

19-5655

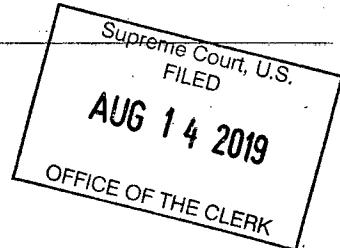
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CHADWICK N. BARNER — PETITIONER
(Your Name)



vs.

PEOPLE OF THE STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TO THE ILLINOIS COURT OF APPEALS FOR THE THIRD JUDICIAL DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHADWICK N. BARNER # R44875
(Your Name)

P.O. BOX 1700

(Address)

GALESBURG, ILLINOIS 61402
(City, State, Zip Code)

N/A

(Phone Number)

QUESTIONS PRESENTED

- 1) CAN A SPECIFIC INTENT TO KILL BE INFERRED BASED ON THE ACT OF PUSHING A PERSON'S HEAD UNDERWATER?
- 2) CAN THE STATE'S PRESENTATION OF NONTESSTIMONIAL EVIDENCE PER SE PRECLUDES A DETERMINATION THAT THE EVIDENCE AT TRIAL WAS CLOSELY BALANCED?

LIST OF PARTIES

CHADWICK N. BARBER #R44875
P.O. BOX 1700
GALESBURG, IL. 61402

PROPRIA PERSONA FOR PETITIONER

KWAME RAOUF
ILLINOIS ATTORNEY GENERAL
100 W. RANDOLPH STREET
CHICAGO, IL. 60601

REPRESENTATION FOR RESPONDENT

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
INDEX OF AUTHORITIES	iv
OPINIONS	1.
JURISDICTION	1.
CONSTITUTIONAL PROVISIONS AND STATUTES	2.
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	14
APPENDIX	

APPENDIX A- DECISION OF THE ILLINOIS APPELLATE COURT

APPENDIX B- DECISION OF THE ILLINOIS APPELLATE COURT DENYING REHEARING

APPENDIX C- DECISION OF THE ILLINOIS SUPREME COURT DENYING REVIEW

INDEX OF AUTHORITIES

PEOPLE V. HENRY 3 ILL. App. 3d 235, 238 (1st. Dist. 1971).....	8
PEOPLE V. WILLIAMS 165 ILL. 2d 51, 64 (1995).....	8
UNITED STATES CONSTITUTION AMENDMENT XIV.....	9,12
ILLINOIS STATE CONSTITUTION, 1970, ARTICLE I, SECTIONS.....	9,12
PEOPLE V. NAYLOR 229 ILL. 2d 534 (2009).....	10
PEOPLE V. SEBBY (2017) ILL. 119445, ¶ 52.....	10,11
PEOPLE V. BELKNAP (2014) ILL. 117094, ¶ 52-53	11
PEOPLE V. ADAMS (2012) ILL. 111168, ¶ 22	11
PEOPLE V. WHITE (2011) ILL. 109689, ¶ 139	11

PETITIONER, CHADWICK N. BARNER, RESPECTFULLY PRAYS THAT THIS HONORABLE COURT ISSUE A WRIT OF CERTIORARI TO REVIEW THE JUDGEMENT BELOW.

I

OPINIONS

THE ORIGINAL JUDGEMENT OF CONVICTION OF THE PETITIONER WAS APPEALED TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT, WHICH AFFIRMED 1 OF THE 3 CONVICTIONS IN AN UNPUBLISHED DECISION AND IS ATTACHED HERETO AS APPENDIX "A".

A PETITION FOR REHEARING OF THE DECISION OF THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT WAS DENIED IN AN UNPUBLISHED DECISION AND IS ATTACHED HERETO AS APPENDIX "B".

THE JUDGEMENT OF THE DECISION OF THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT WAS APPEALED TO THE ILLINOIS SUPREME COURT WHICH WAS DENIED IN AN UNPUBLISHED DECISION AND IS ATTACHED HERETO AS APPENDIX "C".

II

JURISDICTION

THE JUDGEMENT OF THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT WAS ENTERED ON DECEMBER 11, 2018. A TIMELY PETITION FOR REHEARING WAS FILED AND THEREAFTER DENIED ON JANUARY 09, 2019. A PETITION FOR LEAVE WAS TIMELY FILED WITH THE ILLINOIS SUPREME COURT AND WAS DENIED ON MAY 22, 2019. THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257(a).

III

CONSTITUTIONAL PROVISIONS AND STATUTES

1. UNITED STATES CONSTITUTION, AMENDMENT XIV:

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 LAW.

2. ILLINOIS STATE CONSTITUTION, 1970, ARTICLE I, SECTION 2:

NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT THE DUE PROCESS OF LAW NOR BE DENIED THE EQUAL PROTECTION OF THE LAW.

3. ATTEMPT (FIRST DEGREE MURDER) 720 ILCS 519-1(b)(1)d, THE INTENT TO COMMIT THE OFFENSE OF FIRST DEGREE MURDER.

IV

STATEMENT OF THE CASE

Chadwick Barner was originally charged in two separate cases in May 2015. *People v. Barner*, 2018 IL App (3d) 160023-U, ¶4. In case 15-CF-79, Barner was charged with aggravated fleeing or attempting to elude a police officer; the State alleged that on May 12, 2015, Barner was observed speeding outside of Canton, and subsequently evaded peace officer Terry Parks, who attempted to pull him over. *Id.* In case 15-CF-80, Barner was charged with attempt first-degree murder, aggravated battery, and obstructing a peace officer. The information filed for the attempt first-degree murder charge alleged that on May 12, 2015, Barner, with the intent to commit the offense of first-degree murder “pushed Lt. Doug Lafary’s head underwater [sic] and held Lt. Doug Lafary’s head underwater [sic], with the intent to kill Lt. Doug Lafary.” *Id.* The cases subsequently proceeded to a joint jury trial. *Id.*, ¶5

During voir dire, the trial court admonished the jury pool of the four principles of law enumerated in Illinois Supreme Court Rule 431(b), and then proceeded to question potential jurors in panels of four. *Id.*, ¶5. To each panel of four prospective jurors, the court asked if they had “any quarrel with” any of the legal principles in question. *Id.*

Trial

Terry Parks, the chief of the Canton Park District Police, testified that shortly after 2 p.m. on May 12, 2015, he observed a white male wearing a black shirt or black coat driving a black car and traveling at approximately 85 miles per hour on Route 9, where the speed limit was 50 miles per hour. *Id.*, ¶6. Parks

pursued the black car with his lights and siren activated, and followed it into the parking lot of Davis Sand and Gravel. *Id.*, ¶7. As Parks entered the parking lot, the black car pulled out and sped past him; Parks continued his pursuit of the black car until the black car entered a residential area. *Id.*, ¶7.

Deputy Daniel Daly of the Fulton County Sheriff's Department testified that he received a dispatch that a park district police officer was in pursuit of a vehicle; he informed Lieutenant Doug Lafary and Brad Ward of the call, and the men left the station in separate vehicles. *Id.*, ¶8. Daly and Lafary eventually came upon Barner's black Hyundai Sonata, which was stopped in the southbound lane of Taylor Road, outside of Canton. *Id.*, ¶8. Barner was standing outside of his car, and indicated that his car "had just quit running." *Id.*, ¶9. After performing a pat down search, Daly asked Barner to step over to his truck and empty his pockets; Barner said "[f]uck this," and began running southbound in a ditch along Taylor Road. *Id.*, ¶9. Daly and Lafary pursued Barner on foot through a wooded area, but were unable to reach him before he jumped into a lake and swam away. *Id.*, ¶10.

Daly, Lafary, and other officers set up a perimeter around the scene and began searching for Barner; about an hour into the search, an officer spotted Barner and relayed his location to the others. *Id.*, ¶10. Lafary drove to the field where Barner was seen, and picked up Sheriff Jeff Standard along the way. *Id.*, ¶10.

Standard testified that as he and Lafary were driving along the field, he spotted Barner running along the scrub-brush area of the pond; Lafary yelled

for Barner to stop, and Barner, upon seeing the men, backed into the scrub-brush and squatted down. *Id.*, ¶11. Standard testified that Lafary slammed on the breaks, and jumped out, attempting to tackle Barner. *Id.*, ¶12. Lafary and Barner ended up in the water; Lafary's right shoulder was in the water, and his feet were elevated on the bank. *Id.*, ¶12. Standard heard Lafary yell, "[t]his fucker is trying to drown me" and saw Barner applying downward pressure to Lafary's body. *Id.*, ¶13. Standard then pulled Barner off of Lafary; Standard estimated that approximately 15 seconds elapsed from the time Lafary got out of the car to the time Standard pulled Barner off of Lafary. *Id.*, ¶13.

Lafary testified that as he was driving with Sheriff Standard across the field, he saw Barner step out of the trees, run a few steps, and then duck back in. *Id.*, ¶15. Lafary then saw him lying in some tall grass; as Lafary approached, Barner started to stand and turn; Lafary got out of his car and ran after him. *Id.*, ¶¶ 15-16. Lafary ran at Barner as hard as he could, and tackled him from behind, hitting Barner somewhere in the upper torso. *Id.*, ¶16. The men landed in the water, with Barner landing directly to Lafary's left. *Id.*, ¶17. Lafary rolled to his right, and Barner rolled with him, coming cross-wise across Lafary's body. *Id.* Lafary brought his left arm up to push Barner away. *Id.*, ¶18. Lafary yelled out, "this fucker is trying to drown me" and Barner pushed his head under water. *Id.* ¶18. Lafary testified the struggle lasted, at most, 20-30 seconds; it ended when Standard pulled Barner off of him. *Id.* Shortly thereafter, several of Lafary's subordinates, who were assisting in the search for Barner, arrived

at the scene. *Id.*, ¶¶ 19-20. Lafary's subordinates all testified that Lafary was in the water with a wet uniform when they arrived. *Id.*, ¶ 19.

The State entered into evidence a series of photographs of Lafary, taken by one of his subordinates, Chris Ford. *Id.*, ¶20. Ford and Lafary testified that the photographs were taken within minutes of Lafary's encounter with Barner. *Id.*, ¶ 20. In the photographs, the right half of Lafary's uniform appears wet, while the upper left half of Lafary's uniform is completely dry. *Id.*, ¶20.

Barner denied that he was the driver of the speeding black car observed by Parks, but admitted fleeing from Daly and Lafary on Taylor Road. *Id.*, ¶21. Barner testified that after running from Daly and Lafary on Taylor Road, he hid in the woods for approximately 30-45 minutes before deciding to turn himself in. *Id.*, ¶22. As Barner was walking, he saw a car speeding toward him; the car came right up to him, and Lafary jumped out and tackled Barner. *Id.*, ¶23. The men landed on the ground, two feet from the water. *Id.*, ¶23. Lafary then stated, "Try to run now, mother fucker, and I'll put a bullet in your head." *Id.*, ¶23. Barner testified that he never entered the water with Lafary, and that Lafary was laughing and joking with his subordinates after the incident, saying "I think [Barner] tried to kill me." *Id.*, ¶24. Larry Knotts, an inmate at the Fulton County Jail, testified that when Lafary was transporting him to and from court in Peoria in September 2015, Lafary told him that he had tackled Barner on land. *Id.*, ¶25.

The jury subsequently convicted Barner on all counts. *Id.*, ¶28. On appeal, Barner argued, *inter alia*, that the State had failed to prove guilt beyond a

reasonable doubt for the crimes of attempted murder, aggravated battery, and aggravated fleeing and eluding, and that the trial court had committed reversible error in failing to adequately determine whether the jurors understood and accepted the principals outlined in Supreme Court Rule 431(b). In an unpublished opinion, the appellate court reversed outright Barner's convictions for aggravated battery¹ and aggravated fleeing and eluding, but affirmed his conviction for attempted murder. *Id.*, ¶¶ 40, 48, 55. The appellate court further found that while the trial court had committed error in regards to 431(b), that error was not reversible. *Id.*, ¶¶ 60, 68. Because the court had reversed outright Barner's convictions for aggravated battery and aggravated fleeing and eluding, the appellate court analyzed whether the evidence on the remaining offense – attempt murder – was closely balanced. *Id.*, ¶ 62. The court concluded that the case was not a credibility contest, and therefore, the evidence could not be considered closely balanced. *Id.*, ¶ 68. The appellate court ultimately remanded Barner's case to allow the trial court to conduct a proper inquiry to Barner's post-trial claims of ineffective assistance of counsel. *Id.*, ¶ 73.

¹Justice Schmidt dissented from the outright reversal of Barner's aggravated battery conviction. *Id.*, ¶¶ 87-88.

V

REASONS FOR GRANTING THE WRIT

1. THIS CASE PRESENTS AN ISSUE OF FIRST IMPRESSION: WHETHER A SPECIFIC INTENT TO KILL CAN BE INFERRED BASED ON THE ACT OF PUSHING A PERSON'S HEAD UNDER WATER DURING A BRIEF, MUTUAL STRUGGLE.

THE STATE ALLEGED THAT IN THE 15-30 SECOND STRUGGLE THAT ENSUED AFTER LT. DOUG LAFARY FORCEFULLY TACKLED CHADWICK BARNER INTO A BODY OF VERY SHALLOW WATER, BARNER PUSHED LAFARY'S HEAD UNDER WATER INTENDING TO KILL HIM VIA DROWNING SO THAT BARNER COULD ESCAPE. DROWNING IS DEFINED AS "DEATH CAUSED BY SUBMERSION IN A LIQUID." ESSENTIALLY, WHEN AN INDIVIDUAL IS SUBMERGED PAST THE AMOUNT OF TIME FOR WHICH THEY ARE ABLE TO HOLD THEIR BREATH, THEY ENGAGE IN "SUBMERGED BREATHING," TAKING IN LARGE VOLUMES OF WATER IN AN ATTEMPT TO GET AIR. THIS HAPPENS UNTIL THE INDIVIDUAL LOSES CONSCIOUSNESS, WHICH USUALLY TAKES BETWEEN 3 AND 16 MINUTES. SEE V. DIMAIO & J. DIMAIO, FORENSIC PATHOLOGY AT 399-400 (2d ED 2001) EXPLAINING THE PHYSIOLOGY OF DROWNING) (ATTACHED IN APPENDIX).

IN THIS CAUSE, BARNER WAS CONVICTED OF THE OFFENSE OF ATTEMPT (FIRST DEGREE MURDER) 720 ILCS 5/9-1(b)(1)d. "THE ESSENCE OF THE CRIME OF ATTEMPT MURDER IS THE SPECIFIC INTENT TO TAKE LIFE." PEOPLE V. HENRY, 3 ILL. APP. 3d 235, 238 (1st Dist. 1971). THE APPELLATE COURT CONCLUDED THAT BARNER'S INTENT TO INDUCE LAFARY'S DEATH BY DROWNING COULD BE INFERRED FROM HIS INTENTIONALLY SUBMERGING LAFARY'S HEAD IN WATER BECAUSE DROWNING IS CAUSED BY SUBMERSION IN LIQUID. PEOPLE V. BARNER 2018 IL APP (3d) 160023-U 9140. CITING PEOPLE V. WILLIAMS, 165 ILL. 2d 51, 64 (1995), THE APPELLATE COURT

NOTE THAT PEOPLE ARE PRESSURED TO JUSTIFY "ALL NATURAL AND PLEASABLE COAT".
SEQUENCES "HOLDING FROM THEIR DELIBERATE ACTS AND WHETHER ONE PERFORMS AN ACT,
"THE DIRECT AND NATURAL TENDENCY OF WHICH IS TO DESTROY ANOTHER'S LIFE", IF CAN
BE JUSTIFIED THAT THE PERSON JUSTIFIED THAT RESULT. BARNER 919 38-39.
BUT DEATH BY DRUGGING IS NOT JUSTIFIED SIMPLY BY SUBMISSION A PERSON'S HEAD IN
LIQUID, RATHER, TO INDUCE A DEATH BY DRUGGING, THE PERSON HAS TO BE SUBMERGED
FOR A SUBSTANTIAL, PROLONGED PERIOD OF TIME - SPECIFICALLY, THE PERSON MUST BE
SUBMERGED DURING THE PERIOD OF TIME FOR WHICH THEY ARE ABLE TO HOLD THEIR
HEAD WITH A SIMPLE HAMM.

ATTENDED MURDER REQUIRES PROOF OF THE DEFENDANT'S SPECIFIC INTENT TO KILL
ABOVE AND OTHER'S DEATH. THE APPELLATE COURT FOUND THAT BARNER'S INTENT TO KILL LAFFRAY
COULD BE INFERRED BECAUSE (1) BARNER INTENTIONALLY KILLED LAFFRAY HEAD UNDERWATER
AND (2) SUBMERSION IN WATER CAN LEAD TO DEATH BY DROWNING. PROVE V. BARNER, 1918
IL App (3d) 160023-U(1)0.

THE APPELLATE COURT DECIDES THAT THE DEFENDANT HAS DUE PROCESS OF LAW,
UNITED STATES CONSTITUTION, AMENDMENT XIV; ILLINOIS STATE CONSTITUTION,
1970, ARTICLE I, SECTION 2, THE APPELLATE COURT CONCLUSIVELY IS JUSTIFIED
WITH THE REQUIREMENT THAT A CIVIL ACTION FOR ATTEMPT MURDER BE SUPPORTED BY PROOF
BEYOND A REASONABLE DOUBT THAT THE DEFENDANT SPECIFICALLY INTENDED TO TAKE A
LIFE. HERE, JUSTIFY WAS NEVER PROVED BEYOND A REASONABLE DOUBT WHICH DEFENDANT'S PLEA BY LAW.

2 THIS CASE CONTRAVENES THIS COURT'S PRECEDENT REGARDING THE ROLE OF
NONTESTIMONIAL EVIDENCE IN DETERMINING WHETHER THE EVIDENCE AT TRIAL
WAS CLOSELY BALANCED FOR THE PURPOSES OF APPLYING THE PLAIN ERROR DOCTRINE.

ON APPEAL, BARNER ARGUED THAT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO PROPERLY DETERMINE WHETHER THE POTENTIAL JURORS UNDERSTOOD AND ACCEPTED THE PRINCIPLES OUTLINED IN SUPREME COURT RULE 431(b) BECAUSE THE EVIDENCE AT TRIAL WAS CLOSELY BALANCED. THE APPELLATE COURT AGREED THAT THE TRIAL COURT COMMITTED ERROR, BUT CONCLUDED THAT WHILE THE EVIDENCE WAS "NOT OVERWHELMING," IT WAS NOT A CREDIBILITY CONTEST, AND THUS, NOT CLOSELY BALANCED. PEOPLE V. BARNER, 2018 IL App (3d) 160023-U, ¶162.

TWO COMPETING VERSIONS OF THE EVENTS SURROUNDING THE ATTEMPTED MURDER CHARGE WERE PRESENTED AT TRIAL. THE STATE'S VERSION WAS THAT LAFARY TACKLED BARNER INTO THE POOL WHERE THE TWO STRUGGLED. IN ADDITION TO TESTIMONY, THE STATE OFFERED INTO EVIDENCE PHOTOGRAPHS OF LAFARY WEARING A PARTIALLY-WET UNIFORM. THE PHOTOGRAPHS DID NOT CONTAIN A DATE OR A TIME STAMP. BARNER'S VERSION WAS THAT THE PHOTOGRAPHS DEPICTING LAFARY IN A PARTIALLY-WET UNIFORM WERE STAGED TO SUPPORT THE FABRICATED ATTEMPTED MURDER CHARGE. BARNER TESTIFIED THAT LAFARY TACKLED HIM ON LAND AND WAS DRY WHEN BARNER LEFT THE SCENE. BARNER'S TESTIMONY WAS SUPPORTED BY A WITNESS WHO TESTIFIED THAT LAFARY TOLD HIM HE TACKLED BARNER ON LAND. IN ADDRESSING WHETHER THIS CASE AMOUNTED TO A CREDIBILITY CONTEST, THE APPELLATE COURT FOUND THAT THIS COURT'S DECISIONS IN PEOPLE V. NAVLOR, 229 Ill. 2d 584 (2009) AND PEOPLE V. SEBBY, 2017 IL 119445 ARE APPLICABLE "TO A VERY NARROW CATEGORY OF CRIMINAL CASES. NAMELY, WHERE THE FINDER OF FACT MUST DECIDE GUILT OR INNOCENCE BASED SOLELY ON SWORN, TESTIMONIAL EVIDENCE PRESENTED TO THE JURY." BARNER, ¶162 (EMPHASIS IN ORIGINAL). ACCORDINGLY

THE APPELLATE COURT CONCLUDED THAT BECAUSE BARNER CLAIMED THAT LAFARY TACKLED HIM ON LAND AND NOT IN THE WATER, AND THE STATE ENTERED PHOTOGRAPHS DEPICTING LAFARY IN A PARTIALLY-WET UNIFORM, THERE WAS EXTRINSIC EVIDENCE TO CORROBORATE THE STATE'S VERSION OF EVENTS AND THUS, THE EVIDENCE WAS NOT CLOSELY BALANCED BECAUSE THE CASE WAS NOT A CREDIBILITY CONTEST. *Id.* ¶ 68.

ESSENTIALLY, THE APPELLATE COURT'S LOGIC IS AS FOLLOWS: THE STATE'S PRESENTATION OF NON-TESTIMONIAL EVIDENCE TO SUPPORT IT'S CASE PRECLUDES A FINDING THAT THE CASE WAS A CREDIBILITY CONTEST; A CASE THAT DOES NOT PRESENT A CREDIBILITY CONTEST IS NOT CLOSELY BALANCED. ERGO, WHERE THE STATE PRESENTS NON-TESTIMONIAL EVIDENCE TO SUPPORT IT'S CASE, THE EVIDENCE CANNOT BE CLOSELY BALANCED. *Id.* ¶ 68 ("WE CONCLUDE THAT THE EVIDENCE WAS NOT CLOSELY BALANCED BECAUSE THE JURY RECEIVED NON-TESTIMONIAL, EXTRINSIC EVIDENCE THAT ARGUABLY CORROBORATED THE TESTIMONY OF THE STATE'S WITNESSES."). THE APPELLATE COURT'S POSITION IS CONCERNING, AS IT CREATES A BRIGHT LINE RULE THAT DRASTICALLY LIMITS THE SITUATIONS IN WHICH UN-PRESERVED, NON-STRUCTURAL ERRORS CAN BE ADDRESSED. MOREOVER, THIS POSITION CONTRAVENES THIS COURT'S REPEATED DIRECTION THAT A CLOSELY BALANCED ANALYSIS REQUIRES A COMMONSENSE, QUALITATIVE ASSESSMENT OF THE TOTALITY OF EVIDENCE WITHIN THE CONTEXT OF THE CASE. *PEOPLE V. SERBY*, 2017 IL 119445, ¶ 52; *PEOPLE V. BELKNAP*, 2014 IL 117094, ¶ 52-53; *PEOPLE V. ADAMS*, 2012 IL 111168, ¶ 22; *PEOPLE V. WHITE*, 2011 IL 109689, ¶ 139.

IN CONCLUDING THAT THE PHOTOGRAPHS ENTERED BY THE STATE AMOUNTED TO "EXTRINSIC EVIDENCE THAT ARGUABLY CORROBORATED THE TESTIMONY OF THE STATE'S WITNESSES", THE APPELLATE COURT FAILED TO CONSIDER THE PHOTOGRAPHS WITHIN THE ENTIRE CONTEXT OF THE CASE—NAMELY, THAT BARNER'S THEORY AT TRIAL WAS THAT THE OFFICERS FABRICATED THE CHARGES AGAINST HIM IN RETALIATION FOR HIS RUNNING FROM THE ORIGINAL ENCOUNTER. PUT ANOTHER

WAY, BARNER'S THEORY WAS THAT THE PHOTOGRAPHS DEPICTING LAFARY IN A WET UNIFORM WERE STAGED IN AN EFFORT TO "CORROBORATE" LAFARY'S MANUFACTURED STORY, THUS, WHILE THE PHOTOGRAPHS MIGHT ARGUABLY CORROBORATE LAFARY'S STORY, THEY DO NOT CONTRADICT BARNER'S CLAIM THAT THEY WERE STAGED.

BECAUSE BARNER TESTIFIED THAT LAFARY WAS DRY WHEN BARNER LEFT THE SCENE, THE TIMING OF THE PHOTOGRAPHS IS ESSENTIAL TO THE DETERMINATION THAT THEY CORROBORATE LAFARY'S STORY THAT HE TACKLED BARNER IN THE WATER. BUT THE PHOTOGRAPHS ARE NEITHER TIME NOR DATE STAMPED. THE ONLY EVIDENCE TO SUPPORT THAT THEY WERE TAKEN ON THE SAME DAY OF THE ALLEGED INCIDENT WITH BARNER WAS THE TESTIMONIAL EVIDENCE OF LAFARY AND HIS SUBORDINATES IN THE SHERIFF'S DEPARTMENT. TO DETERMINE THAT THE PHOTOGRAPHS WERE TAKEN WHEN THE OFFICERS CLAIMED IS TO, IN ESSENCE, ACCEPT THAT LAFARY AND HIS OFFICERS TESTIFIED CREDIBLY AND THAT BARNER DID NOT.

MOREOVER, BARNER'S THEORY THAT THE PHOTOGRAPHS WERE STAGED WOULD EXPLAIN THE DISCREPANCIES BETWEEN THE PHOTOGRAPHS AND LAFARY'S TESTIMONY. FOR EXAMPLE, LAFARY TESTIFIED THAT AFTER THEY LANDED IN THE WATER, BARNER ROLLED OVER ON HIM, LEAVING THE UPPER HALF OF HIS LEFT TORSO, WHICH WAS OUT OF THE WATER. BUT IN THE PHOTOGRAPHS, THE LEFT HALF OF LAFARY'S UNIFORM IS COMPLETELY DRY. FURTHER, GRASS STAINS CAN BE SEEN ON LAFARY'S PANTS, WHICH IN PART CORROBORATES BARNER'S TESTIMONY THAT LAFARY TACKLED HIM IN THE GRASS. THUS, THE PHOTOGRAPHS, WHILE ARGUABLY CORROBORATING THE STATE'S WITNESSES, ALSO ARGUABLY CONTRADICTED THE TESTIMONY OF THE STATE'S WITNESSES.

TO ALLOW THE DEFENDANT HIS RIGHT TO DUE PROCESS OF LAW, UNITED STATES CONSTITUTION, AMENDMENT XIV; ILLINOIS STATE CONSTITUTION, 1970, ARTICLE I, SECTION 2, THIS COURT SHOULD GRANT REVIEW TO RESOLVE WHETHER THE ENTRY OF NON-TESTIMONIAL EVIDENCE BY THE STATE AUTOMATICALLY PRECLUDES A

FINDING THAT THE EVIDENCE IS CLOSELY BALANCED, THUS PROHIBITING REVIEW OF UNPRESERVED, NON-STRUCTURAL ERRORS UNDER THE PLAIN ERROR DOCTRINE. FURTHER, WRIT FOR CERTIORARI WOULD ALLOW THIS COURT TO CLARIFY FOR REVIEWING COURTS WHETHER 1) EVIDENCE THAT IS NOT OVERWHELMING IS NECESSARILY CLOSELY BALANCED; 2.) WHETHER EVIDENCE THAT DOES NOT AMOUNT TO A CREDIBILITY CONTEST CAN BE CLOSELY BALANCED; AND 3.) WHETHER THE STATE'S PRESENTATION OF NON-TESTIMONIAL EVIDENCE THAT IN PART CONTRADICTS AND IN PART CORROBORATES, THE TESTIMONY OF IT'S WITNESSES, PRECLUDES A FINDING THAT THE EVIDENCE IS CLOSELY BALANCED.

CONCLUSION

J. CHADWICK N. BARNER, RESPECTFULLY REQUESTS THAT
THIS COURT GRANT THE PETITION FOR A WRIT OF
CERTIORARI.

RESPECTFULLY SUBMITTED,

Chadwick N. Barner

DATE: JULY 18, 2019