18-8625 ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Jennifer Nere, *Petitioner,*

v.

State of Illinois, *Respondent,*

On Petition for a Writ of Certiorari to the Supreme Court of the State of Illinois

PETITION FOR WRIT OF CERTIORARI

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March 6, 2019

QUESTION PRESENTED

Whether the defendant may be convicted under the Illinois drug induced homicide Statute when the use of the controlled substance was a "contributing cause" of death? More specifically, is the Illinois Supreme Court correct that Illinois does not have to follow *Burrage v. United States, ____US____, 134 S. Ct ___. 881 (2014)* and can constitutionally apply its own "contributing cause" standard to the Illinois Drug induced Homicide Statute because (in part): the Illinois Supreme Court's "contributing cause" analysis is Superior to this Court's "but for" analysis and Justice Scalia merely "mused" for 1108 words on the issue of "contributing cause" and his "musing" on behalf of this court has no precedential value in interpreting reasonable doubt and due process as it applies to an essentially identical State Statute?

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ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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

OPINION BELOW

The opinion of the Illinois Supreme Court appears at appendix A to this petition. The Court's opinion is *People v. Nere,* No. 122566, (2018).

JURISDICTION

The Illinois Supreme Court issued its decision and final judgment on September 20, 2018. A copy of the opinion is attached at appendix A. Jurisdiction of this Court is invoked under 28 U.S.C section 1257 (a).

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. XIIII

~~All persons born or naturalized in the United States, and subject to the~~ jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Jennifer Nere was convicted by a Jury in Wheaton, DuPage County, Illinois, of Drug Induced Homicide, 720 ILCS 5/9-3.3(a) (West 2012). The conviction arose out of the indictment of Jennifer Nere that alleged Nere delivered heroin to Augustina Taylor and that heroin caused the death of Augustina Taylor. The medical examiner testified that Augustina Taylor died of heroin and cocaine intoxication due to intravenous drug use." (R353) He also testified that either the cocaine or heroin alone could have caused the death. The trial court (over the defense objection and after reviewing this Court's opinion in *Burrage)* instructed the Jury that to find Nere guilty of Drug induced homicide the Jury only needed to find that the heroin was a "contributing cause" of Augustina Taylor's death. The Appellate Court agreed with the defense and this Court that the instructions (as given) could not be squared with reasonable doubt. The Court nonetheless affirmed the conviction ruling that the errors were harmless. The Illinois Supreme Court affirmed the conviction. The Court disagreed with the Appellate Court that the contributing cause instructions could not be squared with reasonable doubt. The Illinois Supreme Court reasoned that it did not have to follow *Burrage* because Justice Scalia was "musing" for 1108 words and the Illinois Supreme Court's "contributing factor" analysis is superior to the U.S Supreme Court's "but for standard" analysis in *Burrage*. *Nere* IL Sup.Ct Opinion # 53-64

The Appellate Court stated that the Jury instructions here raised the same "grave due process concerns" as in *Burrage* and "invited the jury to engage in the same problematic conduct that concerned the Court in *Burrage*". *People v. Nere 2017 IL App (2d) 141143* #78-79.

After raising the same concerns as Justice Scalia in this Court's opinion and stating that it agreed with *Burrage*, the Appellate Court did not follow *Burrage*. Confusingly, in its opinion, the Appellate Court requested that another Court or the legislature fix the Constitutional problems identified and essentially disregarded by the Court.

"We note, however, that the pattern instruction used in this case deserves serious Scrutiny, as does the case authority on which it is based. We agree with *Burrage* that, if a given act was neither a but-for cause of death nor an independently sufficient cause of death, it should not be a 'cause' of death.

"We reiterate our concern that, using the 'contributing cause' instruction, a jury will convict a defendant of criminal homicide based on nothing more firm than a finding that her charged conduct 'made a positive incremental contribution, however small, to a particular result. *Burrage*, 571 U.S. at ___,134 S.Ct. at 891. This does not appear to us to be an acceptable risk; it can be lessened or alleviated by a change in the instruction or, perhaps, by changing the law of causation

(statutory or judicial) on which instructions are based." *Id* #107 Yet the Court allowed that risk to poison this case and violate *Nere's* Constitutional rights.

Unlike the Trial Court, the Appellate Court also agreed with Nere that the trial court should have followed ***Burrage v. United States,*** ___U.S.__, 134 S. Ct. 881 (2014). *Id* #77 "We see no answer to the Court's warning that giving juries standards that enable them to find causation based on an unspecified 'contribution' to the likelihood of death raises grave due process concerns. *Id* #78 The Appellate court further reasoned that " the use of the term 'contributing cause' invited the jury to engage in the same problematic conduct that concerned the Court in *Burrage*: to convict based on spurious theory of causation, one that relied on 'could have' and 'more or less probable' rather than proof beyond a reasonable doubt." *Id* # 79

The Appellate Court found error but affirmed the conviction stating that "ultimately, we conclude that the trial court did not abuse its discretion in this "difficult situation." *Id* #101. "In declining to find reversible error, we also note that it is not clear whether the defect in the instructions prejudiced the defendant." *Id* # 102

Instead of a conducting a de novo review of the instructions with the focus on Jennifer Nere's constitutional right to due process and to be found guilty beyond a reasonable doubt, the court honed in on "abuse of discretion" and the "difficult situation" the trial judge confronted. *Id* #101 Instead of conducting an analysis of whether the improper jury instructions were harmless beyond a reasonable doubt, the court viewed the evidence in the light most favorable to the state and speculated as to what the jury might have done had it been properly instructed. *Id* #76 "Harkey's testimony (the medical examiner) that either one 'could' cause death might have undermined this strong suggestion." *Id* The strong suggestion being that the Appellate Court speculated that the Jury would have concluded that "both drugs had been necessary to cause death" *Id* Amazingly, the Court entered into the exact type of speculation the U.S. Supreme court found noxious to our Constitutional rights to due process and proof beyond a reasonable doubt.

The Illinois Supreme Court affirmed the conviction but stated that it did not need to follow *Burrage* because it "disagrees with the Supreme Court and the Appellate Court below that the contributing cause standard raises due process concerns. The (U.S.) Supreme Court merely raised this point as an assertion and failed to develop it." *People v. Nere,* No. 122566, #46.

This Court's review is imperative because the instructions violated Nere's Constitutional rights and will continue to violate countless defendants' rights going forward.

Some evidentiary background may be helpful in more fully informing the issue presented. Nere was charged with committing (1) unlawful delivery of a controlled substance (720 ILCS 570/401(d) (West 2012) in that, on June 27 or June 28, 2012, she knowingly and unlawfully delivered less than one gram of a substance containing heroin; and (2) drug-induced homicide in that she knowingly delivered heroin to Augustina Taylor and "thereafter Augustina Taylor injected, inhaled or ingested an amount of that heroin into her body and said injection, inhalation, or ingestion of heroin caused the death of Augustina Taylor." *Id* #2

In the morning of June 28, 2012 police were dispatched to Taylor's mother's apartment. They forced open the locked bathroom door where they found Taylor lying unconscious. Paramedics arrived, administered CPR and transported Taylor to the hospital where she was pronounced dead. The officers re-entered the bathroom and photographed and collected evidence. The evidence included a baggie, crack pipe, crack cocaine, two cigarettes, a cigarette box, a lighter, two tinfoil bindles of heroin inside the cigarette box, and a dirty white-gray sock that contained a drug-cooking spoon, a syringe, and a plastic wrapper from the cigarette box. Id #3 (R512-17)

Ms. Nere told Officer Salsman that she, the victim and Leslie Walker were all friends, prostitutes and drug addicts. She said Leslie was the leader. (563-564) Leslie Walker testified that they were all friends and that Nere and Taylor prostituted themselves to support all three of their drug habits. (603-07) Ms Nere said Tina (the victim Augustina Taylor) had taken some heroin the day before she died and that she had some left over. (543-44) On June 27, 2012 Tina kept calling her and asking her to bring some cocaine and heroin to her at mother's house in Wheaton when she came to pick up Leslie. Tina had also asked Nere to bring a needle and a crack pipe. (R 512-13) Ms. Nere told Officer Salsman she gave Tina two bins of heroin in tin foil packets, crack cocaine, a needle and a crack pipe. The one bag of heroin was small so it really amounted to one nice bag. Two closed packets of heroin were recovered at the scene. (R 512-513) Leslie Walker also testified that Tina had used heroin the day before she died and the day she died before Ms. Nere ever gave her the drugs. (R 609-21) Dr. Harkey testified "that Augustina Taylor died of heroin and cocaine intoxication due to intravenous drug use." (R 353)

The state argued in closing argument that "as long as the heroin by itself could cause death, we have met our burden." The defense objected and the court over ruled the objection. (R 725) The state then argued that Dr. Harkey testified that "the amount of heroin found in her was fatal by itself, fatal by itself....(R 726). The court again over ruled the defendant's objection. (R 726) In fact, Dr. Harkey testified that heroin use alone without cocaine use *could* have been fatal by itself. He did not testify that heroin use alone in this case was fatal. (R 353, 375) Dr.

Harkey also testified that cocaine use alone could have been fatal by itself. (R 360, 375) Ms. Nere was never charged with delivery of Cocaine.

The trial Court refused to modify the IPI Jury instructions to comply with and follow *Burrage*. The trial court also refused to modify the instructions to clarify that the acts of the defendant referred to in the instructions are limited to the act of delivering heroin and that particular heroin causing death. Instead the trial Court left the generic language "defendants acts" and "the acts of the defendant" in the instructions. *Id* 109. The Appellate Court recognized that the instruction was deficient because the "issue was whether Taylor's death was connected with her charged conduct, not merely with her. Thus IPI Criminal 4th No. 7.15 (Supp. 2011) might well benefit from amendment in this regard as well." *Id* #110. The Jury was improperly instructed that it could consider uncharged acts of the defendant including delivery of cocaine; and, delivery of a needle and pipe. Logically, the Jury likely concluded Taylor used the needle and or pipe to take the drugs that contributed to her death. It is no stretch of the imagination to believe they considered the uncharged act of delivery of cocaine. Even the Supreme Court agreed that the trial Court should have modified the instructions under these circumstances but found the error harmless. *Nere* Supreme Court opinion #67

REASON FOR GRANTING PETITION

CONTRIBUTING CAUSATION VIOLATES THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT WHEN USED IN DRUG INDUCED HOMICIDE CASES

IPI 7.15 reads: "In order for you to find that the acts of the defendant caused the death of Augustina Taylor the state must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death."

IPI 7.15 as given in this case violated Ms. Nere's constitutional rights. The Illinois Drug-Induced Homicide statute reads as follows: "A person who violates Section 401 of the Illinois Controlled Substances Act *** by unlawfully delivering a controlled substance to another, and *any person's death is caused by* the injection, inhalation or ingestion of any amount of that controlled substance, commits the offense of drug-induced homicide." (Emphasis added.) 720 ILCS 5/9-3.3(a). Before January 1, 2006, the statute read as follows:" A person who violates Section 401 of the Illinois Controlled Substances Act by unlawfully delivering a controlled substance to another, and *any person dies as a result of* the injection, inhalation or

ingestion of any amount of that controlled substance, commits the offense of drug-induced homicide." (Emphasis added.) 720 ILCS 5/9-3.3(a).

The change in the statute from *"any person dies as a result of"* to *"any person's death is caused by"* does not appear to "to have been an intent to make a significant change in the underlying meaning of the concept of causation. *People v. Kidd*, 2013 IL App (2d) 120088, ¶ 31.The *Kidd* court held that the proper jury instruction for causation is IPI Criminal 4th 7.15, which reads as follows: "In order for you to find that the acts of the defendant or one for whose conduct he is legally responsible caused the death of _____, the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However it is not necessary that you find the acts of the defendant were the sole and immediate cause of death." Id, at ¶ 20, 34.

Approximately four months after the appellate court decided *Kidd*, the United State's Supreme Court issued its opinion in *Burrage v. United States*, U.S. _____, 134 S. Ct. 881(2014). In *Burrage*, the court construed the meaning of a portion of the federal Controlled Substances Act which is virtually the same language as the Illinois drug induced homicide statute. "The Federal Controlled Substances Act imposes a 20-year mandatory minimum sentence on a defendant who unlawfully distributes a Schedule I or II drug, when "death or serious bodily injury *results from* (emphasis added) the use of such substance." 21 U. S. C. §841(a)(1), (b)(1)(A)-(C)." id., 134 S.Ct., at 885.

The Government argued that: "distinctive problems associated with drug overdoses counsel in favor of dispensing with the usual but-for causation requirement. Addicts often take drugs in combination, as [the decedent] did in this case, and according to the National Center for Injury Prevention and Control, at least 46 percent of overdose deaths in 2010 involved more than one drug. ..... This consideration leads the Government to urge an interpretation of "results from" under which use of a drug distributed by the defendant need not be a but-for cause of death, nor even independently sufficient to cause death, so long as it contributes to an aggregate force (such as mixed-drug intoxication) that is itself a but-for cause of death." *Burrage.*, at 889-890.

This Court in *Burrage* rejected the Government's argument. *Id*, at 890. The Government then appealed to "a second, less demanding (but also less well established) line of authority, under which an act or omission is considered a cause-in-fact if it was a "substantial" or "contributing" factor in producing a given result." *Id.*, at 890.

The Court rejected that argument as well. The court first stated: "Especially in the interpretation of a criminal statute subject to the rule of lenity, [citation omitted] we cannot give the text a meaning that is different from its ordinary,

accepted meaning, and that disfavors the defendant." *Id* at 891. Next, the Court said: "Here the Government is uncertain about the precise application of the test that it proposes. Taken literally, its "contributing-cause" test would treat as a cause-in-fact every act or omission that makes a positive incremental contribution, however small, to a particular result. See Brief for State of Alaska et al. as *Amici Curiae* 20; see also Black's Law Dictionary 250 (9th ed. 2009) (defining "contributing cause" as "[a] factor that—though not the primary cause—plays a part in producing a result"). But at oral argument the Government insisted that its test excludes causes that are "not important enough" or "too insubstantial." Tr. Of Oral Arg. 28. Unsurprisingly, it could not specify how important or how substantial a cause must be to qualify. See *id.*, at 41-42. Presumably the lower courts would be left to guess. That task would be particularly vexing since the evidence in §841(b) (1) cases is often expressed in terms of probabilities and percentages. One of the experts in this case, for example, testified that [decedent's] death would have been "[v]ery less likely" had he not used the heroin that *Burrage* provided. Is it sufficient that use of a drug made the victim's death 50 percent more likely? Fifteen percent? Five? Who knows? Uncertainty of that kind cannot be squared with the beyond-a-reasonable-doubt standard applicable in criminal trials or with the need to express criminal laws in terms ordinary persons can comprehend. See *United States* v. *L. Cohen Grocery Co.*, 255 U. S. 81, 89-90, 41 S. Ct. 298, 65 L. Ed. 516 (1921)." Id., at 891-892. In the end, the United States Supreme Court held that the statute, as written, required "but-for" cause, not "contributing-cause." *Id* at 892.

The standard of proof in all criminal trials, beyond a reasonable doubt, is governed by the Due Process Clauses contained in the United States Constitution. *U.S. v. Booker*, 543 U.S. 220, 230 (2005). The United States Supreme Court in *Burrage* effectively found the reasoning in the *Kidd* case and now the Illinois Supreme Court in this case (with respect to "contributing cause of death" as it applies to drug-induced deaths) is a violation of the "beyond a reasonable doubt" standard applicable in every criminal case. In *Burrage*, this Court's decision rested on two independent grounds: 1. statutory interpretation and the ordinary definition of the phrase "results from;" and 2. Reasonable doubt is not satisfied in drug induced homicides if the phrase "results from" (or by extension "caused by") requires only that defendant's actions be a substantial or contributing factor to a person's death. Likewise, such a minimal requirement violates the principal that criminal statutes need to be expressed in terms ordinary persons can comprehend. Where a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*, *Woods v. Interstate Realty Co.*, 337 U.S. 535, 537 (1949), and thus both are binding precedent.

The Illinois Supreme Court misses the boat on the elements of drug induced homicide: "we fail to see how using a contributing cause standard would implicate the proof beyond a reasonable doubt standard." *Nere* Supreme Court opinion #48. "But the only statutory element that a defendant has any control over is the delivery of the controlled substance." *Id* 47. The Illinois Supreme Court is wrong. By creating a new crime with more severe punishment the Illinois Legislature made

inhaling or ingesting the drug and that drug causing the death an element of the offense that must be submitted to the jury and proved beyond a reasonable doubt. *See Alleyne v. United States,* 570 U.S.___,___133 S.Ct. 2151, 186 L.Ed.2d 314 at 318 (2013); *Apprendi v. New Jersey,* 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). The Illinois Supreme Court seems to believe the Legislature could make any possible death that has any causal connection to the defendant a homicide as long as it "contributed" to the death.

Before it was amended, the Illinois Drug-Induced Homicide statute had almost the same causation language as the federal statute in *Burrage.* The only difference was that the Illinois statute's language was "as the result of" and the federal statute's language is "results from." The United States Supreme Court recently stated: "The words 'as a result of ' plainly suggest causation." *Paroline v. United States,* _____U.S.__, 134 S. Ct. 1710, 1720 (2014).

The Illinois Supreme Court declined to follow this Court in statutorily interpreting the language in the Illinois Drug induced homicide statute. It may very well have the final say on statutory interpretation of a state statute. However, this Court has the final say on whether the Statute (as interpreted by the State) passes Constitutional muster. The Illinois Supreme Court goes a step too far. The Court reasoned that Illinois' "contributing cause" standard is superior to this Court's "but for" standard. *IL Sup.Ct Opinion* #53-64

The Illinois Court justified not following this Court because it confused this Court's statutory interpretation analysis with its due process analysis. More precisely the Court does not see the distinction between the two.

The Illinois Court places great emphasis on this Court's statement in *Burrage* that Congress could have written section 841 (b) (1) (C) using contributing cause language. *Nere S.Ct opinion #45, 48.* This Court made the statement during the statutory interpretation analysis of the statute. It in no way diminishes the logical conclusion that had Congress written section 841 (b) (1) (C) using contributing cause language this Court would have found it unconstitutional. Either that or Justice Scalia was simply "musing" for himself and the majority.

A properly instructed jury is a requirement of Due Process of Law. *Rivera v. Illinois,* 556 U.S. 148,162 (2009). "The purpose of jury instructions is to provide the jury with the correct legal principles applicable to the evidence, so that the jury may reach a correct conclusion according to the law and the evidence... [and] their correctness depends not on whether defense counsel can imagine a problematic meaning, but whether ordinary persons acting as jurors would fail to understand them." *People v. Bannister,* 232 Ill.2d. 52, 81 (2008).A "jury instruction is unconstitutional if there is a reasonable likelihood that the jury understood the instruction to allow conviction without proof beyond a reasonable doubt." *Tyler v. Cain,* 533 U.S. 656, 658 (2001).

The Appellate Court said at one point: " the only way that the jury could have found that the heroin was an independently sufficient cause of Taylor's death was to

engage in the sort of inherently probabilistic--and vague--calculus that *Burrage* repudiated--rightly, as we shall explain. The expert evidence here suffered from defects the same as those in the expert testimony in *Burrage*. Harkey's testimony, even construed most favorably to the State, allowed at most an inference that the heroin by itself *might have* caused Taylor's death or that it increased the *probability* of death." *Nere* 2017 IL App (2d) 141143, at ¶76. The court also stated: "The use of the term "contributing cause" invited the jury to engage in the same problematic conduct that concerned the Court in *Burrage*: to convict based on a spurious theory of causation, one that relied on "could have" and "more or less probable" rather than proof beyond a reasonable doubt. Id., at ¶79.

As previously stated, if a jury is improperly instructed the Due Process Clause is violated, and the issue becomes whether the error was harmless beyond a reasonable doubt, not whether the trial court abused its discretion in giving the unconstitutional jury instruction. Jury instructions that are unconstitutional in nature are subject to harmless error beyond a reasonable doubt analysis. *Rose v. Clark*, 478 U.S. 570 (1986) *Yates v. Evatt*, 500 U.S. 391 (1991) (Harmless error analysis used where erroneous implied malice instruction given.) In this case, it cannot be said that the unconstitutional causation instruction that was given was harmless error beyond a reasonable doubt where there was no way to know whether Augustina Taylor would have lived or died if she had not taken the heroin. See *Burrage*, 134 S. Ct., at 885 ("Dr. Schwilke could not say whether Banka would have lived had he not taken the heroin.")

All three Illinois Courts seem to have given more weight and deference to the IPI than to the constitutional principles and laws they are supposed to protect. First the trial Court discounted the United States Supreme Court in favor of the IPI instructions. Next the Appellate Court recognized the fatal deficiencies of the IPI instructions as applied to this particular case but refused to correct it. The Appellate Court says that the IPI needs to be corrected and suggests that it be done by the legislature or judicially but it doesn't do it. *Id* #103, #107, foot note 3, #110. The Illinois Supreme Court seems so concerned that if it finds that "contributing cause" violates due process when applied to this very unique drug induced homicide statute, it will call into question causation in all Illinois homicide cases. It's as if an IPI instruction is untouchable instead of the principals the IPI is supposed to guarantee

The reasonable doubt standard is required in criminal cases because "...the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment. [footnote omitted]. In the administration of criminal justice, our society imposes almost the entire risk of error upon itself. *Addington v. Texas*, 441 U.S. 418, 423-424 (1979).

"Contributing factor" causation, rather than to exclude as nearly as possible the likelihood of an erroneous judgment, is so uncertain that it allows the police, prosecutors, and juries to decide what the law means, rather than the legislature. As this court has stated: "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government." *U.S. v. Reese*, 92 U.S. 214, 221 (1876).

Because both the beyond a reasonable doubt standard and notice of what conduct is prohibited are both governed by the due process clause of the fourteenth Amendment, *In re Winship*,397 U.S. 358, 364 (1970); *U.S. v. Williams*,553 U.S. 285, 304 (2008), use of "contributing factor" causation in the Illinois drug-induced homicide statute violates the due process clause of the fourteenth amendment .

The Illinois Supreme Court held that they were not required to follow this court's findings on the "contributing factor" standard of proximate causation since Justice Scalia "mused" when discussing the standard, and this court's findings, were, therefore, dicta. *People v. Nere*, No. 122566, ¶ 44-46 (2018). However, this court has stated: " It does not make a reason given for a conclusion in a case *obiter dictum* because it is only one of two reasons for the same conclusion. It is true that, in this case, the other reason was more dwelt upon, and perhaps it was more fully argued and considered, than § 3477, but we cannot hold that the use of the section in the opinion is not to be regarded as authority except by directly reversing the decision in that case on that point, which we do not wish to do." *Richmond Screw Anchor Co .v. U.S.*, 275 U.S. 331, 340 (1928). As this court more recently stated in citing *Richmond Screw Anchor*: " It is no answer to argue, as Bustillo does, that the holding in *Breard* [citation omitted] was "unnecessary" simply because the petitioner in that case had several ways to lose." *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 350 (2006).

In *Railroad Companies v. Schutte*,103 U.S. 118 (1880), this court held that:" It cannot be said that a case is not authority on one point because, although that point was properly presented and decided in the regular course of the consideration of the cause, something else was found in the end which disposed of the whole matter. Here the precise question was properly presented, fully argued, and elaborately considered in the opinion. The decision on this question was as much a part of the judgment of the court as was that on any other of the several matters on which the case as a whole depended." 103 U.S., at 143. In *Schutte*, the court found that a decision by the Florida Supreme Court on a point regarding statutory authority was not dicta, even though, in the end the case was decided on other grounds. 103 U.S., at 143. In *Burrage*, there was a good reason this court did not decide the matter on "contributing factor" causation: Such a decision would have rendered the statute at issue unconstitutional. This court has said: It is our duty in the interpretation of

federal statutes to reach a conclusion which will avoid serious doubt of their constitutionality." *Richmond Screw Anchor*, 275 U.S., at 346.

"Muse" has been defined as "to meditate." *Webster's New Collegiate Dictionary*, p. 556 (1949). It certainly cannot be said that this court "mused" or meditated" on the issue of "contributing factor" causation. This court used 1108 words to discuss the "contributing factor" causation issue. (Using word count on Google Docs, https://docs.google.com/document, last accessed: December 16, 2018). The court cited ten court opinions, the American Law Institute's Model Penal Code, a Torts casebook, and numerous statutes. This is not mere musing or meditating. This is a holding. The Illinois Supreme Court erred in not following the holding in *Burrage* that "contributing factor" causation violates due process of law when applied to the Illinois drug-induced Homicide statute.

In matters of federal constitutional law, decisions of the United States Supreme Court are binding on the states. *Sims v. Georgia,* 385 U.S. 538, 544 (1967). Thus, in terms of federal constitutional matters, the Illinois Supreme Court is an inferior court to this court. In refusing to follow *Burrage,* the Illinois Supreme Court showed less deference to this court than it requires of its own inferior courts. In *People v. Williams*, 204 Ill.2d. 191 (2003), the court stated: "Our closing statements in *Gooden [citation omitted]* were judicial *dicta* because they concerned an issue addressed by the parties, as well as the core of the appellate court's holding. But whether we characterize that portion of *Gooden* as judicial or *obiter dicta*, it still should have guided the appellate court in this case. Now, yesterday's *dicta* have become today's decision. In *Gooden*, when we said "any delay occasioned by such a late filing would not be attributable to the defendant," we meant just that." 204 Ill.2d., at 207. It would seem that the Illinois Supreme Court applies different rules when it is the inferior court. Equally troubling, the Illinois Supreme Court does not believe that this court means what it says.

CONCLUSION

The petition for writ of certiorari should be granted and the order of the Illinois Supreme Court reversed and Jennifer Nere's conviction reversed and or remanded with orders to properly instruct the Jury.

Respectfully submitted,

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