

19-6150 ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JUN 13 2019

OFFICE OF THE CLERK

CHAD M. CUTLER

(Your Name)

— PETITIONER

vs.

ILLINOIS APPELLATE COURT, 4TH DISTRICT

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ILLINOIS APPELLATE COURT, FOURTH DISTRICT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHAD CUTLER, 516948

(Your Name)

MENARD CORRECTIONAL CENTER, P.O. BOX 1000

(Address)

MENARD, ILLINOIS 62259

(City, State, Zip Code)

N/A

(Phone Number)

QUESTIONS PRESENTED

1. WILL THIS COURT ADDRESS THE CONFLICT BETWEEN THE ILLINOIS APPELLATE (4th) COURT AND BOTH THE ILLINOIS SUPREME COURT AND APPELLATE (3rd) COURT OVER ILLINOIS RULE OF EVIDENCE 804 AND SECTION 725 ILCS 5/115-10.4 PRE-EMPTING SECTION 725 ILCS 5/115-10.2a, AND THE IMPROPER ADMISSION OF HEARSAY STATEMENTS?
2. WILL THIS COURT ADDRESS THE CONFLICT BETWEEN THE ILLINOIS APPELLATE (4th) COURT AND THE ILLINOIS SUPREME COURT OVER THE PEOPLE V. FLOYD QUESTION OF STATE OF MIND HEARSAY STATEMENTS DISPLAYING ONLY A DECLARANT'S PERSONAL FEARS, WITHOUT MORE, BEING RELEVANT TO A DEFENDANT'S STATE OF MIND AND THE LIKELIHOOD OF IMPROPERLY DEMONSTRATING PROPENSITY? SHOULD THIS COURT CONSIDER AMENDING FEDERAL RULE OF EVIDENCE 803(3) BY ADOPTING THE 'B' ADDENDUM, AS HAS THE STATE OF ILLINOIS, PURSUANT TO THE ISSUES ADDRESSED HEREIN?
3. SHOULD THE EXTREMELY PREJUDICIAL HEARSAY TESTIMONY OF A DECLARANT WITH WELL DOCUMENTED MENTAL ILLNESS BE ADMISSIBLE IN A MURDER TRIAL? SHOULD THAT DECLARANT'S DEMONSTRABLE LIES ABOUT SPECIFIC INSTANCES OF DOMESTIC VIOLENCE RENDER INADMISSIBLE HER PAST STATEMENTS INTRODUCED UNDER THE DOMESTIC VIOLENCE HEARSAY EXCEPTION?
4. WILL THIS COURT ADDRESS THE CONFLICT BETWEEN THE ILLINOIS SUPREME COURT'S RULING ESTABLISHING THE THREE PRONGED ADMISSIBILITY THRESHOLD FOR LIFE INSURANCE EVIDENCE (SEE PEOPLE V. GOWEN AND PEOPLE V. MITCHELL) AND THE ILLINOIS APPELLATE (4th) COURT'S RECENT DECISION TO DISREGARD THAT THRESHOLD AND RELY SOLELY UPON INFERENCES?
5. SHOULD THIS COURT ESTABLISH, IN CASES OF ALLEGED BUT UNPROVEN HOMICIDE INVOLVING DROWNING OR OTHER ARGUABLY ACCIDENTAL DEATHS, CASES IN WHICH REASONABLE MEDICAL HYPOTHESES CONSISTENT WITH ACCIDENTAL DEATH HAVE BEEN PROVIDED, A MORE STRINGENT STANDARD OR AT LEAST A REQUIREMENT OF CLOSER SCRUTINY FOR THE FINDING OF THE REQUISITE CRIMINAL AGENCY?
6. WILL THIS COURT ADDRESS THE CONFLICT BETWEEN ILLINOIS REVIEWING COURTS OVER THE PROPER STANDARD OF REVIEW FOR CLAIMS OF DELIBERATE PROSECUTORIAL MISCONDUCT, AND EXAMINE ONE IN A RISING TREND OF PROSECUTORS EMPLOYING DELIBERATE MISCONDUCT AND DECEPTION AS A MEANS TO BOLSTER WEAK, CIRCUMSTANTIAL CASES?

7. WILL THIS COURT ADDRESS THE PRACTICE OF PROSECUTORS USING GOVERNMENT POWER AND UNLIMITED BUDGETS TO WEAPONIZE EXPERT OPINION TESTIMONY AS A MEANS TO CREATE, THROUGH COURT SANCTIONED OPINIONS AND SPECULATION, FACTS AND EVIDENCE WHICH WOULD NOT OTHERWISE EXIST? SHOULD THIS COURT ESTABLISH A STANDARD FOR ADMISSION OF EXPERT OPINION TESTIMONY BEYOND FRYE WHICH REQUIRES A MORE STRINGENT EXAMINATION OF ANY EXPERT OPINING UPON A MANNER OF DEATH, AND OF THE FOUNDATIONAL FACTS UPON WHICH THE OPINION IS PREDICATED?

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:

STATE'S ATTORNEY'S APPELLATE PROSECUTOR
725 SOUTH SECOND STREET
SPRINGFIELD, IL 62704

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- APPENDIX H: ILLINOIS STATUTE 725 ILCS 5/115-10.2(a)
- APPENDIX I: ILLINOIS STATUTE 725 ILCS 5/115-10.4
- APPENDIX J: ILLINOIS RULE OF EVIDENCE 803(3)(B)
- APPENDIX K: ILLINOIS RULE OF EVIDENCE 804
- APPENDIX L: FEDERAL RULE OF EVIDENCE 803(3)
- APPENDIX M: TABLE OF AUTHORITIES, FIRST APPELLATE BRIEF

TABLE OF AUTHORITIES CITED

17, 18, 24, 25	PEOPLE V. GOODAS, 410 ILL. 235 (1951)
17, 18, 24, 25	PEOPLE V. MITCHELL, 105 ILL. 241 (1984)
20	PEOPLE V. GONZALEZ, 2016 IL APP (3d) 130444-D
21, 22	PEOPLE V. ZIMMERMAN, 2018 IL APP (3d) 170645
21, 22	PEOPLE V. FLOYD, 103 ILL. 24 541 (1984)
28	PEOPLE V. EHLEERT, 211 ILL. 2d 192 (2004)
29, 31, 32	PEOPLE V. WHEELER, 226 ILL. 2d 92 (2007)
29	PEOPLE V. WHITE, 2016 IL APP (1st) 141480-D
29	PEOPLE V. ALVAREZ, 2014 IL APP (1st) 121740
29	PEOPLE V. BERNETTE, 30 ILL. 2d 359 (1964)
29	PEOPLE V. BLUE, 184 ILL. 2d 99 (2000)

IN A TRIAL FOR MURDER THE CORPUS DELICTI CONSISTS OF TWO ESSENTIAL ELEMENTS - THE FACT OF DEATH AND THE FACT THAT THE DEATH WAS PRODUCED BY THE CRIMINAL AGENCY OF SOME PERSON. BOTH OF THESE ELEMENTS MUST BE PROVED BEYOND A REASONABLE DOUBT. PEOPLE V. EHLEERT, 211 ILL. 2d 192, 202 (2004)

"THE RELATIONSHIP BETWEEN THE DEFENDANT'S CRIMINAL AGENCY AND THE CAUSE OF DEATH MAY NOT BE LEFT TO INFERENCE AND SPECULATION." PEOPLE V. EHLEERT, 211 ILL. 2d 192, 210 (2004)

AND THAT HE WILL BENEFIT THEREFROM. PEOPLE V. MITCHELL, 105 ILL. 2d 1, 10 (1984)

UPON EVIDENCE OF THE DEFENDANT'S KNOWLEDGE OF ITS EXISTENCE, ITS VALIDITY, OR BELIEVED VALIDITY, THIS COURT DETERMINED THAT THE ADMISSION OF EVIDENCE OF A LIFE INSURANCE POLICY MUST BE PRECLUDED AND ITS RELATIONSHIP TO THE DEFENDANT. IN PEOPLE V. GOODAS (1951) 410 ILL. 235, 239, 102 N.E. 2d 152, WITH REFERENCE TO INSURANCE POLICIES, THIS COURT HAS RECOGNIZED PROOF OF THE EXISTENCE OF SUCH A POLICY

	PAGE
<u>PEOPLE V. BUNNING</u> , 248 IL APP. 3d 725 (1998)	31
<u>BERGER V. UNITED STATES</u> , 295 U.S. 78 (1935)	31
<u>FRYE V. UNITED STATES</u> , 293 F. 1013 (1923)	32,33

UNITED STATES CONSTITUTION, AMENDMENT 14

720 ILCS 5/4-1

725 ILCS 5/115-10.2a 20,22

725 ILCS 5/115-10.4 20

ILLINOIS RULE OF EVIDENCE 803(3)(B) 21,22

ILLINOIS RULE OF EVIDENCE 804 20

FEDERAL RULE OF EVIDENCE, RULE 803(3) 21

FOR COMPLETE LIST OF AUTHORITIES CITED ON DIRECT APPEAL, SEE APPENDIX M.

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.

I.
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 PEOPLE V. WITLER 2018 IL APP (4th) 150846; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the CIRCUIT COURT OF MACON COUNTY 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.

**II.
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 MARCH 20, 2019.
A copy of that decision appears at Appendix 6.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- UNITED STATES CONSTITUTION, AMENDMENT 14, CITIZENSHIP RIGHTS
... 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,
(SEE APPENDIX F)
- 720 ILCS 5/9-1
FIRST DEGREE MURDER (SEE APPENDIX G)
- 725 ILCS 5/115-10.2a
ADMISSIBILITY OF PRIOR STATEMENTS IN DOMESTIC VIOLENCE PROSECUTIONS WHEN THE WITNESS IS UNAVAILABLE TO
TESTIFY (SEE APPENDIX H)
- 725 ILCS 5/115-10.4
ADMISSIBILITY OF PRIOR STATEMENTS WHEN WITNESS IS DECEASED (SEE APPENDIX I)
- ILLINOIS RULE OF EVIDENCE 803
HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL
803 (3) THEN EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION
(SEE APPENDIX J)
- ILLINOIS RULE OF EVIDENCE 804
HEARSAY EXCEPTIONS, DECLARANT UNAVAILABLE
(SEE APPENDIX K)

- FEDERAL RULES OF EVIDENCE RULE 803, 28 U.S.C.A.

EXCEPTIONS TO THE RULE AGAINST HEARSAY - REGARDLESS OF WHETHER THE DECLARANT IS AVAILABLE AS A WITNESS

803 (3) THEN EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION

(SEE APPENDIX L)

STATEMENT OF EXPLANATION REGARDING REFERENCES

PETITIONER WISHES TO INFORM THE COURT AS TO SEVERAL POINTS INVOLVING REFERENCES TO THE RECORD EMPLOYED HEREIN AND IN THE APPELLANT'S BRIEFS. CERTAIN OVERLY BROAD REFERENCES, SUCH AS THOSE SIMPLY INDICATING DEFENSE EXHIBITS 3 OR 4 FOR CHAD CUTLER'S POLICE INTERVIEW STATEMENTS, WERE IDENTIFIED AS SPECIFICALLY AS WAS POSSIBLE GIVEN THE PRO SE, SELF REPRESENTING LITIGANT'S INABILITY TO OBTAIN THOSE TRANSCRIPTS.

ARGUMENTS 3A AND 3B OF THE APPELLANT'S BRIEF WERE THE PRODUCT OF A COLLABORATION BETWEEN MR. CUTLER AND ANOTHER PARTY POSSESSING TRANSCRIPTS IDENTIFIED IN A DIFFERENT MANNER, GENERALLY BY VOLUME NUMBER RATHER THAN 'TRIAL DAY'. MR. CUTLER IS GIVEN TO UNDERSTAND THAT THE COURT'S COPY OF THE TRIAL RECORD MATCHES THIS FORMAT, AND THAT SUCH REFERENCES WILL NOT BE PROBLEMATIC DURING THIS REVIEW.

REFERENCES TO THE TRIAL RECORD IN ALL OTHER SECTIONS OF THE APPELLANT'S BRIEFS AND THIS PETITION ARE FORMATTED IN THE ONLY MANNER AVAILABLE TO THIS PETITIONER GIVEN THE IDENTIFICATION OF THE TRANSCRIPTS PROVIDED BY THE MACON COUNTY CLERK. THESE REFERENCES GENERALLY REFER TO THE COMMON LAW RECORD (C), OR THE DAY OR TITLE OF THE PROCEEDING, SUCH AS HEARING OF THE MOTION TO ADMIT PRIOR STATEMENTS OF LISA CUTLER (H.M.A.), SENTENCING HEARING, KRANKLE HEARING, PAGE (P.), AND PARAGRAPH (#). TRIAL DAY REFERENCES WILL APPEAR AS SHOWN IN THE FOLLOWING EXAMPLE: TRIAL DAY 2, PAGES 76-80 AND 83 (T.D.2.76-80,83).

CHAD CUTLER ALSO THOUGHT IT NECESSARY TO INFORM THE COURT THAT THIS PETITION IS INTENDED TO PRESENT THE QUESTIONS AND INFORMATION THAT WOULD DRAW IN ITS MEMBERS, TO ATTRACT THEIR ATTENTION TO IMPORTANT ISSUES, AND AS SUCH WAS ONLY DESIGNED TO SUMMARIZE PERTINENT POINTS AND RELATED ARGUMENTS WITHOUT REPEATING EXTENSIVE PORTIONS OF THE APPELLATE BRIEFS. THIS PETITIONER RESPECTFULLY ASKS THE COURT TO RELY UPON HIS TWO BRIEFS TO THE APPELLATE COURT FOR MORE COMPREHENSIVE ARGUMENTS ON THE QUESTIONS RAISED, AS WELL AS ALL REFERENCES TO THE TRIAL RECORD NOT FOUND HEREIN.

IV.

STATEMENT OF THE FACTS OF THIS CASE

1. DR. YODMANS' TESTIMONY (T.D. 6.69) ESTABLISHED THAT LISA CUTLER DROWNED IN THE JACUZZI TUB IN HER HOME IN THE EARLY MORNING HOURS OF APRIL 27, 2012. SHE AUTHORED THE OFFICIAL AUTOPSY REPORT (T.D. 6.94) WHICH DETERMINED THE CAUSE OF DEATH TO BE DROWNING AND MADE NO MENTION OF THE MANNER OF DEATH OR THE OCCURRENCE OF A HOMICIDE, ONLY COMMENTING THAT BRUISES WERE FOUND OF AN UNKNOWN ORIGIN. DR. YODMANS LATER DEVELOPED THE OPINION (T.D. 6.89) THAT THE DEATH WAS A HOMICIDE, WHICH WAS DISCLOSED FIVE DAYS INTO CHAD CUTLER'S TRIAL (SEE DEFENSE MOTION TO BAR THE NEW OPINION OF DR. YODMANS, C334-C335), AN OPINION PREDICATED UPON HER INTERPRETATION OF THE MINOR INJURIES SHE HAD SEEN. DR. YODMANS TESTIFIED ON DIRECT (T.D. 6.88) THAT THE BRUISES ON LISA'S SCALP WERE CONSISTENT WITH AN ASSAILANT HOLDING THE HEAD WITH BOTH HANDS, BUT WHEN ASKED ON CROSS (T.D. 6.100) IF THE SCALP BRUISES WERE CAUSED BY IMPACT OR PRESSURE, REPLIED "THEY COULD BE EITHER". WHEN ASKED ON DIRECT A LEADING QUESTION (T.D. 6.88) ABOUT LISA'S ELBOW BRUISES, YODMANS SAID THEY WERE "CONSISTENT WITH PUSHING AGAINST A BATHTUB WALL", BUT WHEN CROSS EXAMINED (T.D. 6.98-100) ABOUT THE INJURIES BEING PRESSURE HEMORRHAGES, TWICE STATED SHE "COULD NOT TELL THE DIFFERENCE BETWEEN IMPACT OR PRESSURE CONTUSIONS ON HER BODY". DR. YODMANS EXPRESSED A WILLINGNESS TO INFER THE EXISTENCE OF FACTS SUGGESTED BY PROSECUTOR'S LEADING QUESTIONS, WHILE ON CROSS ADMITTING THAT FACTS INCONSISTENT WITH HER FIRST OPINIONS COULD BE INFERRED WITH EQUAL CERTAINTY.

2. CHAD CUTLER WAS ARRESTED AND CHARGED WITH HIS WIFE'S MURDER ON AUGUST 8, 2013.

3. PROSECUTORS SUBMITTED A MOTION TO ADMIT PRIOR STATEMENTS OF LISA CUTLER UNDER 725 ILES 5/115-10.2 (a) (C56-58), WHICH BRAZENLY MISREPRESENTED THE UNDISPUTED CAUSE OF DEATH, CHARACTERIZING IT FALSELY AS 'FORCIBLE DROWNING'. A PRETRIAL HEARING OF THE MOTION WAS HELD, AND THE COURT ALLOWED THE ADMISSION OF THE HEARSAY STATEMENTS OF FOURTEEN WITNESSES (SEE HEARING OF THE MOTION TO ADMIT PRIOR STATEMENTS OF LISA CUTLER).

4. WITNESSES AT THE HEARING AND LATER AT TRIAL (COZIAK, T.D. 3.160; DOUGLAS, T.D. 3.272-273; BYRD, T.D. 6.230) REPEATED LISA'S STATEMENTS THAT SHE HAD FEARED FOR HER LIFE WITH NO EVIDENCE OF ACTUAL THREATS BEING MADE BY THE DEFENDANT. THE MOST SPECIFIC REFERENCES TO ABUSE ALLEGED ONLY THAT THERE HAD BEEN 'VERBAL ABUSE AND SOMETIMES MORE' (BYRD, T.D. 6.226-230), AND THAT LISA DISCLOSED TO DOUGLAS (H.M.A. P. 45-50; T.D. 3.272-273) AROUND CHRISTMAS THE PREVIOUS YEAR THAT ONCE CHAD HAD PUSHED HER DOWN.

5. TESTIMONY OF TONYA MELHORN (T.D. 6.213) REVEALED LISA'S VERY SPECIFIC ALLEGATION THAT IN AUGUST OF 2011 CHAD CUTLER WOULD DRINK AND BECOME VIOLENT. TESTIMONY OF STATE'S WITNESSES ADRIAN BYKA (T.D. 6.233-234) AND JERRY DOUGLAS (T.D. 3.278-2.74) REVEALED LISA'S DISCLOSURES MADE TO TWO FAMILY THERAPISTS AND RECORDED IN THEIR SESSION NOTES IN OCTOBER AND NOVEMBER OF 2011 THAT CHAD CUTLER HAD BEEN SOBER SINCE APRIL OF 2011.

6. TESTIMONY OF DR. KAVUKI (T.D. 7.133), LISA'S PSYCHIATRIST OF 7+ YEARS, REVEALED IN HIS DECEMBER, 2011 SESSION NOTES LISA'S DISCLOSURE THAT HER HUSBAND HAD BEEN SOBER SINCE APRIL OF 2011. DR. KAVUKI ALSO TESTIFIED (T.D. 7.115) THAT LISA SUFFERED FROM AN INTENSE ANXIETY DISORDER, TO THE EXTENT OF BEING PARANOID (T.D. 7.117). DR. KAVUKI HAD FOR 7+ YEARS CONSISTENTLY PRESCRIBED LISA CLONAZEPAM, A DRUG DESIGNED TO CONTROL SEIZURES (T.D. 7.118-121), AND HIS RECORDS SHOWED SHE HAD ABUSED THE BENZODIAZEPINE BY TAKING MORE THAN PRESCRIBED (T.D. 7.125, 127-128) AND BY TAKING THOSE ILLICITLY PROVIDED BY HER BROTHER (T.D. 7.132). KAVUKI'S RECORDS SHOWED LISA'S DISCLOSURE AT THEIR INITIAL MEETING IN 2005, THAT SHE WAS SEEKING CLONAZEPAM (T.D. 7.133).

7. TESTIMONY OF JONNIE CLARK (H.M.A. P. 24-29; T.D. 3.164-170) REVEALED LISA'S STATEMENT ON MARCH 17, 2011, THAT SHE WAS TAKING A LEAVE OF ABSENCE DUE TO VIOLENCE IN THE HOME. LATER TESTIMONY (T.D. 3.167-170) REVEALED LISA'S DETAILED WRITTEN REQUEST (DEFENSE EXHIBIT 1) FOR FAMILY MEDICAL LEAVE, SUBMITTED TO CLARK ON THE SAME DAY. LISA CUTLER'S SIGNED F.M.L.A. REQUEST CITED AS THE REASON FOR HER LEAVE OF ABSENCE THE PLANNED EXTENSIVE MEDICAL PROCEEDURE OF ONE OF THE CUTLER CHILDREN, AND INCLUDED A LETTER OF CONFIRMATION FROM BARNES CHILDREN'S HOSPITAL.

8. THE STIPULATED TESTIMONY OF DR. REYES (DEFENSE EXHIBIT 6) WAS EXCLUDED BY THE COURT, BUT STATED (T.D. 7.103) THAT HE WAS AN E.R. PHYSICIAN WHO SAW LISA CUTLER OCTOBER 15, 2008, ADMITTING HER TO THE PSYCHIATRIC UNIT AT ST. MARY'S HOSPITAL. THE DOCTOR HAD NO RECOLLECTION OF SPEAKING WITH LISA, BUT HIS RECORDS NOTED HER STATEMENT THAT SHE'D HAD A SISTER WHO COMMITTED SUICIDE.

9. THE OFFER OF PROOF OF FAMILY MEMBER DEBBY CONTE (T.D. 7.164-167) WAS EXCLUDED BY THE COURT, BUT REVEALED LISA'S PAST STATEMENTS FABRICATING A MYTHICAL SISTER WHO HAD COMMITTED SUICIDE.

10. THE TESTIMONY OF LISA'S OLDER BROTHER, (DAVID RANSDELL, T.D. 2.121-122) ESTABLISHED THE FACT THAT HE AND LISA HAD NEVER HAD A SISTER WHO COMMITTED SUICIDE.

11. PEOPLE'S EXHIBITS 37 AND 38 REVEAL THE STIPULATED TESTIMONY OF THE CUTLER CHILDREN, CHAPIN (11) AND ISABELLE (8), THAT LISA WAS LAST SEEN IN PAJAMAS WITH LONG PANTS AND LONG SLEEVES, THAT SHE HAD NO VISIBLE INJURIES, AND THAT THEY HEARD NO DISTURBANCES DURING THE NIGHT OF THEIR MOTHER'S DROWNING DEATH. THE CHILDREN ALSO STATED (CHAPIN) THAT CHAD CUTLER

WAS NO LONGER DRINKING AND HAD NOT BEEN SEEN SPEAKING TO LISA IN A MEAN MANNER FOR A YEAR, AND (ISABELLE) THAT MOM AND DAD HAD ONCE DISCUSSED DIVORCE BUT WERE GETTING ALONG WELL AT THE TIME OF THEIR MOTHER'S DEATH.

12. DEFENSE EXPERT DR. POSEY OPINED THAT (T.D. 8.54-56) MOST OF LISA'S VERY LIGHT BRUISES AT THE EXTREMITIES WERE CAUSED DURING REMOVAL FROM THE JACUZZI TUB, AND EXPLAINED HOW THE PRE-RIGOR MORTIS CONDITION OF A BODY MADE THAT LIKELY. DR. POSEY DESCRIBED (T.D. 8.58) HOW HE WOULD EXPECT TO SEE, IN ANY HOMICIDE CASE, SERIOUS INJURIES TO THE FRONT OF THE BODY WHICH WERE NOT FOUND ON LISA OR CHAD, AND HOW THE POSTERIOR INJURIES TO THE HEAD AND ELBOWS WERE CONSISTENT WITH LISA FALLING BACKWARD AND HITTING THE TUB. THE DOCTOR OBSERVED (T.D. 8.61, 63-64) NO OFFENSIVE INJURIES TO LISA'S NECK, SHOULDERS, CHEST, BELLY, OR ARMS TO INDICATE SHE WAS PUSHED OR HELD UNDERWATER. DR. POSEY REFERRED TO MEDICAL RECORDS (T.D. 8.65-66) OF LISA'S PERSONAL PHYSICIAN WHICH INDICATED HER CLONAZEPAM ABUSE, YEARS OF USE, AND THE WARNINGS AGAINST RAPID WITHDRAWAL FROM THE DRUG DUE TO THE RISK OF SEIZURE - ALL OF WHICH WERE SUPPORTED BY THE ACTUAL TESTIMONY OF DR. KAVUKI. POSEY EXPLAINED (T.D. 8.69) HOW LISA'S YEARS OF USE HAD LIKELY CAUSED HER TO HAVE A HIGHER THERAPEUTIC THRESHOLD LEVEL OF CLONAZEPAM, THAT SEIZURES CAN AND DO OCCUR IN PATIENTS WHO STOP TAKING THE BENZODIAZEPINES, AND THAT THERE IS NO MEDICAL TEST TO DETERMINE IF A PERSON DID OR DID NOT HAVE A SEIZURE. THE DOCTOR TESTIFIED (T.D. 8.70-71) THAT BASED ON LISA'S HISTORY WITH CLONAZEPAM AND THE WELL ESTABLISHED MEDICAL LITERATURE WARNING AGAINST SUDDEN WITHDRAWAL, SEIZURE WAS A REASONABLE EXPLANATION FOR A TEMPORARY INCAPACITATION CAUSING HER TO DROWN, AND THE POSTERIOR HEAD AND ELBOW BRUISES WERE ATTRIBUTABLE TO THAT SCENARIO. DR. POSEY NOTED THE ABSENCE OF INJURIES (T.D. 8.71) THAT WOULD LEAD HIM TO BELIEVE SHE WAS BEING ATTACKED, OBSERVED (T.D. 8.77-78) PHOTO 64, THAT LISA'S HANDS WERE WELL MANICURED AND DISPLAYED NO BROKEN NAILS OR ANY OTHER EVIDENCE INDICATING A STRUGGLE, AND STATED HE DID NOT SEE THE ELEMENTS THAT WOULD INDICATE CONSISTENCY WITH A HOMICIDE (T.D. 8.75). DR. POSEY STATED AGREEMENT WITH DR. CASE THAT THE CLONAZEPAM LEVEL IN LISA'S SYSTEM AT THE TIME OF DEATH WAS LIKELY EQUAL TO OR LESS THAN THAT SHOWN IN THE TOXICOLOGY REPORT (T.D. 8.72-74), CITED SPECIFIC STUDIES (T.D. 8.101-102) AND STATISTICS SHOWING A 50% OCCURRENCE OF SEIZURES IN PATIENTS WITHDRAWING FROM ANTI-SEIZURE MEDICATIONS, AND NOTED THAT LISA'S LEVEL WAS BELOW THE THERAPEUTIC RANGE. DR. POSEY GAVE A STRONG DEFENSE OF HIS HYPOTHESIS, CITING REPEATEDLY THE LENGTH OF TIME LISA HAD BEEN USING CLONAZEPAM, THE POSSIBILITY OF PREVIOUS SEIZURES OCCURRING NOCTURNALLY OR SIMPLY NOT BEING REPORTED, THE FACT THAT LISA'S INJURIES WERE PREDOMINANTLY POSTERIOR, AND THE ABSENCE OF INJURIES ON BOTH PARTIES INDICATING AN ASSAULT (T.D. 8.107-112). HE ESTABLISHED ON REDIRECT (T.D. 8.114, 117) THAT LISA HAD A RECORDED HISTORY OF BEING ADMITTED TO THE HOSPITAL WITH A MAJOR SYMPTOM OF CLONAZEPAM WITHDRAWAL, SUICIDAL IDEATIONS.

13. STATES EXPERT DR. CASE COMPLIED WITH PROSECUTORS' FREQUENT LEADING QUESTIONS (T.D.7.24,27,28,29,37,42) WHICH PRODUCED OPINIONS THAT CONFLICTED WITH DR. POSEY'S HYPOTHESES AND ULTIMATELY SUPPORTED HER OWN OPINION THAT LISA'S MANNER OF DEATH WAS HOMICIDE. SHE AGREED WITH THE STATES' LEADING QUESTION (T.D.7.27) AS TO WHETHER A PARTICULAR BRUISE WAS CONSISTENT WITH LISA'S HEAD STRIKING THE TUB AND STATED PLAINLY THAT NONE OF HER INJURIES WERE CONSISTENT WITH A FALL (T.D.7.41-42), THEN ADMITTED ON CROSS (T.D.7.56) THAT THE LEFT PARIETAL BRUISE COULD BE CAUSED BY A FALL AND STRIKING THE HEAD. DR. CASE STATED ON DIRECT (T.D.7.28) THAT LISA'S SCALP BRUISES WERE CONSISTENT WITH FINGERS HOLDING HER HEAD UNDERWATER, BUT ON CROSS (T.D.7.53-54) ADMITTED THE BRUISES WERE SIMPLY BLUNT FORCE TRAUMA WHICH COULD HAVE BEEN CAUSED BY A STRIKING OBJECT OR A FORCEFUL PRESSURE. DR. CASE ESTABLISHED THAT THE RANGE OF TIME BEFORE DEATH IN WHICH LISA'S BRUISES MAY HAVE BEEN INFLICTED WAS 4-12 HOURS (T.D.7.44), THAT SOME INJURIES COULD HAVE OCCURRED DURING RESUSCITATION (T.D.7.51) OR REMOVAL FROM THE TUB (T.D.7.54), THAT SHE BELIEVED LISA WAS DECEASED WHEN REMOVED FROM THE TUB (T.D.7.60), AND THAT BRUISING CAN OCCUR POSTMORTEM. DR. CASE OPINED IN OPPOSITION BUT COULD NOT EXCLUDE THE REASONABLE MEDICAL HYPOTHESIS PRESENTED BY DR. POSEY (T.D.8.60-78), AND PROVIDED AN OPINION ON CLONAZEPAM REDISTRIBUTION (T.D.7.51) WHICH ESSENTIALLY AGREED WITH DR. POSEY ON THE KEY POINT THAT LISA'S CLONAZEPAM LEVEL AT THE TIME OF DEATH WAS POSSIBLY LOWER THAN THAT REFLECTED IN THE TOXICOLOGY REPORT.

14. DR. NELSON STATED (T.D.4.12) AS THE BASIS FOR HIS OPINION, THAT "NEUROLOGICALLY INTACT, SOBER ADULTS DON'T DROWN IN BATHTUBS", LATER ADDING THAT WHILE HE COULDN'T TELL HOW A HOMICIDE OCCURRED, "THIS WOMAN HAD NO OTHER REASON TO DROWN..." (T.D.4.42). DR. NELSON ADMITTED (T.D.4.41-42) THAT THERE WERE NO MARKINGS ON LISA'S BODY TO INDICATE STRANGULATION OR TO SHOW WHERE OR HOW SHE WAS HELD UNDERWATER, AND TO BEING UNABLE TO DESCRIBE HOW AN ASSAULT MAY HAVE OCCURRED, BUT STILL INSISTED THAT SOMEHOW EXTERNAL FORCE HAD CAUSED THE DROWNING DEATH. HE ACKNOWLEDGED (T.D.4.42) THE BRUISING ON LISA'S SCALP, THE SAME WHICH DR. YOUHANS HAD OPINED WERE "CONSISTENT WITH AN ASSAILANT ~~WITH~~ HOLDING THE HEAD WITH BOTH HANDS" (T.D.6.88), BUT ADMITTED THERE WAS NO DISCERNIBLE PATTERN TO IMPLICATE PALM OR HAND PRINTS. DR. NELSON RECOGNIZED THE MEDICAL LITERATURE (T.D.4.44) WARNING THAT RAPID WITHDRAWAL FROM CLONAZEPAM COULD CAUSE SEIZURES, BUT BELIEVED IT HADN'T BEEN SO IN LISA'S CASE DUE TO HIS UNDERSTANDING OF THE POSTMORTEM REDISTRIBUTION OF CLONAZEPAM (T.D.4.39). PRIOR TO USING HIS BELIEF THAT LISA'S CLONAZEPAM LEVEL WAS HIGHER THAN THAT SHOWN IN THE TOXICOLOGY REPORT (T.D.4.27) AS FOUNDATION FOR HIS EXPERT OPINION THAT A HOMICIDE OCCURRED, DR. NELSON ADMITTED (T.D.4.26-27) "CLONAZEPAM LEVEL IS DIFFICULT TO DETERMINE", AND "... WE'RE LEFT GUESSING A LITTLE BIT... WE CAN'T BE ALL THAT SPECIFIC..." AND THAT SHE MAY (OR MAY NOT) HAVE BEEN WITHIN THE THERAPEUTIC RANGE OF CLONAZEPAM. HE ADMITTED (T.D.4.48-49) LISA'S ELBOW BRUISES COULD HAVE BEEN CAUSED BY A PERSON HAVING A SEIZURE AND FALLING.

15. DR. DENTON TESTIFIED (T.D. 6.144-148) REGARDING HIS PERFORMANCE OF A SECOND AUTOPSY, OPINING UPON LISA'S BRUISES BUT NOT UPON THE MANNER OF DEATH, ALTHOUGH BOTH THE APPELLATE PROSECUTOR AND APPELLATE COURT HAVE NOW MISCONSTRUED AND TWISTED HIS TESTIMONY IN A MANNER DAMAGING TO THE DEFENSE. DR. DENTON DID AGREE (T.D. 6.144) TO A PROSECUTOR'S EXPLICITLY LEADING QUESTION SUGGESTING AN ASSAULT IN WHICH LISA WAS STRUGGLING TO LIFT HER HEAD ABOVE THE WATER, ONLY TO RETRACT THE OPINION ON CROSS (T.D. 6.147-148), STATING THAT THE PROSECUTOR'S QUESTION WAS MISLEADING AND FINALLY OPINING SIMPLY THAT LISA'S ELBOW BRUISES WERE CONSISTENT WITH STRIKING THE TOB. THIS CRITICAL TESTIMONY BY DR. DENTON, EXTRACTED BY THE LEADING QUESTION, WAS SEIZED UPON AND EMPHASIZED IN CLOSING ARGUMENTS AT TRIAL, ALLENTATED BY THE APPELLATE PROSECUTOR IN ITS APPELLEE'S BRIEF (P.12) BY CLAIMING HE INDICATED LISA WAS FORCEBLY HELD UNDERWATER, AND EVEN ACCEPTED AS SUCH AND CITED BY THE APPELLATE COURT IN ITS FINAL ANALYSIS (COMPARE APPELLATE COURT RULING PARAGRAPHS 413-414 TO PP 286 AND 288). ALL OF THESE DEVASTATINGLY PREJUDICIAL CITATIONS IGNORED THE SIMPLE FACT THAT DR. DENTON WAS MISLED AND RETRACTED THAT ONE KEY OPINION UNDER CROSS EXAMINATION.

16. THE STATE'S RECBTAL WITNESS, DR. GOLDBERGER, WHO WAS NEITHER A FORENSIC PATHOLOGIST NOR A MEDICAL DOCTOR (T.D. 8.133, 136), OPINED THE DRUGS IN LISA'S SYSTEM DID NOT, AS A SEDATIVE, CONTRIBUTE TO HER DEATH, BUT ACKNOWLEDGED HER CLONAZEPAM LEVEL WAS BENEATH THE THERAPEUTIC RANGE (T.D. 8.130-131). DR. GOLDBERGER OPINED (T.D. 8.132) CLONAZEPAM DOES DEGRADE AFTER DEATH, BUT ADMITTED THERE WAS NO WAY TO KNOW EXACTLY WHAT THE BLOOD/DRUG CONCENTRATION WAS AT THE TIME OF DEATH. HE OPINED THAT THE LEVEL OF THE DRUG SHOULD NOT BE USED AS A BASIS FOR THE OPINION THAT LISA SUFFERED A SEIZURE (T.D. 8.134), BUT ADMITTED IT CAN AND DOES HAPPEN IN PATIENTS DISCONTINUING CLONAZEPAM USE. DR. GOLDBERGER OPINED THAT HE'D SEEN NO EVIDENCE LISA HAD ABUSED CLONAZEPAM (T.D. 8.137), DISAGREEING WITH LISA'S OWN PERSONAL PHYSICIAN (SEE DR. KAVORI AT NO. 6) CITING HER RECORDS WHILE IN HIS CARE. DR. GOLDBERGER ACKNOWLEDGED (T.D. 8.137, 140) THAT WITHDRAWAL SYMPTOMS MAY OR MAY NOT APPEAR, AND THAT THE MEDICAL LITERATURE DOES CLEARLY INDICATE WITHDRAWAL FROM CLONAZEPAM CAN CAUSE SEIZURES AND THE RISK MAY EXIST FOR SEVERAL WEEKS AFTER WITHDRAWAL.

17. BRETT ETNIER WAS THE FIRST POLICE OFFICER ON THE SCENE OF LISA CUTLER'S DEATH (T.D. 3.16), RESPONDING TO LHAO CUTLER'S 911 CALL, AND RECOUNTED DEFENDANT'S SEVERAL REFERENCES TO PERFORMING CPR ON HIS WIFE (T.D. 3.41-42). OFFICER ETNIER ESTABLISHED THAT HE OBSERVED A LARGE AREA OF WATER ON THE CUTLER'S MASTER ~~BEDROOM~~ BATHROOM FLOOR (T.D. 3.27), AND THAT HE CLEANED IT UP BEFORE TAKING PHOTOS OF THE SCENE WHICH DISPLAYED A DRY FLOOR (T.D. 3.46). OFFICER ETNIER ESTABLISHED THE FACT THAT LHAO CUTLER WAS FULLY COOPERATIVE AND SIGNED, WITHOUT HESITATION, A CONSENT FORM ALLOWING POLICE TO SEARCH THE

ENTIRE HOME (T.A.3.56).

18. PAUL HARTWIG WAS THE FIRST EMT ON THE SCENE OF THE 911 CALL (T.A.3.63) AND TESTIFIED THAT LISA'S BODY WAS WARM AND HAD NO RIGOR MORTIS. LISA WAS WET (T.A.3.65) AND WAS COVERED WITH A BLANKET OR TOWEL (T.A.3.68), AND HER HANDS HAD PRUNING FROM BEING IN THE WATER (T.A.3.64). HARTWIG BROKE RIBS DURING CPR (T.A.3.65) AND SAID IT WAS IMPOSSIBLE TO TELL IF ANY WERE ALREADY BROKEN.

19. BRIAN EVANS' TESTIMONY (T.A.2.153-154) ESTABLISHED THAT HE DID MANIPULATE LISA'S HEAD DURING THE PROCESS OF INTUBATION, AND THAT HE COULD NOT REMEMBER DETAILS OF HIS WORK ON LISA AT THE SCENE OF THE 911 RESPONSE, WHICH HAD OCCURRED THREE YEARS IN THE PAST.

20. ALI COLLINS TESTIFIED (T.A.5.17-18) THAT DURING THEIR CONVERSATION DAYS AFTER HIS WIFE'S DEATH, CHAD CUTLER TRIED TO GIVE AWAY HIS FURNITURE, AND STATED THAT HE HATED THE FURNITURE, HATED THE CATS, AND HATED LISA, BUT HE DID NOT KILL HER.

21. BOTH OF DEFENDANT'S POLICE ~~RE~~ INTERVIEWS (DEFENSE EXHIBITS 3 AND 4), AS WELL AS NUMEROUS RANDOM STATEMENTS TO OTHER TRIAL WITNESSES REVEAL CHAD CUTLER'S BELIEF IN THE FIRST AWFUL DAYS FOLLOWING HIS WIFE'S DEATH, THAT SHE HAD COMMITTED SUICIDE. WHILE NO TRIAL DEFENSE OF SUICIDE WAS EMPLOYED, THE DEFENDANT'S STATEMENTS IN THIS REGARD REVEAL HIS STUNNED AND ANGRY STATE OF MIND DURING THE PERIOD IMMEDIATELY FOLLOWING THE UNEXPECTED DEATH.

22. LISA CUTLER HAD A RECORDED HISTORY (T.A.8.114,117) OF BEING HOSPITALIZED DUE TO SUICIDAL IDEATIONS.

23. DEFENSE EXHIBIT 5 DISPLAYS THE ONLY EVIDENCE OF CHAD AND LISA CUTLER COMMUNICATING IN MONTHS PRECEDING HER DEATH. THE EMAIL MESSAGES BETWEEN THE DEFENDANT AND HIS WIFE REVEAL A FAIRLY NORMAL COUPLE EXPERIENCING THE MOSTLY CIVIL MARITAL DISCORD ONE MIGHT EXPECT WHILE COPING WITH A SPECIAL NEEDS /AUTISTIC CHILD, A SEVERE ANXIETY DISORDER AND A POTENTIALLY DETERIORATING MARRIAGE. THE CALM AND MEASURED TONE DISPLAYED BY THE DEFENDANT POSES A STRIKING CONTRAST TO THE VIOLENT AND UNSTABLE MANNER IN WHICH HE WAS PORTRAYED BY THE PROVEN UNTRUTHFUL HEARSAY STATEMENTS AND BY THE STATE'S ORAL ARGUMENTS AT TRIAL. ONE MESSAGE IRONICALLY REVEALS CHAD CUTLER EXPLICITLY DENYING ANTI-PATHY TOWARDS HIS WIFE WHEN SHE EXPRESSED ANXIETY OVER THE MATTER.

24. WHILE THE TRIAL RECORD CONTAINS LITTLE DISCUSSION SOLELY FOCUSED ON THE DYNAMICS OF THE CUTLER FAMILY, THE FACT THAT ELEVEN YEAR OLD CHAPIN CUTLER WAS AFFLICTED WITH THEN NOT CLEARLY DIAGNOSED DISABILITIES WHICH UNQUESTIONABLY CATEGORIZE HIM AS A CHILD WITH SPECIAL NEEDS IS APPARENT IN MANY PLACES. CHAD CUTLER'S POLICE INTERVIEWS (DEF. EXHIBITS 3 AND 4) REVEAL HIS MULTIPLE REFERENCES TO CHAPIN'S DIAGNOSES ON THE AUTISM SPECTRUM, TO HIS PHYSICAL OUTBURSTS

AGAINST HIS MOTHER AND SISTER, TO LISA'S BELIEF THAT THEIR SON WAS BIPOLAR, AND TO THE AMOUNT OF STRIFE THAT WAS OFTEN WROUGHT BY CLASHES BETWEEN CHAD AND HIS MOTHER. DEFENSE EXHIBIT 5 CONTAINS EMAILS BETWEEN CHAD AND LISA WHICH FURTHER DESCRIBE SOME OF THESE ISSUES, AS DO SESSION NOTES OF JERRY DOUGLAS (DEF. EXHIBIT 2) AND ADRIAN BYRD (DEF. EXH. 9). SEVERAL INSTANCES IN THE RECORD (DEF. EXH. 3) REVEAL CHAD'S BEING PRESCRIBED PSYCHOTROPIC MEDICATIONS BY HIS OWN DOCTOR. TESTIMONY OF BOTH DOUGLAS (H.M.A., P. 47-52; T.D. 3.275-277) AND ADRIAN BYRD (H.M.A., P. 67-69; T.D. 6.232-235) REVEAL LISA'S STORY OF BEING STRUCK IN THE FACE BY HER SON IN OCTOBER OF 2011, AND DEFENSE COUNSEL INTRODUCED DURING THE PRE-TRIAL MOTIONS HEARING (H.M.A., P. 104) MEDICAL RECORDS WHICH REGISTERED BOTH LISA AND CHAD CUTLER'S SUBSEQUENT ADMISSION TO ST. MARY'S HOSPITAL EMERGENCY ROOM. OFFICER ETNIER TESTIFIED (T.D. 3.42) AS TO CHAD CUTLER'S STUNNED STATEMENTS ON THE NIGHT OF HIS WIFE'S DEATH THAT HE SUSPECTED SUICIDE AND DIDN'T KNOW WHAT TO TELL HIS CHILDREN, AND THAT HIS SON WAS BIPOLAR AND HAD ASSAULTED LISA BACK IN OCTOBER.

25. TRIAL PROSECUTORS FALSELY INFORMED THE COURT DURING ARGUMENT OF DEFENDANT'S MOTION FOR NEW TRIAL (SENTENCING HEARING, P. 14-18) "MULTIPLE EMAILS COMING FROM THE CUTLER HOME WHILE LISA WAS AT WORK SHOWED SHE COULD NOT HAVE BEEN IN CONTACT WITH INSURANCE COMPANIES". SETTING ASIDE THE PLAIN FACTS OF THE CASE ESTABLISHED IN PEOPLE'S EXHIBITS 52, 53, AND 54, THAT THE NEW POLICIES WERE PURCHASED ON A SATURDAY, THIS WAS A GROSS MISSTATEMENT OF THE EVIDENCE, AN OUTRIGHT LIE TO THE COURT CALCULATED TO WIN THE ARGUMENT BY REFERENCING EVIDENCE NEVER PRESENTED. THE RECORD SHOWS NO EMAILS ORIGINATED FROM THE CUTLER HOME IP ADDRESS AT SUCH TIMES.

26. PEOPLE'S EXHIBITS 52, 53, AND 54 STIPULATE THAT THE TWO NEW LIFE INSURANCE POLICIES WITH PETERSON INTERNATIONAL UNDERWRITERS AND MUTUAL OF OMAHA - ONE OF WHICH COVERED THE ENTIRE CUTLER FAMILY - WERE PURCHASED ONLINE FROM THE CUTLER RESIDENCE IP ADDRESS ON SATURDAY, APRIL 21, 2012. NO EVIDENCE ~~SHOWING~~ EXISTED SHOWING CONTACT BETWEEN CHAD CUTLER AND THESE TWO COMPANIES UNTIL THE AFTERNOON OF APRIL 27, OVER TWELVE HOURS AFTER LISA'S DEATH.

27. DEFENSE EXHIBIT 3 TRANSCRIBES CHAD CUTLER'S FIRST POLICE INTERVIEW, WHICH OCCURRED LATE AT NIGHT ON APRIL 27, 2012, ABOUT 24 HOURS AFTER LISA'S DROWNING DEATH. THIS INTERVIEW REVEALS THE DEFENDANT DISTINCTLY INFORMING POLICE HE DID NOT SOLICIT OR PURCHASE THE NEW LIFE INSURANCE POLICIES AND HAD KNOWN NOTHING ABOUT THEM UNTIL DISCOVERING THAT DAY A LIST LISA HAD LEFT. CHAD CUTLER ADMITTED TO DISCOVERING THE NEW POLICIES AND ACTING UPON THEM AT A TIME WHICH PROVIDED NO MOTIVE, THE AFTERNOON FOLLOWING HIS WIFE'S DEATH. MR. CUTLER'S ACTIONS IN THIS REGARD CAN BE TRACKED ACCURATELY ON APRIL 27 BY CROSS REFERENCING TELEPHONE RECORDS (PEOPLE'S EXHIBIT 46), TRIAL TESTIMONY AND COMPUTER AND EMAIL ACCOUNT LOGIN RECORDS, AS WAS DISPLAYED BY DEFENSE COUNSEL'S CLOSING ARGUMENT (T.D. 8.201-202) AND DEFENSE EXHIBIT 8 (FOR MORE DETAILED FACTS WITH

SUPPORTING ARGUMENT, SEE DEFENDANT'S REPLY BRIEF TO THE APPELLATE COURT, P. 12-17).

28. TESTIMONY OF SCHOOL SUPERINTENDENT LISA TAYLOR (T.A. 4. 191-193) OUTLINES THE HIGH SCHOOL TEACHING SCHEDULE OF LISA CUTLER, WHICH INCLUDED NO ACTIVITY ON SATURDAYS. NO EVIDENCE WAS PRESENTED TO INDICATE THE LOCATIONS OF CHAD OR LISA CUTLER ON THE DAY OF THE PURCHASE OF THE NEW LIFE INSURANCE POLICIES, SATURDAY, APRIL 21, 2012.

29. PEOPLE'S EXHIBITS 33 AND 34 DISPLAY ONLINE REQUESTS FOR LIFE INSURANCE RATE QUOTES FROM ACCUQUOTE AND MATRIX DIRECT, ALL OF WHICH WERE SUBMITTED FROM UNIDENTIFIED LOCATIONS DURING WEEKEND OR EVENING HOURS NOT CONFLICTING WITH LISA CUTLER'S WORK SCHEDULE.

30. PEOPLE'S EXHIBIT 46, A LIST OF TELEPHONE RECORDS, INCLUDED EVIDENCE OF CALLS FROM ACCUQUOTE AND MATRIX DIRECT, COMPANIES WHICH PROVIDED ONLY RATE QUOTES, TO THE DEFENDANT DURING THE DAYS OR WEEKS PRECEDING LISA'S DEATH. NO CONTACTS WERE INITIATED BY THE DEFENDANT. CHAD CUTLER DESCRIBED TO POLICE HIS FIELDING OF SUCH CALLS AT HIS WIFE'S REQUEST.

31. PEOPLE'S EXHIBITS 47 AND 49 DISPLAY A LIST OF LOGIN ATTEMPTS TO A YMAIL ACCOUNT (LISA.CUTLER@YMAIL.COM) CONTAINING INFORMATION ON THE TWO NEW LIFE INSURANCE POLICIES. SOME LOGIN ATTEMPTS ORIGINATED FROM THE CUTLER RESIDENCE IP ADDRESS, OTHERS FROM UNASSIGNED AND THEREFORE ANONYMOUS IP ADDRESSES IDENTIFIABLE ONLY AS MOBILE DEVICES. SEVERAL WERE IDENTIFIED AS THE IP ADDRESS OF A LARGE LOCAL EXERCISE FACILITY FREQUENTED BY THE CUTLER FAMILY, THREE OF WHICH OCCURRED AT TIMES WHICH WERE INITIALLY DIFFICULT TO RECONCILE WITH LISA CUTLER'S WORK SCHEDULE. THE TESTIMONY OF CHARLES HOOTS (P.EXH. 48), LISA TAYLOR (T.A. 4. 191-193), AND MELINDA STOUT (T.A. 5. 60) REVEALED DETAILS OF LISA CUTLER'S SCHEDULE, INCLUDING FREE PERIODS, LUNCH BREAKS, AND SCHOOL POLICY ON LEAVING CAMPUIS AND COVERING FOR OTHER TEACHERS' BRIEF ABSENCES, WHICH DISPLAY THE FACT THAT CERTAIN ALLEGEDLY SUSPICIOUS, ALTHOUGH ANONYMOUS LOGIN ATTEMPTS COULD HAVE BEEN INITIATED BY LISA OR CHAD CUTLER, OR VIRTUALLY ANYONE ELSE WITH A MOBILE COMMUNICATIONS DEVICE AND A WI-FI SIGNAL.

32. PEOPLE'S EXHIBITS 30 AND 51 DISPLAY THE CUTLERS' 1999 PURCHASE OF A LARGE JOINT LIFE INSURANCE POLICY WHICH, STANDING ALONE, THE DEFENDANT DID NOT CONTEST AS COMPETENT EVIDENCE AND WHICH WAS NOT EMPHASIZED AT TRIAL. THE ALLSTATE POLICY WAS ACTIVE FOR THIRTEEN YEARS PRIOR TO LISA'S DEATH AND ESTABLISHED THE CUTLER FAMILY AS ONE HISTORICALLY RELIANT UPON A CONSIDERABLE AMOUNT OF LIFE INSURANCE COVERAGE.

33. DEFENSE EXHIBIT 10 DISPLAYED THE LOSS, ONLY TWO MONTHS PRIOR TO THE PURCHASE OF THE TWO NEW POLICIES, OF A SUBSTANTIAL AMOUNT OF THE CUTLER FAMILY'S LIFE INSURANCE COVERAGE IN CONJUNCTION WITH THE LOSS OF CHAD CUTLER'S JOB OF FOURTEEN YEARS. THIS EVIDENCE ILLUSTRATES BOTH A LOSS OF LIFE COVERAGE AND A MAJOR SHIFT IN FISCAL RESPONSIBILITY WHICH PLACED

LISA CUTLER IN THE PRESUMABLY TEMPORARY POSITION OF SOLE PROVIDER FOR THEIR CHILDREN.

34. THE LARGER AND OBVIOUSLY MORE TEMPORARY OF THE TWO NEW LIFE INSURANCE POLICIES, THAT ACQUIRED FROM PETERSON INTERNATIONAL UNDERWRITERS (PEOPLE'S EXHIBITS 31 AND 52), COVERED ONLY LISA CUTLER FOR THE STATED PERIOD OF ONE YEAR.

35. THE SMALLER OF THE TWO NEW POLICIES, THAT ACQUIRED FROM MUTUAL OF OMAHA (PEOPLE'S EXHIBITS 32 AND 54), COVERED ALL FOUR MEMBERS OF THE CUTLER FAMILY AND WAS VERY SIMILAR TO THE RECENTLY LOST POLICY (SEE NO. 33. DEFENSE EXHIBIT 10).

IN ACCORDANCE WITH SUPREME COURT RULE 14 (b)(1), THE FOLLOWING DISPLAY THE STAGE(S) OF THE PROCEEDINGS WHEN THE QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED.

QUESTION ONE WAS RAISED ON DIRECT APPEAL (SEE APPELLANT'S FIRST BRIEF, SECTION 3A, PAGES 4-21) AND PASSED ON BY THE COURT DUE TO PROCEDURAL FORFEITURE (SEE COURT OPINION, APPENDIX A).

QUESTION TWO WAS RAISED AT TRIAL IN DEFENSE PRE AND POST TRIAL MOTIONS TO BAR THE PRIOR STATEMENTS OF LISA CUTLER AND ARGUED ORALLY AT THE PRE TRIAL HEARING OF THE MOTION. QUESTION TWO WAS THEN RAISED ON DIRECT APPEAL (SEE APPELLANT'S FIRST BRIEF, SECTION 3C, PAGES 25-29), AND PASSED ON DUE TO PROCEDURAL FORFEITURE (SEE COURT OPINION, APPENDIX A).

QUESTION THREE WAS RAISED ON DIRECT APPEAL (SEE APPELLANT'S FIRST BRIEF, SECTION 3C.5, PAGES 27-28) AND PASSED ON DUE TO PROCEDURAL FORFEITURE (SEE COURT OPINION, APPENDIX A).

QUESTION FOUR WAS RAISED ON DIRECT APPEAL (SEE APPELLANT'S FIRST BRIEF, SECTION 4, PAGES 30-37) AND PASSED ON DUE TO PROCEDURAL FORFEITURE (SEE COURT OPINION, APPENDIX A).

QUESTION FIVE WAS RAISED ON DIRECT APPEAL (SEE APPELLANT'S FIRST BRIEF, SECTION 1 AND 4, PAGES 1-3 AND 30-37) AND REJECTED (SEE COURT OPINION, APPENDIX A).

QUESTION SIX WAS RAISED ON DIRECT APPEAL (SEE APPELLANT'S FIRST BRIEF, SECTION 6, PAGES 41-52) AND THE APPELLATE COURT FAILED TO EVEN ACCURATELY AND PROPERLY ADDRESS THE ISSUE PRIOR TO PASSING DUE TO PROCEDURAL FORFEITURE (SEE APPENDIX A).

QUESTION SEVEN WAS RAISED ON DIRECT APPEAL (SEE APPELLANT'S FIRST BRIEF, SECTION 2, PAGES 4-7) AND PASSED ON DUE TO PROCEDURAL FORFEITURE (SEE COURT OPINION, APPENDIX A).

V.

GENERAL ARGUMENT OUTLINING THE MERITS OF APPELLANT'S CASE

LISA CUTLER WAS SHOWN BY THE TESTIMONY OF THREE HIGHLY RELIABLE STATE'S WITNESSES, ALL OF WHOM RECORDED HER STATEMENTS IN THEIR PROFESSIONAL SESSION NOTES, ONE OF WHICH WAS HER PERSONAL PHYSICIAN OF OVER SEVEN YEARS, TO HAVE LIED EXPLICITLY TO STATE'S WITNESS TONYA MELHORN ABOUT THE DEFENDANT DRINKING AND BECOMING VIOLENT AT A VERY SPECIFIC POINT IN TIME. LISA DISCLOSED TO TWO FAMILY THERAPISTS AND HER PSYCHIATRIST IN OCTOBER, NOVEMBER, AND DECEMBER OF 2011 THAT CHAD CUTLER HAD BEEN TOTALLY SOBER SINCE APRIL OF 2011. LISA ALSO TOLD HAIRDRESSER TONYA MELHORN THAT HER HUSBAND REPEATEDLY BECAME DRUNK AND VIOLENTLY ABUSIVE DURING AUGUST OF 2011, DIRECTLY CONTRADICTING HER STATEMENTS TO THREE PROFESSIONALS IN WHOM THE CUTLERS HAD INVESTED TIME AND MONEY TO LISTEN AND HELP SOLVE THE FAMILY'S PROBLEMS. THE PROVEN LIE TO MELHORN ABOUT THE CONDUCT OF THE DEFENDANT AND THE DECLARANT'S OWN DOMESTIC SITUATIONAL HISTORY, AMONG NUMEROUS OTHER SIMILAR PREVARICATIONS (SEE APPELLANT'S FIRST BRIEF, SECTION 3C) SHOULD HAVE RENDERED THE HEARSAY STATEMENTS OF LISA CUTLER UNTRUTHFUL, UNRELIABLE, AND THEREFORE INADMISSIBLE AT THE TRIAL FOR HER ALLEGED MURDER. INSTEAD, THE PRIOR STATEMENTS OF LISA CUTLER, ~~WERE~~ OF WHICH TONYA MELHORN'S CONTRIBUTION WERE A CORNERSTONE, WERE ADMITTED AND USED TO PROVE MOTIVE, INTENT, MALICE, AND ALL MANNER OF NECESSARY ELEMENTS OF A CHARGE OF FIRST DEGREE MURDER. PERHAPS MORE DAMAGING TO THE DEFENSE CASE, THE HEARSAY EVIDENCE WAS EMPLOYED TO BRAND CHAD CUTLER AS A VIOLENT DOMESTIC ABUSER, AN ENORMOUSLY PREJUDICIAL LABEL UNSUPPORTED BY ANY OTHER EVIDENCE AND EVEN REFUTED BY SOME, INCLUDING THE STIPULATED TESTIMONY (PEOPLE'S EXHIBITS 37 AND 38) OF THE TWO CUTLER CHILDREN.

THIS WAS A CASE OF A DROWNING DEATH NEVER LEGALLY OR MEDICALLY DETERMINED TO BE A HOMICIDE, A CASE BUILT ENTIRELY ON CIRCUMSTANTIAL EVIDENCE, ONE IN WHICH A REASONABLE MEDICAL HYPOTHESIS CONSISTENT WITH AN ACCIDENTAL DROWNING WAS PRESENTED BY THE DEFENSE AND LINKED TO LISA'S YEARS OF USE AND POSSIBLE ABUSE OF AN ANTI-SEIZURE MEDICATION, A HYPOTHESIS WHICH THE STATE COULD NOT EXCLUDE BEYOND PRESENTATION OF OPPOSING OPINIONS. THIS WAS A CASE WHICH, ABSENT DIRECT EVIDENCE OF AN ACTUAL HOMICIDE, WAS BUILT USING A GREAT DEAL OF QUESTIONABLE MOTIVE EVIDENCE AND THE PROPENSITY EVIDENCE WHICH MOUNTED A TREMENDOUS ATTACK ON CHAD CUTLER'S CHARACTER, AN ATTACK FOCUSED UPON HIS ACTING BADLY FOLLOWING A TRAUMATIC LOSS OF LIFE AND UPON THE HORRIBLY DAMAGING HEARSAY EVIDENCE WHICH PORTRAYED HIM FALSELY AS A VIOLENT, INIMICAL MONSTER OF A MAN. THIS WAS A CASE OF A WOMAN AFFLICTED BY A WELL DOCUMENTED MENTAL ILLNESS, AN INTENSE ANXIETY DISORDER ACCOMPANIED BY BOOTS OF PARANOIA,

WHOSE HEARSAY STATEMENTS THAT SHE FEARED FOR HER LIFE - WITH NO EVIDENCE OF ACTUAL THREATS - LAID THE FOUNDATION FOR A MASSIVE ASSAULT ON CHAD CUTLER'S CHARACTER AND EFFECTIVELY DESTROYED THE POSSIBILITY OF HIS RECEIVING A FAIR TRIAL. EVERY ELEMENT OF THE CHARGED CRIME IN THIS CASE WAS ESTABLISHED BY DRAWING INFERENCES FROM CIRCUMSTANTIAL EVIDENCE INVOLVING MEDICAL TESTIMONY, MOTIVE EVIDENCE, AND THE DEFENDANT'S MANY BLUNDERING, FOOLISH, BUT NEVER CRIMINAL STATEMENTS WHICH OCCURRED ONLY AFTER, NEVER BEFORE THE DEATH OF A CLOSE FAMILY MEMBER. EVERY DAMAGING CONCLUSION DRAWN BY BOTH THE TRIAL JURORS AND THE APPELLATE COURT IN EVERY ASPECT OF THIS CIRCUMSTANTIAL CASE INVOLVED DRAWING UNREASONABLE INFERENCES BASED IN PART UPON THE BELIEF THAT CHAD CUTLER WAS A VIOLENT, ABUSIVE, DEPLORABLE MAN. NO DIRECT EVIDENCE SUPPORTED THESE IDEAS, ONLY THE HEARSAY STATEMENTS OF A MENTALLY ILL WOMAN SHOWN TO REPEATEDLY LIE ABOUT THE VERY SUBJECTS HER PRIOR STATEMENTS WERE INTRODUCED TO PROVE. THE CASE AGAINST CHAD CUTLER WAS FOUNDED UPON THESE INDISPUTABLE LIES ABOUT HIS BEHAVIOR, WHICH THEN BOLSTERED THE 'BAD MAN' ARGUMENT AND PAVED THE WAY FOR THE INCREDIBLE ARRAY OF PROSECUTORIAL MISCONDUCT THAT EXACERBATED EXPONENTIALLY IN OPENING, CLOSING, AND REBUTTAL ARGUMENTS EVERY FACET OF THE 'BAD MAN' THEME WHICH DOMINATED THIS TRIAL.

THIS PETITIONER HAS MADE DETAILED ARGUMENTS TO THE APPELLATE COURT INVOLVING THE HEARSAY EVIDENCE, MOTIVE EVIDENCE WHICH SHOULD HAVE BEEN INADMISSIBLE BASED UPON THE ILLINOIS SUPREME COURT'S PAST RULINGS, ARGUABLY UNFOUNDED EXPERT OPINIONS ON THE MANNER OF DEATH, VARIOUS ABUSES OF DISCRETION AND THE PROSECUTORIAL MISCONDUCT WHICH FACILITATED MANY OF THESE ISSUES, MOST OF WHICH WERE RAISED UNDER THE PLAIN ERROR RULE. THE APPELLATE COURT DENIED EVERY CLAIM, CITING MOSTLY PROCEDURAL FORFEITURE AND THE JUSTIFICATION THAT REASONABLE INFERENCES PREDICATED UPON THE EVIDENCE WERE APPLIED IN EVERY MATTER. CHAD CUTLER STANDS BY EVERY ISSUE RAISED TO THE APPELLATE COURT AND CONTENDS THAT IT WAS IMPOSSIBLE FOR ANY PERSON OR ANY COURT TO MAKE REASONABLE OR FAIR AND UNBIASED INFERENCES ON ANY ISSUE WHILE BELIEVING HE WAS A DRUNKEN WIFE BEATER. IN AN AGE AND AN ENVIRONMENT IN WHICH ARGUABLY FEW WORSE STIGMAS EXIST, LISA CUTLER'S UNFORTUNATE LIES ABOUT HER HUSBAND AND HER OWN PAST ARE PLAINLY SEEN IN THE RECORD AND EXPLICITLY PAINT EXACTLY THAT FALSE PICTURE OF HIM, AND YET HAVE BEEN REJECTED BY THE APPELLATE COURT DUE TO FORFEITURE, A JUSTIFICATION WHICH IGNORES THE ADMITTEDLY CLOMSY RAISING OF THE ISSUE IN THE DEFENDANT'S PRO SE MOTION FOR NEW TRIAL (SEE KRANKLE HEARING).

AS A MATTER OF UNTRUTHFUL HEARSAY EVIDENCE RATHER THAN WITNESS CREDIBILITY, AND ONE WHICH WAS APPLIED IN A FASHION THAT PREJUDICED IN A DEVASTATING MANNER EVERY FURTHER CONSIDERATION IN THIS CIRCUMSTANTIAL CASE, THIS PETITIONER ASKS THE COURT TO CONSIDER - AS PLAIN ERROR WHEN NECESSARY AND AS VIOLATIONS OF HIS RIGHT TO A FAIR TRIAL - THAT CLAIM OF REVERSIBLE ERROR AND

EVERY OTHER UPON WHICH THE APPELLATE COURT HAS RULED BY CITING REASONABLE INFERENCES. OF PARTICULAR NOTE WOULD BE THE ISSUE OF THE DEFENDANT'S ALLEGED KNOWLEDGE OF NEW LIFE INSURANCE POLICIES, IN WHICH THE APPELLATE COURT HAS DISREGARDED THE ILLINOIS SUPREME COURT'S RULINGS IN PEOPLE V. GOUGAS AND PEOPLE V. MITCHELL, CASES WHICH ESTABLISHED THEN REINFORCED A THRESHOLD FOR ADMISSIBILITY OF LIFE INSURANCE EVIDENCE. THE LIFE INSURANCE EVIDENCE ADMITTED IN COTLER NOT ONLY PROVIDED TREMENDOUSLY COMPELLING IMPLICATIONS TOWARDS MOTIVE AND INTENT, BUT WAS THE SOLE PROVIDER OF THE ELEMENT OF CRIMINAL AGENCY WITHOUT WHICH NO GUILTY VERDICT COULD HAVE BEEN REACHED IN A HOMICIDE CASE. THE EVIDENCE AT TRIAL DISPLAYED THE COTLER FAMILY'S LONG HISTORY OF CARRYING AN UNUSUALLY LARGE AMOUNT OF LIFE INSURANCE COVERAGE, AND THAT RECENT DEVELOPMENTS HAD CAUSED BOTH A LOSS OF SOME COVERAGE AND A SHIFT IN FISCAL RESPONSIBILITY WHICH PLACED LISA COTLER IN THE PRESUMABLY TEMPORARY POSITION OF SOLE PROVIDER FOR THEIR CHILDREN. THE EVIDENCE ALSO REVEALED A FAMILY WITH A SPECIAL NEEDS CHILD WHOSE UNCERTAIN FUTURE PROSPECTS WOULD AFFECT THE MANNER IN WHICH RESPONSIBLE PARENTS PLANNED FOR THE FUTURE AND PERCEIVED THE NEED FOR LIFE INSURANCE. THE IDEA THAT A PERSON WITH SEVERE ANXIETY THEN SUBJECTED TO SUCH FAMILY COMPLICATIONS WOULD RELY HEAVILY UPON LIFE INSURANCE AND BE COMPELLED BY RECENT DEVELOPMENTS TO ADD NEW POLICIES IS NOT UNREASONABLE. TO THE EXTENT THE PRIOR STATEMENTS OF LISA COTLER CAN BE ASSUMED EVEN PARTIALLY TRUE, THEY REPEATEDLY DISPLAYED HER FEAR OF A PREMATURE DEMISE WHICH COULD BE ATTRIBUTABLE TO HER ANXIETY DISORDER. HOWEVER ONE CHOOSES TO INTERPRET LISA'S STATED FEARS AND WHATEVER THEIR ORIGIN, AN INCREASED DESIRE FOR THE SECURITY ASSOCIATED WITH LIFE INSURANCE COVERAGE IN A PERSON WITH BOTH INTENSE APPREHENSION ABOUT HER FUTURE AND A WELL DOCUMENTED PROCLIVITY FOR SUCH PLANNING AGAINST CATASTROPHIC LOSS IS ALSO NOT UNUSUAL. THESE ARE THE REASONABLE INFERENCES WHICH COULD AND LIKELY WOULD BE DRAWN BY A FINDER OF FACT NOT UNBOLY BIASED BY THE AWFUL HEARSAY EVIDENCE PRESENTED AGAINST THE DEFENDANT IN THIS CASE. CHAD COTLER TOLD POLICE HE WAS AWARE OF HIS WIFE'S INTEREST IN INCREASING COVERAGE AND HAD FIELD A FEW CALLS ON HER BEHALF BUT WAS UNAWARE OF HER PURCHASE OF NEW POLICIES UNTIL DISCOVERING THEM ON THE AFTERNOON FOLLOWING HER DEATH. THE DIRECT EVIDENCE (SEE SECTION IV, POINT 27) SUPPORTS THESE STATEMENTS AND SHOWS NO INDICATION OF HIS KNOWLEDGE OF THE POLICIES' EXISTENCE BEYOND THE MOST SPECULATIVE INTERPRETATION OF WHAT WEIZE LITERALLY ANONYMOUS LOGIN ATTEMPTS TO AN EMAIL ACCOUNT. WHILE THE EVIDENCE SHOWED PLAUSIBLE REASONS FOR LISA TO HAVE PURCHASED NEW POLICIES REGARDLESS OF THE STATUS OF THE COTLER MARRIAGE OR DIVORCE - THE SHARED CHILDREN WOULD ALWAYS BE DEPENDENT UPON TWO PARENTS - NONE OF THIS INFORMATION COULD BE WEIGHED FAIRLY WHILE UNDER THE DARK CLOUD OF THE INCREDIBLY DEFAMATORY HEARSAY TESTIMONY.

THIS PETITIONER CONTENDS THAT THE APPELLATE COURT REFUSED IN THIS CASE TO ACKNOWLEDGE THAT DARK CLOUD OF DEFAMATION, EVEN AS IT RULED FROM BENEATH ITS INFLUENCE.

CHAD CUTLER ARGUES THAT THIS SITUATION OF A FAMILY PROVEN LIKELY TO ACQUIRE LIFE INSURANCE WHICH THEN SUFFERED A LOSS OF LIFE AT A MOMENT IN TIME INVOLVING EITHER COINCIDENCE OR FOUL PLAY IS EXACTLY THE SORT OF DYNAMIC FOR WHICH THE COURT IN COUGAS AND MITCHELL ESTABLISHED THE THRESHOLD FOR ADMISSIBILITY REQUIRING PROOF OF KNOWLEDGE OF POLICIES' EXISTENCE, VALIDITY, AND BENEFICIARY DETAILS. THE APPELLATE COURT'S RULING TO DISREGARD THE ILLINOIS SUPREME COURT'S ESTABLISHED THRESHOLD FOR THE ADMISSION OF SUCH EVIDENCE AND RELY INSTEAD ON REASONABLE INFERENCES DRAWN FROM CIRCUMSTANTIAL EVIDENCE - IN THIS INSTANCE ANONYMOUS LOGIN ATTEMPTS TO AN EMAIL ACCOUNT WHICH PROVIDED NO EVIDENCE OF CHAD CUTLER'S KNOWLEDGE OF THE CONTENTS OF THE ACCOUNT - DISPLAYS A SITUATION WHICH SHOULD BE REGULATED BY THE MORE STRICT SET OF GUIDELINES PUT FORTH BY THE HIGHER COURT BECAUSE OF THE DEGREE OF PREJUDICE ATTACHED TO THE EVIDENCE AND THE POTENTIAL UNRELIABILITY INVOLVED WITH DRAWING INFERENCES INFLUENCED BY TOO MANY FACTORS AND PIECES OF ~~INFORMATION~~ QUESTIONABLE INFORMATION. VIEWED UNDER THE WRONGFULLY ESTABLISHED BELIEF THAT CHAD CUTLER WAS A VIOLENT DOMESTIC ABUSER, ONE COULD ONLY ACCEPT THE IDEA OF FOUL PLAY OVER COINCIDENCE OR SIMPLY A FAMILY UNUSUALLY PREPARED FOR CATASTROPHIC LOSS. AS SUCH, THE APPELLATE COURT'S AFFIRMATION ALLOWING THE USE OF THE LIFE INSURANCE EVIDENCE IN CONJUNCTION WITH THE INTENSELY PREJUDICIAL HEARSAY EVIDENCE EFFECTIVELY DESTROYED WHAT WAS A COMPELLING DEFENSE OF ACCIDENTAL DEATH AND ANY OPPORTUNITY OF RECEIVING A FAIR TRIAL OR FAIR REVIEW ON DIRECT APPEAL.

AS REGARDS THE PROSECUTORIAL ASPECT OF THIS CASE, PETITIONER CITES THE NEED FOR THE SUPREME COURT'S SUPERVISORY AUTHORITY IN ADDRESSING THE PERVASIVE PATTERN OF DELIBERATE PROSECUTORIAL MISCONDUCT WHICH WAS EMPLOYED IN LITERALLY EVERY STEP OF THIS PROCESS, AN ISSUE THE APPELLATE COURT HAS FLATLY REFUSED TO ACKNOWLEDGE. AS HAS BEEN DISCUSSED IN APPELLANT'S FIRST BRIEF (SECTION 6) AND REPLY BRIEF (P. 18-19), THE UNDENIABLE PATTERN OF PROSECUTOR'S ENGAGING IN LIES AND DECEPTION ON FUNDAMENTAL MATTERS BEGAN WITH LYING TO THE COURT IN PRETRIAL MOTIONS ABOUT THE CAUSE OF DEATH (FIRST BRIEF, P. 52), CONTINUED THROUGHOUT TRIAL (FIRST BRIEF, SECTION 6) AND POST TRIAL (THIS DOCUMENT, SECTION IV, POINT NO. 25) WITH PROSECUTORS LYING TO THE COURT ABOUT THE LIFE INSURANCE EVIDENCE, AND EVEN THE APPELLATE PROSECUTOR APPLYING THE SAME GROSS ~~MISSTATEMENTS~~ MISSTATEMENTS OF STIPULATED FACTS (SEE APPELLANT'S REPLY BRIEF, P. 1) IN ITS APPELLEE'S BRIEF. THE PROSECUTORIAL MISCONDUCT WAS CONSTANTLY PRESENT THROUGHOUT THIS CASE, EXACERBATING MULTIPLE OTHER ISSUES RAISED ON APPEAL AND CREATING A DEVASTATING CUMULATIVE IMPACT UPON THE DEFENSE AND APPELLATE CASES. THE APPELLATE COURT FAILED TO ADDRESS THESE ISSUES ON DIRECT APPEAL, INSTEAD RULING ONLY UPON ONE SMALL POINT OF THE MANY MISCONDUCT VIOLATIONS RAISED, AND EVEN THAT WITH A CARELESSLY INACCURATE READING OF THE ORIGINAL COMPLAINT (APPENDIX A3, #11).

IT IS THE CONTENTION OF THIS PETITIONER THAT THE HORRIFIC STIGMA APPLIED IN THIS CASE BY THE PROVEN UNTRUTHFUL HEARSAY EVIDENCE HAS CREATED AN ATMOSPHERE SO TOXIC TO THE DEFENSE THAT IT HAS DENIED HIM BOTH A FAIR TRIAL AND NOW A FAIR REVIEW BY THE APPELLATE COURT. CHAD LOTLER SUGGESTS THAT IN A CASE IN WHICH THE OCCURRENCE OF A HOMICIDE WAS NEVER ESTABLISHED AND THE ALLEGATIONS OF DOMESTIC VIOLENCE AND ABUSE WERE VOICED ONLY BY A PROVEN LIAR AND WITHOUT BENEFIT OF CROSS EXAMINATION, EVERY CONSIDERATION ON EVERY SUBSEQUENT MATTER WAS TAINTED BEYOND THE POINT AT WHICH ANY INFERENCES DRAWN WOULD BE TRULY REASONABLE. AS SUCH, PETITIONER RESPECTFULLY REQUESTS THIS HONORABLE COURT REVIEW THE CASE WITH AN EYE TO THE FACTS PUT FORTH IN THIS DOCUMENT, AND TO ALL OF THE PROSECUTORIAL DECEPTION AND SUBTERFUGE THAT DOMINATED HIS TRIAL, AND WHICH THE APPELLATE COURT HAS DECLINED TO ACKNOWLEDGE.

VI.

REASONS FOR GRANTING THE PETITION

1. WILL THIS COURT ADDRESS THE CONFLICT BETWEEN THE ILLINOIS APPELLATE (4th) COURT AND BOTH THE ILLINOIS SUPREME COURT AND APPELLATE (3rd) COURT OVER ILLINOIS RULE OF EVIDENCE 804 AND SECTION 725 ILCS 5/115-10.4 PREEMPTING SECTION 725 ILCS 5/115-10.2a, AND THE IMPROPER ADMISSION OF HEARSAY TESTIMONY?

THE ILLINOIS APPELLATE (3rd) COURT REVERSED A CONVICTION IN PEOPLE V. GONZALEZ, 2016 IL APP (3d) 130944-0, DUE TO THE IMPROPER ADMISSION UNDER SECTION 115-10.2a OF HEARSAY TESTIMONY. THE APPELLANT IN GONZALEZ Faced THE STATE'S CHALLENGE THAT, WHILE DEFENDANT AT TRIAL RAISED TIMELY OBJECTIONS TO SUCH ADMISSION UNDER 115-10.2a, NO REFERENCE WAS MADE TO ILL. R. EVID. 804 OR SECTION 115-10.4. THE APPELLATE COURT IN GONZALEZ REVIEWED THE MATTER FOR PLAIN ERROR AND ULTIMATELY RULED THAT DUE TO THE CONFLICT WITH RESPECT TO THE REQUIREMENTS FOR ADMISSION OF THE UNAVAILABLE WITNESS' STATEMENT, THE SUPREME COURT'S LATER ADOPTION OF RULE 804 PRE-EMPTED SECTION 115-10.2a OF THE CODE. PEOPLE V. GONZALEZ, 2016 IL APP. 3d 130944-0, # 85-41.

THE CASE OF PEOPLE V. CUTLER WAS QUITE SIMILAR TO GONZALEZ IN TERMS OF THE CLOSELY BALANCED NATURE OF THE EVIDENCE, THE TIMELY OBJECTIONS AND MOTION IN LIMINE WHICH ARGUED AGAINST THE ADMISSION OF HEARSAY UNDER 115-10.2a BUT DID NOT REFERENCE RULE 804, AND OTHER CLAIMS OF ERROR NOT MENTIONED HERE. CHAD CUTLER ON DIRECT APPEAL CITED THE ISSUE FROM GONZALEZ (WITHOUT OFFICIALLY CITING THE CASE) AND EMPLOYED EXACTLY THE SAME ARGUMENTS WHICH WERE SUCCESSFUL IN THAT CASE WITH THE APPELLATE 3rd DISTRICT, THAT RULE 804 AND SECTION 115-10.4 PREEMPTED SECTION 115-10.2a IN TERMS OF UNAVAILABLE DECLARANTS. THE APPELLATE (4th) COURT IN CUTLER REJECTED THE CLAIM DUE TO FORFEITURE, WITHOUT ANY PLAIN ERROR REVIEW. MR. CUTLER CONTENDS THAT HIS CASE INVOLVED FAR MORE DEVASTATINGLY PREJUDICIAL HEARSAY STATEMENTS BY THE DECEASED AND MORE CLOSELY BALANCED EVIDENCE INCLUDING EXPERT OPINION TESTIMONY ESTABLISHING A REASONABLE MEDICAL HYPOTHESIS CONSISTENT WITH AN ACCIDENTAL DEATH, AND THEREFORE THE OCCURRENCE OF REVERSIBLE PLAIN ERROR WAS PRACTICALLY UNDENIABLE. THIS PETITIONER RESPECTFULLY REQUESTS THE COURT ADDRESS THE CONFLICT HIGHLIGHTED HEREIN, AND REVERSE HIS CONVICTION DUE TO THE IMPROPER ADMISSION OF HEARSAY TESTIMONY WHICH DEPRIVED HIM THE DUE PROCESS RIGHT TO A FAIR TRIAL.

2. WILL THIS COURT ADDRESS THE CONFLICT BETWEEN THE ILLINOIS APPELLATE (4TH) COURT AND THE ILLINOIS SUPREME COURT OVER THE FLOYD QUESTION OF STATE OF MIND HEARSAY STATEMENTS DISPLAYING ONLY A DECLARANT'S PERSONAL FEARS, WITHOUT MORE, BEING RELEVANT TO A DEFENDANT'S STATE OF MIND AND THE LIKELIHOOD OF IMPROPERLY DEMONSTRATING PROPENSITY? SHOULD THIS COURT CONSIDER AMENDING FEDERAL RULE OF EVIDENCE 803(3) BY ADOPTING THE 'B' ADDENDUM, AS HAS THE STATE OF ILLINOIS, PURSUANT TO THE ISSUES ADDRESSED HEREIN?

AN INTERESTING AND RELATED QUESTION WOULD BE WHY THE APPELLATE COURT WAFFLED ON THIS ISSUE, FIRST SUPPORTING EXPLICITLY THE ILLINOIS SUPREME COURT DECISION IN PEOPLE V. FLOYD, 103 ILL.2D 541 (1984) DURING A JUNE, 2018 APPELLATE (ZIMMERMAN) CASE, THEN DENYING IN NOVEMBER, 2018 THE SAME PROPENSITY QUESTION IN PEOPLE V. LOTLER, A CASE WHICH WAS FACTUALLY ALMOST IDENTICAL TO FLOYD. THE HEARSAY ISSUE IN LOTLER MIRRORS EXACTLY THAT ADDRESSED IN 1984 BY FLOYD, AND THE ENSUING PRINCIPLES ESTABLISHED BY THAT COURT WERE LATER ADOPTED IN ILLINOIS RULE OF EVIDENCE 803(3)(B). THE APPELLATE (4TH) COURT HAS DISPLAYED A LACK OF CONSISTENT ADHERENCE TO ITS OWN PRINCIPLES BY FLIP FLOPPING COMPLETELY WITHIN A SIX MONTH PERIOD, ULTIMATELY DENYING THE PROPENSITY CLAIM IN LOTLER AND REFUSING TO ACKNOWLEDGE AND APPLY THE PRINCIPLES IT PREVIOUSLY SUPPORTED, JUSTIFYING ITS DECISION IN LOTLER WITH AN UNFAIR AND INACCURATE RULING OF FORFEITURE.

THE APPELLATE (4TH) COURT EXAMINED IN THE JUNE, 2018 CASE OF PEOPLE V. ZIMMERMAN THE MATTER AT HAND, STATING:

"IN FLOYD, THE STATE ALLEGED DEFENDANT KILLED HIS WIFE. 16 AT 543, 83 ILL. DEC. 335, 470 N.E.2D 293. DEFENDANT ASSERTED IT WAS AN ACCIDENT, AND TO REBUT THIS DEFENSE, THE STATE OFFERED VARIOUS STATEMENTS FROM THE VICTIM UNDER THE STATE OF MIND EXCEPTION THAT DEMONSTRATED SHE WAS CONCERNED FOR HER SAFETY, WAS AFRAID OF THE DEFENDANT, AND IF ANYTHING HAPPENED TO HER, SHE WANTED HER PARENTS TO TAKE CARE OF THEIR CHILDREN. 16 AT 544-46, 83 ILL. DEC. 335, 470 N.E.2D 293. THE SUPREME COURT HELD THE STATEMENTS WERE IMPROPERLY ADMITTED BECAUSE THE VICTIM'S STATE OF MIND WAS IRRELEVANT TO THE ISSUES IN THE CASE AND THOSE STATEMENTS COULD ONLY BE INTRODUCED FOR THE PURPOSE OF DEMONSTRATING THE DEFENDANT'S PROPENSITY OR LIKELIHOOD OF COMMITTING THE CRIME. 16 AT 547, 83 ILL. DEC. 335, 470 N.E.2D 293.

"AS IN FLOYD, IT IS UNCLEAR HOW PAMELA'S GENERALIZED STATEMENTS IN THIS CASE CONCERNING HER FEAR OR SUSPICION OF HER HUSBAND, ON THEIR OWN, RELATE IN ANY WAY TO DEFENDANT'S MOTIVE, INTENT, OR OPPORTUNITY TO COMMIT MURDER. HAD THE TESTIMONY SHOWN THE DEFENDANT MADE THREATS TO PAMELA, AND THESE THREATS CAUSED HER FEARS AND SUSPICIONS, THEN THE STATEMENTS MIGHT BE PROBATIVE OF DEFENDANT'S STATE OF MIND - THAT IS, HIS MOTIVE AND INTENT... PAMELA'S STATEMENTS THAT SHE WAS AFRAID OF DEFENDANT, WITHOUT ANY FURTHER CONTEXT, AMOUNT TO AN OPINION AS TO DEFENDANT'S CHARACTER, OPENING THE DOOR TO THE POSSIBILITY THAT THE JURY WOULD CONVICT DEFENDANT ON AN IMPERMISSIBLE BASIS."

PEOPLE V. ZIMMERMAN, 2018 IL APP (4TH) 170695, ¶ 123, 124.

THE CUTLER CASE WAS, WITH RESPECT TO THE DEFENSE OF ACCIDENTAL DEATH, THE DECLARANT'S NEARLY IDENTICAL STATEMENTS OF FEAR, AND PARTICULARLY TO THE COMPLETE ABSENCE OF THREATS, INDISTINGUISHABLE FROM THE RELATED FACTS IN FLOYD. THE CUTLER TRIAL DEFENSE SUBMITTED PRE AND POST TRIAL MOTIONS AND PRESENTED ORAL ARGUMENTS AGAINST THE STATE OF MIND EVIDENCE WITH REFERENCE TO ILLINOIS RULE OF EVIDENCE 803 (3)(B), AND CHAD CUTLER APPLIED THE SAME SUBSTANTIVE THEME ON APPEAL BY CITING FLOYD AND COMBINING THE STATE OF MIND ARGUMENT WITH THOSE DISPLAYING THE UNRELIABILITY OF THE MENTALLY ILL DECLARANT'S PRIOR STATEMENTS. RULE OF EVIDENCE 803 (3)(B) WAS CITED EXPLICITLY IN HIS APPELLATE REPLY BRIEF WHEN THE APPELLATE PROSECUTOR SUGGESTED THE STATE COULD HAVE EMPLOYED THE STATE OF MIND EXCEPTION. WHILE THE STATE OF MIND HEARSAY EXCEPTION WAS NOT UTILIZED IN THE CUTLER TRIAL, THE FACT REMAINS THAT THE PRIOR STATEMENTS OF LISA CUTLER UNQUESTIONABLY DISPLAYED THE DECLARANT'S FEARFUL STATE OF MIND FOR THE EXPRESS PURPOSE OF PROVING THE STATE OF MIND OF THE DEFENDANT. THE APPELLATE (4TH) COURT'S RULING ON DIRECT APPEAL TO DENY THIS CLAIM OF ERROR DUE TO FORFEITURE WAS UNREASONABLE, AND ITS DEPARTURE FROM THE ABOVE QUOTED PRINCIPLES OF FLOYD CONFLICTS WITH THAT COURT'S DECISION, WITH ITS OWN RULING IN ZIMMERMAN, AND WITH THE ILLINOIS RULES OF EVIDENCE.

THIS PETITIONER RESPECTFULLY REQUESTS THE COURT ADDRESS THE AFOREMENTIONED CONFLICTS BETWEEN ILLINOIS REVIEWING COURTS OVER ADMISSION OF STATE OF MIND HEARSAY AND CONSIDER WHETHER FEDERAL RULE 803 WARRANTS AMENDMENT, AND REVERSE THE CUTLER CONVICTION DUE TO THE IMPROPER ADMISSION OF HEARSAY EVIDENCE EXPRESSLY FORBIDDEN BY ILLINOIS RULE OF EVIDENCE 803 (3)(B).

3. SHOULD THE EXTREMELY PREJUDICIAL HEARSAY TESTIMONY OF A DECLARANT WITH WELL DOCUMENTED MENTAL ILLNESS BE ADMISSIBLE IN A MURDER TRIAL? SHOULD THAT DECLARANT'S DEMONSTRABLE LIES ABOUT SPECIFIC INSTANCES OF DOMESTIC VIOLENCE RENDER INADMISSIBLE HER PRIOR STATEMENTS INTRODUCED UNDER THE DOMESTIC VIOLENCE HEARSAY EXCEPTION?

LISA CUTLER'S LIFELONG STRUGGLE WITH MENTAL ILLNESS WAS IRREFUTABLY ESTABLISHED BY THE TRIAL TESTIMONY OF HER PSYCHIATRIST OF OVER SEVEN YEARS, WHO DESCRIBED HER SEVERE ANXIETY DISORDER, EPISODES OF PARANOIA, AND LIST OF PRESCRIPTION ANXIETY AND PSYCHOTROPIC MEDICATIONS. THE PRIOR STATEMENTS OF LISA CUTLER WERE ADMITTED UNDER SECTION 115-10.2A, AND HER DECLARATIONS OF FEAR OF HER HUSBAND PROVIDED THE FOUNDATION FOR THE STATE'S CASE IN HER ALLEGED MURDER. A MASSIVE AMOUNT OF PREJUDICIAL HEARSAY TESTIMONY WAS ADMITTED FOR THE PURPOSE OF PROVING CHAD CUTLER'S MOTIVE AND INTENT, BY DISPLAYING PRIMARILY THE PERSONAL FEARS OF A WOMAN AFFLICTED WITH A MENTAL ILLNESS DEFINED BY ABNORMAL AND IRRATIONAL FEAR. THE DECEDENT'S PRIOR STATEMENTS

DESCRIBED HER FEARFUL STATE OF MIND, EXPRESSED REPEATEDLY WITH NO EVIDENCE OF ACTUAL THREATS BY HER HUSBAND AND ONLY THE MOST VAGUE AND AMBIGUOUS DESCRIPTIONS OF WHAT SHE FELT WAS 'VIOLENCE IN THE HOME'. THE HEARSAY TESTIMONY PERTAINING TO DOMESTIC VIOLENCE WAS SUPPORTED BY NO OTHER EVIDENCE, WAS GENERALLY REFUTED BY THE STIPULATED TESTIMONY OF BOTH CUTLER CHILDREN, AND AND THE DECLARANT'S PRIOR STATEMENTS WERE SHOWN IN MULTIPLE INSTANCES BY TIME SPECIFIC AND DIAMETRICALLY OPPOSING DECLARATIONS TO BE OBVIOUSLY AND UNQUESTIONABLY UNTRUE. EXAMPLES INCLUDE THE DECLARANT LYING REPEATEDLY TO COWORKERS ABOUT A BLACK EYE INFLICTED BY HER AUTISTIC SON, AND TO ONE KEY STATE'S WITNESS ABOUT DRUNKEN, VIOLENT EPISODES WHICH ALLEGEDLY OCCURRED DURING A SIX MONTH PERIOD WHICH LISA HAD DISCLOSED TO HER DOCTOR AND TWO FAMILY THERAPISTS WAS ENCOMPASSED BY HER HUSBAND'S ABSOLUTE SOBRIETY. THE OFFERS OF PROOF OF TWO DEFENSE WITNESSES EXCLUDED BY THE TRIAL COURT WOULD HAVE SHOWN LISA'S HISTORY OF SPINNING FABULOUS LIES ABOUT PAST TRAUMATIC DOMESTIC SITUATIONS INVOLVING THE SUICIDE OF A SISTER WHO, IN FACT, NEVER EXISTED. ONE OF THESE WITNESSES WAS A DOCTOR WHO ADMITTED LISA TO THE EMERGENCY ROOM AND ULTIMATELY THE PSYCHIATRIC UNIT DURING AN EPISODE OF SUICIDAL IDEATIONS, A PART OF HER MEDICAL HISTORY WHICH WAS ESTABLISHED IN THE TRIAL RECORD BY OTHER WITNESSES.

THE HEARSAY TESTIMONY PORTRAYED CHAD CUTLER FALSELY AS A VIOLENT DOMESTIC ABUSER, A THEME WHICH PROSECUTORS PUSHED RELENTLESSLY AT EVERY OPPORTUNITY TO ADDRESS THE TRIAL JURY. DESPITE ARGUMENTS AGAINST THE PROPENSITY ASPECT OF SUCH A THEME, THE IMPROPER USE OF STATE OF MIND HEARSAY, THE IMPROPER APPLICATION OF A RULE OF LAW PREEMPTED BY A MORE APPLICABLE STATUTE, AND THE PRIOR STATEMENTS BEING DEMONSTRABLY UNTRUE AND UNRELIABLE, THE APPELLATE COURT DECLINED TO ADDRESS ANY OF THESE ISSUES WITH DE NOVO REVIEW OR UNDER THE PLAIN ERROR RULE. CHAD CUTLER ASKS THE COURT, HOW CRITICAL IS THE TRUTHFULNESS AND RELIABILITY THRESHOLD IN DETERMINING WHETHER TO ALLOW HEARSAY TESTIMONY, AND SHOULD THERE EXIST A MECHANISM TO ASSESS MENTAL ILLNESS AND THE INHERENT UNRELIABILITY OF THE PRIOR STATEMENTS OF A DECLARANT SO AFFLICTED?

PETITIONER ASKS THIS HONORABLE COURT TO ADDRESS THE QUESTION OF THE ADMISSION OF HEARSAY BY A MENTALLY ILL DECLARANT, AND TO REVERSE HIS CONVICTION DUE TO THE IMPROPER ADMISSION AT HIS TRIAL OF SUCH HIGHLY PREJUDICIAL HEARSAY.

4. WILL THIS COURT ADDRESS THE CONFLICT BETWEEN THE ILLINOIS SUPREME COURT'S RULING ESTABLISHING THE THREE PRONGED ADMISSIBILITY THRESHOLD FOR LIFE INSURANCE EVIDENCE (SEE PEOPLE V. GOOGAS AND PEOPLE V. MITCHELL) AND THE ILLINOIS APPELLATE (4TH) COURT'S RECENT DECISION TO DISREGARD THAT THRESHOLD AND RELY SOLELY UPON INFERENCES?

THE CUTLER CASE PRESENTED A SET OF FACTS WHICH CRIES OUT FOR THE THREE PRONGED ADMISSIBILITY TEST ORIGINALLY ESTABLISHED IN GOOGAS, RATHER THAN THE SUPPOSED REASONABLE INFERENCES RECENTLY APPLIED BY THE APPELLATE COURT. THESE FACTS AND ASSOCIATED ARGUMENTS HAVE BEEN LAID OUT IN EXPLICIT DETAIL IN CHAD CUTLER'S APPELLATE BRIEFS (FIRST AND REPLY BRIEF), AND THIS PETITIONER RESPECTFULLY URGES THIS COURT TO READ THOSE PORTIONS OF THE RECORD. FOR THE PURPOSE OF ENGAGING THE COURT IN THE QUESTION OF INNOCENTLY ACQUIRED LIFE INSURANCE WHICH, BY VIRTUE OF ITS INCREDIBLY POOR TIMING AND A LOT OF PROSECUTORIAL DECEPTION HAS CONTRIBUTED GREATLY TO A WRONGFUL CONVICTION, CHAD CUTLER OFFERS THIS BRIEF SUMMARY OF THE FACTS RELEVANT TO THIS ISSUE.

THE CHAD AND LISA CUTLER FAMILY HAD A LONG HISTORY OF CARRYING A LARGE AMOUNT OF LIFE INSURANCE. LISA CUTLER HAD A LONG HISTORY OF SUFFERING FROM A SEVERE ANXIETY DISORDER, AND PRIOR STATEMENTS DISPLAYED HER RECENT FEARS THAT SOMETHING WOULD HAPPEN TO HER. THE FEBRUARY, 2012 REDUCTION IN FORCE TERMINATION OF CHAD CUTLER'S JOB OF FOURTEEN YEARS RESULTED ALSO IN THE FAMILY'S LOSS OF A SIGNIFICANT AMOUNT OF EMPLOYER PROVIDED LIFE INSURANCE. THAT EVENT PLACED LISA CUTLER IN THE PRESUMABLY TEMPORARY POSITION OF SOLE PROVIDER FOR HER FAMILY. THE ONLINE PURCHASE TWO MONTHS LATER OF TWO LIFE INSURANCE POLICIES OCCURRED ON SATURDAY, APRIL 21, 2012, FROM THE CUTLER RESIDENCE IP ADDRESS. ONE POLICY MIRRORED ALMOST EXACTLY THE FAMILY COVERAGE LOST WITH CHAD CUTLER'S JOB, THE SECOND COVERED ONLY LISA CUTLER FOR A PERIOD OF ONE YEAR.

CHAD CUTLER'S LATE NIGHT INTERVIEW WITH POLICE JUST 24 HOURS AFTER HIS WIFE'S DROWNING DEATH (A VIDEO WHICH WAS PLAYED IN ITS ENTIRETY FOR THE JURY) REVEALED THE FOLLOWING FACTS:

- MR. CUTLER BELIEVED AT THE TIME THAT HIS WIFE HAD COMMITTED SUICIDE, BASED UPON HER MENTAL ILLNESS AND PAST HISTORY
- LISA CUTLER HAD BEEN SEEKING INFORMATION AND SUBMITTING ONLINE QUOTE REQUESTS PURSUANT TO THE ACQUISITION OF POTENTIAL NEW LIFE INSURANCE POLICIES WHICH HE DID NOT AGREE WERE NECESSARY, AND SHE HAD IN FACT INSERTED HIS CELL PHONE NUMBER AS A CONTACT POINT AND ASKED HIM TO FIELD CALLS WHILE SHE WAS TEACHING CLASSES. CHAD CUTLER ADMITTED TO HAVING RECEIVED SUCH CALLS.
- HE HAD NOT BEEN AWARE OF THE PURCHASE OF NEW POLICIES, ONLY FINDING A LIST OF SUCH INFORMATION ON THE DAY AFTER HER DEATH WHILE SEARCHING LISA'S THINGS FOR EVIDENCE PERTINENT TO HER POSSIBLE SUICIDE.
- MR. CUTLER HAD THAT DAY PLACED CALLS INQUIRING AFTER THE POLICY INFORMATION HE'D DISCOVERED, AND FINDING HIS FAMILY IN A FRIGHTENING FINANCIAL SITUATION AND FACING IMMEDIATE FUNERAL AND BURIAL EXPENSES, AMONG OTHER THINGS, HAD FILED CLAIMS

ON THE TWO NEW POLICIES.

LISA CUTLER'S DROWNING DEATH SHORTLY AFTER THE ONLINE PURCHASE DREW THE ATTENTION OF INVESTIGATORS INTO WHAT WAS CONSIDERED A POSSIBLE HOMICIDE, DESPITE NO EVIDENCE OF CRIMINAL AGENCY ON THE PART OF CHAD CUTLER, AND HE WAS INDICTED AND CHARGED FIFTEEN MONTHS AFTER THE DEMISE OF HIS WIFE. BOTH THE SEARCH AND ARREST WARRANTS AND ULTIMATELY THE PRIMARY THEME OF THE TRIAL FOCUSED ON THE ALLEGATION THAT CHAD CUTLER HAD PURCHASED ONLINE LIFE INSURANCE POLICIES AND PROMPTLY MURDERED HIS WIFE. THIS DESPITE NO EVIDENCE SHOWING WHO HAD PURCHASED THE POLICIES OR THAT CHAD CUTLER HAD ANY AWARENESS AT A RELEVANT TIME OF THEIR EXISTENCE OR, FOR THAT MATTER, ANY DIRECT EVIDENCE OR OFFICIAL DETERMINATION THAT A HOMICIDE OCCURRED.

THE STATE IN THIS CASE RELIED LARGELY UPON THE PRESUMPTION THAT A PERSON HAVING THE ABILITY TO ACCESS AN EMAIL ACCOUNT WILL ABSOLUTELY HAVE KNOWLEDGE OF THE ENTIRETY OF ITS CONTENTS, AS WELL AS A GREAT DEAL OF ORAL ARGUMENT WHICH MISSTATED THE EVIDENCE AND ATTEMPTED TO MISLEAD THE JURY AS TO THE EVIDENCE WHICH HAD BEEN PRESENTED. NO EVIDENCE WAS PRESENTED TO SHOW THE LOCATION OF CHAD OR LISA CUTLER ON SATURDAY, APRIL 21, 2012, THE PURCHASE DATE OF THE INSURANCE POLICIES. NO EVIDENCE TIED CHAD CUTLER TO THE POLICIES OR DISPLAYED HIS AWARENESS, PRIOR TO LISA'S DEATH, OF THEIR EXISTENCE, THEIR VALIDITY, OR THE BENEFICIARY DETAILS AS REQUIRED FOR ADMISSION BY THE THRESHOLD ESTABLISHED BY THE ILLINOIS SUPREME COURT IN GODDAS AND MITCHELL. ATTEMPTED LOGINS TO AN EMAIL ACCOUNT (LISA.CUTLER@YMAIL.COM) WERE SHOWN TO HAVE BEEN INITIATED FROM THE CUTLER HOME IP ADDRESS AND VARIOUS IP ADDRESSES RANDOMLY ASSIGNED TO ANONYMOUS MOBILE DEVICES, SOME OF WHICH, ALTHOUGH LITERALLY ANONYMOUS, MIGHT HAVE BEEN ATTRIBUTED TO CHAD CUTLER. SEVERAL LOGINS OCCURRED AFTER LISA'S DEATH, AND CORRESPONDED WITH DEFENDANT'S ADMIS- SIONS TO POLICE THAT HE'D SEARCHED HIS WIFE'S THINGS, FOUND THE POLICY INFORMATION, AND ACCESSED THEM AFTER HER DEATH.

A SERIES OF ACTIVITIES WERE ESTABLISHED IN THE TRIAL RECORD BY FORENSIC COMPUTER ANALYSIS AND TELEPHONE RECORDS (DETAILED CAREFULLY IN APPELLANT REPLY BRIEF, PAGE 16-17) WHICH SHOWED CHAD CUTLER ON THE MORNING AFTER HIS WIFE'S DEATH CALLING THE FUNERAL DIRECTOR AND CLOSE FAMILY AND FRIENDS, THEN THE CARRIERS OF HIS WIFE'S EMPLOYER PROVIDED FINAL SERVICES BENEFITS AND OF THE THIRTEEN YEAR OLD, UNDISPUTED ALLSTATE LIFE INSURANCE POLICY WHICH THE STATE DID NOT MAKE A IDEAL POINT OF THE CUTLER TRIAL. THE RECORD SHOWS MR. CUTLER FINALLY LOGGING INTO HIS WIFE'S EMAIL ACCOUNT ON THE AFTERNOON OF THAT FIRST DAY, A FULL FIVE HOURS AFTER HIS FIRST INSURANCE RELATED CALL, AND PLAINLY DISCOVERING THE NEW POLICIES AT THAT TIME AND SUBSEQUENTLY MAKING INDICING CALLS. WHILE DIFFICULT TO CONVEY HERE, A PROPER EXAMINATION OF THE COMBINED RECORD INFORMATION (SEE THIS PETITION, SECTION IV, POINT 27) REVEALS HIS FUMBLING WITH THE INTERNET, SEARCHING FOR WEBSITES AND TELEPHONE NUMBERS JUST PRIOR TO CALLING THE NEW INSURANCE

COMPANIES IN A MANNER WHICH BELIES ANY SUGGESTION THAT ALL OF THESE ACTIONS WERE IN ANY WAY PREMEDITATED.

THE STATE AT TRIAL PUSHED RELENTLESSLY THE IDEA THAT CHAD CUTLER HAD INSIDIOUSLY ACQUIRED THE POLICIES AS HE PLANNED TO MURDER HIS WIFE, ENGAGING IN A TREMENDOUS AMOUNT OF PROSECUTORIAL MISCONDUCT BY MISSTATING CRITICAL POINTS OF EVIDENCE, LYING TO BOTH COURT AND JURORS AND DWELLING ON THE LIFE INSURANCE THEME OVER THIRTY TIMES DURING ARGUMENTS TO THE JURY. INSTANCES OF PROSECUTORS MISSTATING THE EVIDENCE AND MISLEADING COURT AND JURY INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING:

- LYING TO THE COURT IN PRE-TRIAL MOTION ABOUT THE UNDISPUTED CAUSE OF DEATH.
- PROMISING IN OPENING STATEMENTS VERY SPECIFIC IP ADDRESS EVIDENCE PROVING CONTACT WITH INSURANCE COMPANIES, EVIDENCE WHICH WAS NEVER PRODUCED.
- PROMISING IN OPENING STATEMENTS EVIDENCE OF DEFENDANT MAKING INCRIMINATING CALLS TO INSURANCE COMPANIES, WHICH THE RECORD SHOWS NEVER OCCURRED.
- TWICE REFERENCING DURING OPENING STATEMENTS "COMMUNICATIONS" BETWEEN DEFENDANT AND INSURANCE COMPANIES WHICH THE RECORD SHOWS WERE SIMPLY ANONYMOUS LOGINS TO AN EMAIL ACCOUNT.
- MISSTATING DURING OPENING THE PURCHASE DATE OF THE INSURANCE POLICIES, MISLEADING JURORS ON THE CRUCIAL POINT THAT THE ONLINE PURCHASES OCCURRED ON A SATURDAY.
- MAKING DAMAGING REFERENCE DURING CLOSING TO ACCOUNT LOGINS IMPLICATING CHAD CUTLER, WHICH THE STATE CONCEALED AS FACTUALLY INACCURATE DURING SENTENCING HEARING.
- EXPRESSING PERSONAL OPINIONS UNSUPPORTED BY EVIDENCE AS TO WHAT LISA CUTLER KNEW OR INITIATED REGARDING EMAIL ACCOUNTS AND INSURANCE POLICIES.
- FALSELY AND REPEATEDLY INFORMING JURORS THAT CHAD CUTLER HAD LIED TO POLICE ABOUT LIFE INSURANCE POLICIES.
- BOLDLY LYING TO THE COURT DURING ARGUMENT OF DEFENDANT'S MOTION FOR NEW TRIAL ABOUT 'MULTIPLE EMAILS TO INSURANCE COMPANIES' WHICH THE RECORD SHOWS NEVER EXISTED.

THE STATE APPELLATE PROSECUTOR REPLIED TO CHAD CUTLER'S FIRST APPELLATE BRIEF WITH A CONTINUATION OF THE MISLEADING TACTICS, MAKING THE DEMONSTRABLY FALSE ARGUMENT THAT "CHAD CUTLER WAS THE ONLY ONE WHO COULD HAVE PURCHASED THE INSURANCE POLICIES. THE POLICIES WERE PURCHASED WHILE LISA WAS AT WORK." THIS THEME WAS PATENTLY FALSE, YET IT WAS PERPETUATED ENDLESSLY THROUGHOUT TRIAL AND APPEAL, AND WAS APPLIED ON APPEAL TO SUPPORT THE STATE'S CONTENTION THAT THE INSURANCE EVIDENCE SATISFIED THE REQUISITE CRIMINAL AGENCY FOR THE HOMICIDE CONVICTION. THE APPELLATE COURT SEEMS TO HAVE IGNORED THE EVIDENCE DISPLAYING

CHAD CUTLER'S ACTIONS IN DISCOVERING HIS WIFE'S NEWLY PURCHASED INSURANCE POLICIES, REFUSED TO ACKNOWLEDGE THE STATE'S MANY RECEPTIONS ON THIS SUBJECT, AND TOTALLY DIVERGED FROM THE ILLINOIS SUPREME COURT'S THRESHOLD FOR ADMISSIBILITY OF LIFE INSURANCE EVIDENCE. THE APPELLATE COURT'S RELIANCE IN THIS DECISION ON INFERENCES WHICH MR. CUTLER ARGUES ARE ABSURDLY UNREASONABLE HAS ALLOWED AMBIGUOUS YET DEVASTATING CIRCUMSTANTIAL EVIDENCE TO STAND AS THE COMPELLING FACTOR WHICH OVERWHELMED HIS FIRMLY FOUNDED DEFENSE OF ACCIDENTAL DEATH, AND AS THE ONLY CRIMINAL AGENCY IN THIS CIRCUMSTANTIAL HOMICIDE CASE.

CHAD CUTLER CONTENDS THAT FOR A COURT TO FIRST ASSUME THAT UNDISPUTEDLY ANONYMOUS LOGINS TO AN EMAIL ACCOUNT FROM AN IP ADDRESS ASSIGNED TO A LARGE PUBLIC FACILITY WERE INITIATED BY A SPECIFIC PERSON, THEN ASSUME THAT THE PERSON ACTUALLY ACCESSED THE ACCOUNT AND READ THE ENTIRE CONTENTS THEREBY GAINING KNOWLEDGE OF THE MOTIVE EVIDENCE, IS TO DRAW INFERENCES WHICH ARE SIMPLY UNREASONABLE. THESE UNREASONABLE INFERENCES WERE OBVIOUSLY DRAWN BY A JURY MISLED ABOUT THE EVIDENCE, DRAWN BY AN APPELLATE COURT WHICH REFUSED TO CONSIDER THE TRIAL PROSECUTORS' ACTS OF DECEPTION, AND FORMED THE BASIS OF THE CASE WHICH CONVICTED CHAD CUTLER. AS SUCH, PETITIONER RESPECTFULLY REQUESTS THE COURT ADDRESS THE AFOREMENTIONED CONFLICT BETWEEN COURTS OVER THE THRESHOLD OF ADMISSIBILITY FOR LIFE INSURANCE EVIDENCE, AND REVERSE CHAD CUTLER'S CONVICTION DUE TO THE IMPROPER ADMISSION OF REMARKABLY DAMAGING MOTIVE EVIDENCE.

5. SHOULD THIS COURT ESTABLISH, IN CASES OF ALLEGED BUT UNPROVEN HOMICIDE INVOLVING DROWNING OR OTHER ARGUABLY ACCIDENTAL DEATHS, CASES IN WHICH REASONABLE MEDICAL HYPOTHESES CONSISTENT WITH ACCIDENTAL DEATH HAVE BEEN PROVIDED, A MORE STRINGENT STANDARD OR AT LEAST A REQUIREMENT OF CLOSER SCRUTINY FOR THE FINDING OF THE REQUISITE CRIMINAL AGENCY?

CRIMINAL AGENCY, INTENT, PREMEDITATION AND PERHAPS MALICE AFORETHOUGHT WERE ALL ESTABLISHED IN PEOPLE V. CUTLER BY THE MERK EXISTENCE OF RECENTLY PURCHASED LIFE INSURANCE POLICIES AND BY ANONYMOUS LOGIN ATTEMPTS TO AN EMAIL ACCOUNT THAT, WERE THE CONTENTS READ IN THEIR ENTIRETY, COULD HAVE PROVIDED INSURANCE INFORMATION WHICH CREATED MOTIVE. IN A FAMILY WITH A LONG HISTORY OF CARRYING A SIGNIFICANT AMOUNT OF LIFE INSURANCE COVERAGE AND WHICH HAD RECENTLY SUFFERED A LOSS OF SOME COVERAGE AND A MAJOR SHIFT IN FISCAL RESPONSIBILITY THAT PLACED AN ANXIETY PLAGUED MOTHER IN THE POSITION OF SOLE PROVIDER FOR TWO CHILDREN, THE ELEMENT OF CRIMINAL AGENCY WAS ESTABLISHED BY PROSECUTORS GUESSING AS TO WHETHER CHAD CUTLER OR HIS WIFE PURCHASED TWO NEW POLICIES SHORTLY BEFORE LISA CUTLER'S DROWNING DEATH. NO EVIDENCE SHOWED WHO

MADE THE ONLINE PURCHASES, NOTHING LINKED CHAD CUTLER TO THE POLICIES UNTIL AFTER HIS WIFE'S DEATH, AND PROSECUTORS EMPLOYED A GREAT DEAL OF MISSTATING AND EVEN MANUFACTURING EVIDENCE INVOLVING TELEPHONE CONTACTS WITH INSURANCE COMPANIES, NON-EXISTENT EMAIL MESSAGES, AND ANONYMOUS IP ADDRESSES TO WRONGFULLY ESTABLISH THE REQUISITE CRIMINAL AGENCY IN THIS QUESTIONABLE HOMICIDE CASE.

ILLINOIS COURTS HAVE ESTABLISHED THAT CRIMINAL AGENCY IS REQUIRED TO SATISFY THE ELEMENTS OF THE OCCURRENCE OF A HOMICIDE (SEE PEOPLE V. EHLERT, 211 ILL.2D 192, AT 202, AT 210 FOR CORPUS DELICTI CITATIONS). THE CORPUS DELICTI IN CUTLER WAS ONLY FABRICATED BY PROSECUTORS MISLEADING JURORS, LYING ABOUT SUSPICIOUS CONTACTS AND GUESSING ABOUT THE FORENSIC COMPUTER AND INTERNET EVIDENCE WHICH WAS PLAINLY ESTABLISHED IN THE RECORD AND QUITE AMBIGUOUS AS TO WHO WAS INVOLVED WITH OR EVEN AWARE OF NEW POLICIES. TRIAL PROSECUTORS LIED EXPLICITLY IN ARGUMENTS TO THE JURY ABOUT CHAD CUTLER'S DISHONESTY IN POLICE INTERVIEWS, FABRICATING EVIDENCE OF STATEMENTS HE NEVER MADE AND MISLEADING JURORS ABOUT EXTRA MARITAL AFFAIRS WHICH EVERY LIVING PERSON ALLEGEDLY INVOLVED TESTIFIED WERE SIMPLY FRIENDSHIPS. THE APPELLATE (4TH) COURT REFUSED TO ADDRESS THIS MISCONDUCT OR THE STATE'S FABRICATION OF SUSPICIOUS CONTACTS BETWEEN CHAD CUTLER AND INSURANCE COMPANIES, AND APPARENTLY ACCEPTED AS CRIMINAL AGENCY HIS BEHAVING STRANGELY AND ANGRILY ONLY AFTER, NEVER BEFORE, THE TRAUMATIC LOSS OF HIS WIFE. DESPITE CLEAR EVIDENCE OF CHAD CUTLER REPEATEDLY EXPRESSING HIS STUNNED BELIEF IN THE FIRST DAYS AFTER HER ~~BROWNING~~ DROWNING DEATH THAT HIS WIFE HAD COMMITTED SUICIDE, HER HISTORY OF BEING HOSPITALIZED WITH SUICIDAL IDEATIONS, AND A TOTAL ABSENCE OF EVIDENCE SHOWING HIS CONDUCT TO BE BASED IN DISRESPECT OR ACRIMONY TOWARDS HIS LATE WIFE PRIOR TO BEING LEFT IN AN UGLY SITUATION BY HER POSSIBLE SUICIDE, THE APPELLATE COURT MADE THAT PRESUMPTUOUS LEAP AND, THROUGH THE DRAWING OF UNREASONABLE INFERENCES, CLAIMED TO SEE THE REQUISITE CRIMINAL AGENCY WHICH ALLOWED THIS HOMICIDE CONVICTION TO STAND.

THE ISSUE RAISED HERE IS ONLY SECONDARILY THAT OF INSUFFICIENT EVIDENCE FROM WHICH A JURY COULD FIND BEYOND A REASONABLE DOUBT THAT CHAD CUTLER WAS GUILTY. ASSUMING A HOMICIDE ACTUALLY OCCURRED IN THIS CASE, AND VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, THIS PETITIONER CONCEDES THAT THE INCREDIBLY SPECULATIVE EXPERT OPINIONS ON THE MANNER IN WHICH LISA CUTLER DROWNED, ONCE ADMITTED, COULD COMPEL A JURY TO CONVICT. THE PRIMARY QUESTION HERE IS, SHOULD THAT ASSUMPTION BE ALLOWED WITHOUT ANY EVIDENCE OF CRIMINAL AGENCY TO ESTABLISH THE OCCURRENCE OF THE INITIAL HOMICIDE, AND SHOULD PROSECUTORS BE PERMITTED IN SUCH A CASE TO GROSSLY MISLEAD THE JURY ABOUT MULTIPLE POINTS OF EVIDENCE TO CONVINCE THEM THAT CRIMINAL AGENCY EXISTED?

CHAD CUTLER ASKS THIS HONORABLE COURT TO CONSIDER THE QUESTION OF ESTABLISHING A MORE STRINGENT STANDARD FOR THE

FINDING OF CRIMINAL AGENCY IN ARGUABLY ACCIDENTAL DEATHS, AND TO RECOGNIZE THE ABSENCE IN THIS CASE OF THAT ESSENTIAL ELEMENT AND REVERSE HIS CONVICTION WITHOUT REMAND.

6. WILL THIS COURT ADDRESS THE CONFLICT BETWEEN ILLINOIS REVIEWING COURTS OVER THE PROPER STANDARD OF REVIEW FOR CLAIMS OF DELIBERATE PROSECUTORIAL MISCONDUCT, AND EXAMINE ONE IN A RISING TREND OF PROSECUTORS EMPLOYING DELIBERATE MISCONDUCT AND DECEPTION AS A MEANS TO BOLSTER WEAK, CIRCUMSTANTIAL CASES?

THE ILLINOIS SUPREME COURT IN PEOPLE V. WHEELER (226 ILL 2d 42 AT 121) HAS SUGGESTED THAT DE NOVO REVIEW IS APPROPRIATE IN CASES OF PROSECUTORS EMPLOYING EGREGIOUSLY IMPROPER ORAL ARGUMENTS, BUT THE ABSENCE OF A FIRM HOLDING ON THIS QUESTION HAS RESULTED IN ILLINOIS APPELLATE COURTS BEING SUBJECT TO SOME DIVISION.

"SINCE WHEELER, APPELLATE COURTS HAVE BEEN DIVIDED REGARDING THE APPROPRIATE STANDARD OF REVIEW."

PEOPLE V. ALVAREZ, 2014 IL APP. (1ST) 121470, #26; PEOPLE V. WHITE, 2016 IL APP. (1ST) 141480-U, #44 (BOTH NOTING THAT THE ISSUE REMAINS DIVIDED).

THE TRIAL COURT IN PEOPLE V. CUTLER ABUSED ITS DISCRETION IN ALLOWING THE STATE TO ARGUE MULTIPLE EMOTION LADEN AND FACTUALLY INACCURATE THEMES TO THE JURY, TO REPEATEDLY STATE PROSECUTORS' PERSONAL BELIEFS IN DEFENDANTS' GUILT AND ON PREJUDICIAL QUESTIONS OF FACT, TO GROSSLY AND PERSISTENTLY MISSTATE EVIDENCE IN HIGHLY PREJUDICIAL MANNERS, TO LIE TO THE JURY IN ARGUMENTS ABOUT FACTS REQUIRED TO SATISFY AN ELEMENT OF THE CRIME CHARGED, AND TO ENGAGE IN IMPROPER LINES OF QUESTIONING OF THE MEDICAL EXPERTS ON THE ULTIMATE ISSUE IN THIS CASE, LISA CUTLER'S MANNER OF DEATH. THE TRIAL COURT'S FAILURE TO CONTROL THE PROCEEDINGS DENIED CHAD CUTLER A FAIR TRIAL, AND AS A RESULT, THIS CONVICTION SHOULD BE VACATED AND THE APPELLATE (4TH) COURT ADMONISHED FOR REFUSING ON DIRECT APPEAL TO EVEN SERIOUSLY OR PROPERLY REVIEW THESE CLAIMS OF ERROR.

SECTION 6 OF CHAD CUTLER'S FIRST APPELLATE BRIEF DETAILS THE STONNING DISPLAY OF DELIBERATE PROSECUTORIAL MISCONDUCT EMPLOYED IN GAINING THIS CONVICTION, AND THE FOLLOWING POINTS SUMMARIZE ONLY THE WORST, MOST UNETHICAL AND DAMAGING OF THE MACON COUNTY STATES ATTORNEY'S BAD BEHAVIOR:

- PROSECUTORS AWHELED REPEATEDLY AND GRATUITOUSLY IN ARGUMENTS UPON THE YOUNG CHILDREN OF THE DECEASED, IN A MANNER WHICH CONFLICTS WITH MULTIPLE PAST HOLDINGS OF THE ILLINOIS SUPREME COURT (PEOPLE V. BERNETTE, PEOPLE V. BLUE).
- PROSECUTORS PERSISTENTLY MISSTATED MEDICAL TESTIMONY AND MISQUOTED EXPERT WITNESSES IN A DELIBERATE STRATEGY DESIGNED TO STRENGTHEN THEIR CASE THAT A HOMICIDE OCCURRED AND TO WEAKEN THE DEFENSE CASE OF ACCIDENTAL DROWNING.

- PROSECUTORS ARGUABLY FALSIFIED COURT DOCUMENTS BY MISSTATING A FUNDAMENTAL FACT IN THIS CIRCUMSTANTIAL CASE, THE CAUSE OF DEATH. THE STATE'S MOTION TO ADMIT PRIOR STATEMENTS OF LISA CUTLER UNDER SECTION 115-10.2a INACCURATELY LISTED THE CAUSE OF DEATH AS "FORCEFUL DROWNING", A BRAZEN MISCHARACTERIZATION WHICH IGNORED THE OFFICIAL AUTOPSY REPORT AND THE TESTIMONY OF ITS AUTHOR, BOTH OF WHICH PLAINLY IDENTIFIED THE CAUSE OF DEATH AS SIMPLY "DROWNING".
- IN THE ABSENCE OF ANY CLEAR EVIDENCE OF A PHYSICAL ASSAULT, AND FACING THE INABILITY TO SHOW THAT A HOMICIDE OCCURRED, PROSECUTORS ASKED LEADING QUESTIONS OF STATE'S EXPERT WITNESSES AGAIN AND AGAIN IN AN ATTEMPT TO CREATE FOUNDATIONAL FACTS AND A THEORY AS TO HOW AMBIGUOUS BRUISES WERE ACQUIRED AND HOW THE ALLEGED ASSAULT OCCURRED, A THEORY WHICH EXPERTS OBVIOUSLY COULD NOT PROVIDE WITHOUT THE IMPROPER LEADING.
- PROSECUTORS FABRICATED EVIDENCE OF CRIMINAL AGENCY BY INFORMING THE JURY, FALSELY AND ON MULTIPLE OCCASIONS, THAT THE DEFENDANT LIES TO POLICE WRITING INTERVIEWS, EXPLICITLY CLAIMING LIES AND OMISSIONS WHICH NEVER OCCURRED, PROSECUTORS ALSO ENGAGED IN A TREMENDOUS AMOUNT OF MISSTATING EVIDENCE IN THEIR PERSISTENT ATTEMPTS TO MISLEAD THE JURY AS TO THE EVIDENCE WHICH HAD BEEN OR WOULD BE PRESENTED, MOSTLY ON SUBJECTS IMPLYING MOTIVE, ALLEGED INFIDELITY, OR OTHER TOPICS CALCULATED TO PREJUDICE THE DEFENDANT WITH MISINFORMATION. THESE ACTS OF INTENTIONAL DECEPTION INCLUDE:
 - BOLDLY LYING TO BOTH COURT AND JURY ABOUT SPECIFIC LIFE INSURANCE EVIDENCE BY MISSTATING IP ADDRESS INFORMATION AND MANUFACTURING EVIDENCE OF CONTACTS AND COMMUNICATIONS, TELEPHONE CALLS AND EMAILS WITH INSURANCE COMPANIES WHICH THE RECORD SHOWS NEVER OCCURRED, THEN DWELLING ON THESE FABRICATED FACTS OVER THIRTY TIMES IN ARGUMENTS.
 - IMPLYING EXTRA MARITAL AFFAIRS WHICH THE EVIDENCE SHOWED NEVER OCCURRED, MISQUOTING BOTH THE DEFENDANT'S EMAIL MESSAGES AND DEFENDANT'S HEARSAY STATEMENTS TO SUPPORT THESE IMPLICATIONS, THEN DWELLING ON THE MISINFORMATION NO FEWER THAN FIFTEEN TIMES IN ARGUMENTS TO THE JURY.
 - EMPLOYING A CHARACTER ASSASSINATION AND 'BAD MAN' THEME, IN PART BY LYING TO THE JURY IN BOTH OPENING AND CLOSING STATEMENTS ABOUT SPECIFIC INTERNET ACTIVITY WHICH IMPLIED CONTACT BETWEEN CHAD CUTLER AND ANOTHER WOMAN PRIOR TO LISA CUTLER'S DEATH.
 - MISCHARACTERIZING THE CUTLER FAMILY'S FINANCIAL SITUATION, AS PART OF ITS 'LIFE INSURANCE AS MOTIVE' THEME, BY STATING REPEATEDLY AND WITH NO SUPPORTING EVIDENCE THAT "FORECLOSURE WAS IMMINENT" AND MAKING REPEATED REFERENCE TO MASSIVE DEBT WHILE IGNORING THE FINANCIAL STIPULATION WHICH REVEALED A TOTAL LIQUIDATED BALANCE OF ZERO DEBT.
 - DWELLING REPEATEDLY IN OPENING AND CLOSING STATEMENT UPON INCONCLUSIVE DNA EVIDENCE FROM LISA'S NAILS, PROMISING A MATCH AND STATING INACCURATE STATISTICAL PROBABILITIES WHICH IGNORED THE EXPERT TESTIMONY ACKNOWLEDGING THE FACTS THAT LISA LIVED WITH A RELATED MALE CHILD AND THAT THE MICROSCOPIC SKIN CELLS COULD HAVE BEEN PICKED UP THROUGH CASUAL CONTACT OR THE SHARED ENVIRONMENT. THESE ARGUMENTS, IN VIEW OF THE PRISTINE CONDITION OF LISA'S HANDS AND

FINGERNAILS AND THE STATES INABILITY TO SHOW THE OCCURRENCE OF A PHYSICAL ASSAULT, PROMISED A MATCH NOT SUPPORTED BY EVIDENCE AND URGED THE JURY TO TAKE UNREASONABLE INFERENCES OF A HIGHLY PREJUDICIAL NATURE.

- PROSECUTORS' ARGUMENTS WERE INTENDED TO DIVERT JURORS' ATTENTION FROM THE FACTS OF THE CASE, TO MISLEAD AND AROUSE THE PREJUDICE OF THE JURY. SECTION 5 OF CHAD CUTLER'S FIRST APPELLATE BRIEF LISTS THE ENORMOUS AMOUNT OF IR-RELEVANT AND INCOMPETENT EVIDENCE ADMITTED IN THIS TRIAL, AND PROSECUTORS DWELLED REPEATEDLY IN ARGUMENTS UPON THE 'BAD MAN' THEME. THIS TACTIC CAN BE SEEN IN REBUTTAL ARGUMENTS WHEN PROSECUTORS EXPLICITLY DISCOURAGED JURORS FROM FOCUSING ON EXPERTS' MEDICAL TESTIMONY, ENCOURAGING THEM INSTEAD TO RETURN A VERDICT GROUNDED IN EMOTION AND BIAS RATHER THAN RATIONAL DELIBERATION OF THE FACTS.

CHAD CUTLER PRESENTED ALL OF THESE MATTERS IN HIS APPELLATE BRIEF, WITH THE REQUEST THAT THE APPELLATE COURT APPLY DE NOVO REVIEW IN ACCORDANCE WITH THE ILLINOIS SUPREME COURT IN PEOPLE V. WHEELER, OR PLAIN ERROR REVIEW AS THE SAME APPELLATE FOURTH DISTRICT DID FOR SIMILAR CLAIMS OF ERROR IN PEOPLE V. RUNNING. DESPITE THE FACT THAT BOTH OF THESE CASES ORIGINATED IN THE SAME COUNTY AS DID THE CUTLER CONVICTION, THE APPELLATE COURT IGNORED THIS ESTABLISHED PATTERN OF MISCONDUCT BY MACON COUNTY STATES ATTORNEYS AND REFUSED TO EVEN CONSIDER THESE CONTENTIONS IN PEOPLE V. CUTLER UNDER EITHER STANDARD OF REVIEW.

AN OFT REPEATED CITATION FROM THIS HONORABLE COURT STATES, IN ABBREVIATED BUT PERTINENT PART:

"... AND WHOSE INTEREST, THEREFORE, IN A CRIMINAL PROSECUTION IS NOT THAT IT SHALL WIN A CASE, BUT THAT JUSTICE SHALL BE DONE... IT IS AS MUCH HIS DUTY TO REFRAIN FROM IMPROPER METHODS CALCULATED TO PRODUCE A WRONGFUL CONVICTION AS IT IS TO USE EVERY LEGITIMATE MEANS TO BRING ABOUT A JUST ONE."

BERGER V. UNITED STATES, 245 U.S. 78 AT 88, 55 S.C.T. 629 (1935)

IT IS CHAD CUTLER'S CONTENTION THAT PROSECUTORS' COMMENTS IN THIS CASE SO INFECTED THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONVICTION A DENIAL OF DUE PROCESS, AND FURTHER, THAT THE PROSECUTORS' NUMEROUS AND GROSS VIOLATIONS OF THE CANONS OF ETHICS REPRESENT A THOROUGH DISREGARD FOR THEIR DUTIES TO REFRAIN FROM IMPROPER METHODS CALCULATED TO PRODUCE A WRONGFUL CONVICTION AND SUGGESTS AN INTENT TO EMBRACE THOSE VERY TACTICS. WHILE THE ASTONISHING NUMBER OF SUCH IMPROPER REMARKS SHOULD WARRANT THE REVERSAL OF THIS CONVICTION, THIS PETITIONER CONTENTS THAT THE INTENT TO MANUFACTURE EVIDENCE AND MISLEAD THE JURY DISPLAYED IN SECTION 6 OF HIS APPELLATE BRIEF GOES BEYOND MERE COURTROOM IMPROPRIETY AND INTO THE REALM OF MALICIOUS WRONGFUL CONVICTION, AND THAT A PATTERN OF MISCONDUCT ACROSS MULTIPLE CASES HAS BEEN ESTABLISHED WHICH THE STATE OF ILLINOIS REFUSES TO NOW ACKNOWLEDGE. AS SUCH, CHAD CUTLER RESPECTFULLY REQUESTS THE COURT ADDRESS THIS ISSUE AND THE SHADOW IT CASTS

UPON THE INTEGRITY OF THE JUDICIAL SYSTEM BY REVERSING HIS CONVICTION AND EXAMINING THE CULTURE OF MISCONDUCT PERMITTED IN MACON COUNTY AND IGNORED ON APPEAL BY THE STATES HIGHER COURTS, AS WELL AS THE STANDARD OF REVIEW FOR DELIBERATE PROSECUTORIAL MISCONDUCT IN ILLINOIS COURTS WHICH, IF FIRMLY ESTABLISHED AS DISCUSSED IN WHEELER, WOULD HAVE BROUGHT THE STATES MISCONDUCT IN CUTLER UNDER PROPER SCRUTINY.

7. WILL THIS COURT ADDRESS THE PRACTICE OF PROSECUTORS USING GOVERNMENT POWER AND UNLIMITED BUDGETS TO WEAPONIZE EXPERT OPINION TESTIMONY AS A MEANS TO CREATE, THROUGH COURT SANCTIONED OPINION AND SPECULATION, FACTS AND EVIDENCE WHICH WOULD NOT OTHERWISE EXIST? SHOULD THIS COURT ESTABLISH A STANDARD FOR ADMISSION OF EXPERT OPINION TESTIMONY BEYOND FRYE WHICH REQUIRES A MORE STRINGENT EXAMINATION OF BOTH THE QUALIFICATIONS OF ANY EXPERT OPINING UPON A MANNER OF DEATH, AND OF THE FOUNDATIONAL FACTS UPON WHICH THE OPINION IS PREDICATED?

THE CUTLER CASE INVOLVED THE TRIAL COURT ADMITTING EXPERT OPINION TESTIMONY ON THE ULTIMATE ISSUE, LISA CUTLER'S MANNER OF DEATH, WHICH WAS DISPUTED AS BEING INADMISSIBLE ON THREE SEPARATE GROUNDS DURING TRIAL AND DIRECT APPEAL. DESPITE THE HIGHLY PREJUDICIAL NATURE OF THIS TESTIMONY, WHICH PRESENTED OPINIONS AS THE ONLY EVIDENCE IN THIS CASE OF THE OCCURRENCE OF A HOMICIDE, THE TRIAL COURT SEEMED TO TREAT THE ADMISSIBILITY OF THE EXPERT OPINIONS AS A MATTER OF RIGHT, RATHER THAN AN ISSUE TO BE CAREFULLY WEIGHED. THE SURPRISE OPINION OF DR. YOUNG, ADMITTED AGAINST DEFENSE OBJECTIONS (L334-L335) AFTER BEING DISCLOSED FIVE DAYS INTO TRIAL, WAS BOTH INCREDIBLY PREJUDICIAL AND UNEXPECTED SINCE THE FORENSIC PATHOLOGIST MADE NO MENTION OF HOMICIDE OR OF THE MANNER OF DEATH DURING AN AUTOPSY WHICH ESTABLISHED ONLY DROWNING AS THE CAUSE OF DEATH. THE EXPERT QUALIFICATION OF ANDREA ZAFERES WAS SO PLAINLY SHOWN DURING THE BIZARRE FRYE HEARING (T.D.2.174-214) TO BE LACKING THAT THE TRIAL COURT ACTUALLY REFUSED TO ACKNOWLEDGE EXPERT STATUS WHEN EXPLICITLY ASKED BY THE STATE TO DO SO (T.D.3.188. LINE 18-21), A BAFFLING EVENT WHICH OCCURRED IMMEDIATELY PRIOR TO ZAFERES TESTIFYING AS AN EXPERT. THESE MATTERS WERE PROPERLY RAISED IN DEFENSE PRE AND POST TRIAL MOTIONS (L375-L376) AND RAISED ON APPEAL (APPELLANT'S FIRST BRIEF, SECTIONS 7 AND 8). DESPITE BEING TWO OF THE FOUR WITNESSES THAT PRESENTED THE ONLY EVIDENCE OF THE OCCURRENCE OF A HOMICIDE, THE APPELLATE COURT REJECTED THESE CLAIMS AS BEING INSUFFICIENTLY PREJUDICIAL.

THE ADMISSION OF THE EXPERT TESTIMONY OF DOCTORS YOUNG, NELSON, AND CASE WAS RAISED AS ERROR ON DIRECT APPEAL ON THE GROUNDS THAT IT WAS ENTIRELY SPECULATIVE ON THE VERY SPECIFIC POINT OF THE UNKNOWN SOURCE OF THE AMBIGUOUS BRUISES FOUND ON LISA CUTLER'S ELBOWS. THE CONJECTURAL OPINIONS AS TO SOURCE OF THE BRUISES, EXTRACTED LARGELY THROUGH PROSECUTORS' IMPROPER USE OF LEADING QUESTIONS, CREATED THE FOUNDATION FOR THEIR OPINIONS THAT LISA WAS FORCEFULLY DROWNED. CHAD CUTLER'S DIRECT

APPEAL PAINSTAKINGLY DETAILED THE POINTS AT WHICH THE THREE DOCTORS CONTRADICTED THEMSELVES AND EACH OTHER ON CRITICAL POINTS OF THE STATE'S THEORIES OF THE ALLEGED PHYSICAL ASSAULT, WERE IMPROPERLY LED BY PROSECUTORS INTO 'CREATING FACTS' ABOUT THE UNKNOWN ORIGIN OF AMBIGUOUS BRUISES, AND EVEN ADMITTED - IN THE CASE OF DR. NELSON - TO ACTUALLY "GUESSING" ABOUT CERTAIN FACTS WHICH PREDICATED OPINIONS ON THE ULTIMATE ISSUE, LISA'S MANNER OF DEATH. PETITIONER WILL NOT ELABORATE FURTHER HERE, BUT URGES THIS COURT TO CAREFULLY CONSIDER APPELLANT'S FIRST BRIEF, SECTION 2, AND REPLY BRIEF PAGES 6-11, WHICH OUTLINE WITH SPECIFICITY THE LACKING FOUNDATION IN THESE THREE CRITICAL EXPERT OPINIONS, A FUNDAMENTAL FLAW WHICH THE APPELLATE COURT DID NOT APPEAR TO SERIOUSLY CONSIDER UNDER THE PLAIN ERROR RULE.

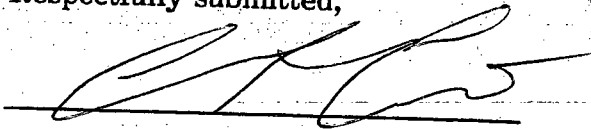
CHAD CUTLER ARGUES THAT IN VIEW OF THE REASONABLE MEDICAL HYPOTHESIS CONSISTENT WITH LISA CUTLER'S ACCIDENTAL DROWNING, THE CLOSENESS OF THE EVIDENCE AND ABSENCE OF CRIMINAL AGENCY SIGNIFYING THE OCCURRENCE OF A HOMICIDE SHOULD DEMAND A MORE CAREFUL REVIEW BY BOTH LOWER COURTS OF THE SPECULATIVE NATURE OF THE STATE'S EXPERT OPINIONS, THE LACKING QUALIFICATIONS AND TRULY RIGIDULOUS FRYE HEARING PERFORMANCE OF ANDREA ZAFERES, AND THE OBVIOUS DISCOVERY VIOLATIONS. THE ALMOST CASUAL REJECTION OF PETITIONER'S CLAIMS BY BOTH TRIAL AND APPELLATE COURTS SUGGESTS THAT THE ADMISSION OF DOCTORS' (AND IN THE CASE OF ZAFERES, EVEN THOSE WITH NO MEDICAL TRAINING) TESTIMONY AND QUALIFICATIONS AS 'EXPERT' HAS BECOME SO ROUTINE THAT SOME LOWER COURTS HAVE ABDICATED THEIR RESPONSIBILITY TO SCREEN THESE ALLEGED EXPERTS PRIOR TO THEIR PRESENTATION OF POTENTIALLY DEVASTATING TESTIMONY. MR. CUTLER CONTENTS THAT THE PRINCIPLES APPLIED BY BOTH TRIAL AND APPELLATE COURTS IN THIS CASE TO THE ADMISSION OF EXPERT TESTIMONY WERE SO NEGLIGENT THAT, IF APPLIED NATIONALLY, WOULD THREATEN THE LIBERTY OF EVERY DEFENDANT

AS SUCH, PETITIONER ASKS THIS COURT TO ADDRESS THE LACK OF FOUNDATION IN THE EXPERT OPINIONS WHICH ESSENTIALLY CONVICTED HIM, AS WELL AS THE OBVIOUS QUALIFICATIONS OF WITNESS ZAFERES, IN THE PROCESS OF ADDRESSING THE BROADER QUESTIONS OF ADMISSIBILITY UNDER FRYE AND OF THE DEGREE OF SCRUTINY THAT SHOULD BE APPLIED TO THE FACTS UPON WHICH CRITICAL EXPERT MEDICAL OPINIONS ARE PREDICATED. THE ADMISSION OF SPECULATIVE EXPERT OPINIONS THAT LISA CUTLER WAS FORCEIBLY DROWNED, IN A CASE WITH NO OTHER EVIDENCE OF THE OCCURRENCE OF A HOMICIDE, DEPRIVED CHAD CUTLER OF A FAIR TRIAL, AND UPON THOSE GROUNDS THIS PETITIONER REQUESTS A REVERSAL OF HIS CONVICTION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. K. B.", written over a horizontal line.

Date: JUNE 7, 2019