

19-5864
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 19 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

BRANDON JONES — PETITIONER
(Your Name)

vs.

STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court, First Judicial District, Sixth Division
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRANDON JONES
(Your Name)

P.O. Box 1000, Reg. No. M-00228
(Address)

MENARD, IL 62259-0100
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

I

whether Perttorelli should be granted to determine if counsel's performance at the hearing on the motion to suppress identification testimony was deficient where counsel failed to argue that the photospread was unduly suggestive despite the fact that Jones was the only person in the photograph with long thick dreadlocks that hung in his face, which matched the description the witnesses gave of the offender. Counsel was also ineffective when she failed to support her claim that the identification testimony should be suppressed because Detective Egan forged the witnesses' signatures on the photo lineup advisory form with the relevant law.

A. whether Perttorelli should be granted to determine if trial counsel was ineffective for not filing a motion to suppress the identification testimony based on the suggestive photospread

1. A motion to suppress the photospread identification would have been meritorious because Jones is the only one in the photospread with long thick dreadlocks hanging in his face.

2. The suggestiveness of the photospread creates a reasonable probability that the line-up and

IN COURT IDENTIFICATIONS WOULD HAVE BEEN
SUPPRESSED

B. Whether Certiorari should be granted to determine if counsel was ineffective for not citing the relevant case-law to support her argument that Detective Egan's forgery warranted suppression of the identification testimony.

C. Whether Certiorari should be granted to determine if there is a reasonable probability that the outcome of the trial would have been different had the identification testimony been suppressed.

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

QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	vii
OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING CERTIORARI	7

I

Certiorari should be granted to determine if counsel's performance at the hearing on the motion to suppress identification testimony was deficient where counsel failed to argue that the photospread was unduly suggestive despite the fact that Jones was the only person in the photograph with long thick dreadlocks that hung in his face, which matched the description the witnesses gave of the offender. Counsel was also ineffective when she failed to support her claim that the identification testimony should be suppressed because Detective Egan forged the witnesses' signatures on the photolinedup advisory form with the relevant law. . . . 7

A certiorari should be granted to determine if counsel was ineffective for not filing a motion to suppress

the identification testimony based on the suggestive photo spread. 9

1. A motion to suppress the photo spread identification would have been meritorious because Jones is the only one in the photo spread with long thick dreadlocks hanging in his face. . . 10

2. The suggestiveness of the photo spread creates a reasonable probability that the lineup and in court identifications would have been suppressed. 13

B. Certiorari should be granted to determine if counsel was ineffective for not citing the relevant case-law to support her argument that Detective Egan's forgery warranted suppression of the identification testimony. 17

C. Certiorari should be granted to determine if there is a reasonable probability that the outcome of the trial would have been different had the identification testimony been suppressed. . . 20

Conclusion 23

INDEX TO APPENDICES

APPENDIX A: Appellate Court of Illinois, First Judicial District. . A-1

APPENDIX B ILLINOIS SUPREME COURT, DENIAL OF PLA. B-1

APPENDIX C

APPENDIX D

TABLE OF AUTHORITIES

CASES:

Page Number:

I

CERTIORARI should be granted to determine if counsel's performance at the hearing on the motion to suppress identification testimony was deficient where counsel failed to argue that the photo spread was unduly suggestive despite the fact that Jones was the only person in the photograph with long thick dreadlocks that hung in his face, which matched the description the witnesses gave of the offender. Counsel was also ineffective when she failed to support her claim that the identification testimony should be suppressed because Detective Egan forged the witnesses' signatures on the photo lineup advisory form with the relevant law.

ILL. P.A. 98-1014, § 10, EFF. JAN. 01, 2015 8

725 ILLCS 5/107A-2(c)(2), (j)(i) 8

A. CERTIORARI should be granted to determine if trial counsel was ineffective for not filing a motion to suppress the identification testimony based on the suggestive photo spread.

STRICKLAND v WASHINGTON, 466 U.S. 668 (1984) 9

CASE:

Page Number:

Gentry v Sevier, 597 F.3d 838 (7th Cir. 2010) 9

People v Henderson, 2013 IL 114040 10

People v Little, 322 Ill. App.3d 602 (1st Dist. 2001) 9

People v McCarter, 385 Ill. App.3d 919 (1st Dist. 2008) 9

1. A motion to suppress the photospread identification would have been meritorious because Jones is the only one in the spread with thick dreadlocks hanging in his face.

Ester v California, 394 U.S. 440 (1969) 10, 12

MANSON v BRATHWAITE, 432 U.S. 98 (1977) 11

Perry v New Hampshire, 535 U.S. 228 (2012) 10

United States v Wake, 388 U.S. 218 (1967) 10, 11

People v Lerma, 2014 IL App (1st) 121880 10

People v Mahoney, 201 Ill. App.3d 599 (1st Dist. 1990) 11, 12

People v McIntosh, 81 Ill. 2d 513 (1980) 11

People v Smith, 232 Ill. App.3d 121 (1st Dist. 1992) 12

State v Henderson, 27 A.3d 872 (2011) 10

735 ILES 5/107 A-2 (F)(3)(B) (West 2015) 13

2. The suggestiveness of the photospread creates a reasonable probability that the lineup and in court identifications would have been suppressed.

CASES:

Page Number:

<u>Manson v Brathwaite</u> , 432 U.S. 98 (1977)	14, 15
<u>Simmons v United States</u> , 390 U.S. 302 (1968)	14, 15
<u>State v Henderson</u> , 27 A.3d 872 (N.J. 2011)	14, 16
<u>Defenbacher, et. al., Mugshot exposure effects: Retrospective Interference, Mugshot Commitment, Source Confusion, AND UNCONSCIOUS TRANS- FERENCE</u> , 30 Law & Hum. Behav. 287 (2006)	
<u>Defenbacher, et. al., A Meta-Analytic Review of the Effects of High Stress on Eyewitness Testimony</u> , 28 Law & Hum. Behav. 687 Note 148	16

B. CERTIORARI should be granted to determine if counsel was ineffective for not citing the relevant case law to support her argument that Detective Pagan's forged warranted suppression of the identification testimony.

<u>Von Moltke v Gillies</u> , 332 U.S. 708 (1948)	19
<u>People v Causey</u> , 341 Ill. App. 3d 759 (1st Dist. 2003)	20
<u>People v Rosemond</u> , 339 Ill. App. 3d 51 (1st Dist. 2003)	19
725 I.L.C.S. 5/102 A-2(e)(1)(B), (C), (D) (West 2015)	19
725 I.L.C.S. 5/102 A-2(e)(2)	19
725 I.L.C.S. 5/102 A-2(j)(1)	19

C. There is a reasonable probability that the outcome of the trial would have been different had the identification testimony been suppressed.

Cases:

Page Number:

Strickland v Washington, 466 U.S. 668 (1984) 21

People v Diggins, 2016 IL App (1st) 142088 21, 22

People v Little, 322 IL App. 3d 802 (1st Dist. 2001) 22

People v McPhee, 385 IL App. 3d 919 (1st Dist. 2008) 21

People v Wright, 2012 IL App (1st) 073106 22

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 A 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 Illinois Supreme court appears at Appendix B to the petition and is

- ☐ reported at _____; 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 5-22-2019.
A copy of that decision appears at Appendix B.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution provides in pertinent part:

That no person shall be deprived of life, liberty, or property without due process of law. . .

The Sixth Amendment to the Constitution provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense.

The Fourteenth Amendment to the Constitution provides in pertinent part:

. . . No State shall . . . deprive any person of life, liberty, or property without due process of law; . . .

STATEMENT OF THE CASE

BRANDON JONES WAS CONVICTED OF FIRST DEGREE MURDER AND HOME INVASION AFTER A BENCH TRIAL. HE WAS SENTENCED TO CONSECUTIVE 31 AND 12 YEAR SENTENCES. MR. JONES' CONVICTION AND SENTENCES WERE AFFIRMED ON DIRECT APPEAL IN AN ORDER DATED SEPTEMBER 21, 2018, WHICH IS ATTACHED AS APPENDIX A.

AMONG THE ARGUMENTS ADVANCED ON DIRECT APPEAL WAS THAT MR. JONES WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO ARGUE THAT THE PHOTOSPREAD IDENTIFICATION TESTIMONY SHOULD BE SUPPRESSED AND FOR NOT CITING LEGAL AUTHORITY TO SUPPORT SUPPRESSION OF THE IN-PERSON LINE-UP IDENTIFICATIONS. IN REJECTING THIS CLAIM, THE ILLINOIS APPELLATE COURT HELD THAT:

DUE TO THE LACK OF PREJUDICE, WE NEED NOT SEPARATELY ANALYZE WHETHER DEFENSE COUNSEL WAS UNREASONABLE IN FAILING TO ARGUE THAT THE PHOTOSPREAD WAS UNDULY SUGGESTIVE. EVEN ASSUMING ARGUENDO THAT DEFENSE COUNSEL HAD SUCCESSFULLY SUPPRESSED THE PHOTOSPREAD, ALONG WITH ALL THE OTHER IDENTIFICATION TESTIMONY, INCLUDING THE LINE-UP AND IN-COURT IDENTIFICATIONS, THERE IS STILL OVERWHELMING EVIDENCE OF THE DEFENDANT'S GUILT. THIS REMAINS TRUE EVEN WITHOUT THE DEFENDANT'S TESTIMONY. MULTIPLE WITNESSES TESTIFIED THAT THEY SAW CO-DEFENDANT JEFFERSON AND SEVERAL OTHER BLACK MEN ATTACK WILLIAMS, AND THAT A MAN WITH DEADLOCKS HIT WILLIAMS SEVERAL TIMES WITH A

baseball bat. The defendant, a friend of co-defendant Jefferson's, is a black man with dreadlocks. Most importantly, it is undisputed that the defendant's white Chevy van was used as the get-a-way car. From this evidence, the trier of fact could find, beyond a reasonable doubt, that the defendant was with co-defendant Jefferson and the other men on the night they beat Williams to death and that the defendant specifically hit Williams with the baseball bat. People v Jones, 2018 IL App (1st) 120045-U, p 35.

The Appellate Court also ruled against a defense argument that he received ineffective assistance when defense counsel failed to cite to legal authority supporting her argument that Detective Egan's signing of the witnesses' names warranted suppression of the line up identification testimony. The defendant cites to a statute mandating that witnesses acknowledge in writing their receipt of the instructions contained in the line up advisory form. 725 ILCS 5/109-A2(j)(1) (West 2015) (any violation of the requirements of the line up procedure shall be a factor to consider in adjudicating a motion to suppress identification testimony). The defendant acknowledges that the statute was not yet in effect by the time of the motion to suppress hearing, but argues that it became effective

before the trial started and therefore defense counsel should have moved to reopen the motion to suppress and made the trial court aware of the statute...

Similar to our preceding analysis of the defendant's first ineffectiveness claim, we need not scrutinize whether defense counsel's actions fell below the objectively reasonable standard because we find no prejudice. All of the other identification testimony, including the witnesses' photo spread identifications and Arlyonah's line up identification, would have remained. Mr. Jones notes all of this identification should have been suppressed under the first argument. This is even more evidence of the defendant's guilt than from our preceding analysis. We find no reasonable probability that the suppression of Anderson and Ross' line up identifications would have led to a different outcome at the defendant's trial. Id. at pp. 36-37.

The Illinois Supreme Court denied leave to appeal. [See Appendix B].

REASONS FOR GRANTING THE PETITION

I.

Petitioner should be granted to determine if counsel's performance at the hearing on the motion to suppress identification testimony was deficient where counsel failed to argue that the photo spread was unduly suggestive despite the fact that Jones was the only person in the photograph with long thick dreadlocks that hung in his face, which matched the description the witnesses gave of the offender. Counsel was also ineffective when she failed to support her claim that the identification testimony should be suppressed because Detective Egan forged the witnesses' signatures on the photo lineup advisory form with the relevant law.

Two witnesses identified Brandon Jones at trial as the perpetrator who struck the decedent with a bat. Both of these witnesses first identified Jones from a suggestive photo spread that improperly highlighted Jones. Another witness denied identifying Jones, but the state introduced evidence that he also had identified Jones from the photo spread. Counsel filed a boilerplate motion to suppress the identification testimony on the grounds that the line ups were suggestive, but failed to argue that the photo spread was suggestive because Jones was the only person with long thick dreadlocks that hung in his face. (People's Exhibits 20, 76) There is a significant chance that this suggestive array could have affected the

witnesses later identification of Jones at a line up as Jones was the only person in both the photo lineup and the physical lineup. Counsel was ineffective for not raising this meritorious issue as there was a reasonable probability that the identification testimony would have been suppressed had counsel argued that the photo spread was impermissibly suggestive.

Instead of arguing that the photo spread was suggestive, counsel argued the identification testimony should be suppressed because Detective Egan forged the witnesses names on the photo spread advisory form. The trial court expressed concern that Egan signed the witnesses' signatures without indicating on the form that he was doing so and asked counsel if she could provide any authority to support the claim that the suppression was a proper remedy for Egan's misconduct. After counsel failed to offer any, the trial court denied the motion to suppress. But before the bench trial commenced, P.A. 98-1014, § 10, eff. Jan. 01, 2013, went into effect, which states that the failure to obtain the witnesses' signature on the lineup advisory form is a factor to be considered by the court in adjudicating a motion to suppress eyewitness identification. 725 ILCS 5/102A-2(e)(2), (j)(i). Thus, counsel abandoned a meritorious claim for suppression and failed to support the chosen claim with statutory authority. Counsel deprived Jones of the effective assistance of counsel by failing to suppress the suggestive photo spread,

which would have undermined the admissibility of the line up and in-court identifications, thereby denying him a fair trial

A. Pethearl should be granted to determine if trial counsel was ineffective for not filing a motion to suppress the identification testimony based on the suggestive photo spread.

Criminal defendants have a constitutional right to the effective assistance of counsel. Strickland v Washington, 466 U.S. 668, 690-91 (1984); U.S. CONST. AMENDS. VI, XIV. A defendant is denied effective assistance if counsel's representation falls below an objective standard of reasonableness, and absent counsel's deficient performance, there is a reasonable probability that the outcome of trial would have been different. Strickland, 466 U.S. at 687-689. "[P]rejudice may be found even when the chance [of acquittal] is significantly less than 50 percent." People v McCarter, 385 Ill. App. 3d 917, 935 (1st Dist. 2008). Counsel's failure to file a meritorious motion to suppress evidence, "is beyond the pale of an objectively reasonable strategy." Gentry v Sevier, 590 F.3d 838, 852 (7th Cir. 2010). Counsel's performance is deficient where a suppression motion "would have been defense counsel's strongest, and most likely wisest course of action." People v Little, 322 Ill. App. 3d 602, 613 (1st Dist. 2001). A defendant is prejudiced by counsel's failure to file a suppres-

sion motion where the motion was meritorious and there was a reasonable probability of a different trial outcome had the evidence been suppressed. People v Henderson, 2013 IL 114040, pp 14-15. Here counsel filed a boilerplate motion that alleged the photospread was suggestive, but failed to raise this issue at the hearing on the motion to suppress.

- i. A motion to suppress the photospread identification would have been meritorious because Jones is the only one in the spread with thick dreadlocks hanging in his face.

The Due Process Clause forbids the admission of identification testimony where the procedures used by the state to produce the identification were "unnecessarily suggestive and conducive to irreparable mistaken identification." Foster v California, 394 U.S. 440, 442-43 (1969); See also U.S. Const. Amend. XIV. Eyewitness identifications are fallible and "the annals of criminal law are rife with instances of mistaken identification." Perry v New Hampshire, 565 U.S. 228, 245 (2012) (quoting United States v Wade, 388 U.S. 218 (1967)). Various courts have acknowledged that numerous scientific studies have revealed significant errors in eyewitness identifications. People v Medina, 2014 IL App (1st) 121880, p 37 (collecting cases); State v Henderson, 208 N.T. 208, 27 A.3d 872 (2011). Because "sug-

gestibility, is inherent in the context of the pre-trial identification, "the manner in which the accused is presented to the witness for identification is vital to prevent false identifications. Wade, 388 U.S. at 288.

Although the participants in a lineup need not be physically identical, a lineup in which the fillers appear grossly dissimilar to the suspect is impermissibly suggestive. People v Mahoney, 201 Ill. App. 3d 599, 606-607 (1st Dist. 1990).

Courts employ a two-prong test to determine whether a witness's identification is admissible. MANSON v BRATHWAITE, 432 U.S. 98, 114 (1977). The test requires courts to determine first if police identification procedures were impermissibly suggestive; if so, courts then weigh five relevancy factors to decide if the identification evidence is nonetheless admissible. MANSON, 432 U.S. at 114. The state may overcome a showing of suggestiveness by clear and convincing proof that the witnesses identified the defendant based solely on an independent recollection of the incident. People v McTush, 81 Ill. 2d 573, 580 (1980).

Here, Detective Drees obtained a photograph of Jones depicting him with long, thick dreadlocks that hang in his face and reach to his shoulders. (People's Exhibits 20, 76) Drees knew that one of the suspects had dreadlocks. (R. 111d) The other photographs in the spread are readily distinguishable. Three of the photographs are of men with cornrows that are tight to the scalp. One of the men has very

short hair that is in mini-twists. One of the men has hair that could be described as long braids or thin dreadlocks but his hair is pulled back from his face in a ponytail and is very distinctive from Jones' thick dreadlocks hanging in his face. (People's Exhibit 20)

These distinct differences effectively placed a spotlight on Jones and suggested, even told, the witnesses that he "is the man," the one considered by the police to be a suspect. Foster, 394 U.S. at 443; People v. Mackey, 201 Ill. App. 3d 599, 207 (1st Dist. 1990) (lineup unduly suggestive where defendant's appearance compared to that of fillers "all but having a sign saying 'pick me' around the defendant's neck"). Counsel had a duty to make for suppression of the identification testimony based on the suggestive photo spread.

The suggestiveness of the photo spread was enhanced because Jones is the only person with dreadlocks, which is how the witnesses described the offender. (R.H.10) A lineup is impermissibly suggestive when the suspect is the only person who matches the description of the offender. See People v. Smith, 232 Ill. App. 3d 121, 130 (1st Dist. 1992) (holding that the fact that the defendant was the only neatly-groomed and well-dressed man in the lineup suggested that the witness identified him because this matched her description of the offender); Foster, 394 U.S. at 442-43 (holding that a lineup was improper where the defendant

stood out by virtue of his height and his leather jacket, when the suspect was described as wearing a leather jacket.) This principle is so important that it was codified by the Illinois legislature. See 725 ILCS 5/102 A-2 (f)(3)(B) (West 2015). "The suspected perpetrator shall not be substantially different in appearance from the fillers based on the eyewitness's previous description of the perpetrator or based on other factors that would draw attention to the suspected perpetrator." (emphasis added) Simply put, where the witnesses describe the perpetrator as having dreadlocks, a photospread where the suspect is the only person with thick dreadlocks hanging in his face is impermissibly suggestive and counsel was ineffective for not arguing that the photospread should have been suppressed on this basis.

2. The suggestiveness of the photospread creates a reasonable probability that the lineup and in court identifications would have been suppressed.

Jones established that the photospread identification was unduly suggestive. The admissibility of the eyewitness identifications, both out of court and in, thus depends on whether the State can show by clear and convincing evidence, after examining the totality of the circumstances, that the eyewitnesses identified Jones based on their inde-

pendent recollection of the incident and were not influenced by the suggestive identification procedure. MANSON, 432 U.S. at 114. The state cannot make this showing.

First, it is likely that the suggestive photospread influenced the lineup and in-court identifications. Showing the witnesses a photospread before the physical lineup could have led to "mugshot commitment." Mugshot commitment occurs when a witness identifies a photo of a person who is then included in a later lineup procedure. State v. Henderson, 27 A.3d 872, 900 (N.J. 2011) citing Deffenbacher, et al., Mugshot exposure effects: Retroactive Interference, Mugshot Commitment, Source Confusion, and Unconscious Transference, 30 LAW + HUM. BEHAV. 287, 299 (2006). Studies have shown that once witnesses identify an innocent person from a mugshot, "a significant number" then reaffirm their false identification in a later lineup -- even if the actual target is present. Id. Here, there is a significant chance the suggestive photo array influenced the subsequent lineup.

Even more troubling is the fact that Jones is the only person who appeared in both the photospread and the physical lineup. (People's Exhibits 12a, 20, 22, 26). "[T]he use of a photo array prior to a lineup identification may be impermissibly suggestive where there is only one 'repeat player.'" Simmons v. United States, 390 U.S. 371, 383-84 (1968). Such a procedure increases the danger of a misidentifica-

tion because "the witness thereafter is apt to retain in his memory the image of the photograph rather than the person actually seen." Simmons, 390 U.S. at 383-84.

Similarly, the in-court identifications made by Ariyonna and Anderson were also impermissibly tainted by the suggestive photospread. Once the witnesses viewed Jones' picture in the suggestive photospread, it is likely they would have retained his image in their mind.

Factors relevant to evaluating the risk of misidentification include the eyewitnesses' opportunity to view the suspect during the offense, their degree of attention, the accuracy of any prior descriptions, their level of certainty at the time of the identification, the length of time between the crime and the lineup, and any prior acquaintance with the suspect. Brathwaite, 432 U.S. at 114-115. The suggestiveness of the identification procedure must then be weighed against these factors. Id. at 114.

Here, Ariyonna Williams and Charles Anderson identified Jones from the photospread, a physical lineup, and at trial. The circumstances in which they viewed the offender do not overcome the suggestiveness of the photospread. Ariyonna was in the bedroom when the men came in the door. She said the men began to fight with Williams and ended up in the bedroom. She then left the bedroom and stood by the front door. Thus, Ariyonna was not in the same room as the offenders and did not testify that she had a long time to look

at them. Moreover, Armonah testified that the person with dreadlocks wielded a bat against Williams. When a visible weapon is used during a crime, it can distract a witness and draw his attention away from the culprit. "Weapon focus" can thus impair a witness's ability to make a reliable identification and describe what the culprit looks like if the crime is of short duration. HENDERSON, 27 A.3d at 904-05. Moreover, this was obviously a high stress situation, which can diminish an eyewitness's ability to recall and make an accurate identification. See Deffenbacher, et al., A Meta-Analytic Review of the Effects of High Stress on Eyewitness Testimony, 28 LAW & HUM. BEHAV. 687, note 148, 697 (2004).

Anderson's testimony similarly did not establish his identifications were not tainted by the suggestive photo spread. Anderson was near the door when the men pushed in. Anderson stayed by the front door because one of the men gestured towards his waist and told Anderson not to move. The men were fighting with Williams and Anderson saw the man with dreadlocks hit Williams with the bat. Anderson then ran next door. Thus, Anderson's testimony did not establish that he had a long time to look at the offenders. The reliability of Anderson's identification could also have been impacted by weapon focus and the stress of the event. Accordingly, it cannot be said that Anderson's identification testimony was not tainted by the suggestive photo spread.

While Ross denied identifying Jones at trial, the state introduced his prior statements of identification. Had these prior statements of identification been suppressed, Ross' trial testimony would not have aided the state's case.

Importantly, no eyewitness gave the police any type of physical description of the man wielding the bat other than "he had long thick dreadlocks that hung in his face."

Thus, the state could not establish that the later identifications were free from the taint of the impermissibly suggestive photospread. The witnesses viewed the suspect for a brief time in a high stress situation involving a weapon. The photospread was especially suggestive because Jones was the only person with thick dreadlocks and the witnesses described the suspect as having dreadlocks. There is a reasonable probability that testimony relating to the later identifications would have been suppressed.

B. Counsel was ineffective for not citing the relevant case law to support her argument that Detective Egan's forged warrants suppression of the identification testimony.

Instead of moving to suppress on the grounds that the photospread was impermissibly suggestive, defense counsel abandoned this issue and argued that the identification testimony should be suppressed because Detective Egan forged the witnesses' signatures on the

lineup advisory forms. Detective Egan admitted that he signed the witnesses' names, and that he did not indicate on the form that he was signing on their behalf. (R.H. 13-19, 32-33) Egan said he signed the witnesses' names on the forms because the printer was not working while they were at the station. Egan testified that he informed the witnesses that he was going to sign their names. (R.H. 34) Defense counsel argued that Egan's actions constituted a forgery and warranted suppression of any identification testimony from the witnesses.

The trial court was concerned by Egan's actions and asked the Assistant State's Attorney, "Okay. Here's my question. Isn't it still a forgery even if I find that the witnesses gave permission to sign their name? Isn't it still a forgery?" (R.H. 36) The trial court then asked defense counsel if she had any case law to support her contention that Egan's actions warranted suppression of the identification testimony. (R.H. 36-37) When counsel did not provide any, the trial court denied the motion to suppress.

Trial counsel was ineffective because P.A. 98-1014, § 10, eff. Jan. 01, 2015, went into effect before the bench trial commenced on June 03, 2015. The statute governing lineup procedures requires that the eyewitness be instructed in inter alia that: (1) the perpetrator may or may not be presented in the lineup; (2) the eyewitness should not assume that the lineup administrator knows which person

in the lineup is the suspect. (3) the eyewitness should not feel compelled to make an identification. 725 ILLCS 5/107 A-2(e)(1)(B), (C), (D). (West 2015). The statute also mandates that, "The eyewitness shall acknowledge in writing the receipt of the instructions required under this subsection." 725 ILLCS 5/107 A-2(e)(2) (West 2015). Subsection (j)(2) states that any violation of the requirements of the lineup procedure shall be a factor to consider in adjudicating a motion to suppress identification testimony. 725 ILLCS 5/107 A-2(j)(1) (West 2015)

Counsel's performance was deficient in that she did not make the trial court aware of this statute or move to reopen the motion to suppress based on the statute. Sound trial strategy requires use of established rules of evidence and procedures to avoid the admission of incriminating evidence. People v. Rosemond, 339 Ill. App. 3d 65-66 (1st Dist. 2003), cf. Von Moltke v. Gillies, 332 U.S. 708, 721 (1948) (Plea agreement; Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings, and laws involved... Failure to know any one of the four required areas constitutes ineffective assistance of counsel). The trial court expressed concern that Detective Egan had forged the witnesses' signatures, but asked counsel if there was any support for proposition that this violation warranted suppression of the identification testimony. (A.H. 36-37) Counsel had a duty to know

the relevant law and bring it to the trial court's attention. While the statute had not gone into effect at the time of the suppression hearing, the effective date was five months before the bench trial commenced. In *People v. Causey*, 341 Ill. App. 3d 759, 762 (2003), the appellate court held that counsel could be ineffective for not moving to reopen a motion to suppress when new evidence supported suppression. This case involves a new law rather than new evidence, but the same principle should apply. Counsel was ineffective for not supporting her argument that identification testimony should be suppressed with relevant case law.

Here, defense counsel did not argue the photospread was suggestive and put all her eggs in the basket of Detective Egan's conduct warranting suppression. The trial court specifically requested controlling legal authority that suppression could be a proper remedy. Counsel had a duty to know the current state of the law and to inform the trial court that the statute specifically stated that the failure to have the witnesses sign the advisory form was a factor to be considered in support of suppression.

C. There is a reasonable probability that the outcome of the trial would have been different had the identification testimony been suppressed.

As noted above, the suggestive photospread tainted the later identifications and there is a reasonable probability that counsel

could have prevented the state from introducing any identification testimony at trial. Without the identification testimony, there is also a reasonable probability that the outcome of the trial would have been different. The state would only have been able to prove that the perpetrators got into a van registered to Jones. A reasonable probability is less than a preponderance of the evidence standard. In fact, a defendant can meet the second prong of Strickland, even if the chance of acquittal was significantly less than five percent. People v McLarter, 385 Ill. App. 3d 919, 935 (1st Dist. 2008). Even if one assumes that Jones could be connected to the crime scene through the van, the state would not have been able to prove that he participated in the crime.

It is true that Jones testified he was at the house and hit Williams because he was in fear for his life. (R. 11140-41) But this does not mean that Jones cannot show prejudice. In People v Diggins, 2016 IL App (1st) 142088, p 3, the defendant was convicted of aggravated unlawful use of a weapon based on his lack of a FOID card. The state relied on a certified letter from the Firearm Service Bureau of the Illinois State Police, which stated that the defendant did not have a valid FOID card. Id. at p 2. This letter was held to violate the Confrontation Clause and the defendant's conviction was reversed. Id. at pp 13-18. The defendant admitted on cross-examination that he did not possess a FOID card, but the appellate court held that this did not mean the defendant did not have a valid claim for relief. If the certifi-

fired letter had not been admitted, the defendant might have decided to not take the stand. Id. At p 18; see also People v Wright, 2012 IL App (1st) 073106 pp 91-96 (defendant's use of a consent defense at trial did not bar his claim on appeal that trial court erred in denying his motion for pre-trial DNA database search because trial strategy might have been different had the state not been able to introduce prejudicial DNA evidence).

If defense counsel had been able to keep out the identification testimony because of the suggestive photo spread, it is likely that the state's case would not have survived a motion for a directed verdict and Jones would not have had to testify. Accordingly, Jones' testimony does not alleviate counsel's deficient performance and the prejudice Jones suffered because of counsel's failure to have the identification testimony suppressed. See Little, 322 IL App.3d at 613 (trial counsel was ineffective where a suppression motion "would have been defense counsel's strongest, and most likely wisest course of action").

In sum, counsel's performance was deficient where she failed to argue that the photo spread was suggestive. Instead, counsel argued that Detective Egan's forging of the signatures on the lineup advisory form warranted suppression of the identification testimony. While Detective Egan's actions were improper, counsel failed to cite the statutory authority to support her claim that the identification testimony should be suppressed. Had counsel provided effective representation, there is a reasonable probability that a motion to suppress the

identification testimony would have been successful and that the result of the trial would have been different. Accordingly, Jones did not receive effective assistance of counsel and this Court should grant certiorari to address Jones' claim of ineffective assistance of trial counsel.

CONCLUSION

For the foregoing reasons, Brandon Jones, petitioner pro-se, respectfully requests that a writ of certiorari be issued to the Appellate Court of Illinois, First Judicial District.

Respectfully submitted,
Brandon Jones pro-se
BRANDON JONES, pro-se,
P.O. Box 1000, Reg No. M-00228
Menard, IL 62259-0100