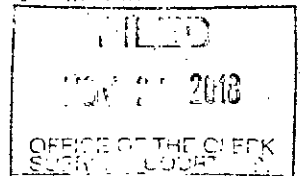


18-8227

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

RODNEY L. COOK — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPEAL FROM THE APPELLATE COURT OF ILLINOIS 1ST JUDICIAL DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RODNEY L. COOK #M-45836
(Your Name)

PO BOX 16010
(Address)

MENARD IL 62259
(City, State, Zip Code)

(None)
(Phone Number)

QUESTIONS PRESENTED

1. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION WHERE THE COURT AFFIRMED THE APPELLATE COURT'S RULING THAT THE STATES USAGE OF HEARSAY TESTIMONY DURING PETITIONERS TRIAL CLOSING ARGUMENTS AS SUBSTANTIVE EVIDENCE WAS NOT PLAIN ERROR?
2. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION WHERE THE COURT AFFIRMED THE APPELLATE COURT'S RULING THAT THE USAGE OF HEARSAY ADMITTED IN PETITIONER'S TRIAL WAS ADMISSIBLE AND JUSTIFIED ACCORDING TO 725 ICS 10-15.1. WHEN CLEARLY THE APPELLATE COURT MISCONSTRUED AND MISAPPLIED THE CITED LAW.
3. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION WHERE THE COURT AFFIRMED THE APPELLATES COURT RULING THAT THE HEARSAY WITHIN HEARSAY WAS ADMISSIBLE TO IMPEACH JOHNSON'S CREDIBILITY?
4. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION WHERE THE COURT AFFIRMED THE APPELLATE COURT'S RULING THAT EVEN IF JOHNSON'S HANDWRITTEN STATEMENT CONCERNING HEARSAY WAS ERRONEOUS, SUCH ERROR WAS HARMLESS BECAUSE "ESSENTIALLY THE SAME EVIDENCE WAS ADMITTED THROUGH JOHNSON'S GRAND JURY TESTIMONY, AND THERE IS NO PERSONAL KNOWLEDGE REQUIREMENT FOR GRAND JURY TESTIMONY?"

5. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION WHERE THE COURT AFFIRMED THE APPELLATE COURT'S RULING THAT THE EVIDENCE WAS NOT CLOSELY BALANCED CONCERNING PETITIONER, WHEN CLEARLY AND FACTUALLY IT WAS?

6. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION WHERE THE COURT AFFIRMED THE APPELLATE COURT'S RULING THAT PETITIONER'S TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT TO EYEWITNESS "SHERMAN JOHNSON'S" HAND WRITTEN STATEMENT AND IN-COURT TESTIMONY ABOUT HEARSAY EVIDENCE DURING PETITIONER'S TRIAL

7. DID THE ILLINOIS SUPREME COURT ABUSE ITS DISCRETION WHERE THE COURT AFFIRMED THE APPELLATE COURT'S RULING THAT THE MANNER IN WHICH THE TRIAL COURT APPLIED "KRAVKE" AND ITS PROGENY DID NOT DENY PETITIONER DUE PROCESS OF LAW, WHEN CLEARLY IT DID

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:

TABLE OF CONTENTS

Options Below PG 1

JURISDICTION PG 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
..... PG 3

STATEMENT OF THE CASE PG 4

REASONS FOR GRANTING THE WRIT PG 5

CONCLUSION PG 32

INDEX TO APPENDICES

APPENDIX A - APPELLATE COURTS OPINION / DENIAL OF REHEARING

APPENDIX B - ILLINOIS SUPREME COURTS DECISION

TABLE OF AUTHORITY

- I. THE TRIAL COURT COMMITTED PLAIN ERROR WHERE IT ALLOWED HEARSAY AND LET THE STATE USE IT DURING CLOSING ARGUMENTS AS SUBSTANTIVE EVIDENCE OF DEFENDANTS GUILT. ... PG 5

PEOPLE V. CAFFEY, 205 ILL 2d 52, 89 (2001)

PEOPLE V. THOMAS, 178 ILL 2d 215, 236 (1997)

... PG 5

PEOPLE V. ENOCH, 122 ILL 2d 176 (1988) ... PG 5

PEOPLE V. AVERETT, 237 ILL 2d 1 (2010) ... PG 5

PEOPLE V. PATKOWSKI, 225 ILL 2d 551 (2007) ... PG 5

PEOPLE V. MUNOZ, 398 ILL App. 3d 455 (2007). (1ST DIST. 2010)

... PG 5

- A. THE TRIAL COURT'S ADMISSION OF THE HEARSAY CONSTITUTES AN ABUSE OF DISCRETION ... PG 5

PEOPLE V. SINGER 256 ILL App 3d 258 (1ST DIST. 1993) ... PG 5

PEOPLE V. SANGSTER 2014 ILL App (1ST) 113457 ... PG 5

PEOPLE V. BOLING 2014 ILL App (4TH) 120634 ... PG 5

- A1. DEFENDANTS TRIAL COUNSEL FAILED TO OBJECT TO THE INADMISSIBLE TESTIMONY. NOR WAS THE ISSUE RAISED POST-TRIAL SO THE ERROR

IS REVIEWED UNDER THE PLAINT ERROR DOCTRINE... PG

PEOPLE V. HERRON 215 IL 2d 167 (2005)... PG

PEOPLE V. JOHNSON 2012 IL App (1st) 091730... PG

A2 THE APPELLATE COURT MISCONSTRUED AND MISAPPLIED 725
ILCS 10-15.1 IN JUSTIFYING THE ADMISSION OF THE HEARSAY...
PG

PEOPLE V. SIMPSON, 2015 IL 116512, 32... PG

A3. THE APPELLATE COURT INCORRECTLY HELD THAT THE HEARSAY WITHIN
HEARSAY WAS ADMISSIBLE TO IMPEACH JOHNSON'S CREDIBILITY...
PG

PEOPLE V. THOMAS 178 IL 2d 215, 236 (1997)... PG

A4 THE APPELLATE COURT INCORRECTLY HELD THAT ANY ERROR WAS
HARMLESS BECAUSE "ESSENTIALLY THE SAME" EVIDENCE WAS INTRODUCED
THROUGH JOHNSON'S GRAND JURY TESTIMONY... PG

PEOPLE V. LOFTON 2015 IL App (2d) 130 135, 32... PG

PEOPLE V. SAUGSTER 2014 IL App (1st) 13457, 85... PG

AS THE APPELLATE COURT ERRED IN HOLDING THAT THE EVIDENCE WAS NOT CLOSELY BALANCE AND THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE OBVIOUS... PG 13

PEOPLE V LEE 363 ILL App 3d 356, 362 1ST DIST 1999... PG 13

PEOPLE V. MOREY 308 ILL App 3d 722, 726 2ND DIST 1994... PG 13

PEOPLE V. AGUIRRE 290 ILL App 3d 1028, 1035 2ND DIST 1997... PG 13

PEOPLE V. PALMER 125 ILL App 3d 703, 712 4TH DIST 1989... PG 13

DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHERE HIS ATTORNEY FAILED TO OBJECT TO THE INADMISSIBLE EVIDENCE OF MOTIVE BASED ON LACK OF FOUNDATION... PG 13

STRICKLAND V. WASHINGTON 4106 U.S. 668 (1984)... PG 13

PEOPLE V. ALBANESE 104 ILL 2d 584 (1984)...

PEOPLE V. RODRIGUEZ 313 ILL App 3d 877 (2ND DIST 2000)... PG 13

PEOPLE V. CARRA 205 ILL 2d 52 (2001)... PG 3

PEOPLE V. HARRIS 333 ILL App 3d 741 (1ST DIST 2002)... PG 13

2 THE TRIAL COURT ERRED 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... PG 15

PEOPLE V. KRANKEL, 102 ILL 2d 181 (1984)... PG 15

PEOPLE V. CARDONA, 2013 IL 114076... PG

PEOPLE V. MOORE, 207 IL 2d 68 (2003)... PG

PEOPLE V. CHAPMAN, 194 IL 2d 186 (2000)... PG

PEOPLE V. CARTER, 377 IL App 3d 91 (1ST DIST 2007)... PG

THE APPELLATE COURT ERRED IN HOLDING THAT THE TRIAL COURT
PROPERLY APPLIED KRANKEL... PG

PEOPLE V. STANLEY, 369 IL App 3d 441 (1ST DIST 2006) PG

PEOPLE V. BOUNDS, 182 IL 2d (1998)... PG

BOUNDS V. SMITH, 430 US 817 (1977)... PG

PEOPLE V. WASHINGTON, 101 IL 2d 104 (1984)... PG

THE MANNER IN WHICH THE TRIAL COURT APPLIED KRANKEL
DENIED DEFENDANT DUE PROCESS, ALONG WITH THE APPELLATE COURT'S
AFFIRMANCE OF THE ERRONEOUS RULING... PG

PEOPLE V. SNOW, 2012 IL App (4TH) 110415... PG

PEOPLE V. JOILY, 2014 IL 117142... PG

PEOPLE V. PATRICK, 2011 IL 111666... PG

PEOPLE V. HALL, 217 IL 2d 524 (2005)... PG

THIS COURT SHOULD COMPEL THE ILLINOIS SUPREME COURT TO
BRING THE PROCEDURE UNDER KRANKEL IN ALIGNMENT WITH THE POST

CONVICTION HEARING ACT TO PREVENT ANY EQUAL PROTECTION VIOLATIONS ... PG 18

PEOPLE V. PORTER 122 ILL 2d 64, 74 (1988) ... PG 18

PEOPLE V. JONES 211 ILL 2d 140, 144 (2004) ... PG 18

PEOPLE V. HODGES, 234 ILL 2d 1, 9 (2007) ... PG 18

PEOPLE V. TATE -2012 IL 1/2214 ... PG 18

PEOPLE V. COLEMAN, 183 ILL 2d 366, 380-381 (1998) ... PG 18

3. THE ILLINOIS SUPREME COURT ERRED BY NOT ACKNOWLEDGING DEFENDANT'S HEARING ON HIS MOTION TO RECONSIDER...

PEOPLE V. DAVIS, 203 ILL App 3d 129, 140-141 (1ST DIST 1990)

MOORE V. HOLDHAN, 294 US 103, 55 S. CT. 340, 29 L. ED. 291 PG 19

4. DEFENDANT WAS DENIED FUNDAMENTAL FAIRNESS WITHIN HIS DIRECT APPEAL PROCEEDINGS PG 19

5. DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL PG 13

STRIKLAND V. WASHINGTON (1984) 466 U.S. 668, 104 S. CT. 2052, 80 P. 2D 1074 PG 13

6. TRIAL COURT ERRED WHEN THEY PREVENTED DEFENDANT COUNSEL FROM

QUESTIONING JUDGE "J.W." ABOUT HER EXPLICIT AREAS OF BIAS
AND PREJUDICE (R. BB ~~84~~ 85, 155-57).

PEOPLE V. BUSS, 187 ILL.2d 144, 175-76 (1999) PG 28

PEOPLE V. SORENSON, 196 ILL.2d 425, 431 (2001) PG 28

PEOPLE V. CLOUTIER 156, ILL.2d 483, 495-96 (1993) PG 28

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 2018 IL App (1st) 123471; 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 2018 IL App (1st) 142134; 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 09-76-18.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: NO REHEARING WAS FILED, 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____. NO EXTENSION WAS FILED OR GRANTED

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

¹ CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

• PETITIONER'S 6TH AMENDMENT OF THE UNITED STATES CONSTITUTION WAS VIOLATED WHERE TRIAL COUNSEL FAILED TO GIVE PETITIONER EFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL PROCEEDINGS.

• PETITIONER'S 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION (SECTION 1) WAS VIOLATED WHERE TRIAL JUDGE MARY M. BROSNIHAN FAILED TO CONDUCT A PROPER KRANKEL HEARING CONCERNING PETITIONER'S INEFFECTIVE COUNSEL CLAIM. THEREFORE DEPRIVING PETITIONER DUE PROCESS OF LAW, ALONG WITH EQUAL PROTECTION OF LAW.

• PETITIONER'S 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION (SECTION 1) WAS VIOLATED WHERE APPELLATE JUSTICE LAMPKIN ALLOWED AND AGREED WITH EVIDENCE THAT IS NOT SUPPORTED BY THE RECORD, THUS AFFIRMING PETITIONER'S CONVICTION THEREFORE DEPRIVING PETITIONER'S ^{DUE PROCESS} ~~CONVICTION~~ OF LAW, ALONG WITH EQUAL PROTECTION OF LAW.

STATEMENT OF THE CASE

ROGER KIZER AND ESTAVION THOMPSON WERE SHOT DURING A DRIVE-BY SHOOTING ON THE SOUTH SIDE OF SOUTH CHICAGO. KIZER WAS KILLED, WHILE THOMPSON SURVIVED. SEVERAL MONTHS LATER DEFENDANT AND CO-DEFENDANT MARCELLUS TRENCH WERE CHARGED WITH THE SHOOTING. BOTH WERE ARRESTED BASED ON PUTATIVE EYEWITNESS IDENTIFICATIONS. NO OTHER EVIDENCE INCULPATED DEFENDANT OR CO-DEFENDANT, AND BOTH ASSERTED ALIBIS FOR THE DATE OF THE CRIME. THE DEFENDANTS PROCEEDED WITH SIMULTANEOUS JURY TRIALS, AT WHICH PRIMARY ISSUE WAS THE RELIABILITY AND CREDIBILITY OF THE EYEWITNESS IDENTIFICATIONS. THE JURY FOUND DEFENDANTS GUILTY. DEFENDANTS FILED A TIMELY NOTICE OF APPEAL WHERE THE COURT APPELLATE AFFIRMED THE CIRCUIT COURTS RULING. DEFENDANT FILED A TIMELY "P.L.A." WHICH WAS DENIED.

REASONS FOR GRANTING THE PETITION

Argument

THE TRIAL COURT COMMITTED PLAIN ERROR WHERE IT ADMITTED HEARSAY AND ALLOWED THE STATE TO USE IT DURING CLOSING ARGUMENT 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. CAFFEY*, 205 ILL.2D 52, 89, (2001). AN ABUSE OF DISCRETION OCCURS WHERE THE TRIAL COURT'S RULING IS ARBITRARILY 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 KEEPER TRIED TO WAIVE DEFENDANT DOWN TO SPEAK WITH HIM ABOUT A DISPUTE HIS FAMILY WAS HAVING WITH DEFENDANT, AND (2) WHEN SHERMAN JOHNSON'S OUT-OF-COURT STATEMENT WAS PUBLISHED TO THE JURY WHEREIN HE STATED THAT ROGERS' COUSINS WERE HAVING A "BEEF" WITH DEFENDANT. THE STATE EXPLICITLY ARGUED THAT THE STATEMENTS WERE ADMISSIBLE TO PROVE MOTIVE (CC 274-275)

A1. ~~THE~~ 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 FORGOTTEN. 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 DEEM THE EVIDENCE WITHIN THE CASE CLOSELY BALANCED. DEFENDANT CHALLENGES THE RULING THAT EVIDENCE AGAINST HIM WASN'T OVERWHELMING. LATER IN THIS PETITION

A2. THE APPELLATE COURT MISCONSTRUED AND MISAPPLIED 725 ILC. 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 DEFENDANT AND KIZER'S COUSIN WAS ADMISSIBLE AS SUBSTANTIVE EVIDENCE PURSUANT TO 725 ILLCS 5/115-10.1, (A#5-18). IT IS NOTABLE THAT THE STATE APPELLATE COURT RELIED UPON 725 ILLCS 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 ILLCS 5/115-10.1, PROVIDES IN PERTINENT PORT:

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 EXAMINATIONS 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 DEFENDANT (SEE PEOPLE'S EXHIBIT 44, #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. 12-18).

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 THE 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 BESIDES THE POINT.

ALL

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 CONTRADICTS THIS COURT'S (ILLINOIS SUPREME COURT'S) 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 OVER HEARD 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 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 (MARCELLUS FRENCH) AND ROGER'S KIZERS FAMILY, WHICH
SHOWS JOHNSON'S LACK OF PERSONAL KNOWLEDGE ~~AND SINCE THE PERSON~~
TOLD JOHNSON ABOUT THE "BEEF" WAS NOT PRESENTED, THEIR PERSONAL
KNOWLEDGE OF THE ALLEGEDLY "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 STATEMENTS.

THE APPELLATE COURTS 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. ANY ERROR WAS HARMLESS BECAUSE "ESSENTIAL-
LY - THE SAME" EVIDENCE WAS INTRODUCED THROUGH JOHNSON'S GRAND
JURY TESTIMONY, AND THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE

OBSERVATIONS

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, (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 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 REASONABLE 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" (HMH 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 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 ASKED 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. MOREY, 308 ILL APP 301 722, 726 2ND DIST. 1999, STATES "HOLDING THAT JURY VIEWED EVIDENCE AS CLOSELY BALANCED BASED ON HAVING BEEN DEADLOCKED", PEOPLE V. AGUIRRE 291 ILL. APP 301 1028, 1035 2ND DIST. 1997, STATES "HOLDING THAT EVIDENCE WAS CLOSELY BALANCED WHERE JURY REPORTED BEING DEADLOCKED 10-2". PEOPLE V. PALMER 125 ILL APP 301 703, 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 APPELLATE COURTS ATTENTION IT DID NOTHING TO DISTINGUISH THE LEGAL PRINCIPLE SET FORTH IN THESE CASES. THE ILLINOIS SUPREME COURT FAILED TO CORRECT THE APPELLATE COURTS FAILURE TO ACKNOWLEDGE MY ARGUMENT.

INSTEAD OF ACTUALLY REVIEWING MY (DEFENDANT'S) ARGUMENT CONCERNING THE ADEQUACY 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 DEFENDANTS' WITNESSES FOR LACK OF PROOF SUCH AS PICTURES AND VIDEO FOOTAGE BUT YET THE COURT WHOLLY IGNORED THE STATES' 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. TURBY*, 138 ILL. 2D 434, 455 (1990). HERE IN THE DEFENDANTS' 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 DEFENDANTS' DUE PROCESS TO BE GRANTED A FAIR AND IMPARTIAL HEARING AND OR TRIAL.

2. THE TRIAL COURT ERRED 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.

THE COURT'S PUBLISHED DECISION IN THIS CASE RAISES AN IMPORTANT UNANSWERED QUESTION REGARDING PRELIMINARY "KRANKEL" INQUIRIES: WHERE THERE IS AN ADEQUATE "KRANKEL" INQUIRY, HOW DOES A DEFENDANT DEMONSTRATE HIS ATTORNEY'S "POSSIBLE NEGLIGENCE" TO OBTAIN NEW COUNSEL? THIS QUESTION IS IMPORTANT HERE SEEING THAT DEFENDANT CLAIMED INEFFECTIVENESS FOR FAILURE TO PROPERLY INVESTIGATE WITNESSES AND INTERVIEW WITNESSES FOR DEFENDANT'S ALIBI WITNESSES THAT WERE LISTED ON THE DEFENSE'S ANSWER TO DISCOVERY. AND DEFENSE COUNSEL STATED ON THE RECORD THAT THERE WAS NOTHING IN HER NOTES TO SHOW THAT THOSE WITNESSES HAD EVER BEEN INTERVIEWED (C.300; R. UU. 3-4) MOREOVER, DESPITE THIS BEING A PRELIMINARY "KRANKEL" INQUIRY REQUIRING DEFENDANT TO SHOW POSSIBLE NEGLIGENCE AND NOT AN EVIDENTIARY HEARING WHERE DEFENDANT WOULD HAVE TO PROVE HIS CLAIMS, THE APPELLATE COURT FOUND NO ERROR IN THE TRIAL COURTS FINDING THAT THESE UNINTERVIEWED WITNESSES WOULD NOT HAVE CHANGED THE TRIAL COURT OUTCOME. PEOPLE V. COOK, 2018 IL App (1st) 142134, ¶ 108.

THIS COURT NEEDS TO PROVIDE MUCH NEEDED GUIDANCE TO THE LOWER COURTS ON WHAT CONSTITUTES "POSSIBLE NEGLIGENCE" AND WHAT THE COURT SHOULD CONSIDER IS MAKING THAT DETERMINATION.

THE THREE-STEP PROCEDURE FOR REVIEW OF PRO-SE POST-TRIAL CLAIMS OF INEFFECTIVE ASSISTANCE PURSUANT TO PEOPLE V. KRANKEL, 102 ILL. 2D 181 (1984) IS WELL ESTABLISHED. SEE PEOPLE V. AYRES,

2017 IL 120071 ¶ 11. AFTER CONDUCTING A PRELIMINARY "KRANKEL" INQUIRY WHEREIN THE COURT ASKS QUESTIONS OF BOTH THE DEFENDANT AND HIS ATTORNEY, THE COURT SHALL APPOINT NEW COUNSEL IF THE DEFENDANT HAS DEMONSTRATED TRIAL COUNSEL'S POSSIBLE NEGLIGENCE. PEOPLE V. MOORE 207 IL 2d 168, 78 (2003); PEOPLE V. NITZ, 143 IL 2d 82, 134-135 (1991). THE APPELLATE COURT ERRED BY ADDRESSING WHAT DOES NOT CONSTITUTE POSSIBLE NEGLIGENCE, SUCH AS CLAIMS THAT ARE REBUTED BY THE RECORD OR THOSE THAT CONCERN TRIAL STRATEGY. SEE, E.G., PEOPLE V. BANKS 237 IL 2d 154, 215 (2010). HOWEVER, THE ILLINOIS SUPREME COURT ERRED AS WELL BY NOT SETTING FORTH AN AFFIRMATIVE STANDARD FOR WHAT DOES CONSTITUTE "POSSIBLE NEGLIGENCE."

BY CONTRAST, THE LEGISLATURE AND THIS COURT HAVE LAID OUT THE AFFIRMATIVE BURDEN ON THE DEFENDANT AT EACH STAGE OF THE FAMILIAR THREE-STEP PROCEDURE FOR POST-CONVICTION PETITIONS. SEE, E.G., PEOPLE V. ALLEN, 2015 IL 118135, ¶¶ 24-25. (IF A PRO-SE DEFENDANT RAISES AN "ARGUABLE" CLAIM AT FIRST STAGE, COUNSEL IS APPOINTED; IF DEFENDANT WITH COUNSEL MAKES "SUBSTANTIAL SHOWING" OF CONSTITUTIONAL VIOLATION AT SECOND STAGE, THEN PETITION ADVANCES TO THIRD STAGE EVIDENTIARY HEARING). THIS COURT HAS REPEATEDLY STATED THAT THE "GOAL OF KRANKEL" IS TO FACILITATE THE DISPOSITION OF PRO-SE INEFFECTIVE ASSISTANCE CLAIMS IN THE TRIAL COURT, THEREBY REDUCING APPELLATE AND COLLATERAL LITIGATION AND PROVIDING A COMPLETE RECORD FOR SUCH LITIGATION. AYRES, 2017 IL 120071 ¶ 21.

THIS CASE REVEALS WHY IT IS NECESSARY FOR THIS COURT TO PROVIDE GUIDANCE TO THE LOWER COURTS AS WELL AS DEFENDANTS DEMONSTRATING

POSSIBLE NEGLIGENCE. DEFENDANT FILED A "PROSE" KRANKER MOTION ALLEGING "INTER ALIA" DEFENSE COUNSEL'S INEFFECTIVENESS FOR FAILING TO CALL ADDITIONAL ALBI WITNESSES THAT WERE LISTED ON THE DEFENSE'S ANSWER TO DISCOVERY (C. 196-97, 300); SEE PEOPLE V. MAKEL 358 ILL. APP. 3d 102, 107 (1ST DIST. 2005) (DETERMINING COUNSEL MAY BE INEFFECTIVE FOR FAILING TO INVESTIGATE A CLIENT'S CASE AND INTERVIEW WITNESSES); PEOPLE V. SALOMON 158 ILL. APP. 3d 432, 435-37 (1ST DIST. 1987) (FINDING COUNSEL INEFFECTIVE FOR FAILING TO PRESENT WITNESS WHO WOULD HAVE CORROBORATED DEFENSE). DURING THE PRELIMINARY "KRANKER" INQUIRY, DEFENSE COUNSEL FIRST CLAIMED THAT ONE OF THE WITNESSES HAD BEEN CALLED BUT THE COURT CORRECTED COUNSEL, INFORMING HIM THAT HE WAS REFERRING TO A DIFFERENT WITNESS. (R. PP. 78) COUNSEL LATER SAID HE DID NOT CALL THE ADDITIONAL WITNESSES BECAUSE THEY WOULD NOT HAVE BENEFITED THE ALBI DEFENSE. (R. PP. 83) THE COURT ASKED COUNSEL TO ELABORATE, AND COUNSEL REPLIED, "I CAN'T REMEMBER EXACTLY BUT I KNOW THEY WOULD HAVE BEEN CALLED IF THEY HELPED" (R. PP. 84) KATHLEEN SCHULTZ, DEFENDANT'S OTHER ATTORNEY SAID "JUDGE, WITHOUT MY NOTES, I DON'T RECALL OFF THE TOP OF MY HEAD WITHOUT MY NOTES WHETHER OR NOT THEY WERE DETRIMENTAL TO HIS ALBI OR IF THEY JUST DIDN'T SEE HIM AT THE EXACT MOMENT" (R. PP. 84)

3.

THE ILLINOIS SUPREME COURT ERRED BY NOT ACKNOWLEDGING DEFENDANT'S HEARING ON HIS MOTION TO RECONSIDER. ATTORNEY SCHULTZ APPEARED AND STATED, "JUDGE, I DID DO A THOROUGH INVESTIGATION OF OUR FILE AND I WAS UNABLE TO FIND ANY NOTES PERTAINING TO AN INTERVIEW WITH RUBY HARRIS OR ARIEL (PHONETIC), AND THOSE WERE

THE TWO WITNESSES THAT WE DID NOT CALL THAT WERE ON THE ANSWER TO ~~THE~~ ^{DISCOVERY} JUDGE. (R. U.S. 3) SHE THEN CONFIRMED THAT SHE HAD "NO RECOLLECTION AS TO WHETHER OR NOT [SHE] INTERVIEWED EITHER OF THOSE TWO WITNESSES." (R. U.S. 4) IT WOULD BE DIFFICULT TO COME UP WITH A MORE ARCHETYPAL EXAMPLE OF "POSSIBLE NEGLIGENCE" BY TRIAL COUNSEL THAT TRIGGERS THE COURT'S DUTY TO APPOINT NEW COUNSEL AND HOLD A "KRANKEL" HEARING. AYLES, 2017 IL 120021, ¶¶ 11 (EMPHASIS ADDED); SEE, E.G., DEARIE V. DAUGS, 203 IL 2d 129, 140-141 (1ST DIST., 1990) (FINDING COUNSEL INCOMPETENT FOR FAILING TO CONTACT OR INTERVIEW WITNESSES KNOWN TO COUNSEL BEFOREHAND WHO COULD HAVE HELPED DEFENSE). THE COURTS ERRED BY FINDING THAT, DESPITE COUNSEL'S ON-THE-RECORD ADMISSION THAT SHE DID NOT KNOW IF THOSE ADDITIONAL WITNESSES "LISTED IN THE DEFENSE'S ANSWER" HAD BEEN INTERVIEWED, DEFENDANT DID NOT DEMONSTRATE COUNSEL NEGLIGENCE. "IT IS HARD TO IMAGINE COUNSEL 'POSSIBLE NEGLIGENCE' IT IS HARD TO IMAGINE WHAT DOES."

MOREOVER, DESPITE THIS BEING AN PRELIMINARY KRANKEL INQUIRY REQUIRING DEFENDANT TO SHOW HIS "ATTORNEY'S" POSSIBLE NEGLIGENCE AS OPPOSED TO AN EVIDENTIARY HEARING, THE TRIAL COURT APPEARED TO CONSIDER THE IMAGINED MERITS OF DEFENDANT'S CLAIM IN DECIDING TO APPOINT NEW COUNSEL. INDEED, THE COURT SAID, THERE'S BEEN NO SHOWING THAT IF THE [JURY] HAD HEARD EIGHT [ALIBI WITNESSES] INSTEAD OF FIVE, THAT THE OUTCOME WOULD HAVE BEEN ANY DIFFERENT." (R. PP. 816). THE APPELLATE COURT ERRED HERE BY BELIEVING THIS WAS PROPER. NOTING THAT COUNSEL CALLED FIVE ALIBI WITNESSES; HAD HE CALLED MORE THERE

4. DEFENDANT WAS DENIED "FUNDAMENTAL FAIRNESS" WITHIN HIS DIRECT APPEAL PROCEEDINGS WHERE JUSTICE LAMPKIN AND THE STATE'S ATTORNEY ANITA ALVAREZ IMPLICATED AND ALLOWED FALSE/FABRICATED EVIDENCE AGAINST DEFENDANT, WHICH VIOLATES DEFENDANT'S 14TH AMENDMENT, SECTION 1 OF THE U.S. CONSTITUTION AND ARTICLE 1, SECTION 2 OF THE ILLINOIS CONSTITUTION

"NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW NOR BE DENIED THE EQUAL PROTECTION OF LAWS" - ILL. CONST. ARTICLE 1. SECTION 2

ACCORDING TO MOONEY V. HOZAHAN, 294 U.S. 103, 55 S. CT. 340, 79 L. ED 791, THE LAW STATES "THE 14TH AMENDMENT CANNOT TOLERATE A STATE CRIMINAL CONVICTION OBTAINED BY THE KNOWING USE OF FALSE EVIDENCE". THE STATES ATTORNEY OPPOSING THE DEFENDANT ON DIRECT APPEAL HAS KNOWINGLY FABRICATED AND PRESENTED FALSE EVIDENCE AGAINST DEFENDANT THE STATE'S ATTORNEYS ARE PROVIDED ALL DISCOVERY PERTAINING AN ACCUSED ALONG WITH THE WHOLE PRE-TRIAL, TRIAL AND POST-TRIAL PROCEEDINGS IN TRANSCRIPTS THIS "EVIDENCE" IS ALSO AWARDED TO THE DEFENSE (THE ~~DEFENDANT~~ DEFENDANT AND HIS/HER ATTORNEY). FOR THE SOLE PURPOSE OF PRESERVATION PRESENTATION AND REFERENCE. THIS PREVENTS FALSE EVIDENCE BEING SHOWN OR STATED AGAINST OR FOR A DEFENDANT, ALL EVIDENCE CAN BE REFERRED TO AND ACCOUNTABLE, AND MOST IMPORTANTLY CREDIBLE.

CLEARLY THE STATE'S ATTORNEY USED FALSE EVIDENCE AGAINST DEFENDANT WHERE ANDRE STACKHOUSE IDENTIFIED DEFENDANT AND CO DEFENDANT AS GET AWAY DRIVER AND SHOOTER AUGUST 26TH 2010 WHEN IN FACT THIS IS FALSE AND FABRICATED" ACCORDING TO THE ARREST REPORTS MADE BY

OFFICER CLIFFORD MARTIN, AUGUST 26TH 2010 ANDRE STACKHOUSE STATED "HE WAS STANDING ON THE STREET AT 7420 S KENWOOD BETWEEN TWO HOUSES WHEN HE SAW THE SMALL BLUE CAR DRIVE PAST WITH ~~DEFENDANT~~ DEFENDANT DRIVING AND CO DEFENDANT FRENCH IN THE PASSENGER SEAT. STACKHOUSE WENT ON TO SAY THAT THE CAR WAS MOVING FAST AS IT PASSED HIM, STACKHOUSE FURTHER STATED THAT AS THE CAR REACHED THE END OF THE BLOCK HE HEARD GUNSHOTS BUT WAS UNABLE TO SEE THE VEHICLE AS HIS VIEW WAS BLOCKED BY A VAN PARKED ON THE STREET". THE STATE'S ATTORNEYS RESPONSIBLE FOR DEFENDANT ~~PROCEEDINGS~~ PROCEEDINGS NOT ONLY IS IN POSSESSION AND POSSESSION OF ALL DEFENDANTS EVIDENCE AND TRANSCRIPTS. THEY MUST HAVE BEEN AWARE THAT THEIR ACCUSATIONS CONCERNING MR. STACKHOUSE'S AUGUST 26TH 2010 IDENTIFICATION WAS INCORRECT SIMPLY, DUE TO THE STATE'S ATTORNEY CLASSIFYING, MR. STACKHOUSE'S "FAISE IDENTIFICATION" AS FACT IN THEIR STATEMENT OF FACTS!

THE WORD "FACT" IS DEFINED AS "SOMETHING THAT ACTUALLY EXIST, AN ASPECT OF REALITY (BLACK'S LAW DICTIONARY 4TH EDITION).

THIS ALLEGED AND FAISE IDENTIFICATION THE STATE SAYING ANDRE STACKHOUSE IDENTIFIED DEFENDANT AS THE GET AWAY DRIVER AUGUST 26TH 2010 IN FACT DOES NOT EXIST! THE STATE ERRONEOUSLY REFERS TO ANDRE STACKHOUSE'S TRIAL IDENTIFICATION AND TESTIMONY WITH HIS IDENTIFICATION AND STATEMENT MADE AUGUST 26TH 2010 EXHIBIT

WHICH ARE DEFENDANT'S CASE SUPPLEMENTARY REPORT PRINTED BY DETECTIVE MARTIN, CLIFFORD. THESE REPORTS GIVE A VERBATIM ACCOUNT OF MR. STACKHOUSE'S STATEMENT AND IDENTIFICATION. AND NO WHERE IN

THIS STATEMENT OR IDENTIFICATION DOES MR. STACKHOUSE IMPLICATE DEFENDANT AS BEING THE GET AWAY DRIVER TO A MURDER OR ANY CRIME AT THAT POINT

WITH MORE PREJUDICE, DEFENDANT'S APPELLATE JUSTICE LAMPKIN WITHOUT REVIEWING THE EVIDENCE AGAINST DEFENDANT TOOK THE STATE'S ATTORNEY'S ACCUSATION AS TRUE AND IN WHICH CAUSED JUSTICE LAMPKIN TO USE THE "FALSE EVIDENCE" AS ONE OF TWO REASONS WHY SHE DENIED / AFFIRMED DEFENDANT'S CONVICTION. (SEE DEFENDANT'S OPINION PG. PARAGRAPH LISTED AS EXHIBITS 2) JUSTICE LAMPKIN ERRONEOUSLY STATES "FIVE DAYS AFTER THE SHOOTING, STACKHOUSE TOLD THE POLICE THAT COOK DEFENDANT WAS THE DRIVE AND CO-DEFENDANT FRENCH WAS THE SHOOTER AND IDENTIFIED THEM FROM PHOTO ARRAYS" THIS "FALSE EVIDENCE" WAS USED TO AFFIRM DEFENDANT'S CONVICTION, AND BY APPELLATE JUSTICE LAMPKIN FAILING TO ACTUALLY REVIEW THE FACTS AGAINST DEFENDANT FALSE EVIDENCE WAS ALLOWED IN DEFENDANT'S FUNDAMENTAL RIGHT TO A FAIR APPEAL PROCESS HAS BEEN COMPROMISED, VIOLATING HIS DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW.

THIS ERROR COULD NOT HAVE BEEN CURED ON FURTHER APPEALING REVIEW DUE TO THE FLAGRANT FALSE EVIDENCE USED AS TRUTH. THE EXTENT OF MISCONDUCT BY THE STATES ATTORNEY AND JUSTICE LAMPKIN TAINTED THE ENTIRE APPEAL PROCEEDINGS.

JUSTICE LAMPKIN IS AND SHOULD BE HELD ACCOUNTABLE AS MUCH AS THE OPPOSING COUNSEL CONCERNING DEFENDANT'S ERRONEOUS DIRECT APPEAL PROCESS SIMPLY BECAUSE IT IS AN APPELLATE JUDGE'S DUTY TO MAKE SURE ALL CIRCUIT COURT AND APPELLATE COURT RULINGS ARE FACTUAL AND JUSTIFIED AND THE

FACT THAT EVIDENCE THAT CANNOT BE SUPPORTED BY THE RECORD WAS USED AGAINST DEFENDANT CANNOT BE JUSTIFIED. DEFENDANT DESERVES AT LEAST A RE-EVALUATION OF HIS DIRECT APPEAL ERROR WAS EXPOSED IN DEFENDANT'S TRIAL CONCERNING THE INADMISSIBLE USAGE OF HEARSAY (SEE DEFENDANT'S OPINION MARKED AS EXHIBIT) SO SINCE DEFENDANT PROVED ERROR EXISTED WITHIN HIS TRIAL THROUGH PLAIN ERROR DOCTRINE, DEFENDANT ONLY HAD TO SHOW EITHER 1. THAT ERROR EXISTED (MINOR OR MAJOR) AND THE EVIDENCE WAS CLOSELY BALANCED SO THE ERROR (MINOR OR MAJOR) SEVERELY THREATENED TO TIP THE SCALES OF JUSTICE AGAINST HIM, OR 2. THE ERROR WAS SO SERIOUS IT UNDERMINES THE INTEGRITY OF THE COURTS.

DEFENDANT ARGUED HIS CONTENTION UNDER PRONG ONE, THE CLOSENESS OF EVIDENCE SO BY THE STATE'S ATTORNEYS ON DEFENDANT'S PROCEEDING USING FALSE EVIDENCE AND JUSTICE LAMPKIN USING FALSE EVIDENCE IN DEFENDANT'S OPINION AS ONE OF THE "MAIN" REASONS SHE IS AFFIRMING DEFENDANT'S CONVICTION, THE OUTCOME CANNOT BE DEEMED LAWFUL OR JUSTIFIED, WHICH CLEARLY SHOWS DEFENDANT WAS DENIED "FUNDAMENTAL FAIRNESS" CONCERNING HIS DIRECT APPEAL PROCEEDINGS.

5. DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, WHICH HE IS GUARANTEED ACCORDING TO THE UNITED STATES CONSTITUTION 6TH AMENDMENT WHERE APPELLATE COUNSEL FAILED TO ADMONISH THE STATES ATTORNEY IN REPLY BRIEF OF DEFENDANTS DIRECT APPEAL BASED ON THE STATE USING FALSE EVIDENCE WITHIN THEIR ARGUMENTS TO AFFIRM DEFENDANTS CONVICTION

IN ORDER TO OBTAIN A NEW TRIAL AND OR IN DEFENDANTS CASE A NEW DIRECT APPEAL "PREMISED ON THE DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL, DEFENDANT MUST SHOW BOTH INEFFECTIVE ASSISTANCE AND RESULTING PREJUDICE" STRICKLAND V. WASHINGTON (1984) 466 U.S. 668, 104 S. CT. 2052, 80 L. ED. 2D 674

HERE IN DEFENDANT CASE HIS APPELLATE ATTORNEY / BILL MURPHY FAILED TO CORRECT THE STATES ATTORNEY USAGE OF FALSE EVIDENCE DEFENDANTS CASE ONLY CONSISTED OF AIBI WITNESSES 5 TESTIFIED AND STATE EYE WITNESSES 4 TESTIFIED STRICTLY TESTIMONY ON DIRECT APPEAL DEFENDANTS APPELLATE COUNSEL RAISED AN ISSUE CONCERNING THE TRIAL COURT ABUSING ITS DISCRETION WHERE IT ADMITTED HEARSAY AND ALLOWED THE STATE TO USE IT DURING CLOSING ARGUMENT AS SUBSTANTIVE EVIDENCE OF DEFENDANTS GUILT. APPELLATE COUNSEL RAISED THIS ISSUE UNDER THE "PLAIN ERROR DOCTRINE" "THE FIRST PRONG WHICH IS WHEN" A CLEAR OR OBVIOUS ERROR OCCURED AND THE EVIDENCE IS SO CLOSELY BALANCED THAT THE ERROR ALONE THREATENED TO TIP THE SCALES OF JUSTICE AGAINST DEFENDANT REGARDLESS OF THE SERIOUSNESS OF THE ERROR"

SO WITH THAT SAID IF APPELLATE COUNSEL'S CORE ARGUMENT
2.3.

1.5. THE EVIDENCE FOR AND AGAINST DEFENDANT WAS
"CLOSELY BALANCED". THEREFORE IF ERROR EXISTED WHICH IT DID
(SEE APPELLATE COURTS DECISION EXHIBIT) THAT DEFENDANT
MUST HAVE A RETRIAL. BUT SINCE APPELLATE COUNSEL FAILED TO CONTEST
THE STATE'S ATTORNEY USAGE OF FALSE EVIDENCE, THE EVIDENCE WAS
DEEMED TRUE AND USED AS A PRIMARY REASON TO AFFIRM DEFENDANT'S
CONVICTION. WHICH NOT ONLY SHOWS APPELLATE COUNSEL'S INCOMPETENCE
AND INEFFECTIVENESS, BUT BECAUSE OF APPELLATE COUNSEL'S ACTIONS OR RATHER
LACK THERE OF DEFENDANT WAS SERIOUSLY ~~PREJUDICE~~ WITHIN HIS ARGUMENTS
ON DIRECT APPEAL. CONCERNING THE CLOSENESS OF THE EVIDENCE PRESENTED
AGAINST AND FOR DEFENDANT THE APPELLATE COURT JUSTICES BELIEVED ANDRE STACKHOUSE
IDENTIFIED DEFENDANT AS THE GET AWAY DRIVER AFTER THE SHOOTING WHICH
ADDED CREDIBILITY TO MR. STACKHOUSE POSITION WHEN IN FACT MR. STACKHOUSE TOLD
THE AUTHORITIES 5 DAYS AFTER THE SHOOTING THAT HE DID NOT SEE THE SHOOTING
OR ACTUAL CRIME TAKE PLACE BUT HE SAW DEFENDANT DRIVE DOWN THE STREET
WITH CO DEFENDANT (MARCELLUS FRENCH), PASSENGER SEAT WHEN HE HEARD SHOTS.
(SEE EXHIBITS CASE SUPPLEMENTARY REPORTS) WHICH CORROBORATES WITH
THE "FACTS". MR. STACKHOUSE IDENTIFIED DEFENDANT IN A PHOTO ARRAY AUGUST
27TH 2010 AS KNOWING DEFENDANT FROM THE NEIGHBORHOOD NOT AS GET
AWAY DRIVER. (SEE PHOTO ARRAY IN EXHIBIT) MR. STACKHOUSE CIRCLES
DEFENDANT'S PICTURE (MUGSHOT) AND WRITES DRIVER WHICH FURTHER
CORROBORATES WITH MR. STACKHOUSE INITIAL STATEMENT GIVEN ALSO ON
AUGUST 27TH 2010.

IF THE APPELLATE COURT JUSTICES REVIEWING DEFENDANT'S

CASE WOULD HAVE BEEN AWARE OF THE ACTUAL FACTS, CONCERNING MR. STACKHOUSE'S THEIR DECISION WOULD HAVE BEEN DIFFERENT. THE EVIDENCE WAS IN FACT CLOSELY BALANCED SINCE MR. STACKHOUSE NEVER STATED DEFENDANT WAS THE ACTUAL GET AWAY DRIVER LET ALONE HIS CO-DEFENDANT THE SHOOTER UNTIL JANUARY 21ST 2011! THE FACT THAT APPELLATE COUNSELOR WAS AWARE OF THE "AUTHENTIC" FACTS CONCERNING DEFENDANT'S CASE, WHETHER INTENTIONAL OR UNINTENTIONAL APPELLATE COUNSELOR FAILED TO CORRECT THE STATE'S MISAPPLIED EVIDENCE, AND SINCE THE ONLY EVIDENCE PRESENTED WAS TESTIMONY (EYE WITNESSES AND ALBI WITNESSES) THE FACT THAT THE STATE PRESENTED FABRICATED EVIDENCE, AND THIS FABRICATED EVIDENCE WAS CRITICALLY USED AGAINST DEFENDANT. SO COUNSELOR'S INEFFECTUENESS CAN NOT BE DEEMED HARMLESS, IN FACT COUNSELOR'S ERROR CANNOT BE DEEMED ANYTHING BUT SERIOUS SINCE ACCORDING TO JUSTICE LAMPKIN THE ERROR IS ONE OF THE TWO REASONS MY CONVICTION WAS AFFIRMED (SEE DEFENDANT'S APPELLATE DECISION PG. PARAGRAPH MARKED AS (EXHIBIT)) HAD APPELLATE COUNSELOR CORRECTED THE MISAPPLIED EVIDENCE THERE IS A VERY HIGH PROBABILITY THE OUTCOME OF DEFENDANT'S DIRECT APPEAL WOULD HAVE BEEN DIFFERENT.

6. Trial Court AND Appellate Court ERRED WHEN THEY FAILED TO GRANT DEFENDANT ISSUE ON ABUSE OF DISCRETION COMPLETELY PREVENTING DEFENSE COUNSEL FROM QUESTIONING PROSPECTIVE JUROR "J.W." ABOUT HER EXPLICIT AREAS OF BIAS AND PREJUDICE, ESPECIALLY WHERE "J.W." EXPRESSED A NEW AND MORE DANGEROUS BIAS AFTER BEING "REHABILITATED".

DEFENDANT ARGUED, INTER ALIA, THAT THE COURT ABUSED ITS DISCRETION IN PREVENTING DEFENSE COUNSEL FROM QUESTIONING JUROR "J.W." ABOUT HER EXPLICIT AREAS OF BIAS, ONE OF WHICH SHE EXPRESSED AFTER SHE AGREED WITH THE COURT THAT SHE COULD BE FAIR. ^{APPELLATE COURT} ~~RENDERED~~ FOUND THAT THEY DIDNT ABUSE ITS DISCRETION IN LIMITING COUNSEL'S "VOIR DIRE" BECAUSE IT "SUSTAINED" OBJECTIONS TO DEFENSE COUNSEL'S QUESTIONS THAT WERE ALREADY ASKED OF AND ANSWERED BY "J.W." CONCERNING HER FEELINGS ABOUT HER FAMILY MEMBERS BEING VICTIMS OF CRIME AND HER ABILITY TO KEEP HER STRONG FEELINGS SEPERATE FROM THIS CASE AND SERVE AS A FAIR AND IMPARTIAL JUROR" PEOPLE VS. COOK, 2018 11 App (1ST) 142134 77 97. THIS COURT IGNORED THE FACT THAT COUNSEL ATTEMPTED TO ASK "J.W." ABOUT A NEW EXPLICIT AREA OF BIAS AND PREJUDGEMENT THAT SHE REVEALED AFTER THE COURT FOUND SHE WAS REHABILITATED. MORE- OVER THIS COURT'S RULING ESSENTIALLY SANCTIONS A "VOIR DIRE" PROCESS THAT COMPLETELY PREVENTS DEFENSE ATTORNEY'S FROM LEGITIMATELY QUESTIONING A PROSPECTIVE JUROR ABOUT HER EXPRESSED AREAS OF BIAS PARTICULARLY WHERE HER EQUIVOCATIONS

DISNUMBERED HER TERM "REHABILITATION" A DEFENDANT'S
CONSTITUTIONAL RIGHT TO BE TRIED BY A FAIR AND IMPARTIAL
JURY IS FAR TOO SACROSANCT FOR SUCH A "VOIR DIRE" PROCESS
THAT COMPLETELY PREVENTS DEFENSE FROM AN ACCURATE ARGUMENT
DEFENDANT HAS A CONSTITUTIONAL RIGHT TO BE TRIED
BY A FAIR AND IMPARTIAL JURY, U.S. CONST. AMEND. VI, III.
CONST. 1970, ART. I, § 8. THAT RIGHT INCLUDES AN ADEQUATE
"VOIR DIRE" TO PERMIT THE IDENTIFICATION OF BIASED JUDGES
PEOPLE V. BOSS, 187 Ill. 2d 144, 125-26 (1999) ABROGATED ON OTHER
GROUNDS BY PEOPLE V. SOREXSON, 190 Ill. 2d 425, 431 (2001). THE
GOAL OF VOIR DIRE IS TO ALLOW QUESTIONING OF PROSPECTIVE
JUDGES TO DETERMINE WHETHER THEY CAN "APPLY THE LAW
AS INSTRUCTED IN ACCORDANCE WITH THEIR OATH." PEOPLE V. CLOUTIER
156 Ill. 2d 483, 495-96 (1993). THE COURT ABUSES ITS DISCRETION
WHEN IT DENIES A PARTY A FAIR OPPORTUNITY TO PROPERLY INVESTIGATE
AN IMPORTANT AREA OF POTENTIAL BIAS OR PREJUDICE. Id. AT 409.
WITH THESE PRINCIPLES IN MIND, IT IS IMPOSSIBLE TO
CONCLUDE THAT THE TRIAL COURT COMPLETELY DEPRIVING DEFENSE
COUNSEL OF AN OPPORTUNITY TO QUESTION "J.W." ABOUT HER EXPLICIT
BIASES PASSES MUSTER. THERE IS NO QUESTION THAT THE COURT
COMPLETELY PREVENTED DEFENDANT AND CO-DEFENDANT ATTORNEYS
FROM ASKING "J.W." ABOUT HER SON AND GRAND CHILDREN
BEING SHOT AT, OR TWO "KIDS" IN HER NEIGHBORHOOD THE
SAME NEIGHBORHOOD THIS SAME CASE HAPPEN IN THAT DEFENDANTS
ARE ON TRIAL FOR WAS SHOT (B.B. 84-85, 155-57):

COOK, 2018 IL App (1st) 142134, ¶¶ 88-89, 91-92. INDEED, IT WAS THROUGH THE COURT'S QUESTIONING THAT "J.W." STATED TWICE THAT SHE DID NOT THINK SHE COULD BE FAIR TO DEFENDANTS. THEN, AFTER THE COURT ASKED HER A LONG QUESTION ABOUT WHETHER SHE COULD KEEP "THOSE FEELINGS SEPERATE FROM THOSE INCIDENTS WITH HER SON AND HOW SHE FEEL ABOUT HOW CRIMES HAVE BEEN GOING UNNOTICED IN HER NEIGHBORHOOD "J.W." WITH A TERSE "YEAH YES" (R. BB. 87-88). GIVEN "J.W.'S" TWO EXPLICIT EQUIVOCATIONS ABOUT HER ABILITY TO BE FAIR IN LIGHT OF EXPERIENCE WITH GUN VIOLENCE, VERSUS HER SINGLE TERSE RESPONSE TO THE COURT'S QUESTION, DEFENSE COUNSEL HAD EVERY REASON TO THINK THAT "J.W.'S" BIAS AND LACKS IMPARTIALITY WERE CLEAR, OR AT THE VERY LEAST REQUIRED FURTHER QUESTIONING. IN THE SPIRIT OF THE LAW - WHICH GUARANTEES A CRIMINAL DEFENDANT A RIGHT TO AN IMPARTIAL JURY AND A CORRESPONDING RIGHT TO AN OPPORTUNITY TO INVESTIGATE IMPORTANT AREAS OF POTENTIAL BIAS AND PREJUDICE - DEFENSE COUNSEL SHOULD HAVE BEEN ALLOWED TO QUESTION "J.W." ABOUT THOSE EXPLICIT AREAS OF BIAS. SEE CLOUTIER 156 IN. 2d AT 495-96.

THIS COURT COMPLETELY DEPRIVED COUNSEL OF THAT OPPORTUNITY BY SUSTAINING THE STATES OBJECTION ON THE GROUNDS THAT COUNSEL'S QUESTIONS WERE "ASKED AND ANSWERED" (R. BB. 155-57). BUT, THIS WASN'T COUNSEL WAY OF WASTING TIME, THIS WAS A DEFENSE ATTORNEY APPROPRIATELY EXERCISING HIS CLIENTS RIGHT TO FOLLOW UP ON AND INQUIRE ABOUT EXPRESSED AREAS OF BIAS TO ENSURE THAT THE PROSPECTIVE

JUROR WOULD BE IMPARTIAL, AS THE UNITED STATES AND ILLINOIS CONSTITUTIONS GUARANTEE. THE COURT, HOWEVER, CUT OFF COUNSEL'S ATTEMPTS AND PREVENTED ANY FURTHER EXPLORATION OF J.W.'S "UNQUESTIONABLE BIAS AND PREJUDICE. THAT IS AN ABUSE OF DISCRETION SEE CLOUTIER 1510 ILL. 2d AT 495-96.

INDEED AFTER THE COURT SUSTAINED SEVERAL OF THE STATES OBJECTIONS TO COUNSEL'S QUESTIONS COUNSEL MANAGED TO ASK "J.W." "IS THERE ANYTHING IN [YOUR] MIND THAT WOULD PREVENT YOU FROM BEING A FAIR JUROR?" (R. BB. 157) "J.W." RESPONDED "MY NEIGHBORHOOD IS SOMEWHAT VIOLENT YOU SEE KILLING IS GOING TO HAPPEN AT LEAST ONCE A MONTH, EVERY TWO MONTHS. YOU GET UP AT FIVE O'CLOCK YOU SEE A YOUNG MAN LAYING DEAD ON THE STREET, SO I'M LOOKING AT MY NEIGHBORHOOD WHEN I LOOK AT THEM" REFERRING TO DEFENDANT COOK AND CO DEFENDANT FRENCH. (R. BB. 157) (EMPHASIS ADDED). THEREFORE, AFTER "J.W." EQUIVOCATED TWICE ON HER ABILITY TO BE FAIR, AND RESPONDED, "YEAH, YES," TO THE COURT'S ATTEMPTED REHABILITATION, SHE REVEALED THAT SHE SAW HER VIOLENT NEIGHBORHOOD WHEN SHE LOOKED AT DEFENDANTS. THE SAME NEIGHBORHOOD THIS CASE HAPPEN AT. CLEARLY "J.W." KNEW ABOUT THIS CASE OR COULD POSSIBLY KNOW DEFENDANTS SINCE THEY'RE FROM THAT VERY AREA. CLEARLY "J.W." HAD BIAS AND WAS PREJUDICE AND IT POSSIBLE COULD HAVE PREVENTED HER FROM BEING FAIR AND IMPARTIAL.

DESPITE "J.W." HAVING REVEALED A NEW AREA OF BIAS AND PREJUDICE AGAINST DEFENDANTS WHICH SHE HAD NOT PREVIOUSLY

EXPRESSED, THE COURT DEPRIVED COUNSEL OF ANY OPPORTUNITY TO INQUIRE ABOUT IT. THE STATE OBJECTED; THE COURT SUSTAINED, AND THIS COURT AFFIRMED ON THE SAME MISUNDERSTANDING THAT THESE QUESTIONS WERE "ASKED AND ANSWERED, BUT THEY WERE NOT. (SEE R. BB. 157-58); COOK 2018 IL App (1st) 142139 ¶ 97. NEITHER THE COURT NOR THE PARTIES EVER ASKED "J.W." ABOUT WHY DEFENDANTS REMINDED HER OF HER VIOLENT NEIGHBORHOOD, WHERE THERE WERE FREQUENT KILLINGS, IT WAS LATER REVEALED IN CHAMBERS THAT "J.W." LIVED IN THE VERY NEIGHBORHOOD WHERE THIS SHOOTING TOOK PLACE, (R. BB. 122) BUT SHE NEVER ASKED WHETHER HER PROXIMITY TO THIS SHOOTING OF WHICH DEFENDANTS WERE ACCUSED WOULD AFFECT HER ABILITY TO BE FAIR AND IMPARTIAL. DEFENSE COUNSEL ATTEMPTED TO FOLLOW UP WITH "J.W." BY ASKING HER, "CAN YOU STILL PRESUME DEFENDANTS COOK AND FRENCH INNOCENT BECAUSE OF YOUR NEIGHBORHOOD?" (R. BB. 158) THE COURT, ~~SHE~~ STANTE, CUT OFF DEFENSE COUNSEL'S QUESTION AND STATED THAT "J.W." INDICATED SHE WOULD BE A FAIR JUDGE, IF PRESSED INTO SERVICE," (R. BB. 158) BUT COUNSEL DID NOT ASK "J.W." ABOUT HER ABILITY TO BE FAIR. HE SPECIFICALLY ASKED HER IF SHE COULD FOLLOW BASIC PRINCIPLE OF LAW THAT DEFENDANTS ARE PRESUMED TO BE INNOCENT, IN LIGHT OF HER REVEALED BIAS AGAINST THESE DEFENDANTS BASED ON THEM REMINDING HER OF HER VIOLENT NEIGHBORHOOD WHERE THIS SHOOTING TOOK PLACE. MOUTIER, 156 Ill.2d 483, 495-96 (NOTING THAT PURPOSE OF VOIT DITE IS TO DETERMINE WHETHER PROSPECTIVE JUDGE CAN

FOLLOW THE LAW) CONTRARY TO TRIAL COURTS RULING AND
APPELLATE COURTS DECISION, THESE QUESTIONS WERE NOT
"ASKED AND ANSWERED." THEY WERE ATTEMPTED TO INQUIRE
ABOUT A PROSPECTIVE JUROR'S EXPLICITLY STATED AREA OF
POTENTIAL BIAS AND PREJUDICE, AS GUARANTEED BY THE
CONSTITUTION. COUNSEL WAS DEPRIVED BY THE COURT OF ANY
OPPORTUNITY TO DO HIS DUTY.

CONCLUSION

For the reasons stated herein, Defendant -
Appellant, BODEY COOK, respectfully request that this
Court grant the instant petition for leave to appeal
vacate his convictions for first degree murder
and aggravated battery with a firearm and
all further relief deemed just and appropriate.

Respectfully Submitted
BODEY COOK

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