USE IT DURING CLOSING ARGUMENTS AS SUBSTANTIVE EVIDENCE OF DEFENDANT'S GUILT.

- A TRIAL COURT'S EVIDENTIARY RULINGS ON HEARSAY TESTIMONY ARE REVIEWED UNDER AN ABUSE OF DISCRETION STANDARD. PEOPLE V. CATTEN, 205 ILL 2d 52, 89 (2001). AN ABUSE OF DISCRETION OCCURS WHERE THE TRIAL COURT'S RULING IS ARBITRARY, FANCIFUL, UNREASONABLE, OR NO REASONABLE PERSON WOULD TAKE THE VIEW ADOPTED BY THE TRIAL COURT.

A. THE TRIAL COURT'S ADMISSION OF THE HEARSAY CONSTITUTES AN ABUSE OF DISCRETION;

THE TRIAL COURT ADMITTED HEARSAY EVIDENCE PERTAINING TO MOTIVE ON TWO SEPARATE OCCASIONS; ① WHEN ESTAVION THOMPSON TESTIFIED THAT KIZER TRIED TO WAIVE BODEY COOK (CODEFENDANT) DOWN TO SPEAK WITH HIM ABOUT A DISPUTE HIS FAMILY WAS HAVING WITH BODEY, AND ② WHEN SHERMAN JOHNSON'S OUT-OF-COURT STATEMENT WAS PUBLISHED TO THE JURY, WHEREIN HE STATED THAT ROBER'S COUSINS WERE HAVING A "BEEF" WITH BODEY. THE STATE EXPLICITLY ARGUED THAT THE STATEMENTS WERE ADMISSIBLE TO PROVE MOTIVE. (CC. 274 - 275.)

A1. CONCERNING THOMPSON'S HEARSAY TESTIMONY, THE APPELLATE COURT AGREED THOMPSON'S TESTIMONY WAS NOT ADMISSIBLE TO EXPLAIN COURSE OF CONDUCT, OR TO PROVE MOTIVE. THE APPELLATE COURT ALSO AGREED THE TRIAL COURT ABUSED ITS DISCRETION, COMMITTING ERROR BY ALLOWING THE INADMISSIBLE TESTIMONY TO BE USED WITHIN DEFENDANT'S TRIAL. (A. 12-15). BECAUSE DEFENDANT'S TRIAL COUNSELOR FAILED TO OBJECT TO THE INADMISSIBLE TESTIMONY NOR WAS THE ISSUE RAISED IN A POST TRIAL MOTION. THE ERROR WITHIN HIS TRIAL IS REVIEWED UNDER THE PLAIN-ERROR DOCTRINE.

THE PLAIN-ERROR DOCTRINE PERMITS THE COURTS TO REVIEW ERROR THAT HAS BEEN FORFEITED. THE APPELLATE COURT DEEMED THE EVIDENCE AGAINST DEFENDANT WAS OVERWHELMING, SO THE ERROR WAS RULED "HARMLESS". THE ILLINOIS SUPREME COURT FAILED TO CORRECT THIS INAPPROPRIATE AND MISAPPLIED LAW. AS THIS COURT REVIEWS THE EVIDENCE AGAINST AND FOR THE DEFENDANT, SURELY ANY REASONABLE PERSON WOULD BEEN THE EVIDENCE WITHIN THIS CASE CROSSED BALANCED. DEFENDANT CHALLENGES THE RULING THAT EVIDENCE AGAINST HIM WASN'T OVERWHELMING, LATER IN THIS PETITION.

A2. THE APPELLATE COURT MISCONSTRUED AND MISAPPLIED 725 ILCS 10-15.1 IN JUSTIFYING THE ADMISSION OF THE HEARSAY. AND THE ILLINOIS SUPREME COURT FAILED TO CORRECT OBVIOUS

THE APPELLATE COURT INCORRECTLY HELD THAT SHERMAN JOHNSON'S OUT-OF-COURT HANDWRITTEN STATEMENT CONCERNING A "BEEF" BETWEEN COOK AND KIZER'S COUSINS WAS ADMISSIBLE AS SUBSTANTIVE EVIDENCE PURSUANT TO 725 ILCS 5/115 - 10.1 (A. 15-1B). IT IS NOTABLE THAT THE STATE APPELLATE COURT RELIED UPON 725 ILCS 5/115 10.1, AS THE STATE DID NOT CITE TO THAT SECTION OF THE CRIMINAL CODE IN ITS BRIEF TO JUSTIFY THE ADMISSION OF JOHNSON OUT-OF-COURT STATEMENT. THIS IS LIKELY BECAUSE THAT SECTION OF THE CODE "PLAINLY" DOES NOT RENDER THE STATEMENT ADMISSIBLE. 725 ILCS 5/115 10.1, PROVIDES IN PERTINENT PART;

"IN ALL CRIMINAL CASES, EVIDENCE OF A STATEMENT MADE BY A WITNESS IS NOT MADE INADMISSIBLE BY THE HEARSAY RULE IF"

- (a) THE STATEMENT IS INCONSISTENT WITH HIS TESTIMONY AT THE HEARING OR TRIAL, AND
- (b) THE WITNESS IS SUBJECT TO CROSS-EXAMINATION CONCERNING THE STATEMENT, AND

(C) THE STATEMENT NARRATES, DESCRIBES, OR EXPLAINS AN EVENT OR CONDITION OF WHICH THE WITNESS HAD PERSONAL KNOWLEDGE.

THE STATUTE REQUIRES THAT IN ORDER FOR A PRIOR INCONSISTENT STATEMENT TO BE ADMISSIBLE, IT MUST PERTAIN TO AN EVENT OR CONDITION OF WHICH THE WITNESS HAD PERSONAL KNOWLEDGE. THE ILLINOIS SUPREME COURT FAILED TO UPHOLD THEIR OWN INTERPRETATION OF SECTION 115-10.1, HOLDING THAT "THE PRIOR INCONSISTENT STATEMENT IS NOT ADMISSIBLE UNLESS THE WITNESS ACTUALLY PERCEIVED THE EVENTS THAT ARE THE SUBJECT OF THE STATEMENT OR ADMISSION." PEOPLE V. SIMPSON, 2015 IL 116512, 32.

HERE, THERE WAS NO INDICATION IN THE HANDWRITTEN STATEMENT THAT JOHNSON HAD PERSONAL KNOWLEDGE OF ANY "BEEF" BETWEEN MEMBERS OF KIZER'S FAMILY AND BODEY COOK (SEE, PEOPLE'S EXHIBIT 44, FF 100, 105-108). AS A RESULT, THE ASSERTION MADE IN JOHNSON'S HANDWRITTEN STATEMENT TO THAT EFFECT IS NOTHING MORE THAN DOUBLE HEARSAY (IT IS HEARSAY WITHIN THE OUT-OF-COURT STATEMENT), AND IT IS CLEARLY INADMISSIBLE. THE ILLINOIS SUPREME COURT FAILURE TO CORRECT THE OBVIOUS IS IN DIRECT CONFLICT WITH THE

ILLINOIS SUPREME COURT'S OWN PRECEDENT.

A3. THE APPELLATE COURT INCORRECTLY HELD THAT THE HEARSAY WITHIN HEARSAY WAS ADMISSIBLE TO IMPEACH JOHNSON'S CREDIBILITY. AND THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE OBVIOUS.....

THE APPELLATE COURT FURTHER INCORRECTLY HELD THAT JOHNSON'S STATEMENT THAT KIZER'S FAMILY HAD A "BEEF" WITH COOK WAS ADMISSIBLE AS IMPEACHMENT EVIDENCE. (A. 17-18)

AS A THRESHOLD MATTER, NO LIMITING INSTRUCTION WAS GIVEN INFORMING THE JURY THAT THE STATEMENT ABOUT A "BEEF" COULD ONLY BE USED AS BEARING ON JOHNSON'S CREDIBILITY. MORE TO THE POINT, THE STATE EXPLICITLY USED "A OUT-OF-COURT STATEMENT SUBSTANTIVELY TO PROVE MOTIVE. BECAUSE THE STATEMENT IS CLEARLY NOT ADMISSIBLE AS SUBSTANTIVE EVIDENCE, WHETHER THE DOUBLE-HEARSAY COULD THEORETICALLY HAVE BEEN USED STRICTLY AS IMPEACHMENT EVIDENCE IS BESIDE THE POINT.

NEVERTHELESS, THE ILLINOIS SUPREME COURT'S FAILURE TO CORRECT THE APPELLATE COURT'S RULING, THAT THE OUT-OF-COURT STATEMENT WAS ADMISSIBLE TO IMPEACH JOHNSON ALSO DIRECTLY CONTRADICTS THIS.

COURT'S (ILLINOIS SUPREME COURT) PRECEDENT. FOR EXAMPLE, IN PEOPLE V. THOMAS ONE WITNESS, NAMED RHONDA, WAS IMPEACHED WITH A TYPED STATEMENT SHE GAVE TO THE POLICE. (PEOPLE V. THOMAS 178 ILL. 2d 215 236 (1997)). IN THAT STATEMENT RHONDA TOLD THE POLICE "ABOUT A STATEMENT SHE OVERHEARD ANOTHER WITNESS, NAME RICKY MAKE TO THE DEFENDANT." IN ADDRESSING THE ADMISSIBILITY OF RHONDA'S OUT-OF-COURT STATEMENT, THE ILLINOIS SUPREME COURT NOTED AS FOLLOWS;

"THE ADMISSION OF RICKY'S STATEMENT THROUGH RHONDA'S PRIOR INCONSISTENT STATEMENT PRESENTS A HEARSAY WITHIN HEARSAY PROBLEM. THE FIRST HEARSAY STATEMENT IS THE STATEMENT MADE BY RICKY TO DEFENDANT, WHICH WAS OVERHEARD BY RHONDA. ALTHOUGH RICKY'S STATEMENT IS NOT TECHNICALLY BEING INTRODUCED FOR THE PURPOSE OF ITS TRUTH, IT IS STILL HEARSAY BECAUSE ITS PURPOSE IS TO PROVE THE IMPLICIT ASSERTION THAT DEFENDANT TOLD RHONDA ABOUT THE MURDER. THE SECOND HEARSAY STATEMENT IS THE OUT-OF-COURT

STATEMENT RHONDA MADE TO THE
POLICE". (PEOPLE V THOMAS, AT 237)

THE SAME ANALYSIS IS APPLICABLE HERE. THE FIRST HEARSAY STATEMENT IS JOHNSON BEING TOLD ABOUT THE "BEEF" BETWEEN DEFENDANT'S CO-DEFENDANT (BOBEY COOK) AND ROGER KIZER'S FAMILY, WHICH SHOWS JOHNSON'S LACK OF PERSONAL KNOWLEDGE. AND SINCE THE INDIVIDUAL WHO ALLEGEDLY TOLD JOHNSON ABOUT THE "BEEF" WAS NOT PRESENTED, THEIR PERSONAL KNOWLEDGE OF THE ALLEGED "BEEF" IS AT QUESTION ALSO. THE SECOND LAYER OF HEARSAY IS JOHNSON'S HANDWRITTEN OUT-OF-COURT STATEMENT ITSELF. ALTHOUGH AN ARGUABLE HEARSAY EXCEPTION APPLIED TO THE HANDWRITTEN STATEMENT BY VIRTUE OF JOHNSON'S INCONSISTENT TRIAL TESTIMONY, THERE WAS NO SUCH EXCEPTION FOR THE OUT-OF-COURT STATEMENT MADE WITHIN THE HANDWRITTEN STATEMENT.

THE APPELLATE COURT'S JUDGEMENT ON THIS POINT OF LAW IS SIMPLY PATENTLY INCORRECT. AND THE ILLINOIS SUPREME COURT FAILURE TO CORRECT THE OBVIOUS HAS THE INTEGRITY OF THE JUDICIAL SYSTEM AT QUESTION.

A4. THE APPELLATE COURT INCORRECTLY HELD THAT

AND ERROR WAS HARMLESS BECAUSE "ESSENTIALLY THE SAME" EVIDENCE WAS INTRODUCED THROUGH JOHNSON'S GRAND JURY TESTIMONY. AND THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE OBVIOUS....

THE ILLINOIS SUPREME COURT ALSO FAILED TO CORRECT THE ERRONEOUS HOLDING BY THE APPELLATE COURT THAT EVEN IF JOHNSON'S HANDWRITTEN STATEMENT ABOUT A "BEEF" WAS ERRONEOUSLY ADMITTED AS SUBSTANTIVE EVIDENCE, SUCH ERROR WAS HARMLESS BECAUSE "ESSENTIALLY THE SAME" EVIDENCE WAS ADMITTED THROUGH HIS GRAND JURY TESTIMONY, AND THERE IS NO PERSONAL KNOWLEDGE REQUIREMENT FOR GRAND JURY TESTIMONY. (A.18)

THIS DEMONSTRATES THE EXTENT TO WHICH THE ILLINOIS SUPREME COURT FAILED TO GRASP THEIR OWN RULES CONCERNING THE ADMISSION OF HEARSAY, OR SIMPLY NEGLECTED THEM. SECTION 115-10.1(C)(1) DOES NOT RELAX THE GENERAL RULE AGAINST HEARSAY CONTAINED WITHIN A PRIOR INCONSISTENT STATEMENT. PEOPLE V. LOFTON, 2015 IL APP (2d) 130135, 32, AND SEE ALSO PEOPLE V. SANGSTER, 2014 IL APP (1st) 113457, 85 (NOTING THAT SECTION 115-10.1 DOES NOT ABROGATE OTHER RULES OF EVIDENCE, INCLUDING THE BAN ON DOUBLE HEARSAY.)

THUS, EVEN IF HEARSAY EVIDENCE OF MOTIVE HAD BEEN TESTIFIED TO BY JOHNSON AT THE GRAND JURY, IT STILL WOULD HAVE BEEN INADMISSIBLE AT DEFENDANT'S TRIAL.

ADDITIONALLY, THE APPELLATE COURT'S CONCLUSION THAT JOHNSON'S STATEMENT ABOUT A "BEEF" WAS "ESSENTIALLY THE SAME EVIDENCE" PROPERLY INTRODUCED THROUGH HIS GRAND JURY TESTIMONY IS FACTUALLY INCORRECT. THE ONLY PORTIONS OF JOHNSON'S GRAND JURY TESTIMONY ADMITTED AT TRIAL RELATED TO JOHNSON'S DIRECT KNOWLEDGE OF WHAT HE PURPORTEDLY OBSERVED THE NIGHT OF THE SHOOTING. (EE. 126-130). THUS EVEN IF JOHNSON'S TRIAL TESTIMONY COULD BE IMPEACHED WITH GRAND JURY TESTIMONY ABOUT WHAT HE HEARD ANOTHER PERSON SAY OUT-OF-COURT, NO SUCH GRAND JURY TESTIMONY WAS ELICITED AT TRIAL.

A5. THE APPELLATE COURT ERRED IN HOLDING THAT THE EVIDENCE WAS NOT CLOSELY BALANCED, AND THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE OBVIOUS...

TO SEE THAT THE EVIDENCE WAS CLOSELY BALANCED ONE NEED LOOK NO FURTHER THAN THE JURY DELIBERATIONS. THE JURY TWICE INFORMED THE COURT THAT IT WAS DEADLOCKED AND IT ASKED THE COURT TO DEFINE REASO-

NABLE DOUBT BEFORE CONVICTING DEFENDANT. THIS ALONE IS MORE THAN SUFFICIENT TO DEMONSTRATE THE CLOSENESS OF THE EVIDENCE AND THAT THE ERRONEOUS ADMISSION OF HEARSAY TO SHOW MOTIVE UNFAIRLY THREATENED TO TIP THE SCALES OF JUSTICE AGAINST DEFENDANT.

QUOTING PEOPLE V. LEE 303 ILL. APP. 3D 356 362 1ST DIST 1999 "HERE, WE MUST VIEW THE EVIDENCE AS BEING CLOSELY BALANCED BASED UPON THE FACT THAT THE JURY WAS DEADLOCKED FOR SEVERAL HOURS AND HAD ON THREE OCCASIONS INDICATED THAT IT COULD NOT REACH A UNANIMOUS VERDICT". DEFENDANT'S JURY DELIBERATED A TOTAL OF 16 HOURS, AFTER SIX HOURS OF DELIBERATION THE JURORS STATED "WE ARE HELPLESSLY DEADLOCKED ON THEIR DECISIONS FAR AS THE VERDICT" (HHH 180) THE JURORS ALSO ASKED THE COURT COULD REASONABLE DOUBT BE DEFINED FOR THEM. IN WHICH THE COURT EXPLAINED SIMPLY IT COULD NOT BE DEFINED AFTER BEING INSTRUCTED WITH THE PRIN INSTRUCTION, 13 HOURS INTO THE DELIBERATION WHICH IS 7 HOURS AFTER THE JURORS FIRST WRITTEN STATEMENT OF THEIR INABILITY TO REACH AN UNANIMOUS VERDICT. THE JURORS WROTE A SECOND STATEMENT STATING —

"AGAIN THEY ARE HELPLESSLY DEADLOCKED ON THEIR DECISIONS FAR AS THE VERDICT".
(II 17-18)

IN WHICH THE TRIAL COURT REQUESTED THE JURY TO GIVE A TALLY OF THE VOTES CONCERNING THE VERDICT, WITHOUT GIVING THE GUILTY/NOT GUILTY SHOWING. THE JURY RESPONDED THEY WERE AT 10 TO 2. (II 19) THE TRIAL COURT ASK THE JURORS TO CONTINUE TO DELIBERATE, WHERE 3 HOURS LATER (16 HOURS TOTAL) THE JURY FOUND THE DEFENDANT GUILTY.

CASE PRECEDENT DICTATES THAT WHERE A JURY, THROUGH ITS COMMUNICATIONS WITH THE TRIAL COURT, EXPRESSES DOUBT AS TO THE DEFENDANT'S CULPABILITY, THE EVIDENCE IS CLOSELY BALANCED. PEOPLE V. MOREN, 308 ILL. APP. 3d 722, 724 2ND DIST. 1999, STATES "HOLDING THAT JURY VIEWED EVIDENCE AS CLOSELY BALANCED BASED ON HAVING BEEN DEADLOCKED"; PEOPLE V. AGUIRRE, 291 ILL. APP. 3d 1020 1035 2ND DIST 1997, STATES "HOLDING THAT EVIDENCE WAS CLOSELY BALANCED WHERE JURY REPORTED BEING DEADLOCKED 10-2"; PEOPLE V. PALMER, 125 ILL. APP. 3d 703, 712 4TH DIST 1984 "HOLDING THAT LENGTH OF JURY DELIBERATIONS AND JURY NOTE DEMONSTRATED CLOSELY BALANCED NATURE OF EVIDENCE". THOUGH DEFENDANT BROUGHT THIS PRECEDENT TO THE APP-

APPELLATE COURT'S ATTENTION, IT DID NOTHING TO DISTINGUISH THE LEGAL PRINCIPLE SET FORTH IN THESE CASES. THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE APPELLATE COURT'S FAILURE TO ACKNOWLEDGE MY ARGUMENT.

INSTEAD OF ACTUALLY REVIEWING MY (DEFENDANT'S) ARGUMENT CONCERNING THE CLOSENESS OF THE EVIDENCE, THE APPELLATE COURT MADE CREDIBILITY DETERMINATIONS AND IGNORED THE SERIOUS INCONSISTENCIES AND FLAWS IN THE EYEWITNESS TESTIMONY TO FIND THAT THE EVIDENCE WAS NOT CLOSELY BALANCED.

FOR EXAMPLE, THE APPELLATE COURT QUESTIONED THE CREDIBILITY OF ROMANIA BOOKER'S ALIBI TESTIMONY BECAUSE SHE DID NOT PROVIDE HER ALIBI INFORMATION IMMEDIATELY TO THE POLICE (A. 23). YET THE COURT WHOLLY IGNORED THE STATE'S WITNESSES' FAILURE TO REMAIN AT THE SCENE AND REPORT THEIR PUTATIVE KNOWLEDGE OF THE SHOOTING IMMEDIATELY TO THE POLICE.

IT IS WELL ESTABLISHED THAT DETERMINATIONS REGARDING WITNESS CREDIBILITY, THE WEIGHT TO BE GIVEN WITNESS TESTIMONY, AND THE REASONABLE INFERENCES TO BE DRAWN FROM THE EVIDENCE ARE THE RESPONSIBILITY OF THE TRIER OF FACT. PEOPLE V. FIV.

RB4, 138 ILL.2d 434, 455 (1990). HERE, IN THE DEFENDANT'S CASE THE JURY CLEARLY QUESTIONED THE CREDIBILITY AND/OR RELIABILITY OF THE STATE'S EYEWITNESS TESTIMONY BASED ON ITS DIFFICULTY REACHING A VERDICT. THE APPELLATE COURT SHOULD NOT BE PERMITTED TO USURP THE JURY'S ROLE BY ASSESSING THE CREDIBILITY OF THE VARIOUS WITNESSES SIMPLY TO AVOID THE APPLICATION OF PLAIN ERROR WHERE IT OBVIOUSLY EXISTS. AND THE ILLINOIS SUPREME COURT'S FAILURE TO CORRECT THE OBVIOUS MUST NOT STAND, BECAUSE IT IS DEFENDANT'S DUE PROCESS TO BE GRANTED A FAIR AND IMPARTIAL HEARING AND OR TRIAL.

2. DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHERE HIS ATTORNEY FAILED TO OBJECT TO THE ADMISSION OF EVIDENCE OF MOTIVE BASED ON LACK OF FOUNDATION, THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE ERRONEOUS RULING BY THE APPELLATE COURT.....

ILLINOIS SUPREME COURT FAILED TO CORRECT THE APPELLATE COURT'S ERRONEOUS RULING THAT DEFENDANT'S COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT TO THE STATE'S EYEWITNESS SHERMAN JOHNSON'S HANDWRITTEN STATEMENT AND IN-COURT TESTIMONY ABOUT

HEARSAY EVIDENCE DURING TRIAL. THE APPELLATE COURT HELD THAT THE "HEARSAY EVIDENCE WAS PROPERLY ADMITTED, THUS THE DEFENDANT WAS NOT PREJUDICE BY HIS COUNSELOR NOT OBJECTING TO THE PROPERLY ADMITTED HEARSAY EVIDENCE. (A.28-29)

THE ILLINOIS SUPREME COURT'S FAILURE TO CORRECT THIS LEGALLY AND FACTUALLY INCORRECT HOLDING HAS EXTREMELY PREJUDICE THE DEFENDANT. SIMPLY BECAUSE DEFENDANT CANNOT FURTHER EXHAUST THIS ISSUE ON A POST-CONVICTION DUE TO "RES JUDICATA". SO, AS STRESSED IN ISSUE A2 ABOVE ONCE THE MISAPPLIED LAW CONCERNING 725 ILCS 5/115-10.1 IS CORRECTED AND THIS COURT PROPERLY ANALYZES THE EVIDENCE AGAINST AND FOR DEFENDANT. THIS COURT WILL SEE THAT DEFENDANT HAS MET THE BURDEN THAT THIS COURT HAS ENFORCED THROUGH THE STRICKLAND TEST, SEE "STRICKLAND V. WASHINGTON 406 U.S. 668, 104 S. CT. 2052, 80 U.S. 2d 674 (1984) SO, FOR THE SAME REASONS ARGUED IN ISSUES A2 AND A3 ADDRESSING THE MISAPPLIED LAW CONCERNING HEARSAY, AND ISSUE A5 ADDRESSING THE ERRONEOUS RULING THAT DEFENDANT'S EVIDENCE WAS OVERWHELMING. IT IS CLEAR TO SEE ERROR EXISTED CONCERNING

THE ADMISSION OF THE HEARSAY AND DEFENDANT TRIAL COUNSELOR FAILED TO OBJECT TO THE INADMISSIBLE HEARSAY.

FURTHERMORE, IT IS ALSO CLEAR TO SEE THAT THE EVIDENCE PRESENTED AGAINST DEFENDANT, ALONG WITH THE EVIDENCE PROVIDED BY DEFENDANT SHOULD BE DEFINITELY DEEMED CLOSELY BALANCED. SEE PEOPLE V. JOHNSON 2012 IL APP (1ST) 091730 PARAGRAPH 46-47 FOR SUPPORT OF DEFENDANT'S ARGUMENT. ONCE THOROUGHLY SOUGHT THROUGH THERE IS NO QUESTION IN TRIAL COUNSEL'S INEFFECTIVENESS DEFINITELY TIPPING THE SCALES IN REGARDS TO THE JURY'S FINDING THE DEFENDANT GUILTY AND THERE IS NO LEGAL OR FACTUAL JUSTIFICATION FOR THE ILLINOIS SUPREME COURT'S FAILURE TO CORRECT THE OBVIOUS. SO FOR THE REASONS STATED ABOVE THE DEFENDANT RESPECTFULLY REQUEST THAT THIS COURT CORRECT THIS ERROR AND GRANT DEFENDANT PROPER RELIEF.

3. THE TRIAL COURT ERREA BY NOT APPOINTING DEFENDANT AN ATTORNEY FOLLOWING HIS POST-TRIAL CLAIM OF INEFFECTIVE ASSISTANCE, AND THE MANNER IN WHICH THE TRIAL COURT APPLIED "KRANKEL" AND ITS PROGENY DENIED DEFENDANT DUE PROCESS OF LAW....

FOLLOWING TRIAL, DEFENDANT FILED A

WRITTEN MOTION ALLEGING THAT HIS TRIAL ATTORNEY WAS INEFFECTIVE FOR, INTER ALIA (1) FAILING TO CALL THREE ADDITIONAL ALIBI WITNESSES, AND (2) FAILING TO PRESENT HIS CELL PHONE RECORDS AND/OR OBTAIN GLOBAL POSITIONING SYSTEM (G.P.S.) DATA THAT WOULD HAVE BOLSTERED HIS ALIBI. (CC 409-20)

THE TRIAL COURT CONDUCTED A KRANKEL HEARING ON DEFENDANT'S CLAIMS. (QQ 7-34). DEFENDANT INFORMED THE COURT THAT HE HAD GIVEN HIS ATTORNEY THE NAMES OF THREE ADDITIONAL WITNESSES WHO WOULD SUPPORT HIS ALIBI; "SHARRIA CROCKETT", "DONNA ALEXANDER", AND "NELVA BROWN". (QQ 12-13). DEFENDANT STATED THAT HIS ATTORNEY SUBPOENAED HIS PHONE RECORDS WHICH WERE BILLED IN DEFENDANT'S NAME. (QQ 15). DEFENDANT FURTHER STATED THAT HIS ATTORNEY KNEW THOSE RECORDS SHOW HIS PHONE IN USAGE WITH HIS MOTHER'S PHONE AT THE TIME OF THE SHOOTING.

DEFENDANT FURTHER EXPLAINED THAT HE REQUESTED THAT HIS ATTORNEY SUBPOENA G.P.S. RECORDS SHOWING THE LOCATION OF HIS PHONE AT THE TIME OF THE SHOOTING. (QQ 16). DEFENDANT ARGUED THAT ANY SUCH RECORDS WOULD HAVE CORROBORATED HIS ALIBI AND DEMONSTRATED THAT HE WAS NOT PRESENT IN THE

AREA OF THE SHOOTING, AT THE TIME IT OCCURRED. TRIAL COUNSEL NEVER ACKNOWLEDGED THAT THESE RECORDS WERE EVER SOUGHT OUT, OR SHOWED SHE ATTEMPTED TO RETRIEVE THE RECORDS.

DURING THE HEARING THE TRIAL COURT INVITED TRIAL COUNSEL TO REBUT DEFENDANT'S CLAIMS. (QQ 24) TRIAL COUNSEL INFORMED THE COURT THAT SHE DID NOT THINK CROCKETT WAS A CREDIBLE WITNESS. (QQ 24-25). SHE ALSO TOLD THE COURT THAT DONNA ALEXANDER TOLD HER THAT SHE WENT TO BED AT 7:00 P.M. AND DID NOT SEE DEFENDANT FOR THE REMAINDER OF THE EVENING. COUNSEL EXPLAINED THAT HER DECISIONS NOT TO CALL THOSE WITNESSES WERE TRIAL STRATEGY.

AS TO MELVA BROWN AND DEFENDANT'S PHONE RECORDS, TRIAL COUNSEL INFORMED THE COURT THAT "THERE WAS SOME EVIDENCE THAT A PHONE CALL WAS MADE FROM A PHONE NUMBER TO ANOTHER PHONE NUMBER." (QQ 26) HOWEVER, WITHOUT ANY REAL EXPLANATION, TRIAL COUNSEL OPINED THAT THE EVIDENCE DID NOT SUPPORT DEFENDANT'S ALIBI, AND THAT IN ORDER FOR THE PHONE RECORDS TO BE ADMITTED INTO EVIDENCE DEFENDANT WOULD HAVE HAD TO TESTIFY.

DEFENDANT DISPUTED TRIAL COUNSEL'S CHARACTERIZATION OF WHAT OCCURRED AND

WHAT THE WITNESSES TOLD COUNSELOR. (QQ 30-33) HOWEVER, DEFENDANT WAS NOT PERMITTED TO CROSS EXAMINE HIS TRIAL ATTORNEY ON HER REPRESENTATIONS TO THE COURT.

NEITHER THE DEFENDANT OR TRIAL COUNSEL PROVIDED ANY DOCUMENTS OR EVIDENCE TO SUPPORT THEIR ARGUMENTS. YET THE TRIAL COURT MADE FACTUAL FINDINGS, THE COURT HELD THAT DEFENSE COUNSEL DID TALK TO CROCKETT AND THAT CROCKETT TOLD HER SHE WAS NOT WITH DEFENDANT THE NIGHT OF THE SHOOTING. (QQ 36) THE COURT FURTHER HELD THAT DONNA ALEXANDER, TOLD DEFENDANT'S COUNSEL THAT SHE WAS AT HOME THE DAY OF THE SHOOTING, BUT WENT TO BE BED AT APPROXIMATELY 7:00 P.M. AND DID NOT SEE DEFENDANT THEREAFTER. (QQ 37) THE COURT ALSO CONCLUDED THAT DEFENDANT'S ATTORNEY "WAS ACCURATE IN ASSESSING THE PHONE RECORDS" IN THAT FOR THEM "TO COME INTO EVIDENCE DEFENDANT WOULD HAVE HAD TO HIT THE STAND" BASED ON ITS FINDINGS THE COURT DENIED DEFENDANT'S MOTION FOR INEFFECTIVE ASSISTANCE OF COUNSEL. (QQ 34-48)

DEFENDANT THEN FILED A MOTION TO RECONSIDER THE FINDINGS ON THE INEFFECT-

IVE ASSISTANCE OF COUNSEL MOTION. DEFENDANT PROVIDED AFFIDAVITS FROM MELVA BROWN AND DONNA ALEXANDER. (VV 13) DEFENDANT ALSO PROVIDED THE CELLULAR PHONE RECORDS BILLED IN DEFENDANT'S NAME, WHICH SHOWS DEFENDANT'S CELLULAR DEVICE IN USAGE DURING THE "EXACT TIME" THE MURDER WAS TAKING PLACE. (SEE APPENDIX FOR AFFIDAVIT AND PHONE RECORDS). MELVA BROWN THROUGH AFFIDAVIT SWORE THAT SHE WAS IN FACT TALKING TO DEFENDANT AND ROMANIA BOOKER OFF DEFENDANT'S PHONE. THIS TESTIMONY DEFINITELY SUPPORTS DEFENDANT'S DEFENSE. **CONSIDERING**, DEFENDANT WAS ON THE PHONE TALKING TO HIS MOTHER THE EXACT TIME THE MURDER WAS HAPPENING. AND DEFENDANT'S MOTHER TALKED TO MS. BOOKER OFF OF DEFENDANT'S PHONE WHICH BOLSTERS DEFENDANT'S ALIBI THAT HE WAS AROUND MS. BOOKER, MR. ALEXANDER (BOOKER'S FATHER), AND MS. ALEXANDER (MR. ALEXANDER'S MOTHER). STILL THE TRIAL COURT HELD DEFENDANT'S CLAIMS WERE MERITLESS.

THE APPELLATE COURT ERRONEOUSLY AFFIRMED THE TRIAL COURT'S RULING STATING, DEFENDANT WOULD HAVE HAD TO TESTIFY TO INTRODUCE HIS CELLULAR PHONE RECORDS. THIS IS FALSE AND HAS NO LEGAL OR FACTUAL

SUPPORT. PHONE RECORDS ARE BUSINESS RECORDS. A BUSINESS RECORD IS A "MEMORANDUM, REPORT, RECORD, OR DATA COMPILATION, IN ANY FORM, OF ACTS, EVENTS, CONDITIONS, OPINIONS, OR DIAGNOSES MADE AT OR NEAR THE TIME BY OR FROM INFORMATION TRANSMITTED BY A PERSON WITH KNOWLEDGE. IF KEPT IN THE COURSE OF A REGULARLY CONDUCTED BUSINESS ACTIVITY, AND IF IT WAS THE REGULAR PRACTICE OF THAT ACTIVITY TO MAKE THE MEMORANDUM, REPORT RECORD OR DATA COMPILATION ALL AS SHOWN BY THE TESTIMONY OF THE CUSTODIAN OR OTHER QUALIFIED WITNESSES". (SEE ILL. R. EVID. 803 (6))

"THE FOUNDATION FOR A BUSINESS RECORD MAY BE ESTABLISHED THROUGH THE TESTIMONY OF ANY PERSON FAMILIAR WITH THE BUSINESS AND ITS MODE OF OPERATION, INCLUDING THE CUSTODIAN OF THE RECORD". RE-ESTATE OF WELAND, 338 ILL. APP. 3d 585, 600 2ND DIST 2003. THUS, IT IS CLEAR THAT DEFENDANT WOULD NOT HAVE TO TESTIFY IN ORDER FOR HIS CELLULAR PHONE RECORDS TO BE ADMITTED. YET, THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE OBVIOUS WHEN MADE AWARE OF THE LEGAL MISTAKES.

FURTHERMORE, IN REGARDS TO DONNA AL-

ALEXANDER, THE AFFIDAVIT SUBMITTED BY DEFENDANT CLEARLY IS IN CONTRADICTION WITH THE TRIAL COUNSEL'S REASONING FOR NOT PRESENTING DONNA ALEXANDER. (SEE AFFIDAVIT ATTACHED IN APPENDIX) YET, THE TRIAL COURT DID NO FURTHER INQUIRY ON THE MATTER AT HAND THE TRIAL COURT JUST SIMPLY TOOK THE TRIAL COUNSEL'S EXCUSE FOR NOT PRESENTING DONNA ALEXANDER AS FACT AND DENIED DEFENDANT'S ISSUE REGARDING INEFFECTIVE ASSISTANCE OF COUNSEL. WHICH THE APPELLATE COURT ADOPTED IN THEIR OPINION. (CA: 33 PARAGRAPH 81) THE ILLINOIS SUPREME COURT WAS MADE AWARE OF THE EVIDENCE THAT CONFLICTS WITH THE JUDGEMENT. (SEE DEFENDANT'S P.L.A.). YET THE COURT DID NOTHING TO CORRECT OR REVERSE THE OBVIOUS.

B. THE APPELLATE COURT ERRED IN HOLDING THAT THE TRIAL COURT PROPERLY APPLIED KRANKEL. THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE OBVIOUS....

- THE APPELLATE COURT HELD THAT THE MANNER IN WHICH THE TRIAL COURT CONDUCTED DEFENDANT'S KRANKEL HEARING DID NOT TURN IT INTO AN ADVERSARIAL PROCEEDING. THE COURT DID NOT JUSTIFY ITS RULING, OTHER

THAN TO HOLD THAT "SOME INTERCHANGE BETWEEN THE TRIAL COURT AND TRIAL COUNSEL REGARDING THE FACTS AND CIRCUMSTANCES SURROUNDING THE ALLEGEDLY INEFFECTIVE REPRESENTATION IS PERMISSIBLE AND USUALLY NECESSARY IN ASSESSING WHAT FURTHER ACTION, IF ANY, IS WARRANTED ON A DEFENDANT'S CLAIM." (A. 31-32) THE APPELLATE COURT'S CONCLUSORY HOLDING IS INCORRECT, AND THE ILLINOIS SUPREME COURT'S FAILURE TO CORRECT THE OBVIOUS HAS DENIED DEFENDANT HIS DUE PROCESS TO A FAIR AND IMPARTIAL TRIAL.

FOLLOWING A POST-TRIAL CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, NEW COUNSEL SHOULD BE APPOINTED IF THE ALLEGATIONS SHOW "POSSIBLE" NEGLIGENCE OF THE CASE. PEOPLE V. MOORE 207 ILL. 2d 68, 77-78 (2003). NEWLY APPOINTED COUNSEL CAN INDEPENDENTLY EVALUATE THE DEFENDANT'S CLAIM AND WOULD AVOID THE CONFLICT OF INTEREST THAT TRIAL COUNSEL WOULD EXPERIENCE IF TRIAL COUNSEL HAD TO JUSTIFY HIS OR HER ACTIONS CONTRARY TO THE DEFENDANT'S POSITION. PEOPLE V. CHAPMAN 194, ILL. 2d 186, 230 (2000)

A "KRANKEL" HEARING IS TO BE NEUTRAL AND NON-ADVERSARIAL. PEOPLE V.

JULY 2014 IL 117142, 38. THE VERY NARROW PURPOSE KRANKEL SERVES IS TO ALLOW THE TRIAL COURT TO DECIDE WHETHER TO APPOINT INDEPENDANT COUNSEL TO ARGUE THE DEFENDANT'S PROSE' POST-TRIAL INEFFECTIV ASSISTANCE OF COUNSEL CLAIMS, PEOPLE V. - PATRICK 2011 IL 111666, 39.

HERE, THE APPELLATE COURT ERRED BY HOLDING THAT THE TRIAL COURT DID NOT TURN DEFENDANT'S KRANKEL HEARING INTO AN ADVERSARIAL PROCEEDING. ADVERSARIAL IS DEFINED AS "INVOLVING TWO PEOPLE OR TWO SIDES WHO OPPOSE EACH OTHER"..... "ADVERSARIAL" MERRIAM-WEBSTER.COM - 2011 ([HTTP://WWW.MERRIAM-WEBSTER.COM](http://www.merriam-webster.com) (08 MAY 2017)). DEFENDANT AND HIS TRIAL ATTORNEY PRESENTED DIAMETRICALLY OPPOSED VIEWS OF THE CIRCUMSTANCES UNDER WHICH TRIAL COUNSEL OSTENSIBLY MADE DECISIONS NOT TO CALL CERTAIN WITNESSES AND/OR INTRODUCE CERTAIN EVIDENCE. THE TRIAL COURT MADE FACTUAL FINDINGS CONTRARY TO DEFENDANT'S ALLEGATIONS BASED ON TRIAL COUNSEL'S REPRESENTATIONS. THIS IS THE VERY ESSENCE OF AN ADVERSARIAL PROCEEDING.

MOREOVER, THE TRIAL COURT CLEARLY ERRED IN FAILING TO APPOINT INDEPENDANT COUNSEL TO EVALUATE AND PRESENT DEFENDANT'S



NDANT'S CLAIMS. DEFENDANT ALLEGED THAT THERE WERE ADDITIONAL ALIBI WITNESSES AND PHONE RECORDS THAT WOULD HAVE SUPPORTED HIS ALIBI DEFENSE. HE SUBMITTED AFFIDAVITS FROM THOSE WITNESSES, AND HE INTRODUCED PHONE RECORDS SHOWING THAT HIS PHONE WAS IN USE AT THE TIME OF THE SHOOTING. AT A MINIMUM THIS SHOWS "POSSIBLE" NEGLIGENCE OF HIS CASE ON THE PART OF TRIAL COUNSEL. (SEE APPENDIX)

- B1. THE MANNER IN WHICH THE TRIAL COURT APPLIED "KRANKEL" DENIED DEFENDANT DUE PROCESS, ALONG WITH THE APPELLATE COURT'S AFFIRMANCE OF THE ERRONEOUS RULING. THE APPELLATE COURT AND THE ILLINOIS SUPREME COURT FAILED IN CORRECTING THE OBVIOUS.....

THE CONSTITUTION OF THE STATE OF ILLINOIS PROVIDES, "NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW." - ILL. CONST. 1970, ARTICLE 1 SECTION 2; ALSO SEE U.S. CONST. AMEND. XIV. THE ESSENCE OF DUE PROCESS IS BASED ON THE CONCEPT OF FUNDAMENTAL FAIRNESS. VAN HARKEN V. CITY OF CHICAGO, 305 ILL. APP. 3d. 972, 982 1ST DIST 1999. DUE PROCESS ENTITLES A PERSON TO RECEIVE A FAIR HEARING BEFORE A FAIR TRIBUNAL.

A FUNDAMENTAL REQUIREMENT OF DUE PROCESS IS THE OPPORTUNITY TO BE HEARD AT A MEANINGFUL TIME AND IN A MEANINGFUL MANNER. ARMSTRONG V. MANZO, 380 U.S. 545, 552 (1965). DEFENDANT WAS COMPLETELY DEPRIVED THE OPPORTUNITY TO BE HEARD IN A MEANINGFUL WAY. HE WAS NOT APPOINTED AN ATTORNEY; HE WAS NOT ALLOWED TO CROSS EXAMINE HIS TRIAL ATTORNEY'S ADVERSARIAL TESTIMONY; AND HE WAS NOT ALLOWED TO PRESENT CONTRARY EVIDENCE. DEFENDANT WAS THEREFORE DENIED DUE PROCESS OF LAW — AS PROVIDED FOR IN BOTH THE ILLINOIS AND UNITED STATES CONSTITUTIONS — WHERE HE WAS UNREASONABLY DENIED AN OPPORTUNITY TO ADVANCE HIS CONSTITUTIONAL CLAIM.

B2. THIS COURT SHOULD COMPEL THE ILLINOIS SUPREME COURT TO BRING THE PROCEDURE UNDER KRAMER IN ALIGNMENT WITH THE POST-CONVICTION HEARING ACT, TO PREVENT ANY EQUAL PROTECTION VIOLATIONS.....

THERE IS NO RATIONAL BASIS FOR DISTINGUISHING BETWEEN AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM MADE POST-TRIAL FROM THE CLAIM MADE AFTER A DEFENDANT HAS BEEN SENTENCED. YET, TO THE EXTENT THE TRIAL COURT HERE INCORP-

ECTLY APPLIED KRANKEL, FEWER PROCEDURAL PROTECTIONS ARE AFFORDED THE DEFENDANT WHO MAKES HIS INEFFECTIVE ASSISTANCE CLAIM PRIOR TO SENTENCING THAN THOSE GRANTED A DEFENDANT WHO SEEKS RELIEF UNDER THE POST-CONVICTION HEARING ACT ("THE ACT"). THIS COURT SHOULD THEREFORE GRANT THE INSTANT PETITION TO RECTIFY THIS DISCREPANCY.

AT THE FIRST STAGE OF THE PROCEEDINGS UNDER "THE ACT", A DEFENDANT NEEDED ONLY STATE A "GIST" OF A CONSTITUTIONAL CLAIM. *PEOPLE V. PORTER* 122 ILL. 2d 64, 74 (1988). "THIS STANDARD PRESENTS A LOW THRESHOLD" — *PEOPLE V. JONES* 211 ILL. 2d 140, 144 (2004) REQUIRING ONLY THAT THE PETITIONER PLEAD SUFFICIENT FACTS TO ASSERT AN ARGUABLY CONSTITUTIONAL CLAIM. — *BROWN*, 236 ILL. 2d AT 184 (CITING *PEOPLE V. HODGES*, 234 ILL. 2d 1, 9 (2009)). AT THE FIRST STAGE, A COURT MUST "INDEPENDENTLY" REVIEW THE PETITION, TAKING THE ALLEGATIONS AS TRUE, AND DETERMINE WHETHER THE PETITION IS FRIVOLOUS OR PATENTLY WITHOUT MERIT. "*HODGES*, 234 ILL. 2d AT 10". A PETITIONER'S PETITION IS FRIVOLOUS OR PATENTLY WITHOUT MERIT ONLY IF IT —

"HAS NO ARGUABLE BASIS EITHER IN LAW OR IN FACT."

IF THE COURT DOES NOT DISMISS A PETITION AT THE FIRST STAGE, THE PETITION ADVANCES TO THE SECOND STAGE WHERE COUNSEL IS TO BE APPOINTED TO AN INDIGENT DEFENDANT. IT IS NOT UNTIL A THIRD STAGE EVIDENTIARY HEARING THAT THE TRIAL COURT MAY RESOLVE FACTUAL DISPUTES RAISED BY THE PLEADINGS. PEOPLE V. COLEMAN, 183 ILL. 2d 366, 380-381 (1998).

HERE, ASSUMING THE TRIAL COURT CORRECTLY APPLIED KRANKEL, DEFENDANT WOULD HAVE BEEN MUCH BETTER SERVED BY WAITING TO RAISE HIS INEFFECTIVE ASSISTANCE CLAIMS IN A POST-CONVICTION PETITION. DEFENDANT'S POST-TRIAL MOTION DEMONSTRATED THAT HE WAS "ARGUABLY" DENIED EFFECTIVE ASSISTANCE OF COUNSEL. — PEOPLE V. TATE 2012 IL 112214 (PARAGRAPHS 16-17) "CLAIM OF INEFFECTIVE ASSISTANCE BASED ON FAILURE TO CALL ALIBI WITNESSES NOT FRIVOLOUS OR PATENTLY WITHOUT MERIT". THUS, HAD HIS CLAIM BEEN FILED AS A POST-CONVICTION PETITION, ^{IT} ~~THE~~ WOULD HAVE BEEN ADVANCED TO THE SECOND STAGE. DUE TO THE EVIDENCE PRESENTED BY DEFENDANT DURING POST-TRIAL MOTION FOR

INEFFECTIVE ASSISTANCE OF COUNSEL (SEE APPENDIX FOR EXHIBITS MARKED A TO H FILED BY DEFENDANT). THIS EVIDENCE IS CLEARLY IN CONTRADICTION WITH TRIAL COUNSEL'S ALLEGED STRATEGY OR REASONING FOR NOT PRESENTING THE EVIDENCE. IF THIS ALONE HAD DEFENDANT FILED A POST-CONVICTION PETITION HE WOULD HAVE BEEN APPOINTED COUNSEL AT THE SECOND STAGE.

MOREOVER, HAD DEFENDANT FILED HIS CLAIM IN A POST-CONVICTION PETITION, THE TRIAL COURT WOULD HAVE BEEN PRECLUDED FROM MAKING ASSESSMENTS CONCERNING TRIAL STRATEGY BEFORE APPOINTING DEFENDANT AN ATTORNEY. (PEOPLE V. TATE 2012 IL 112214, PARAGRAPHS 21-22) "ARGUMENTS CONCERNING TRIAL STRATEGY NOT APPROPRIATE AT FIRST STAGE" MORE TO THE POINT, THE TRIAL COURT WOULD NOT HAVE BEEN PERMITTED TO ELICIT EVIDENCE FROM DEFENDANT'S TRIAL ATTORNEY CONTRARY TO DEFENDANT'S ALLEGATIONS. COLEMAN, 183 ILL. 2D AT 385.

BECAUSE DEFENDANT FILED HIS CLAIM POST-TRIAL BUT BEFORE HE WAS SENTENCED, THE TRIAL COURT WAS PERMITTED TO GO BEYOND HIS PLEADINGS, QUESTION

HIS TRIAL ATTORNEY, AND MAKE FACTUAL DETERMINATIONS WITHOUT HAVING APPOINTED DEFENDANT COUNSEL OR HOLDING AN EVIDENTIARY HEARING. HE WAS THEREFORE GRANTED FEWER PROCEDURAL PROTECTIONS THAN HE WOULD HAVE BEEN GRANTED HAD HE RAISED HIS CLAIM IN A POST-CONVICTION PETITION. ADDITIONALLY, THE STATE WILL CERTAINLY ARGUE THAT THE TRIAL COURT'S RULINGS PRECLUDE DEFENDANT FROM RE-RAISING HIS CLAIMS IN A POST-CONVICTION PETITION, SHOULD ONE BE FILED.

IN SHORT, GRANTING DEFENDANT FEWER PROCEDURAL PROTECTIONS BECAUSE HE RAISED HIS CLAIM POST-TRIAL AS OPPOSED TO IN A POST-CONVICTION PETITION IS ARBITRARY AND FUNDAMENTALLY UNFAIR. THIS IS ESPECIALLY TRUE GIVEN THAT DEFENDANT, ACTING PRO SE, WAS NOT ADMONISHED THAT BY ASSERTING HIS CLAIM POST-TRIAL HE WAS FOREGOING THE PROCEDURAL PROTECTIONS AFFORDED BY THE ACT. THIS COURT SHOULD GRANT THE INSTANT PETITION TO BRING KRANKEL IN ALIGNMENT WITH THE "ACT" OR, AT A MINIMUM, HOLD THAT DEFENDANTS SHOULD BE ADMONISHED THAT IN PURSUING THEIR CLAIMS POST-TRIAL THEY ARE GIVING UP THE PROTECTIONS PROVIDED FOR IN THE POST-CONVICTION HEARING ACT.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marcellus A French

Date: JANUARY 2ND 2019

MARCELLUS A. FRENCH

M21081

P.O. BOX 1000

NEWARK IL 62259