

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

HERBERT BURGESS — PETITIONER
(Your Name)

vs.
KWAME RAOUL, ILLINOIS ATTORNEY GENERAL
PEOPLE, STATE OF ILLINOIS RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

HERBERT BURGESS
(Your Name)

10930 LAWRENCE ROAD
(Address)

SUMNER, IL 62466
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. WHETHER THE TRIAL COURT DENIED HERBERT BURGESS HIS CONSTITUTIONAL RIGHT TO PRESENT A COMPLETE DEFENSE.
- II. WHETHER THE TRIAL COURT HAD AUTHORIZATION TO PRESIDE AT A FELONY TRIAL IN VIOLATION OF ILLINOIS SUPREME COURT RULE 295, NOTE 9.
- III. WHETHER THE TRIAL COURT'S REPEATED DISPLAYS OF BIAS, HOSTILITY, ANIMOSITY, ILL WILL TOWARD HERBERT BURGESS VIOLATED THE STANDARD FOR PREJUDICE AND BIAS.
- IV. WHETHER THE TRIAL COURT'S ABSENCE FROM THE COURTROOM WHILE THE JURY WAS STILL IMPANELLED AND THE COURT WAS IN SESSION, WAS A STRUCTURAL ERROR THAT CANNOT BE HARMLESS.
- V. WHETHER HERBERT BURGESS WAS DENIED A FAIR TRIAL DUE TO A PERVASIVE PATTERN OF PROSECUTORIAL MISCONDUCT.
- VI. WHETHER THE TRIAL COURT ERRED WHERE IT ALLOWED THE STATE TO REHABILITATE THE CREDIBILITY OF TWO CRUCIAL WITNESSES WITH PRIOR CONSISTENT STATEMENTS WHEN THERE WAS NO CHARGE OF RECENT FABRICATION.
- VII. WHETHER HERBERT BURGESS WAS DENIED A FAIR SENTENCING HEARING WHERE THE COURT CONSIDERED AN AGGRAVATING FACTOR THAT WAS DIRECTLY CONTRADICTED BY THE EVIDENCE.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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BERGER V. U.S.	295 U.S. 78 (1935)
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U.S. V. MARTINEZ-SALAZAR	528 U.S. 304 (2000)
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CRANE V. KENTUCKY	476 U.S. 683 (1986)
TUMNEY V. OHIO	273 U.S. 510 (1927)
IN RE MURCHISON	349 U.S. 133, 136 (1955)
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ILL S. Ct. RULE 415(c)	ILL S. Ct. R 63 CANON 3A (a)

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ~~B~~ A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the APPELLATE COURT OF ILLINOIS FIRST DISTRICT court appears at Appendix ~~A~~ A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was JANUARY 29, 2020
A copy of that decision appears at Appendix A.

☐ 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).

U.S. CONST. AMEND. V STATES IN PART: "NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB, ... NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW."

U.S. CONST. AMEND. VI STATES: "IN ALL CRIMINAL PROSECUTIONS, 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 WHEREIN SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE."

U.S. CONST. AMEND. VIII, EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED. IN THE CASE AT BAR, BOND IN LAKE COUNTY WAS \$500,000. ASA GERBER STATED LAKE COUNTY BAIL WAS \$1,000,000, FOR THE PURPOSE OF OBTAINING A HIGHER BAIL IN COOK COUNTY. THIS OFFICER OF THE COURT PURJURED HIMSELF BEFORE THE COURT WHICH RESULTED IN A BOND OF \$750,000, AND A VIOLATION OF THE EIGHTH AMENDMENT.

U.S. CONST. AMEND. XIV STATES IN 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..."

ILL. S. Ct. R. 415(c) "PROHIBITING AN ATTORNEY FROM PROVIDING DISCOVERY TO A DEFENDANT BUT NOT PROHIBITING A DEFENDANT FROM POSSESSING DISCOVERY."

ILL. S. Ct. RULE 615(a) PLAIN ERROR TEST. THE PLAIN ERROR RULE ALLOWS A REVIEWING COURT TO CONSIDER UNPRESERVED ERROR IF EITHER: (1) THE EVIDENCE IN THE CASE WAS CLOSELY BALANCED OR (2) THE ERROR WAS SO SERIOUS THAT IT AFFECTED THE FAIRNESS OF THE DEFENDANT'S TRIAL AND CHALLENGED THE INTEGRITY OF THE JUDICIAL PROCESS. BOTH PRONGS APPLY.

ILL. S. Ct. R. OF PROF CONDUCT 3.7(a) IMPROPER "OBJECTIONS" VIOLATE THE "ADVOCATE-WITNESS RULE," WHICH BARS ATTORNEYS FROM ASSUMING A DUAL ROLE AS ADVOCATE AND WITNESS IN THE SAME PROCEEDINGS.

ILL. S. Ct. RULE 295: ... MAY ASSIGN AN ASSOCIATE JUDGE TO HEAR AND DETERMINE ANY MATTERS EXCEPT THE TRIAL OF CRIMINAL CASES IN WHICH THE DEFENDANT IS CHARGED WITH AN OFFENSE PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR."

ILL. S. Ct. R. 63 CANON 3(9). "A JUDGE SHALL PERFORM JUDICIAL DUTIES WITHOUT BIAS OR PREJUDICE."

STATEMENT OF THE CASE

BURGESS IS 100% INNOCENT OF THE CHARGES AGAINST HIM.

HERBERT BURGESS AND SR. HAD KNOWN EACH OTHER FOR SEVERAL YEARS, AND IN THE SPRING OF 2011 WERE IN THE PROCESS OF STARTING A SEWER BUSINESS TOGETHER. IN THE SUMMER OF 2011 THE PRINTING COMPANY WHERE BURGESS WORKED IN LAKE COUNTY HIRED J.V. JR. JR. ALLEGED THAT BURGESS SEXUALLY ASSAULTED HIM AT BURGESS'S APARTMENT IN MT. PROSPECT ON AUGUST 8, 2011 AND AT WORK ON AUGUST 12, 2011. JR.

RETAINED AN ATTORNEY TO PURSUE A CIVIL CLAIM AGAINST THE PRINTING COMPANY ARISING OUT OF THE ALLEGED INCIDENTS. JR. RECEIVED A \$250,000. SETTLEMENT BEFORE BURGESS WENT TO TRIAL. AT SOME POINT DURING THE SUMMER JR. MOVED IN WITH SR. AND SR. ASKED IF BURGESS WOULD DRIVE JR. TO AND FROM WORK. DURING ONE OF THESE CAR RIDES JR. TESTIFIED UNDER OATH THAT BURGESS RUBBED JR'S THIGH AND TOUCHED THE "TIP OF HIS PRIVATE." HOWEVER, INVESTIGATOR MICHELLE KONDRAT TESTIFIED THAT SHE INTERVIEWED JR AFTER HE ACCUSED BURGESS OF SEXUAL ASSAULT AND HE NEVER SAID THAT BURGESS TOUCHED HIS PENIS OR THAT HE WAS TOUCHED INAPPROPRIATELY DURING ONE OF THESE DRIVES.

JR. AND M.M. WERE IN BURGESS'S CUBICLE TALKING ABOUT EXERCISING AND JR. TESTIFIED THAT BURGESS ASK JR "HOW YOUR SIX PACK DOING" THEN PULLED UP JR'S SHIRT. INVESTIGATOR KONDRAT LATER TESTIFIED THAT JR. ALSO FAILED TO TELL HER ABOUT THIS INCIDENT IN BURGESS'S CUBICLE. ON AUGUST 8, 2011 BURGESS, SR. AND JR. PLANNED A BARBEQUE AT SR'S APARTMENT. JR. TESTIFIED HE WORKED NINE HOURS AND LEFT WORK AT 4:30 PM WITH BURGESS, (BURGESS'S HOURS WERE 8AM - 5PM). AT BURGESS'S APARTMENT JR TESTIFIED THAT BURGESS WANTED JR. TO TRY ON A JOCKSTRAP. JR. OPENED THE DOOR TO LEAVE AND JR. CLAIMS BURGESS CAME UP BEHIND HIM, SLAMMED THE DOOR SO HARD THAT IT CRACKED. JR. THEN TESTIFIED THAT HE PUT ON THE BLACK JOCKSTRAP, BUT STILL HAD ON THE WHITE T-SHIRT HE WORE THAT DAY TO WORK. JR. STATED THAT BURGESS PUSHED HIM FACE DOWN ON THE BED, THEN RETRIEVED SOMETHING FROM A BEDSIDE DRAWER, BREAKING THE DRAWER AND JR. FELT A COLD LIQUID ON HIS ANUS. AFTER STOPPING AT SAM'S CLUB, BURGESS AND JR DROVE TO SR'S APARTMENT. IT WAS ON AUGUST 8, 2011 THAT SR. TESTIFIED HE FOUND OUT WHAT HAPPENED TO JR. FROM M.M. JR. TESTIFIED THAT HE TOLD M.M. ON AUGUST 15, 2011 THAT BURGESS ASSAULTED HIM. M.M. TESTIFIED THAT HE KNEW NOTHING OF WHAT BURGESS HAD DONE UNTIL WELL AFTER BURGESS WAS ARRESTED ON AUGUST 19, 2011.

HEATHER EVANOKA, BURGESS'S NEIGHBOR, LATER TESTIFIED THAT ON AUGUST 8, 2011 SHE HEARD TWO PEOPLE YELLING IN BURGESS'S APARTMENT. A DOOR SLAMMED AND THEN BURGESS YELLED "I'M TAKING YOU HOME." MRS. EVANOKA'S APARTMENT WAS KITTY CORNER TO BURGESS'S AND SHE TESTIFIED SHE COULD NOT SEE BURGESS'S DOOR FROM HER APARTMENT. JR. NEVER TESTIFIED BURGESS YELLED ANYTHING AT HIM.

JR. TESTIFIED THAT AT WORK AUGUST 12, 2011, BURGESS GRABBED JR'S HANDS, PULLED DOWN JR.'S PANTS AND "STARTED PULLING ON HIS PRIVATE," AND PUBIC HAIR, BURGESS THEN INSERTED THE TIPS OF HIS FINGERS INTO JR'S ANUS. THE EMERGENCY ROOM DOCTOR WHO EXAMINED JR. ON AUGUST 19, 2011 TESTIFIED THAT JR. STATED THAT BURGESS INSERTED HIS PENIS INTO HIS ANUS DURING BOTH THE AUGUST 8TH AND AUGUST 12TH INCIDENTS. THERE WAS NO INDICATION MEDICALLY NOR DID JR COMPLAIN OF ANY PAIN OR DISCOMFORT INDICATING ANY SIGNS OF AN ASSAULT.

A MT. PROSPECT POLICE OFFICER DROVE JR. HOME AND RECOVERED A WHITE T-SHIRT FROM A PLASTIC BAG IN JR'S CLOSET. THERE WAS A SEMEN STAIN ON THE BACK OF THE T-SHIRT. A FORENSIC SCIENTIST TESTIFIED THAT JR'S DNA WAS NOT ON THE SHIRT AND THE ONLY DNA PROFILE FOUND WAS BURGESS'S. THE FORENSIC SCIENTIST RONALD J. TOMER NOTED THAT THE SEMEN WAS AS ALSO NOTED ON THE FRONT OF THE T-SHIRT. ASA GERBER ASKS: "COULD HAVE BEEN SWEAT STAINS ON THAT SHIRT, CORRECT?" TOMER ANSWERED "SURE." ASA GERBER: "AND YOU COULD HAVE SEEN THOSE AT THE LAB?" TOMER: "YES." ASA GERBER: "IS THERE DNA IN SWEAT?" TOMER: "YES."

A PICTURE OF JR'S CELL PHONE SHOWED A TEXT MESSAGE FROM BURGESS'S PHONE NUMBER DATED AUGUST 15 READING "IF I FIND OUT YOU SAID SOMETHING, YOU WILL BE LIVING ON THE STREET." THE LEGAL LIASON FOR VERIZON WIRELESS DAN MARKUS TESTIFIED THAT ACCORDING TO VERIZON'S RECORDS NO TEXT WAS SENT TO JR. BY BURGESS ON AUGUST 15, 2011 AND JR'S STATEMENT THAT HE NEVER TALKED TO BURGESS AFTER AUGUST 8, 2011 IS ALSO FALSE ACCORDING TO VERIZON'S RECORDS AGAIN IMPEACHING JR.

DEFENSE COUNSEL SOUGHT TO PERFECT THE IMPEACHMENT OF JR. WHEN JR. IS HEARD TO TELL SR. THAT HE "DIDN'T WANT TO LIE ANYMORE" ABOUT BEING ASSAULTED BY BURGESS. THE COURT RULED THAT DEFENSE COUNSEL COULD NOT IMPEACH JR. BECAUSE OF INSUFFICIENT FOUNDATION AND FURTHERMORE, THE COURT RULED THAT COUNSEL COULD NOT "FLOAT OUT THEORIES TO THE JURY THAT AREN'T GOING TO BE PROVEN UP."

WILLIAM ABRUSCATO, BURGESS'S CELLMATE IN LAKE COUNTY TESTIFIED FOR THE STATE. WHILE BURGESS DID NOT DISCUSS HIS CASE WITH ABRUSCATO, BURGESS DID HAVE HIS DISCOVERIES IN THE CELL. ABRUSCATO IN A MEETING WITH INVESTIGATOR KONDRAT, ASA KEN LARUE AND ATTORNEY DOUG ZEIT, STATED THAT BURGESS TOLD JR. TO "GROW UP OR ACT LIKE A MAN" ON AUGUST 8, 2011. IN COURT WHEN ABRUSCATO WAS ASKED IF HE WAS COMPLETE AS POSSIBLE INFORMING KONDRAT, LARUE AND ZEIT AS TO WHAT HAD HAPPENED HE SAID "I'M NERVOUS NOW." AFTER ABRUSCATO TALKED TO THE STATE, THE ASA HANDLING BURGESS'S CASE TOOK OVER THE PROSECUTION OF ABRUSCATO'S CASE AND REDUCED A PENDING FELONY DUI CHARGE TO RECKLESS DRIVING AND HE WAS ALSO GIVEN PROBATION FOR A FELONY DOMESTIC BATTERY. SR. TESTIFIED THAT HE HIRED AN ATTORNEY AFTER HE TALKED TO HIS MOTHER. THE ATTORNEY'S DEMAND LETTER WAS DATED SEPTEMBER 2, 2011. BURGESS WAS INDICTED SEPTEMBER 14, 2011. SR. HAD A HARD TIME ANSWERING QUESTIONS PRESENTED BY THE DEFENSE, BUT NO PROBLEM ANSWERING THE STATE'S OR COURT'S LEADING QUESTIONS. IT SHOULD BE NOTED THAT SR.'S LAST CONVICTION BEFORE THIS TRIAL WAS IMPERSONATING A POLICE OFFICER. SR. TOLD DEFENSE ATTORNEY RINEHART "DON'T TWIST MY STORY." SR. DENIED THAT HE TOLD HIS BROTHER D.V. THAT HE PLANTED THE T-SHIRT IN JR'S CLOSET. D.V. LATER TESTIFIED THAT HE HEARD SR. SAY ON NUMEROUS OCCASIONS THAT HE PLANTED THE T-SHIRT IN JR'S CLOSET AND THEY WOULD NOT HAVE GOTTEN THE MONEY THEY GOT IF NOT FOR HIM.

BURGESS TESTIFIED THAT HE WAS THE HUMAN RESOURCES MANAGER FOR THE PRINTING COMPANY. HE TESTIFIED THAT HE WAS UNAWARE THAT THE DOOR HAD BEEN BROKEN. BURGESS DID ADMIT THAT HE HAD PREVIOUSLY MASTERBATED USING A WHITE T-SHIRT. BURGESS WAS NOT AWARE THAT HAVING THE DISCOVERY VIOLATED ILLINOIS. DEFENSE COUNSEL ASKED THE COURT AT LEAST FOR THE JURY BE INSTRUCTED THAT BURGESS HADN'T VIOLATED ANY LAW OR RULE, BUT THE COURT RESPONDED "NO. IN DOING SO, I'M GOING TO BE HIDING THE FACT THAT YOU DID." THE PROSECUTOR ACCUSED BURGESS OF COMMITTING FRAUD FOR A DRAIN LAYERS LICENSE. "DON'T LET ANYBODY KICK YOU INTO FINDING THIS GUY NOT GUILTY," BECAUSE FOR THAT TO HAPPEN, YOU'VE GOT TO BELIEVE THAT THE EVIDENCE THAT WAS PRESENTED HERE WAS FABRICATED, INCOMPETENTLY HANDLED, THAT THERE WAS PERJURY. AFTER THREE AND A HALF HOURS OF DELIBERATIONS, THE JURY SENT OUT A NOTE STATING THAT THEY WERE "DEADLOCKED 6-6." THE FOLLOWING DAY THE JURY REQUESTED THE TRANSCRIPTS OF JR., ABRUSCATO AND TOMER. THE COURT DENIED THE JURY REQUEST, EVEN THOUGH THE STATE SAID THEY COULD BE PROVIDED. AFTER FOUR AND HALF HOURS OF FURTHER DELIBERATION THE JURY FOUND BURGESS GUILTY. THE COURT IMPOSED CONSECUTIVE SENTENCES OF 24 YEARS FOR AGGRAVATED CRIMINAL SEXUAL ASSAULT, 15 YEARS FOR CRIMINAL SEXUAL ASSAULT AND THREE YEARS FOR UNLAWFUL RESTRAINT.

BURGESS WAS DEPRIVED HIS FUNDAMENTAL CONSTITUTIONAL RIGHTS TO PRESENT A COMPLETE DEFENSE, (U.S. CONST. AMEND. VI)

A CRIMINAL DEFENDANT IS GUARANTEED A "MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE." U.S. CONST. AMENDS. VI, XIV; III.

CONST. 1970, ART. I § 2.8; HOLMES V. SOUTH CAROLINA, 549 U.S. 319, 324 (2006)

THIS RIGHT IS ROOTED IN THE DUE PROCESS, COMPULSORY PROCESS AND CONFRONTATION CLAUSES, AND ALLOWS DEFENDANTS TO PRESENT EVIDENCE RELEVANT TO A THEORY OF INNOCENCE. CRANE V. KENTUCKY, 476 U.S. 683, 690 (1986). THE STANDARD OF REVIEW FOR DETERMINING WHETHER AN INDIVIDUAL'S CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED IS DE NOVO.

CRIMINAL DEFENDANTS HAVE A DUE PROCESS RIGHT TO A FAIR TRIAL FREE FROM PROSECUTORIAL MISCONDUCT. (U.S. CONST. AMEND. VI, XIV;

III. CONST. 1970 ART. I § 2. IF A REVIEWING COURT CANNOT SAY THAT THE PROSECUTOR'S IMPROPER COMMENTS DID NOT CONTRIBUTE TO THE DEFENDANT'S CONVICTION, THEN THE COURT SHOULD ORDER A NEW TRIAL.

THE PLAIN ERROR RULE ALLOWS A REVIEWING COURT TO CONSIDER UNPRESERVED ERROR IF EITHER: (1) THE EVIDENCE IN THE CASE WAS CLOSELY BALANCED OR (2) THE ERROR WAS SO SERIOUS THAT IT AFFECTED THE FAIRNESS OF THE DEFENDANT'S TRIAL AND CHALLENGED THE INTEGRITY OF THE JUDICIAL PROCESS. BOTH PRONGS APPLY, ILL. S. Ct. R 615(a).

IMPROPER "OBJECTIONS" VIOLATE THE "ADVOCATE-WITNESS" RULE WHICH BARS ATTORNEYS FROM ASSUMING A DUAL ROLE AS ADVOCATE AND WITNESS IN THE SAME PROCEEDINGS, ILL. S. Ct. R. OF PROF. CONDUCT 3.7(a). THIS RULE IS "PARTICULARLY PERTINENT TO PROSECUTORS IN CRIMINAL CASES BECAUSE OF THE SENSITIVE ROLE THEY ASSUME AS THE GOVERNMENT'S REPRESENTATIVE. WHEN PROSECUTORS MAKE TESTIFYING OBJECTIONS, THE STATE GAINS AN "UNFAIR ADVANTAGE" BECAUSE IT IS PROBABLE THAT THE JURY ENDOWED THE REMARKS MADE BY GOVERNMENT REPRESENTATIVES WITH GREATER CREDIBILITY THAN NORMALLY ACCREDITED TO WITNESSES." THE PREJUDICE CAUSED BY THESE OBJECTIONS WAS REINFORCED BY THE FACT THAT THE JUDGE NOT ONLY SUSTAINED MANY OF THE STATE'S OBJECTIONS, BUT OFTEN REPEATED THE PROSECUTOR'S ADDITIONAL COMMENTS IN HER RULINGS.

AS A RESULT, IN THE EYES OF THE JURY, THE JUDGE CLEARLY APPEARED TO BE AN ADVOCATE FOR THE STATE. THEREFORE, IT WAS IMPROPER FOR THE STATE TO CONSTANTLY MAKE TESTIFYING OBJECTIONS AND THE TRIAL COURT ERRED WHENEVER IT FAILED TO OVERRULE THE EDITORIAL COMMENTS. WHETHER COMMENTS MADE BY THE STATE IN CLOSING ARGUMENT WARRANTS A NEW TRIAL IS A QUESTION THAT IS REVIEWED DE NOVO. A PROSECUTOR'S IMPROPER COMMENTS DURING CLOSING ARGUMENT VIOLATES A DEFENDANT'S RIGHT TO A FAIR TRIAL. U.S. CONST. AMENDS. VI, XIV.

A PROSECUTOR MAY NOT DISTORT THE BURDEN OF PROOF BY SUGGESTING INCORRECTLY WHAT THE JURY MUST FIND IN ORDER TO REACH A CERTAIN VERDICT. A CRIMINAL DEFENDANT HAS A CONSTITUTIONAL RIGHT TO A FAIR SENTENCING HEARING. U.S. CONST. AMENDS. VIII, XIV. SENTENCES ARE REVIEWED UNDER ABUSE OF DISCRETION STANDARD. AN ABUSE OF DISCRETION OCCURS WHEN THE COURT RELIES ON IMPROPER FACTORS IN CRAFTING A SENTENCE. THE TRIAL COURT BASED A SENTENCE ON IMPROPER FACTORS. THESE FACTORS WERE DIRECTLY CONTRADICTED BY THE EVIDENCE. THE IMPOSITION OF AN ERRONEOUS SENTENCE WAS PLAIN ERROR BECAUSE IT CHALLENGED INTEGRITY OF THE JUDICIAL PROCESS, AND UNDERMINED FAIRNESS OF THE DEFENDANT'S SENTENCING HEARING. THE POTENTIAL FOR A SURPLUS SENTENCE AFFECTS THE INTEGRITY OF THE JUDICIAL PROCESS, THUS SATISFYING THE SECOND PRONG OF THE PLAIN ERROR RULE.

THIS COURT STATED THAT THE RULES OF EVIDENCE "MAY NOT BE APPLIED MECHANISTICALLY TO DEFEAT THE ENDS OF JUSTICE." (CHAMBERS V. MISSISSIPPI, 410 U.S. 284, 302 (1973).

THE ILLINOIS SUPREME COURT HELD THAT THE STANDARD FOR PREJUDICE IS ANIMOSITY, HOSTILITY, ILL WILL OR DISTRUST TOWARD THE DEFENDANT, KNOWN AS "THE SOMETHING MORE" STANDARD. (PEOPLE V. MERRICADO, 244 ILL. APP. 3d 1040, 614 N.E. 2d 284, 1993).

THE HOLDING OF THIS COURT IS THAT IT CONSTITUTES A VIOLATION OF DUE PROCESS WHEN A DEFENDANT IS TRIED BEFORE A JUDGE WHO IS PROBABLY PREJUDICED, WE CONCLUDE THAT THE APPROPRIATE QUANTUM OF PROOF IS TO SHOW PREJUDICE BY A PREPONDERANCE OF THE EVIDENCE. (IN RE MURCHISON, 349 U.S. 133, 136 (1955)).

EVEN IF ANY ONE SET OF JUDICIAL REMARKS WOULD NOT BE ENOUGH TO CREATE PREJUDICE AND BIAS, THE REMARKS WERE SO PERVASIVE AT TRIAL, THAT COUPLED WITH THE JUDGE'S HOSTILE ATTITUDE THAT THE JUDGE DENIED BURGESS OF A FAIR TRIAL AND UNDERMINED THE STRUCTURAL INTEGRITY OF THE JUDICIARY AND ARE SO INTRINSICALLY HARMFUL AS TO REQUIRE AUTOMATIC REVERSAL AND DISMISSAL. (TUMNEY V. OHIO, 273 U.S. 510 (1927)).

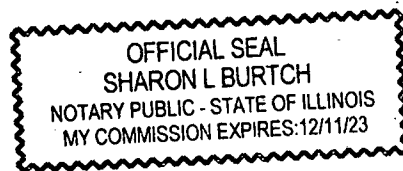
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sharon L. Burtch

Date: APRIL 16, 2020



Sharon L. Burtch
Notary Public 4/16/2020