19-8304

No.

In the Supreme Court of the United States

TIMOTHY J. MCVAY,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
To the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

Timothy McVay, Pro se
IDOC # M55606
Menard Correctional Facility
P.O. Box 1000
Menard, Il ~~61265~~ 62259

QUESTION PRESENTED

Whether a bench trial conviction of first degree murder by H.U.M Matrix(Homicide by Unspecified Means) can be upheld without benefit of: an eyewitness, a confession, a cause of death, a crime scene, or any meaningful physical evidence; where the conviction rests solely on a judge's "reasonable inferences" which were; extensively documented on the record, as: inconsistent with the evidence presented at trial, beyond the scope of testimony and cross examination of prosecution's witnesses, and contradicted by the judge's deliberate statements admitting to the lack of physical evidence requiring speculation as to the "act" resulting in death, finally followed by proffering his own theory of the crime never presented by the states expert medical examiner?

The decision in this case was divided upon appeal specifically on the issue of intent (a prosecution's mandated burden of proof) a key component in state and federal first degree murder statutes; wherein this conviction, fundamentally violates U.S. Constitutional authority of Amendments VI and XIV to prove a defendant's *actus reus* and *mens rea*(VI- nature and cause of accusation) and deprivation of guaranteed rights (XIV- due process and equal protection of laws) as established by procedural rules and presumed innocence doctrine.

QUESTION PRESENTED

Whether a structurally deficient search warrant for a private residence can rightfully issue containing no alleged specific offense(*def*: a violation of law, i.e. a crime) where; instead being used as, an instrument to conduct a fishing expedition against a citizen -not mirandized or in custody- who willingly co-operates with police regarding an adult "missing person" complaint; which is not, by accepted investigative standards, a committable criminal offense; therefore not sufficient for an affiant to show probable cause?

By U.S. Constitutional authority of Amendment IV, protection from unreasonable search and seizure is of paramount importance especially when a warrant is unstably supported by: false statements of the affiant, contradiction between law enforcement agencies and court jurisdictions involved, and intentionally omits relevant information, voluntarily provided by the targeted citizen, to police and family of the missing person.

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TABLE OF AUTHORITIES

Timothy J. McVay respectfully petitions for a writ of certiorari to review the judgement of the Illinois Supreme Court in this case.

OPINIONS BELOW

The Supreme Court of Illinois DENIED Timothy J. McVay's Petition for Leave to Appeal on November 26, 2019; with mandate issuing to Appellate Court on December 31, 2019. Provided as App A.

The appellate court initially affirmed Timothy J. McVay's convictions on August 19, 2019, the court issued a published decision on August 30, 2019, pursuant to the State's motion to publish the decision. No petition for rehearing was filed, Provided as App B.

JURISDICTION

On November 26, 2019, the Supreme Court of Illinois denied Timothy McVay's Petition for Leave to Appeal the Illinois Appellate Courts decision in this case. This petition for Writ of Certiorari has been timely filed within 90 days of that order. SUP. CT. R. 13.1. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part, "the right of people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures...no warrants shall issue, but upon probable cause..."

The Fifth Amendment to the United States Constitution provides in relevant part, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury,...,nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law..."

The Sixth Amendment to the United States Constitution provides in relevant part, ""...the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district will have been previously ascertained by law, and to be informed of the nature and cause of the accusation..."

The Fourteenth Amendment to the United States Constitution provides in relevant part, "...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."

720 ILCS 5/1-5(a)(1)(b)-State Criminal Jurisdiction:

(a) A person is subject to persecution in this State for an offense which he commits, while either within or outside the State, by his own conduct or that of another for which he is legally accountable, if:

(1) The offense is committed either wholly or partly within the State

720 ILCS 5/9-1(a)(1)-First Degree Murder:

(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause death:

(2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another.

720 ILCS 5/9-3.4(a)- Concealment of Homicidal Death:

(a) A person commits the offense of concealment of homicidal death when he knowingly conceals the death of any other person with knowledge that such other person has died by homicidal means.

720 ILCS 5/108-3- Grounds for Search Warrant:

(a) Except as provided in subsection (b), upon the written complaint of any person under oath or affirmation which states facts sufficient to show probable cause and which particularly describes the place or person, or both, to be searched and the things to be seized, any judge may issue a search warrant for the seizure of the following;

(1) Any instruments, articles or things designed or intended for use or which are or have been used in the commission of, or which may constitute evidence of, the offense in connection with which the warrant is issued; or contraband, the fruits of crime, or things otherwise criminally possessed.

725 ILCS 5/114-13(b)- Discovery of Field Notes

(b) provide all investigative material, including , but not limited to, memoranda, and field notes, that have been generated by or have come into the possession of the investigating agency concerning homicide offense being investigated.

STATEMENT OF THE CASE

On July 17, 2015, Timothy J. McVay was convicted by bench trial of first degree murder and concealment of a homicidal death. He was sentenced on October 16, 2015 to 40 years in prison on count 1, and a consecutive 5 years on count 2. Provided in App F.

I. Timeline Background

While on a New Year's vacation with girlfriend Tami Heigi; Timothy McVay was contacted by the members of the Olson family and Davenport IA Police Department regarding his longtime friend Carrie Olson. On January 2,

2014 at 11:45pm Timothy McVay returned a Toyota Avalon belonging to Olson which he had borrowed with her permission to travel to Heigi's residence in Hastings, MN where he had roundtrip flights for Las Vegas from the Minneapolis Airport on December 29, 2013. The car was delivered to the DPD exactly as traveled in. No exterior or Interior cleaning was performed. Detectives removed some receipts that were later used at trial. The vehicle contained no evidence of foul play, no DNA or trace samples were taken, and the car was returned to the Olson family. McVay was not Mirandized but willingly stayed with Dtv. Voy to answer questions and assist in the "Missing Person" complaint regarding Ms. Olson. McVay consented to a polygraph which was later scheduled through his attorney with a certified test provider. At 4:00am McVay left and received a ride home to Rock Island, IL from his father.

On the afternoon of January 3rd McVay returned home from the grocery store to find his home being searched by RIPD and DPD officers on order of a RI County Search Warrant for missing items listed related to a "Missing Person." Nothing belonging to Olson detailed in the warrant were found. Some items of clothing, and various papers belonging to McVay were taken but not used at trial. A photo of his luggage was later used to obtain another warrant for a DeSage travel bag that used at trial. A warrant was simultaneously served at Olson's residence in Davenport were Olson lived with a roommate Justin Mueller. The cab of Mueller's work truck belonging to Kenny's Pest Control was searched: however' the tool boxes were not opened and the bed not tested for

DNA or trace evidence. No arrests were made or charges filed resulting from either warrant.

Olson was considered a missing person until her body was discovered in rural Dakota County MN on April 5th, 2014 at 4:30pm. Olson's body was nude with arms stretched over her head and folded legs. The body and surrounding ground showed no signs of dragging from the road to where the body was placed, which was considered suspicious and processed as a crime scene, these items from under or around the body were collected: a receipt, an empty beverage can, broken piece of glass, and barcode sticker. The sticker was later determined to be from Big Lots chain stores for plastic kids snow shovels carried that winter; the sticker was later used at trial. A rape kit was performed where the vaginal swab did not contain a sample matching McVay. A sample of DNA under a fingernail could not exclude McVay(matching at 3 of 16 sites) it was consistent with 1 in 3 white males. The autopsy performed by M.E. Dr. Middleton was categorized as H.U.M(Homicide by Unspecified Means) that could not determine any anatomical cause, approximate time, or location of death.

On April 7th and 8th McVay contacted law enforcement in Dakota County, MN; Davenport, IA; and Rock Island, IL after reading a headline in the Hasting's Star Gazette regarding an unidentified female body. McVay believed that a tattoo photographed and being used by officials for identification purposes matched a tattoo on Olson's lower back. He was later served a warrant, on the

evening of the 8th, to collect his current cell phone and a sample of carpet both later used at trial. No arrests were made or charges filed as a result.

In January 2015, while McVay was in remand, a DPD search warrant was issued to collect belongings previously from McVay's home that were now being stored in the garage of his parent's Davenport, IA home. A DeSage travel bag was located containing mail addressed to McVay and a small amount of Marijuana. The bag was photographed and taken by DPD Dtv. Thomas; suspiciously, the marijuana also collected by Thomas was not photographed and not entered as evidence. John McVay was present to witness the warrant as served.

II. Procedural Background

Timothy McVay was charged by information on July 18, 2014, with the first-degree murder of Carrie Olsen and the concealment of a homicidal death. *People v. McVay*, 2019 IL App (3d) 150821, ¶ 3. The information alleged that McVay committed the murder and the concealment in Rock Island County on December 29, 2013. Because Olson was a resident of Iowa, her body was found in Minnesota, and defendant lived in Illinois, a number of law-enforcement groups participated in the investigation and prosecution of the case. *Id.*

A 12-day bench trial commenced on June 10, 2015. Olson's father, Dave, testified that Olson lived in Davenport, Iowa. She worked at the family floor covering business in Davenport. Olson drove a 2005 Toyota Avalon. Olson's family was concerned when she did not show up for work on Monday, December 30, 2013. Dave went to Olson's house, and her boyfriend Justin Mueller was there. Dave did not know Mueller lived with Olson. Mueller said Olson never came home. Dave and his wife Karen called the police. *Id* at 5. An officer took a report, but they had to wait until Olson was missing for three days for her to be considered a missing person. Dave and Karen checked Olson's bank and phone records (R494-96). The last call on her phone was at 4 a.m. on December 29. They found one of Olson's old cell phones and checked her contact list and realized it was McVay's number (R496). Olson and McVay dated in 2012, and McVay lived with her for about a month (R482).

Dave contacted McVay, who said that he was on a trip, Olson was not with him, and he had not talked to her that day (R508). McVay said Olson had a key to his house and that Dave was welcome to look for her. *McVay*, 2019 IL

App (3d) 150821, ¶ 5. Dave and a few family members went into McVay's house, but Olson was not there. *Id.* McVay said Olson's car was at the Minneapolis airport. McVay told Dave that he was going to try to be home by noon on January 2, and that he would bring Dave the car. He sent Dave a text message at 1:35 p.m. on January 2 and said he was leaving for Davenport. Dave expected McVay around 5 p.m., and he arrived after midnight. *Id.* In Olson's car, they found a frying pan, a purse, boots, and a book. *Id.* at ¶ 6.

Olson's mother Karen last saw Olson on December 28, 2013, at around 1 p.m.. Olson sported a fresh manicure. The purse in Olson's trunk was blue, and it contained her hairbrush, checkbook, and makeup bag. There was a towel in the back seat of her car. Olson never mentioned wanting to get away. *Id.* at ¶ 7. Neither Karen nor Olson's sister knew Olson was dating Mueller, or that Olson remained friends with McVay. *Id.* at ¶ ¶ 7-8.

Amanda Smith, Olson's best friend, communicated with Olson via text message on Saturday, December 28. Olson said she was on her way home from Dubuque and wanted to meet up. Smith said she going to bed, but that she would see Olson on Sunday. They had plans at noon. Olson never responded to text messages on Sunday. It was not typical for Olson to go to Dubuque by herself. Olson said she wanted to get away for a little bit. Smith knew that Olson and Mueller were having problems. *Id.* at ¶ 9.

Olson's debit card was used on December 28 at a 7-11 and a nail salon, and to make a $200 withdrawal from a Davenport ATM. A receipt showed that she bought a bag of chips, one pack of Camel cigarettes, one pack of Marlboro cigarettes, and gas at 4:07 p.m. at the 7-11 (also called Mother Hubbard's) in

Rock Island. Her card was declined at 6:17 a.m. on December 29 for gas at a Git-N-Go station in Rock Island for an incorrect PIN. At 6:22, it was declined at a gas pump at Mother Hubbard's in Rock Island, but a $20 transaction was allowed at 6:23 inside the store without a PIN. Video surveillance confirmed McVay was using Olson's card. At 6:33, the card was used to attempt to withdraw $400 from a Rock Island ATM. The PIN was entered incorrectly three times, and the card was shutdown. Olson's PIN was 1954 until she changed it to 1684 on December 20. *Id.* at ¶ 13. At 7:55 a.m., McVay purchased one cigar at the Tobacco Outlet in Davenport with cash (R852-58).

Olson's last phone call was at 3:54 a.m. on December 29, to McVay (R1700). On December 29, all of the calls made to Olson's phone went to voicemail, suggesting that it was off, in airplane mode, or underground and not getting a signal. At 3:49 p.m. on December 30, a phone call went through, so the phone was either turned on, taken off of airplane mode, or getting a signal. After that call, no other calls went through (R1766-68).

McVay's father John testified that he and McVay were planning to drive to Kentucky or Tennessee a couple of days after Christmas to pick up McVay's friend Cati Smiddy, but when they did not hear from her, John went hunting instead (R970-80). McVay's license was suspended, so he did not have a car (R980). He was unemployed, and his parents helped him with his bills (R985). McVay never said he was going on a trip, but John was not surprised he was in Las Vegas (R975, 992). McVay's mother also did not know he was going on a trip. *McVay*, 2019 IL App (3d) 150821, ¶ 14.

Tammy Hegi began dating McVay in November 2013. McVay told Hegi

that he owned a construction company. Hegi invited McVay to Las Vegas. She booked McVay's flights, and he was going to repay her. It was most economical for him to drive to Minnesota and fly out of the Minneapolis airport. To avoid having two cars at the airport, Hegi suggested McVay park in her garage and her friend Bonnie Gilbertson would drive him to the airport. He would fly to Las Vegas to meet her on December 29, and they would fly home together on January 1. She sent McVay a text message on December 28 at 11:41 p.m.; he responded at 6 a.m. that he was getting ready. He sent a text at 7:35 a.m. that he was on the road. Hegi emailed McVay a map to her home ahead of time, but he entered her address into the navigation system in his cell phone, and it took him a different route. She talked to him on the phone and he said he was coming out of Red Wing, which was about 15 minutes from her house. McVay did not arrive on time, and he said he got lost. *Id.* at ¶ 15.

McVay was supposed to meet Gilbertson at 2 p.m., but he arrived at Hegi's house at about 3:35 p.m.. He had two black medium-sized bags with him, but he left one in Hegi's room. During the drive to the airport, he said he was running late because he got lost south of Hastings. *Id.* at ¶ 17.

Hegi was not aware McVay had a missing friend until the day they were leaving Las Vegas and someone called the hotel asking for him. McVay said he had a friend who was missing, and that she had let him borrow her car because her dad had vehicles she could use (R1155-56). After arriving back at Hegi's at 1 a.m., they went to sleep. McVay left around 3 p.m. on January 2. Originally, McVay had planned to stay with her a few days longer, which was why he left a bag at her house. McVay never repaid her the $400 for his flight. They broke up a month later. *McVay*, 2019 IL App (3d) 150821, ¶ 16.

Davenport police detective Richard Voy interviewed McVay on January 2. McVay had a close friendship with Olson. She had issues with Mueller and was going to tell him to move out. She came over to McVay's house at 3 p.m. on Saturday and left after an hour. She came back about 5 or 6 p.m., left again, and came back about midnight. McVay fell asleep, and when he woke up, she was gone. He called her to ask her where she was around 4 a.m., and she said she went out to get some drinks. Olson said she had plans to go to dinner with Smith on Sunday. McVay asked Olson at 5:30 or 6 a.m. if she was still driving him to Minnesota, and Olson told him to take her car. She gave him her debit card and told him to take $400 out of the ATM for her and top off the gas tank, and the PIN was the garage door code. He remembered the garage door code was 1584, but the ATM said the PIN was incorrect. He gave her back the debit card and told her the PIN did not work and she said it was "Amanda's birthday." Olson told him to move her things to the trunk, but she grabbed a coat and a black purse. He dropped her off and watched her walk into the garage. He then stopped at a gas station and then the tobacco store. *Id.* at ¶ 17. Voy falsely told McVay that video surveillance did not show him dropping Olson off at 6:30, and McVay said it could have been closer to 7:30, but he would need to check his text messages (R2328, E153).

Olson's house and Mueller's truck were searched on January 3, 2014. No blood was found (R1647-49). The bed of the truck was not tested, nor were the toolboxes in the truck opened (R1656-57). Police drove to Smith's house because Olson had texted McVay that "Amanda's in on it" (R2387-88). A search of McVay's house revealed a new-looking black bag that McVay said he took with

him to Las Vegas. There were several rolls of carpet in the living room that were unrolled and tested for blood. The trunk of Olson's car was searched, and no deoxyribonucleic acid (DNA) was found. *McVay*, 2019 IL App (3d) 150821, ¶ 19.

Mueller testified that in December of 2013, he lived at Olson's house and agreed to pay her $300 per month (R1311-12). He drove a truck for a pest control company and was ex-army (R1312, 1331-32). On Saturday, December 28, she stormed out of the house around noon. Mueller did not expect her home at any specific time because Smith was in town. He texted her a few times, and she responded to a text at 9:20 p.m. on Saturday. She did not come home on Sunday, or respond to his text messages. Mueller did not know McVay, and he had never been to Minnesota. *McVay*, 2019 IL App (3d) 150821, ¶ 20. It was "typical" for Olson to go missing for 28 hours—she had done it before (R1365-66).

On April 5, 2014, Olson's body was discovered in an isolated lot in Presley Circle in Minnesota (R434-36). The snow was melting, but when the property owner last drove by in January, the snow was 8 to 16 inches deep (R441). He would not have attempted to drive, or even walk, on the property (R459). Olson's body was nude, with her arms over her head as if she had been dragged (R798). A bar code sticker was found near the scene, which was later identified as belonging to a child's snow shovel sold at Big Lots (R807, 825-30). A receipt, chunk of glass, and beverage can were also recovered (R843).

A forensic anthropologist testified that Olson's remains were in the early decomposition stage due to the cold temperatures (R1397-1400). She opined that Olson was at the recovery site no later than March 11, 2014, but likely closer to December 28 because Olson's manicure was undamaged (R1432-33, 1456-57).

Big Lots employees were contacted by the police regarding the sticker found near the deceased for a child's snow shovel (R1235, 1269). The employees were asked to look at stores between Davenport, Iowa, and Minneapolis, Minnesota (R1273-74). On December 29, a child's snow shovel was purchased at the LaCrosse, Wisconsin location. There was no video available from the surveillance system. Whoever purchased the shovel also purchased a Desage Travel bag. The bag was not a Big Lots exclusive item, but a photo of the bag appeared to be the same as McVay's bag. *McVay*, 2019 IL App (3d) 150821, ¶ 23.

Forensic pathologist and medical examiner Dr. Owen Middleton performed the autopsy (R1465). He found part of a necklace and a synthetic fiber tangled in her hair (R1488). There was no identified cause of death. He ruled her death a homicide by unspecified means. *McVay*, 2019 IL App (3d) 150821, ¶¶ 24-25. The lividity was consistent with the position in which she was found–on her back, with her arms over her head (R1549). Middleton agreed that lividity typically becomes fixed after 8 to 12 hours (R1550-51, 1582).

The fiber in Olson's hair was compared to rolls of carpeting in McVay's house. It could have come from the same source, but carpeting is mass manufactured, so it was a level 3 association (out of 4 levels, level 1 being 100% match). A carpet fiber from the trunk of Olson's car did not match McVay's carpet. *Id.* at ¶ 26. A sexual assault kit was performed, and McVay's DNA did not match the vaginal swab. The DNA found under Olson's nails matched McVay's on 3 of a possible 16 sites. One in three white males would also match, however, Mueller and Dave were excluded. *Id.* at ¶ 27.

McVay's first wife Nicole Manasco testified that he had never been violent

with her or the children. Cathy (Cati) Smiddy testified that she dated McVay from January to May of 2013, and then in October, living with him both times. In May 2013, she woke up to him sitting on her chest and bouncing up and down, telling her to wake up, and she could not breathe (R2082). The next day he said he was just playing (R2082). During cross-examination, Smiddy clarified that McVay was flicking her nose and her face and being drunk and obnoxious (R2101). She told him she could not breathe, and she pushed him (R2119). During a June 2014 interview, Smiddy said McVay never put his hands on her; he never struck or choked her (R2096-97).

Computer forensics experts found that McVay's search history showed 100 visits to the Hastings Star Gazette, a local news website, between January 16 and April 8. There were more visits to the Star Gazette website in March and April of 2014 than there were in January and February. *McVay*, 2019 IL App (3d) 150821, ¶ 30.

Mandy Britton from Mid-States Organized Crime Information Center (MOCIC) created maps using cell phone tower information (R2126-27). She attempted to map McVay's route to Hastings, starting at 7:57 a.m. at the tobacco store, and including the hypothesized stop at Big Lots (R2173, Ex. 90B). She also routed the return trip and his trip to Hastings at the end of January (R2201, 2220-21, Exs. 90C, 90E). There was one tower that was accessed only on December 29 (R2202, 2221-22). She plotted the towers in relation to Hegi's house and Olson's remains, which were 4.3 miles apart as the crow flies (R2193-94). Britton did not know if calls went to the closest tower, and admitted that the software did not account for getting lost (R2156-57, 2183). All of Mueller's

calls accessed Quad Cities towers (R2225-26). Olson's phone connected to a Rock Island tower during the 3:58 a.m. call, but then accessed a tower near Milan at 3:49 p.m. on December 30 when the phone briefly re-connected to the network (R2239, 2244-45, Exs. 90L, 95C).

The defense presented no witnesses. The State's theory in closing argument was that McVay sat on Olson's chest until she died (also known as burking) during the late hours of December 28 or early morning hours of December 29, put her in the trunk of her car, and then drove her body to Minnesota (R2743-44, 2766-68). The court found McVay guilty of first-degree murder and concealment of a homicidal death and sentenced him to 40 years' imprisonment in the Illinois Department of Corrections for first-degree murder, plus a consecutive 5 years' imprisonment on the concealment charge. *McVay*, 2019 IL App (3d) 150821, ¶ 37.

On appeal, McVay argued that the State did not prove beyond a reasonable doubt that McVay murdered Olson and concealed the homicide. Specifically, he argued that the State failed to prove beyond a reasonable doubt that: (1) McVay was involved in Olson's disappearance, let alone that he murdered Olson or concealed her body; (2) McVay performed an act knowing that it created a strong probability of Olson's death; and (3) Olson's death should have been classified as a homicide. In addition, McVay argued that the State failed to prove beyond a reasonable doubt that either the first-degree murder or the concealment of a homicidal death occurred within the state of Illinois. Finally, McVay argued that the trial court erred in denying his motion to quash search warrant and suppress evidence where the warrant application failed to

state an offense, and the judge referred to the warrant as "barebones," illustrating that there was no probable cause to search McVay's home. In a two-to-one decision that the State moved to publish, the appellate court rejected all arguments. The dissenting justice found that the evidence did not support a finding of first-degree murder because no intent was proved. *McVay*, 2019 IL App (3d) 150821, ¶ 56 (McDade, J., dissenting).

REASONS FOR GRANTING THE PETITION

I. This Court should grant review of the Illinois Appellate Courts decision due to its cavalier divergence from both the spirit and letter of the law in affirming the unsound application of first degree murder statutory provisions in U.S.C. 18 § 1111 and 725 ILCS 5/9-1.

This court should grant review because even though there was no cause of death, McVay was convicted of first degree murder and concealment of a homicidal death by a judge who said "I don't know how you did it but you did it." The due process clause protects an accuse against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charges U.S. Const. Amendment XIV; Ill Const., 1970, art. I, §2; *In re Winship,* 397 U.S. 358, 364(1970). The state has the burden of proving beyond a reasonable doubt all of the material and essential facts constituting the crime. *People v. Weinstein*, 35 Ill. 2d 467,470(1966). It is the reviewing court's duty to "carefully consider the evidence [and] to reverse the judgement if the evidence is not sufficient to create an abiding conviction that he is guilty of the crime charges." The state did not prove beyond a reasonable doubt that McVay was involved in Olson's disappearance, let alone that he murdered Olson or concealed her body. In addition, the state failed to prove beyond a reasonable doubt that McVay performed an act knowing that it created a strong probability

of Olson's death. Specifically the State never disclosed; let alone, proved the following: exact date, time and specific place on which each offense is alleged to have occurred, the specific act(s), conduct, method or means by which the alleged crimes are alleged to have been committed, and the basis upon which such act(s), conduct, methods or means constitute a violation of the particular statute upon which he is charged. The failure on behalf of the state to provide a Bill of Particulars denied McVay due process. The charging information in the instant case did not specify any of the above information, nor was the State able to procure a grand jury indictment of said information. Given this, the defendant was not given sufficient notice of the particulars of the criminal offenses charged that was necessary to enable him to prepare his defense as it relate to both Count 1 and Count 2. The due process violation is underscored by the lack of evidence brought forth during the course of trial.

A. The Appellate Court erred in holding that a bench trail conviction of first degree murder culminating in the trier of fact offering multiple unproven theories of the crime not presented by the prosecution stands as sufficient evidence of "element" beyond corpus delecti as required by 720 ILCS 5/9-1(a)(1)(b)

The murder statue requires proof of intent or knowledge. McVay was charged under 720 ILCS 5/9-1, which states: "A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause death: he knows that such acts create a strong probability of death or great bodily harm to that individual or another." The State did not prove that McVay committed an act, let alone that it was done knowingly. The judge's ruling was evidence of enough that the State failed to prove beyond a reasonable doubt that McVay committed first degree murder:

> "my reasonable inference is that she was dead at your house, I don't know how you did it, but you did it. She didn't die of natural causes, she didn't die because she just passed out or whatever. You did something to her, burking choked her, the bag over the head. Like I said, there is a lot of ways to do it without leaving a trace."

The judge also said,

> "I still think that's the single biggest issue is the cause of death and where it occurred. Basically the reasonable inference is the State puts forward [sic] are burking and suffocation. I have a couple of others that nobody bothered to bring up, how about you put a plastic bag over somebody's head, doesn't leave a mark. How about you take a towel, come up behind them and smother them with it, it doesn't leave a mark. 'Cause obviously if you're choking somebody you're going to leave handprints on their neck." App F

Because of the lack of evidence, the judge was attempting to craft a story that fit into the State's narrative. Murder by bag or towel was never discussed in this case. Suffocation can cause petechial hemorrhages in the eyes, which Olson did

not have. There was no definitive evidence to support that she died by smothering or strangulation. No cause of death here was more or less likely than any other suggested cause of death. The judge could not find with any certainty that the State's suggested method of death- burking- was how Olson died. Without the burking, the State's theory that McVay had *modus operandi* for hurting people falls apart. The judge could not say how Olson died, which demonstrated that the State did not prove McVay committed first degree murder.

One of the medical examiner's main reasons for finding that this was a homicide was that Olson was naked in wooded are. Assuming for purposes of this argument of this argument that McVay was the one who placed Olson's body on Presley Circle, that still does not prove that he committed first degree murder. McVay could have committed involuntary manslaughter. The key difference between first degree murder and involuntary manslaughter is the mental state: acting while knowing of a strong probability of death or great bodily harm versus acting recklessly; compare 720 ILCS 5/9-1(a)(2)(2014) (first degree murder) with 720 IlCS 5/9-3(a)(2014) (involuntary manslaughter). Not only has the State failed to prove McVay committed first degree murder, that State failed to prove that Olson's death could not be attributed to another cause. The *corpus delecti* of murder requires proof of death and proof of a criminal agency of death.

The State failed to offer any evidence pointing to a specific intentional act by the McVay that resulted in Carrie Olson's death. The State's expert witness Dr. Middleton, the Dakota County M.E., was not able to articulate a known cause of death for Olson. Moreover, he did not consider the entire data set as required by the criteria used when determining HUM; to wit, he never reviewed her entire medical history from all her known consulting doctors and specialists. In Addition, the criteria he used to determine Olson's death as HUM specifically states that intent was neither suggested or indicated by the application of said criteria. In this regard, Dr. Middleton himself indicated that he was offering no opinion as to any intent to the unknown act(s) that may or may not have caused Olson's death. Dr. Middleton's testimony regarding suffocation and/or burking is pure speculation, Ultimately, because he was unable to determine a cause of death, he suggested method by which someone may be able to kill Olson. The fact that one of these methods may be a possibility, does not make it a reasonable inference.

The key difference between first degree murder and involuntary manslaughter is defined in U.S.C 18 § 1111 "murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by...[list of intentional acts]...or perpetrated from a premeditated design unlawfully and maliciously to effect death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree..."

alternately 18 § 1112 "(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds: voluntary-upon sudden quarrel or heat or passion, or involuntary-in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death." Dr. Middleton opined that this was a homicide, but he could not say whether it was intentional or accidental. Because of a lack of evidence in this case, it was just as likely that McVay's acts were reckless as it was they were intentional.

B. The Appellate Court erred by allowing that hypothesized links in the chain of "circumstantial evidence" could remain intact to sustain conviction when in contradiction to "factual" evidence presented; thereby negating, right to impartial trial and protection of due process afforded in Amendments V, VI, XIV.

Proof of an offense requires proof of two concepts: first, that a crime occurred, the corpus delecti, and second, that it was committed by the person charged. *People vs Ehlert*, 211 Ill. 2d 192, 202 (2004) McVay was convicted of first degree murder and concealment of a homicidal death all without an eyewitness, a confession, a cause of death, a crime scene, or any meaningful

physical evidence. The State's case was comprised of circumstantial evidence to which the trial judge further added facts not in evidence to try to assuage the doubt in this case. Without an eyewitness, a confession, a cause of death, a crime scene, or any meaningful physical evidence, what evidence did it have? The State's main arguments for why it believed were: motive, modus operandi, travel timeline, online newspaper searches, and the location of the body(the only undisputable fact in evidence).

The State claimed McVay's motive was that he needed her car and money to get to the airport for his flight to Las Vegas. Olson and McVay's extensive contact in the months, weeks, and specifically the final days of December with stops at the Rock Island Courthouse, the Illinois Sec. of State driver's license facility(Silvis Il), and Family Credit Union(McVay's bank) all tend to contradict and at very least deflate the State's motive. Olson's mother claimed she let no one borrow her car: yet testified, she did not know how close of friends they were.

The State argued in closing arguments that the court heard witnesses testify about McVay's *modus operandi* of hurting people. In May 2013 Cathy Smiddy fell asleep on the couch waiting for McVay to come home. She woke up to him sitting on her chest and bouncing up and down, telling her to wake up, and she could not breathe, During cross examination Smiddy clarified that McVay was flicking her nose and her face and being drunk and obnoxious: he was not hitting her or yelling. She told him she could not breathe about ten

times and she pushed him as well. Simddy did not originally think to mention to police as a form of abuse. This is in no way an attempt to murder Smiddy by asphyxiation, and to call it his modus operandi is a gross mischaracterization.

The State's theory regarding the murder and timeline involved no real evidence, and instead relied on conjecture intended to distract the fact finder. The Tate made much out of the fact that McVay said he dropped Olson off at home at 6:30 or 6:45am, when in fact he used the debit card at 6:33am. However, when Dtv. Voy falsely told McVay that the cameras at the medical complex behind Olson's house did not show him dropping her off between 6 an 7:30am, he did not balk. McVay said it may have been later. In fact, there was no video footage available, Dtv. Voy was using false information to attempt to confuse or unsettle McVay.

The State enumerates the number of times he visited the Hasting's Star Gazette in the period that Olson was missing. The State argued that this was evidence of guilt. Visiting a news website did not mean McVay murdered Olson. In fact, a Hasting's Star Gazette article allowed Mcvay to contact authorities stating that the tattoo photographed for identification appeared to match that of Olson's; which McVay was familiar with. What was notably absent from his internet history were any searches for burking, strangulation, or murder.

The fac5t that Olson's body was found about four miles from where McVay parked her car does not mean that McVay murdered her. I t may have

been the strongest piece of evidence to support the State's theory that McVay placed Olson in Presley Circle, but it did not prove McVay committed first degree murder. More importantly, the State could never prove conclusively when or how the body was placed without leaving trace evidence to either action.

C. The Appellate Court deprived McVay of his constitutional rights guaranteed by Amendments V and VI by requiring him to provide a medical expert who could disprove H.U.M. as the cause of death; in effect, forcing the defense to produce what the prosecution could not do for itself through its own experts or investigation, unfairly placing a responsibility not procedurally bared by defense.

The State argues that the defense "did not produce their own expert to dispute D. Middleton's conclusion that Olson's death was a homicide." Then the Appellate Court found that the "medical evidence showed that Olson's death was the result of murder and not an accident" and that "the defense did not produce an expert to dispute the cause of death." App C First of all the defense did not have to produce an expert- this statement improperly places a burden on

McVay which he did not bear. But more importantly the medical evidence did not prove that Olson was murdered: there was no cause of death.

D. The Appellate Court wrongfully allowed for conviction of 720 ILCS 5/9-3.4(a)- Concealment of Homicidal Death and 720 ILCS 5/1-5(a)(1)(b)-State Criminal Jurisdiction in Illinois that are both disputed by the established science of lividity which proves the "time of death" placed by the court impossible.

Given the time frames involved, particularly with respect to lividity, it is not only possible, but more likely that Ms. Olson died in Iowa or Minnesota. In short, the State did not prove McVay guilty of first degree murder because there is no evidence beyond a reasonable doubt that Olson died in Illinois. The court makes a factual finding that the victim was killed between 4:00 and 6:15 am. At McVay's house and thereby establishes jurisdiction in this case. The court indicates that this time is consistent with lividity. However, the testimony Dr. Middleton was indicative of the fact that Olson died less than 8 hours before being placed in Presley Circle; moreover, there were no indications of mixed lividity(that she was moved post mortem). These time frames and lack of mixed lividity completely rule out Olson dying in Illinois prior to 6:30am.

II. This Court Should Grant Review of the Illinois Appellate Courts Decision Because a procedural de novo review would have immediately found that "evidence of a missing person" is not an "offense" McVay could have committed as accepted in Supreme Court review of Amendment IV jurisprudence, or dictated by the statutory language in 725 ILCS 5/108-3.

A. The Appellate Court improperly allowed the state to introduce evidence obtained via the search warrant that was used against McVay at trail and heavily relied upon by the court in rendering its verdict. any warrant without offense inherently constitutes unreasonable search and seizure of a citizen or his property in violation of federal law.

On January 29, 2015, McVay filed a Motion to Quash Search Warrant and Suppress Evidence, which was heard and denied. The search warrant failed to allege an offense as is required under 725n ILCS 5/108-3 Consequently there was no probable cause upon which the search warrant could have been issued. By improperly denying the Motion The State was able to introduce evidence obtained via search warrant that was used against the defendant at trail and was heavily relied upon by the Court in rendering its verdict. While Olson was still

missing, Dtv. Noe submitted a complaint for a search warrant on January 3, 2014, to search for evidence of a missing person and Mcvay's home was searched. A "missing person is not a criminal offense. A search warrant may be issued for the seizure of "any instruments, articles or things designed or intended tfor use which are or have been used in the commission of, or which may constitute evidence of, the offense in connection with which the warrant is issued." 725n ILCS 5/108-3 (2014) the appellate court analogized this case to *People v, Gacy*, 103Ill. 2d 1 (1984), by saying that the complaint in Gacy also did not cite a specific crime Pe*ople vs McVay*, Il App (3d) 150821, However, the argument in Gacy was that the information presented in the warrant did not support a reasonable belief that the crime of unlawful restraint had been committed, not that no offense was named or even suspected. In Fourth Amendment jurisprudence the sanctity of the home is afforded the hidghesst prtotection *Florida v Jardines*, 569 U.S. 1,6 (2013) ("but when it comes to the Fourth Amendment the home is first among equals"). "...physical entry of the home is the chief evil against which the wording of the Fourt Amendment is directed" *U.S. v U.S. States Dist. Ct. for the E.D.*, 407 U.S. 297,313 (1972).

CONCLUSION

The petition for writ of certiorari should be granted for any one or all of these reasons.

Respectfully submitted,

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Please Take Notice that on 2-24, 2020 I have placed the documents listed above in the institutional mail at Menard Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service.

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