

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

ROBERT CURRY

- PETITIONER;

v.

19-5366

PEOPLE, STATE OF ILLINOIS - RESPONDENT;

FILED

APR 30 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

MR. ROBERT CURRY

Mr. Robert Curry

IDOC# K61254

STATEVILLE CORRECTIONAL CENTER

P.O. BOX 112

JOLIET, IL. 60434

PETITIONER / PRO SE

QUESTIONS PRESENTED

- (1) WHETHER PETITIONER WAS DENIED A REASONABLE AND/OR ADEQUATE LEVEL OF ASSISTANCE OF COUNSEL DURING INITIAL POSTCONVICTION PROCEEDING(S)?
- (2) WHETHER PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT SPECIFICALLY ON PERSONAL KNOWLEDGE GROUNDS AS TO STATE WITNESS?
- (3) WHETHER STATE SATISFIED PERSONAL KNOWLEDGE REQUIREMENT FOR ADMISSION OF A PRIOR INCONSISTENT STATEMENT UNDER SECTION 725 ILLS 5/115-10.1(C)(2)?
- (4) WHETHER PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF BOTH APPELLATE AND POST CONVICTION COUNSEL FOR FAILURE TO RAISE THE IMPROPER USE OF SPECIAL INTERROGATORY?
- (5) WHETHER THE SPECIAL INTERROGATORY WAS IN PROPER FORM SINCE IT FAILED TO RELATE TO AN ULTIMATE ISSUE OF FACT UPON WHICH PETITIONER'S RIGHTS DEPENDED?

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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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

THE PETITIONER RESPECTFULLY PRAYS THAT THIS
HONORABLE COURT ISSUE A WRIT OF CERTIORARI 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☐ IS UNPUBLISHED.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☐ IS UNPUBLISHED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 C TO THE PETITION AND IS -
THE DECISION OF THE SUPREME COURT OF ILLINOIS

☐ REPORTED AT _____ ; OR,

☐ HAS BEEN DESIGNATED FOR PUBLICATION BUT IS NOT YET REPORTER; OR,
☒ IS UNPUBLISHED.

THE OPINION OF THE COURT
APPEARS AT APPENDIX A TO THE PETITION AND IS - THE
DECISION OF THE ILLINOIS APPELLATE COURT (1ST DISTRICT)

☒ REPORTED AT PEOPLE V. CURRY N.O. 1-16-1247 ; OR,

☒ HAS BEEN DESIGNATED FOR PUBLICATION BUT IS NOT YET REPORTER; OR,

☐ IS UNPUBLISHED.

JURISDICTION

☐ FOR CASES FROM FEDERAL COURTS:

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS
DECIDED MY CASE WAS

A COPY OF THAT DECISION APPEARS AT APPENDIX

☐ 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:

, 20, 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

, 20, ON

20, IN APPLICATION NO., AND A COPY OF THE
ORDER GRANTING SAID EXTENSION APPEARS AT APPENDIX

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 JANUARY 31, 2019.

A COPY OF THAT DECISION APPEARS AT APPENDIX C.

☒ NO PETITION FOR REHEARING WAS TIMELY FILED IN MY CASE.

☐ A TIMELY PETITION FOR REHEARING WAS DENIED ON THE FOLLOWING
DATE:

20, AND A COPY OF THE ORDER
(3)

DENYING REHEARING APPEARS AT APPENDIX _____.

☐ AN EXTENSION OF TIME TO FILE THE PETITION FOR A WRIT OF CERTIORARI WAS GRANTED TO AND INCLUDING

_____, 20 _____, ON _____,

20 _____, IN APPLICATION NO. _____, AND A COPY OF THE ORDER GRANTING SAID EXTENSION APPEARS AT APPENDIX _____.

THE JURISDICTION OF THIS COURT IS INVOLVED UNDER 28 U.S.C. § 1257(8).

CONSTITUTIONAL PROVISIONS AND STATUTES

S.H.A 725 ILCS 5/115-10.1^① - IN ORDER FOR A PRIOR INCONSISTENT STATEMENT TO BE ADMISSIBLE AS SUBSTANTIVE EVIDENCE, THE OUT OF COURT STATEMENT MUST NARRATE, DESCRIBE, OR EXPLAIN AN EVENT OR CONDITION, AND THE WITNESS MUST HAVE PERSONAL KNOWLEDGE OF THAT EVENT OR CONDITION.^② A PRIOR INCONSISTENT STATEMENT IS NOT ADMISSIBLE AS SUBSTANTIVE EVIDENCE UNLESS THE WITNESS ACTUALLY PERCEIVED THE EVENTS THAT ARE THE SUBJECT OF THE OUT OF COURT STATEMENT OR ADMISSION.

725 ILCS 5/122-1

PG. 11, 12

U.S.C.A CONST, AMEND.^{*}6 - TO SHOW INEFFECTIVE ASSISTANCE OF COUNSEL, A DEFENDANT MUST DEMONSTRATE THAT HIS ATTORNEY(S) REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABleness AND THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS, THE RESULT OF THE PROCEEDING(S) WOULD HAVE BEEN DIFFERENT.

STATEMENT OF THE CASE

FOLLOWING A JURY TRIAL, PETITIONER WAS CONVICTED OF FIRST DEGREE MURDER AND ATTEMPT MURDER IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS. ON JUNE 19, 2006 THE TRIAL COURT ENTERED JUDGMENT AND SENTENCED PETITIONER TO A TOTAL OF FIFTY (50) YEARS OF IMPRISONMENT.

PETITIONER APPEALED HIS JUDGMENT OF CONVICTION AND ON MAY 14, 2008, THE STATE APPELLATE COURT AFFIRMED. THE ILLINOIS SUPREME COURT DENIED PETITIONER'S ENSUING PETITION FOR LEAVE TO APPEAL ON SEPTEMBER 24, 2008.

PETITIONER FILED A POST CONVICTION PETITION IN THE CIRCUIT COURT OF COOK COUNTY ON JUNE 18, 2009 PURSUANT TO 725 ILCs 5/122-1. THE TRIAL COURT DISMISSED THE PETITION, PETITIONER APPEALED, AND THE APPELLATE COURT AFFIRMED PETITIONER'S CONVICTION ON JANUARY 5, 2015. PETITIONER'S ENSUING PETITION FOR LEAVE TO APPEAL WAS DENIED ON MAY 27, 2015.

PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS ON DECEMBER 4, 2015 IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTER DIVISION.

ON OCTOBER 27, 2016 A ORDER WAS ISSUED, GRANTING DISMISSAL OF PETITIONER'S 28 U.S.C § 2254 PETITION FOR A

WRIT OF HABEAS CORPUS.

PETITIONER FILED A TIMELY NOTICE OF APPEAL ON NOVEMBER 14, 2016. THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, ILLINOIS ISSUED AN ORDER ON MAY 31, 2017 DENYING PETITIONER'S REQUEST FOR A CERTIFICATE OF APPEALABILITY.

PETITIONER FILED A WRIT OF CERTIORARI ON AUGUST 29, 2017. THE WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT WAS DENIED ON JANUARY 8, 2018

ON FEBRUARY 11, 2016 PETITIONER FILE A MOTION FOR LEAVE TO FILE A SUCCESSIVE PETITION FOR POST CONVICTION RELIEF IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, RAISING THE FOLLOWING CLAIMS:

- (1) THAT RETAINED COUNSEL FAILED TO RAISE CERTAIN ISSUES IN HIS FIRST PETITION, WHICH PROVIDED UNREASONABLE ASSISTANCE.
- (2) THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE THAT THE SPECIAL INTERROGATORY FINDING THAT DEFENDANT DID NOT DISCHARGE A FIREARM IS INCONSISTENT WITH THE GENERAL VERDICT THAT HE WAS GUILTY OF MURDER.

(3) THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE ADMISSION OF SHERRON ADAM'S PRIOR INCONSISTENT STATEMENT.

(4) THAT THE "PERSONAL KNOWLEDGE REQUIREMENT FOR ADMISSION OF A PRIOR INCONSISTENT STATEMENT WAS NOT SATISFIED UNDER SECTION 115-10.1 (C)(2) (725 ILCS 5/115-10.1 (C)(2), AS PERTAINED TO STATE WITNESS SHERRON ADAMS

PETITIONER'S MOTION FOR LEAVE TO FILE A SUCCESSIVE PETITION FOR POST CONVICTION RELIEF WAS DENIED BY THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS ON MARCH 21, 2016.

PETITIONER FILED A TIMELY NOTICE OF APPEAL ON APRIL 5, 2016. ON APRIL 22, 2016, THE OFFICE OF THE STATE APPELLATE DEFENDER WAS APPOINTED.

THE STATE APPELLATE DEFENDER FILED A MOTION FOR LEAVE TO WITHDRAW AS COUNSEL ON APPEAL, CONSISTENT WITH PENNSYLVANIA V. FINLEY ON MARCH 6, 2018.

PETITIONER FILED A RESPONSE TO THE STATE APPELLATE DEFENDER'S MOTION TO WITHDRAW ON MAY 4, 2018. THE APPELLATE COURT ALLOWED THE STATE APPELLATE DEFENDER'S MOTION TO WITHDRAW AS COUNSEL AND AFFIRMED THE

CIRCUIT COURT'S JUDGMENT ON JULY 16, 2018.

PETITIONER FILED A TIMELY PETITION FOR LEAVE
TO APPEAL ON AUGUST 18, 2018. THE SUPREME COURT OF
ILLINOIS DENIED PETITIONER'S PETITION FOR LEAVE TO
APPEAL ON JANUARY 31, 2019.

REASON FOR GRANTING WRIT

PETITIONER ROBERT CURRY WAS PREJUDICED WHERE RETAINED COUNSEL FOR POST CONVICTION PETITION FAILED TO ADDRESS SEVERAL CLAIMS WHICH WERE OF MERIT AND FAILED TO PROPERLY FILE THE COMPLETE AND SIGNED AFFIDAVIT THAT ESTABLISHED PETITIONER'S ACTUAL INNOCENCE AT THE FIRST STAGE OF POST CONVICTION PROCEEDINGS.

ALTHOUGH NO STATUTORY RIGHT TO SUCH ASSISTANCE EXISTS AT FIRST STAGE PROCEEDINGS, PETITIONER IS PREJUDICED WHEN HE IS PREVENTED FROM RAISING VIABLE POST CONVICTION CLAIMS DUE TO ATTORNEY NEGLIGENCE OR ERROR. IN PEOPLE V. BENNETT, 394 ILL. APP. 3d, 350 (2ND DIST. 2009), BECAUSE DEFENDANT IS PERMITTED ONLY ONE POST CONVICTION PETITION, FAIRNESS DICTATES THAT A LIMITED REMAND IS APPROPRIATE TO ALLOW DEFENDANT TO AMEND HIS/HER PETITION TO STATE ANY ADDITIONAL CLAIMS DEFENDANT MAY HAVE.

PETITIONER IS ENTITLED TO REASONABLE ASSISTANCE OF RETAINED COUNSEL AT THE FIRST AND SECOND STAGE OF PROCEEDING(S) WHERE COUNSEL HAS DRAFTED THE ORIGINAL PETITION (IN THE AFFIRMATIVE ILLINOIS COURTS MAY VERY WELL REVISIT THE ISSUE OF WHETHER RETAINED COUNSEL IS REQUIRED TO PROVIDE REASONABLE/ADEQUATE ASSISTANCE AT THE FIRST STAGE.)

THAT ON JUNE 18, 2009 RETAINED COUNSEL FILED A PETITION

FOR POST CONVICTION RELIEF ON BEHALF OF PETITIONER THAT WAS DENIED (63) DAYS LATER ON AUGUST 21, 2009 AS BEING FRIVOLOUS AND PATENTLY WITHOUT MERIT, (SEE APP. B-2/3). RETAINED COUNSEL FAILED TO ADDRESS SEVERAL CLAIMS WHICH WERE OF MERIT AND FAILED TO SUBMIT SIGNED AND NOTARIZED AFFIDAVIT(S) PERTAINING TO PETITIONER'S INNOCENCE CLAIM, INSTEAD COUNSEL SUBMITTED AN UNSIGNED AFFIDAVIT AMOUNTING TO UNREASONABLE AND/OR INADEQUATE LEVEL OF ASSISTANCE FROM RETAINED COUNSEL AT THE FIRST STAGE OF POSTCONVICTION PROCEEDING(S). POSTCONVICTION COUNSEL, REALIZING THAT SAID POST CONVICTION PETITION WAS DUE ON OR BEFORE JUNE 24, 2009, HURRIEDLY FILED IT ON JUNE 18, 2009, SUCH HASTE RESULTED IN SAID PETITION BEING FILED TO TOLL THE RUNNING OF THE STATUTE OF LIMITATIONS.

IN THIS LIGHT, PETITIONER SHOULD BE PROVIDED AN FAIR OPPORTUNITY TO PROCEED HERE SINCE THE INITIAL POST CONVICTION PETITION WAS DEFICIENT AND RETAINED COUNSEL'S UNREASONABLE AND/OR INADEQUATE LEVEL OF ASSISTANCE WAS THE CAUSE OF PETITIONER'S INITIAL PETITION BEING DEFICIENT, THUS PREJUDICING PETITIONER'S ABILITY TO FAIRLY PLACE AN ADEQUATELY PREPARED PETITION BEFORE THE COURT.

THE POSTCONVICTION HEARING ACT, 725 ILCS 5/122-1 PROVIDES A METHOD FOR AN INDIVIDUAL SUBJECT TO A CRIMINAL SENTENCE TO CHALLENGE A CONVICTION BY ALLEGING IT WAS THE RESULT OF A SUBSTANTIAL DENIAL OF FEDERAL OR STATE CONSTITUTIONAL RIGHTS OR BOTH, 725 ILCS 5/122-1. THE ACT PROVIDES A THREE

PROCESS FOR ADJUDICATING PETITIONS.

REASONABLE LEVEL OF ASSISTANCE STANDARD IS APPLICABLE TO BOTH RETAINED AND APPOINTED COUNSEL.

DEFENDANT WHOSE INITIAL POSTCONVICTION WAS FILED BY RETAINED COUNSEL AND WHO WAS REPRESENTED BY RETAINED COUNSEL AT FIRST STAGE AND SECOND STAGE OF POSTCONVICTION PROCEEDING(S) IS ENTITLED TO REASONABLE LEVEL OF ASSISTANCE OF COUNSEL, FOR PURPOSES OF DETERMINING WHETHER POSTCONVICTION COUNSEL WAS DEFICIENT IN RAISING THE SAME ISSUE IN POSTCONVICTION PROCEEDING(S) AS HAD BEEN RAISED AND REJECTED ON DIRECT APPEAL. PEOPLE V. ANGUIANO, 32, 34, 378 ILL. DEC. 600, 4 N.E. 3d 483. S.H.A. 725 J.L.C.S. 5/122-1 et. seq.

PEOPLE V. MITCHELL, WHICH STRONGLY INDICATES THAT A COUNSELED DEFENDANT IS ENTITLED TO A REASONABLE LEVEL OF ASSISTANCE. SEE MITCHELL, 189 ILL. 2d AT 358, 245 ILL. DEC. 1, 727 N.E. 2d 254, WE DO NOT BELIEVE THE LEGISLATURE INTENDED FOR PRIVATE COUNSEL RETAINED THROUGH FIRST AND SECOND STAGES TO BE FREE TO PROVIDE A LEVEL OF ASSISTANCE BELOW THAT REQUIRED OF COUNSEL APPOINTED OR RETAINED AT THE SECOND STAGE. APPLYING THE SAME STANDARD HAS THE VIRTUE NOT ONLY OF GUARANTEEING SIMILAR PROTECTIONS TO SIMILARLY SITUATED LITIGANTS, BUT ALSO OF SIMPLICITY. WE SEE NO NEED TO FURTHER COMPLICATE POSTCONVICTION PROCEEDINGS.

THE JURY RETURNED A GUILTY VERDICT ON FIRST DEGREE MURDER AND ATTEMPT FIRST DEGREE MURDER IN THAT DEFENDANT FIRED A GUN, KILLING CESAR FOWLER AND ATTEMPTED TO KILL ANDRE ARMSTRONG BY FIRING A GUN. (SEE APP. E-2) THAT SAME JURY ALSO RETURNED A SPECIAL VERDICT THAT DEFENDANT DID NOT PERSONALLY DISCHARGE A FIREARM, RENDERING IT A LEGAL IMPOSSIBILITY TO HAVE KILLED OR ATTEMPTED TO KILL SOMEONE WITHOUT HAVING DISCHARGED A FIREARM. (SEE APP. E-2)

THAT THE INCONSISTENT JURY VERDICTS IN THE PETITIONER'S TRIAL CONCLUDES, BOTH FACTUALLY AND LEGALLY THAT THE DEFENDANT WAS NOT PROVEN BEYOND A REASONABLE DOUBT FOR FIRST DEGREE MURDER.

ILLINOIS RELIANCE ON SPECIAL INTERROGATORIES AND SPECIAL VERDICTS TO MEET THE APPENDIX PRINCIPLE'S, MITIGATES AND RUNS COUNTER TO IT'S REFUSAL TO PROVIDE A REMEDY FOR FACTUAL AND LEGAL INCONSISTENCIES PRESENTED IN THE USE OF SPECIAL INTERROGATORIES AND VERDICTS. AT PRESENT, ILLINOIS COURTS HAVE ADOPTED SUPREME COURT RULINGS THAT DENIES DEFENDANT'S THE OPPORTUNITY TO CONTEST JURY INCONSISTENCIES.

NEITHER DUNN NOR POWELL WERE MANDATES UPON THE STATES. THE SUPREME COURT'S RULING ON JURY INCONSISTENCIES SHOULD BE LIMITED IN IT'S RULING. IN DUNN V. UNITED STATES, 284 U.S. 390 (1932), THE HIGH COURT CONSIDERED THE

QUESTION OF PROPER DISPOSITION OF INCONSISTENT JURY VERDICTS. THE SUPREME COURT IN DUNN UPHELD THE CONVICTION ON THE COMPOUND FELONY, DUNN, 284 U.S. AT 394.

IT MUST BE NOTED THAT THE DUNN COURT JUSTIFIED THEIR DECISION ON THE ASSUMPTION OF POWER THAT THE JURY ACTUALLY HAD NO RIGHT TO EXERCISE, BUT WAS INSTEAD DISPOSED TO DO SO THROUGH "LENITY." Id AT 394. THAT WHILE RECOGNIZING THAT AN INCONSISTENT VERDICT COULD BE BASED UPON MOTIVATION OTHER THAN "LENITY" FOR INSTANCE, AS A RESULT OF COMPROMISE OR OF A MISTAKE ON THE PART OF THE JURY, THE COURT REASONED THAT IT COULD NOT SPECULATE REGARDING THESE MATTER(S), DUNN, 284 U.S. AT 393-394.

AS A RESULT, THE DUNN COURT ADOPTED WHAT AMOUNTED TO AN IRREFUTABLE PRESUMPTION THAT THE JURY WAS ENGAGED IN AN ACT OF "LENITY" WHEN IT ACQUITTED EVEN THOUGH THE COURT RECOGNIZED THAT THE JURY VERDICT COULD HAVE BEEN BASED ON OTHER FACTORS. DUNN, 284 U.S. AT 393-394.

52 YEARS LATER, THE HIGH COURT RE-AFFIRMED IT'S STANCE ON INCONSISTENT JURY VERDICTS IN UNITED STATES V. POWELL, 469 U.S. 57 (1984). THE COURT UPHELD THE RULING IN DUNN AND HELD THAT JURY INCONSISTENCY DID NOT REQUIRE REVERSAL IN GUILTY VERDICTS. POWELL 469 U.S. AT 63. THE POWELL COURT NOTED IT WAS POSSIBLE THAT THE JURY MADE AN ERROR IN CONVICTING THE DEFENDANT, IT WAS "EQUALLY POSSIBLE

THAT THE JURY CONVINCED OF GUILT, PROPERLY REACHED IT'S CONCLUSION ON THE COMPOUND OFFENSE, AND THEN THROUGH MISTAKE, COMPROMISE OR LENITY, ARRIVED AT AN INCONSISTENT CONCLUSION ON THE LESSER OFFENSE. POWELL, 469 U.S. AT 65.

WHAT IS NOT OFTEN MENTIONED IS THE POWELL COURT CONCLUDED THAT THE REMEDIAL SCHEME AFFORDED TO DEFENDANT'S FOLLOWING A GUILTY VERDICT WAS SUFFICIENT PROTECTION TO GUARD AGAINST Juries THAT WOULD CONVICT OUT OF PASSION OR PREJUDICE. POWELL, 469 U.S. AT 67.

POWELL REASONED THAT, BY REQUIRING THE GOVERNMENT TO CONVINCe JURORS AT TRIAL AND JUDGES ON APPEAL OF THE DEFENDANT'S GUILT AND THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT THE VERDICT, A CONVICTED DEFENDANT WAS SUFFICIENTLY PROTECTED AGAINST JUROR ABUSE, THIS HOLDS NO SOLACE FOR PETITIONER, SINCE ILLINOIS OFFERS NO SUCH OPPORTUNITY OR REMEDY.

WHAT INFORMS THE CONCLUSION OF POWELL, NOR DUNN BEING MANDATED, THE COURT STATED THEIR REMEDY WAS NOT WELL ROUNDED FOR ALL STATES, NOTHING IN THIS OPINION IS INTENDED TO DECIDE PROPER RESOLUTIONS OF A SITUATION WHERE A DEFENDANT IS CONVICTED WHERE A GUILTY VERDICT ON ONE COUNT LOGICALLY EXCLUDES FINDING OF GUILT IN THE OTHER. POWELL, 469 U.S. AT 69. THAT SPECIFICALLY APPLIES

HERE, THE SUPREME COURT'S RULINGS ON INCONSISTENT JURY VERDICTS SHOULD BE NARROWLY INTERPRETED AS A SCHEME FOR THE FEDERAL CRIMINAL PROCESS AND NOT A MANDATE FOR ANY STATE, POWELL, 469 U.S. AT 69, AND THIS COURT SHOULD NARROWLY INTERPRET THE DUNN / POWELL HOLDINGS AS ONE THAT HAS PRIORITIZED THE INTEGRALITY OF THE CRIMINAL PROCESS, THAN OF THE RIGHTS OF A DEFENDANT.

PETITIONER SUBMIT'S THAT THE SPECIAL VERDICT RETURNED BY THE JURY IN RESPONSE TO THE SPECIAL INTERROGATORY RELATED TO THE ULTIMATE FACT ON WHICH PETITIONER'S RIGHTS DEPENDED, WHICH WAS, THE KILLING AND ATTEMPTED MURDER OF (2) TWO VICTIMS, (SEE APP. G). THE GRAND JURY CHARGED PETITIONER WITH THE FIRST DEGREE MURDER OF CESAR FOWLER AND THE ATTEMPTED FIRST DEGREE MURDER OF ANDICE ARMSTRONG, (SEE APP. G14).

WHAT ENTAILED THE ULTIMATE FACT UPON WHICH THE RIGHTS OF PETITIONER DEPENDED, WAS, IN BEING PROVED BEYOND A REASONABLE DOUBT, GUILTY OF KILLING FOWLER BY DISCHARGING A FIREARM PERSONALLY, (SEE APP. G14). HOWEVER THE JURY RETURNED A SPECIAL VERDICT ACQUITTING PETITIONER OF THE ULTIMATE FACT, (SEE APP. E-2).

THE RESPONSE / ANSWER TO THE SPECIAL INTERROGATORY CONTROLS THE JUDGMENT WHEN IT IS INCONSISTENT WITH THE GENERAL VERDICT. GORANOWSKI V. NORTHEAST ILLINOIS

REGIONAL COMMUTER R.R. CORP., APP. 1ST DIST. (2013), 991 N.E. 2d 837. THE LAW IN ILLINOIS INVOLVING SPECIAL INTERROGATORIES ENTAIL CIVIL CASES (JABLONSKI V. FORD MOTOR CO., APP. 5 DIST. (2016), 923 N.E. 2d 347), BUT DUE TO APPENDIX REQUIREMENTS, HAVE BEEN TAILORED TO CRIMINAL CASES. AS SUCH, THE AXIOM THAT, WHERE THE COURT FINDS THE ANSWER TO THE SPECIAL INTERROGATORY ABSOLUTELY IRRECONCILABLE WITH THE VERDICT, AND IF THE ANSWER TO THE SPECIAL FINDINGS IS NOT AGAINST THE MANIFEST WEIGHT OF EVIDENCE, THE SPECIAL FINDING CONTROLS, AND A JUDGMENT MAY BE ENTERED BASED ON THE SPECIAL FINDING RATHER THAN ON THE GENERAL VERDICT. AHMED V. BICKWICK PLACE OWNER'S ASSN. APP. 1 DIST. 2008, 896 N.E. 2d 854, IN RE DETENTION OF HAYES, APP. 1 DIST. (2014), 8 N.E. 3d 680.

PETITIONER THEREFORE SEEKS THE GENERAL VERDICT BEING SET ASIDE AS BEING CLEARLY INCONSISTENT AND THAT THE VERDICT ON THE SPECIAL INTERROGATORY NECESSARILY CONTROLS, (SEE APP. E). MONOWSKI V. SIKORA, (1968) 234 N.E. 2d 831, REQUIRING A NEW TRIAL. FREEMAN V. CHICAGO TRANSIT AUTHORITY, APP. (1964) 200 N.E. 2d 128.

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT SPECIFICALLY ON "PERSONAL KNOWLEDGE" GROUNDS AS TO SHERRON ADAMS PURSUANT TO 725 ILCS 5/115-10.1 (C) (2). SHERRON ADAMS PROVIDED POLICE WITH A STATEMENT ON NOVEMBER 9, 2004, AT AREA (1) POLICE DEPARTMENT, WHICH PROVED TO BE IN-

CONSISTENT WITH ADAMS TRIAL TESTIMONY. ADAMS ALSO PROVIDED GRAND TESTIMONY WHICH WAS INCONSISTENT WITH HIS TRIAL TESTIMONY, (SEE APP. D)

TRIAL COUNSEL OBJECTED ON GROUNDS THAT ADAMS' TESTIMONY WAS NOT TO BE BELIEVED DUE TO PROMISES, WHILE ADAMS' HEARSAY WAS CLEARLY USED AS SUBSTANTIVE EVIDENCE, EVEN AS THE APPELLATE OPINIONS REFLECT, (SEE APP. A). IT IS WELL SETTLED THAT ADAMS' STATEMENT MADE OUT OF COURT, AND OUT OF THE PRESENCE OF PETITIONER IS PURE HEARSAY AND IS INCOMPETENT AS SUBSTANTIVE EVIDENCE. PEOPLE V. CRUZ, 162 ILL. 2D 314, 359-360 (1994), TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO OBJECT TO THE STATEMENT AND GRAND JURY TESTIMONY BEING INTRODUCED WHEREIN ADAMS CLAIMED TO HAVE BEEN TOLD BY PETITIONER THAT HE (PETITIONER) HAD SHOT THE VICTIMS, SINCE ADAMS HAD NO PERSONAL KNOWLEDGE OF WHAT HE NARRATED, DESCRIBED, OR EXPLAINED, (SEE APP. D-3), 725 ILLCS 5/115-10.1(C)(2).

THE ILLINOIS APPELLATE COURT FOUND THAT "FOR A WITNESSES OUT OF COURT STATEMENT TO SATISFY THE PERSONAL KNOWLEDGE REQUIREMENT, THE WITNESS MUST HAVE ACTUALLY SEEN THE EVENTS THAT FORM THE SUBJECT MATTER OF THE STATEMENT. PEOPLE V. SIMPSON, 2013 ILL. APP. (1ST) 111914, 993 N.E. 2D 527.

THE APPELLATE COURT FURTHER FOUND TRIAL COUNSEL WAS DEFICIENT FOR FAILING TO OBJECT ON THAT PRECISE BASIS, SUCH BEING AFFIRMED BY THE ILLINOIS SUPREME COURT ON JANUARY 23, 2015, PEOPLE V. SIMPSON, 25 N.E. 3d 601.

THE CHAMBERS COURT REFERRED TO FOUR SPECIFIC OBJECTIVE INDICIA OF TRUSTWORTHINESS; (1) THE STATEMENT WAS MADE SPONTANEOUSLY TO A CLOSE ACQUAINTANCE SHORTLY AFTER THE CRIME OCCURRED; (2) THE STATEMENT WAS CORROBORATED BY OTHER EVIDENCE; (3) THE STATEMENT WAS SELF-INCRIMINATING AND AGAINST THE DECLARANT'S INTEREST; (4) THERE WAS ADEQUATE OPPORTUNITY FOR CROSSEXAMINATION OF THE DECLARANT. (CHAMBERS V. MISSISSIPPI, 410 U.S. 284, 302). THE PRESENCE OF ALL FOUR FACTORS IS NOT A CONDITION OF ADMISSIBILITY. THEY ARE INDICIA, NOT HARD AND FAST REQUIREMENTS (HOUSE, 141 ILL. 2d AT 390, 152 ILL. DEC. 572, 566 N.E. 2d 259, CITING BOWELL, 111 ILL. 2d AT 67, 94 ILL. DEC. 748, 488 N.E. 2d 995). THE QUESTION TO BE CONSIDERED IN DECIDING THE ADMISSIBILITY OF SUCH AN EXTRAJUDICIAL DECLARATION IS WHETHER IT WAS MADE UNDER CIRCUMSTANCES WHICH PROVIDE "CONSIDERABLE ASSURANCE" OF IT'S RELIABILITY BY OBJECTIVE INDICIA OF TRUSTWORTHINESS.

AS SUCH, ADAMS' TESTIMONY SHOULD HAVE BEEN STRICKEN AND NEVER USED AS SUBSTANTIVE EVIDENCE IN THE TRIAL OF PETITIONER.

PETITIONER CONTENDS THAT HE HAS DEMONSTRATED THAT THE

COURT'S ASSESSMENT OF THESE CLAIMS ARE DEBATABLE AND ARE MERITORIOUS. TO ALLOW THE ORDER OF THE ILLINOIS APPELLATE COURT AND THE SUPREME COURT OF ILLINOIS TO REMAIN WOULD IN EFFECT INSULATE THE TRIAL AND POST CONVICTION COUNSEL FROM REVIEW FOR THEIR INEFFECTIVE AND UNREASONABLE ASSISTANCE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Robert Lury

Date: APRIL 25, 2019