No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Terry Bridges — PETITIONER
(Your Name)

vs.

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

Terry Bridges M48255
(Your Name)

2500 RT 99 South
(Address)

Mt. Sterling, IL 62353
(City, State, Zip Code)

_____
(Phone Number)

QUESTION(S) PRESENTED

I. Whether the trial court erred in permitting the State to introduce excessive evidence relating to the murder of Keith Slugg, of which Terry Bridges was not charged, including seven out-of-court statements from Kimberly Harris identifying Terry's brother DeMarius as Slugg's murderer, and numerous photos of Slugg's dead body both in situ and during an autopsy, where the only relevance of the Slugg murder to the charged case was in suggesting Terry killed Harris to prevent her from testifying against DeMarius, and the details of the Slugg murder were highly inflammatory and prejudicial.

II. Whether the trial court abused its discretion in sentencing Terry Bridges to natural life in prison, where Terry's involvement in the murder was brought about by his brother DeMarius and Terry has significant potential for rehabilitation, gainful employment, and reintegration into society.

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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TABLE OF AUTHORITIES CITED

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[ ] is unpublished.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[ ] is unpublished.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 _____ 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 _____ 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.

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 September 13, 2019. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: October 15, 2019, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. The trial court erred in permitting the State to introduce excessive evidence relating to the murder of Keith Slugg, of which Terry Bridges was not charged, including seven out of court statements from Kimberly Harris identifying Terry's brother DeMarius as Slugg's murderer, and numerous photos of Slugg's dead body both in situ and during an autopsy, where the only relevance of the Slugg murder to the charged case was in suggesting Terry killed Harris to prevent her from testifying against DeMarius, and the details of the Slugg murder were highly inflammatory and prejudicial

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A. The State's cumulative seven statements from Ms. Harris regarding the Slugg murder contained inflammatory and prejudicial details about her injuries, terror, and children, and improperly focused the jury on DeMarius actual guilt of the Slugg murder and hence DeMarius and Terry's character.. page 32

B. The State presented numerous unnecessary and inflammatory photos of the Slugg murder scene and aftermath..

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C. The State's presentation of irrelevant and prejudicial evidence regarding the Slugg murder was reversible error, and it cannot be determined.

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II. The trial court abused its discretion in sentencing Terry Bridges to natural life in prison because Terry was not the shooter, because his involvement in the murder was motivated by his brother DeMarius, and because Terry has significant potential for rehabilitation, gainful employment, and reintegration into society.

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STATEMENT OF FACTS

The State charged Terry Bridges and co-defendant Tyrell Lewis with, among other things, the first degree murder of Kimberly Harris while armed with a firearm on April 15, 2012. (Sup. C. 27-29, 36-38.) The State specifically alleged that Terry[1] and Lewis killed Harris either because Harris provided material assistance to the State in an investigation or prosecution or to prevent her from testifying in a criminal prosecution. (Sup. C. 36-38.)[2]

Motions in Limine *Concerning Evidence of Slugg Murder*

Prior to trial, the State moved *in limine* to admit evidence of other crimes, specifically the August 28, 2011, murder of Keith Slugg and simultaneous prior shooting of Ms. Harris (hereinafter, "the Slugg murder") by Terry's brother, Demarius Bridges. (R. I3; R. L5-6; Sup2. C. 12-18.) The State argued that the evidence, combined with other circumstantial evidence, was relevant to show that Terry, Demarius and Mr. Lewis had conspired to murder Harris because she had identified Demarius as the man who shot her and murdered Slugg. (R. L6-10.) The State indicated that it was "not trying to prove" that Terry was himself responsible for the Slugg murder. (R. L14.) In response, defense counsel argued that it was improper to admit any evidence regarding the Slugg murder because there was no allegation that Terry had participated in it. (Sup. C. 80: R. L17-18.) In the alternative, counsel argued that if the court held that evidence of the Slugg murder were relevant, any evidence going beyond the fact of the murder and Harris's

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[1]Terry Bridges and his brother Demarius Bridges are both key figures in the evidence; consequently, the brief will refer to them by their first names.

[2]Mr. Lewis's case was severed from Terry's, and heard at a bench trial conducted simultaneously with Terry's jury trial.

Harris Murder - Eyewitnesses

Next, the State presented two witnesses who testified to having either having seen Ms. Harris shot to death on April 15, 2012, or events near the shooting. Andrew Allen, who did not want to testify but was under court order (SR. C107), and who was possibly intoxicated while testifying (SR. C195), testified that on April 15, 2012, he was living near the corner of Flournoy Street and Francisco Avenue, four or five blocks from Manley High School. (SR. C 103-105.) At some point during the day he left the house in a brown and white jeep to get it fixed at a mechanic's on Arthington Street. (SR. C106-09.) On the corner of Polk Street and Francisco he picked up two friends, Dede and Maine Maine, and also picked up an acquaintance named Conley, also known as Kunny G. (SR. C109-10.) He had not planed to pick up Conley, but Conley flagged him down. (SR. C111-12.) Allen stopped the car on Arthington in front of Manley High School and Conley left the jeep to see if the mechanic was available; he did not see where Conley went, and Conley was not on a phone when he left the jeep. (SR. C113-14.) After a period of time, Conley returned and asked to drive the car, which Allen permitted, getting into the front passenger seat. (SR. C115-18.) At some point Dede and Maine Maine left the car. (SR. C117.)

Conley drove to Arthington and Francisco, where he stopped near a blue car, and a woman got out of the blue car and got into the back seat of Conley's jeep. (SR. C118-20.) Mr. Allen told Conley to drive to the mechanic's garage, which was in an alley. (SR. C121-23.) Once there, Conley left the car and knocked on the door to the mechanic's. (SR. C121-23.) Conley left, and Allen became concerned. (SR. C123.)

Mr. Allen testified that after a period of time, he heard gunshots and bent down. (SR. C125.) He did not see anyone shoot a gun, did not know where the shots came from, did not know if he ever left his car, and did not see the woman get shot. (SR. C124-26.) He saw a person run somewhere. (SR. C126.) Allen drove out of the alley, alone; the woman from before was no longer in his vehicle. (SR. C126-28.) He drove home, seeing a person on the corner as he went. (SR. C127-28.)

Mr. Allen was impeached with testimony that he gave contrary statements to CPD Detectives Greg Swiderek and Marco Garcia at the Area North police station on September 18, 2012. Allen testified that he went to the police station after being asked to come in "about some sexual harassment or something," and spoke with Swiderek and Garcia about driving a Ford Explorer into an alley to have a ball joint replaced (SR. C128-29, 190, 195), but testified that he either did not make or was unable to remember making numerous additional statements (SR. C129-35).

By contrast, Detective Garcia testified that he and Detective Swiderek located Mr. Allen and brought him to the Area North station; Allen was not arrested, handcuffed, or told that he was a suspect in a sexual harassment case. (R. WW223-25, 249-52.) Garcia testified that Allen made statements about what he did and saw on April 15, 2012, that were at times more expansive or contrary to his trial testimony. In relevant part: The vehicle Allen drove was a white and beige 1993 Ford Explorer that belonged to his stepfather. (R. WW226-27.) Conley was on the phone when he left the Explorer on Arthington to see if the mechanic was available. (R. WW 228-29.) The blue car that Conley and Allen encountered was

a BMW that belonged to a woman that Allen knew as "Munch," and the woman who got out of it and into the Explorer was Ms. Harris. (R. WW229-30.) In the alley, after Conley left the car to knock on the mechanic's door, Conley went to the front of the building, away from the alley and out of sight. (R. WW232.) After several minutes, Allen and Harris left the car, and Allen saw a man he knew as "T-Lord," whom he had went to school and played basketball with, dressed in all black and holding a gun. (R. WW233.) Allen identified a photo of Tyrell Lewis as "T-Lord." (R. WW234.) T-Lord shot at Harris, and Andrew went into the driver's seat of the Explorer. (R. WW235.) After T-Lord finished shooting, T-Lord opened the passenger door of the Explorer, pointed the gun at Allen, and told him to drive. (R. WW235.) Allen said he could not find the car key, and T-Lord closed the door, put the gun in a purse and threw it onto a roof on Taylor Street, and ran west down the alley toward Sacramento Avenue. (R. WW235-36.) Allen then found the car key, drove east onto Francisco Avenue, passing Conley, who attempted to flag him down, and drove home. (R. WW235-36.)

Mr. Allen was similarly impeached with a signed, handwritten statement that ASA Kevin Deboni and Detective Garcia testified he had made on September 19, 2012, a copy of which was admitted into evidence. (SR. C254-66; R. WW235-55; P.E. 56.) It was broadly consistent with the statement to Garcia and Swiderek. (SR. C269-75; P.E. 56.) Allen said he agreed to the statement in the presence of both a prosecutor and detective, and did so because he was told he was going to go to jail and faced other "unlimited threats"; he did not remember what was in the statement, and was intoxicated on ecstacy at the time he made it. (SR. C135-38, 148, 193-94.) Deboni testified that he did not promise Allen anything

in exchange for his agreement to the statement, and that Allen did not appear to be intoxicated at the time of the statement and had no complaints about his treatment by the detectives. (SR. C259-60, 267-68.) Garcia similarly testified that he never threatened to send Allen to jail. (R. WW225.)

Similarly, Mr. Allen was impeached with testimony that ASA John Dillon testified he had given to a grand jury on October 2, 2012. Allen testified that he was forced to appear before the grand jury and testified as he did because he was told he would go to jail if he did not, and that he did not remember the content of his testimony. (SR. C151-52, 195.) Dillon testified that he did not threaten Allen. (SR. E45-50.) Dillon identified a transcript of Allen's grand jury testimony, which was offered into evidence, and which was broadly consistent with his earlier handwritten statement. (SR. E55-57, 58-128; P.E. 226.)

Victor Tousignant testified that on April 15, 2012, he was living at 3002 W. Taylor Street. (SR. C204.) Just before 7:00 p.m., he heard about nine gunshots somewhere to the east, across Sacramento Boulevard. (SR. C206-09.) He went onto the back porch of his house, facing the alley between Arthington and Taylor, looked to the east across Sacramento and heard about twelve more gunshots from the alley across Sacramento. (SR. C206, 209-10.) About 20 seconds later, a man came out of the alley to the east. (SR. C211.) He had a lazy eye, pronounced temples and head crown, and a short haicut, and was wearing loose-fitting black clothing and a hoodie with the hood down. (SR. C212-13.) He seemed to be trying to hide something in his hand. (SR. C211.) Tousignant identified the man in court as Tyrell Lewis. (SR. C215.) A dark grey Infiniti QX56 SUV traveling south on Sacramento stopped to let the man in, then continued south. (SR. C215-16.)

Mr. Tousignant called 911, and spoke with detectives the next day. (SR. C217.) On September 20, 2012, he identified Mr. Lewis as the man he saw in a lineup, and in a statement to ASA Kevin Deboni. (SR. C218-20.) Detective Garcia confirmed the lineup. (R. WW238-24; P.E. 57-55.)

Harris Murder - Physical Evidence

The State also presented the testimony of CPD forensic investigator David Ryan. On April 15, 2012, at 8:25 p.m., Ryan and partner Eric Szwed arrived at the rear yard of 2923 W. Arthington and processed the Harris murder scene. (R. WW72, 74.) Among other things, the two found and recovered a fired bullet fragment, metal fragments, and seven fired Win 9mm Luger shell casings. (R. W78-80; P.E. 196-98.) After processing the scene, Ryan went to Mt. Sinai Hospital to photograph Harris's body; there, a registered nurse gave him a fired bullet that she found on a gurney while treating Harris. (R. WW82-83, 102-03; P.E. 195.)

Dr. Gates testified that he reviewed notes of an autopsy of Ms. Harris performed by Dr. Goldschmidt on April 16, 2012. (R. WW21, 40-41.) Harris had numerous old, healed injuries, including surgical and other scars, healed fractures, and rusted bullets that had been in her body a significant amount of time. (R. WW43-46.) Immediately prior to death, Harris suffered two gunshot wounds to her face, and 13 to her torso and lower extremities, which dislocated her teeth and caused massive internal damage and bleeding. (R. WW47-55.) Gates opined that Harris was killed by multiple gunshots. (R. WW56.) Over objection, the State introduced 51 autopsy photos. (R. WW56-66; P.E. 81-132.)

Dr. Gates testified that bullets and metal fragments recovered from Ms. Harris's body were sent to the CPD. (R. WW66-67; P.E. 133.)

CPD Sergeant Brian Holy testified that on April 16, 2012, he went to 2920, 2922, and 2924 W. Taylor Street, and gained access to the roofs. (R. WW119-25.) On the roof of 2924 he found a loaded Smith & Wesson handgun, serial number TFA909, 5926. (R. WW125, 136-37; P.E. 211.) On the roof of 2922 was a purse containing Harris's state ID and driver's license, as well as three phones. (R. WW127-30, 138; P.E. 212.) The items were recovered by an evidence technician. (R. WW125, 129.)

William Van Scyoc testified that he had previously operated a gun store in Bloomington, Illinois. (R. WW148-49.) Legally required records showed that he had sold Terry a Smith & Wesson Model 5926 9mm pistol, serial number TFA8908, on March 26 through 29, 2007. (R. WW149-62.) He identified the recovered pistol as the gun he sold to Terry. (R. WW163; P.E. 213.)

Illinois State Police ("ISP") forensic scientist Ryan Paulsen testified to testing swabs taken from the recovered handgun, the handle of the recovered purse, and phones found in the purse to compare any DNA to standards of Ms. Harris, Mr. Lewis, and Terry. (R. W171-72, 179-80.) Paulsen was unable to generate useable DNA profiles from the swabs of the handgun or the phones. (R. WW180-81.) From the purse handle swab, Paulsen was able to recover mixed male and female DNA, from which he removed Harris's DNA standard to produce a partial male profile. (R. WW182-84.) The profile excluded Terry, but not Lewis, with one in 300 black men not excluded. (R. WW184-85.)

ISP firearms and toolmarks specialist Mark Pomerance testified to examining the firearms evidence recovered in both the Slugg murder and the Harris murder. (SR. E142-43.) The fired cartridges recovered from the Slugg murder scene consisted

of 18 .40 caliber Smith & Wesson fired cartridges, all of which had been fired from the same firearm, and 11 9mm fired cartridges, all of which had been fired from the same firearm. (SR. E164-66.) Analyzing a collection of fired bullets, and jacket and metal fragments from the Slugg murder scene, Pomerance concluded that the bullets and fragments had been fired from three separate guns, two 9 mm/.38 caliber and one 10mm/.40 caliber (SR. E162-63, 168-72.)

In regard to the Harris murder, Mr. Pomerance received seven cartridges cases, a fired bullet and a fired jacket and metal fragment from the scene, a fired bullet picked up from the gurney at Mt. Sinai Hospital, and bullets, jacket fragments and metal fragments recovered from Ms. Harris's body. (SR. E173-74.) He test fired the Smith & Wesson 9mm handgun recovered from the roof and compared the fired cartridges to the cartridges recovered from the scene; all had been fired from that gun. (SR. E175-78.) The bullet and one jacket fragment recovered from the Harris crime scene, the bullet recovered from Mt. Sinai Hospital and four of the bullets recovered from Harris's body had also been fired by that gun. (SR. E180-84.) Additionally, Pomerance compared the test-firings to 11 of the 9mm cartridges recovered in the Slugg murder; those had also been fired by the gun recovered from the roof. (SR. E178-79.)

Harris Murder - Circumstantial Evidence - Surveillance Video

Next, the State presented circumstantial evidence surrounding the Harris murder. Willie Johnson testified that he was the coordinator from the Chicago Public Schools' Student Safety Center, and that he monitored school surveillance cameras and CPD POD cameras near Safe Passage locations. (SR. C40-41.) The parties stipulated that he had obtained recordings from cameras on Manley High

School and nearby POD cameras from the evening of April 15, 2012, these were offered into evidence, along with an collection of excerpts of videos that was played for the jury. (SR. C43-46; P.E. 48, 49, 50, 52, 53.)

The videos show a series of events within a few blocks of the location of Ms. Harris's shooting. (P.E. 50.) At 6:18 p.m., three people, including a woman carrying a large purse and a man in a light shirt, blue jeans and a cap, left a car, walked into a red house on Polk Street west of Francisco Avenue. (SR. C53-56.) The man in light shirt and blue jeans left the house shortly thereafter with a person dressed all in black, and walked east on Polk toward Francisco; shortly afterwards, a blue BMW drove west on Polk. (SR. C56-58.) The same BMW returned and stopped in front of a garbage can next to the red house about five minutes later. (SR. C59.) At around 6:29, a silver or grey Infiniti SUV drove west on Arthington Street, just south of Manley High School, turned around in the school parking lot and parked on the south side of Arthington, facing east; the occupants of the car would have had a line of sight to the red house on Polk Street. (SR. C60-64.)

At about 6:35 p.m., a brown and white Ford Explorer went east on Polk Street, turned right and headed south onto Francisco Avenue, turned right and headed west on Arthington Street, and parked on Arthington in front of Manley High School at about 6:37. (SR. C66-70.) A man got out of the car and headed to the south side of the street and out of frame. (SR. C70-71.) Johnson testified that a review of other cameras indicated that the Infiniti SUV that had earlier parked on the south side of Arthington had not left the block at this point, though it was not visible on any camera at the time. (SR. C69, 71.) At about 6:40, the Ford Explorer drove west on Arthington and turned south onto Sacramento Avenue,

then turned west onto Taylor Street. (SR. C71-72.)

At about 6:42 p.m., the blue BMW that had parked in front of the red house on Polk Street drove west on Polk, then turned south on Francisco. (SR. C72.) By around 6:43, the BMW was traveling south on Francisco Avenue, followed by the Ford Explorer. (SR. C73-75.) At around 6:45, the Infiniti SUV pulled away from the curb on Arthington drove east and turned south onto Francisco. (SR. C75-77.) At about 6:49, the Ford Explorer drove east on Arthington across Sacramento Avenue, then turned south on Francisco. (SR. C77-79.) At about 6:50, the Infinity SUV turned east onto Arthington from Sacramento, came to a stop on Arthington across from Manley High School, where a man in a cap got into the car, after which the SUV continued east and turned south onto Francisco. (SR. C79-82.) At about 6:56, a man ran to the east across Francisco Avenue on Arthington; Mr. Johnson opined that it appeared to be the same man that had gotten into the Infiniti SUV minutes before. (SR. C83.) The Infiniti stopped briefly on Sacramento, allowed a man to get in from the east side of the street, possibly from the alley between Arthington and Taylor, and continued south. (SR. C87-88.)

At about 6:57 p.m., the Infiniti SUV drove south on Sacramento past Arthington, then turned East onto Roosevelt. (SR. C85-86.) At about 6:57, the Ford Explorer drove north on Francisco to Arthington, made a u-turn, and drove south on Francisco. (SR. C84.) About a minute later, the Explorer drove north on California Avenue past Polk Street. (SR. C84.) By 7:02, emergency vehicles began arriving in the area. (SR. C86-87.)

Additionally, Kourtney Harris, Ms. Harris's sister, testified that Harris knew Charnise "Munchie" Chapman, and identified video stills of the blue BMW

as looking like Chapman's truck, which was the only blue BMW truck she had encountered. (SR. A193-94, 198-200; P.E. 16.) Mr. Tousignant identified the clip of the man getting into the SUV on Sacramento as consistent with what he saw from his back porch. (SR. C222-29; P.E. 50, 59.)

CPD Officer Dan Cravens testified that on April 22, 2012, just before 8:00 p.m., he was on routine patrol with his partner Officer Holly when an older black woman told them that there was a grey Infiniti SUV parked on the 300 block of S. Western Avenue, with two people inside who did not live in the neighborhood. (SR. C243-46.) The officers went there and saw a grey Infiniti QX56 SUV; inside it were Terry, in the driver's seat, with the keys, and Boris Ward in the front passenger seat. (SR. C247-50.) Cravens identified photos of the SUV. (SR. C250-52; P.E. 60-62.) Detective Wood said that later that day, Terry told her that the Infinity was one his own cars. (SR. D70-71.) Additionally, the State introduced certified title from the Illinois Secretary of State demonstrating that Terry Bridges owned the car. (SR. C110; P.E. 22.)

State's Case - Circumstantial Evidence - Cellular Telephone Locations

The State also presented evidence regarding the location of cellular telephones that belonged to Terry and Mr. Lewis before and after the shooting of Ms. Harris. Detective Garcia testified that on May 6, 2012, he encountered Mr. Lewis at Mt. Sinai Hospital and obtained his personal identification information; Lewis said that his cell phone number was (773) 632-6983. (R. WW221-22.) CPD Detective Michelle Wood testified that on April 22, 2012, she encountered Terry, who told her that he had two cell phones, a personal number, (312) 719-1520, and a second number that he used for work. (SR. D68-69.) Sprint records custodian Joseph

Trawicki also identified billing records showing that the 1520 number was registered to Terry in April of 2012. (SR. D13-14; PE. 219, 220.)

FBI Agent Joseph Raschke, a member of the FBI's Cellular Analysis Survey Team, testified to receiving and analyzing cell site location records for the 1520 and 6983 numbers from 4:00 p.m. until late into the evening on April 15, 2012. (SR. D112-23; P.E. 223.) Broadly, Raschke testified that the records suggested that Terry's phone, 1520, was roughly in the area of 7719 S. Winchester Avenue from 4:00 p.m. to 5:00 p.m., then moved north and was potentially in the area of 2923 W. Arthington from 6:48 p.m. to 7:03 p.m. (SR. D129-40.) Mr. Lewis's phone, 6983, was generally in the area of the crime scene after 6:00 p.m. until 7:00 p.m. (SR. D140-46.) Raschke was shown stills from the surveillance video of the Inifiniti SUV from 6:24, 6:34, 6:49, and 6:51 p.m.; he opined that, based on where and when he was told the stills were taken, it was possible that both phones had been inside the vehicle at the relevant times. (SR. D148-50.) After 7:00 p.m., both phones left the area and moved to the north. (SR. D146-47.)

Harris Murder - Circumstantial Evidence - Communications

The State also presented evidence regarding communications between the phones described above as well as two other phones. The parties stipulated that phone number (773) 408-1986 belonged to Conley English, and that (773) 691-2429 belonged to Ms. Harris. (SR. D15.)

Mr. Trawicki identified records of incoming and outgoing calls from Terry, Mr. Lewis and Mr. English's phones in April of 2012, which records were offered into evidence. (SR. D12-14; P.E. 216-18.) Calls were sent between Terry and English's phone on April 7, April 11, and repeatedly on April 14 and 15, 2012.

(SR. D21-33.) English's phone repeatedly was called by and called Lewis, Terry, and Harris's phone on April 13, 14, and 15, 2012. (SR. D33-45.)

Cook County Sheriff's Lieutenant Joseph Giunta testified that he was in charge of keeping records for Division 5 of the Cook County Department of Corrections ("CCDOC"). (SR. E12-14, 19-20.) He identified the visitation records for Demarius from September 10, 2011, to April 22, 2012, which were offered into evidence. (SR. E20-22; P.E. 224, 225.) Terry visited Demarius frequently throughout the period. (SR. E24-26.) Mr. Lewis visited Demarius for the first time on April 8, 2012. (SR. E27-29.)

Lieutenant Giunta also explained the method by which CCDOC inmates can make outgoing phone calls, and identified a record of Demarius's outgoing calls, which was offered into evidence. (SR. E15-18; P.E. 255.) Demarius made outgoing calls to Terry numerous times in March and April 2012. (SR. E31-33.)

Harris Murder - Terry's Statements

Finally, the State presented evidence that Terry made statements to police in addition to those already described above. Detective Wood testified that on April 22, 2012, she and Detective Marco Garcia had a 45 minute conversation with Terry in which Terry said that on April 15, 2012, he worked his job at the linens department of the University of Chicago Hospital from 7:00 a.m. to 4:30 p.m., drove to his home at 7719 S. Winchester Avenue, then took a shower and took his girlfriend, Janay Roberts, to Olive Garden and then to a movie at the North Riverside Mall from 6:00 p.m. to after 9:00 p.m. (SR. C70-73.)

Detective Wood testified that on September 20, 2012, she and her partner John Korolis arrested Terry and interrogated him in Interview Room A at the

Area North police station. (SR. C77-78.) Terry was video and audiorecorded while in the room, and Wood, sometimes with Korolis, interviewed Terry on eight separate occasions throughout the afternoon and evening. (SR. C78-79; 84.) Wood identified video recordings of the interviews, which were offered into evidence and published to the jury. (SR. C84-86; P.E. 215.)

During the various interrogations, Terry indicated that Mr. Lewis was a friend of his brother Demarius, and that Terry himself did not know him well; he stated that Lewis believed he had money and frequently asked him for money. (P.E. 215, 14:27, 15:09, 18:36.) Later, Terry stated that Lewis had asked him for money in order to resolve the problem of Ms. Harris testifying against Demarius, possibly at a barbershop on April 13, 2012. (P.E. 215, 15:12, 18:49-55, 22:34-36.) However, Terry denied having offered Lewis or anyone else money relating to Harris, including Harris herself, saying that he had been in contact with Demarius's lawyer and believed he would be acquitted at trial. (P.E. 215, 15:12, 18:49-55, 22:34-36.) Terry said that he did not think that Demarius's case would be better with Harris dead, because her statements would be admissible against Demarius as a dying declaration. (P.E. 215, 22:55-56.) Terry initially said that he did not know a "Conley," but later identified a photograph of Conley English as a man he either knew as or was told by Mr. Lewis was called "CG," who was a friend of Lewis. (P.E. 215, 18:42, 19:04, 22:30-33, 22:50).

Initially, Terry maintained that he had been with his girlfriend at an Olive Garden restaurant from 5:45 p.m. or 6:00 p.m. until 8:00 p.m. on April 15, 2012, and that Mr. Lewis had never been in his car that day. (P.E. 215, 14:27, 14:49-14:52, 15:09). However, Terry eventually stated that at some point on April 15,

he was parked in front of a barbershop on California Avenue and Polk Street, talking to pedestrians before going to meet his girlfriend, when Mr. Lewis got into the front passenger seat, made small talk about Terry's brother Demarius, and asked Terry to drive him around the neighborhood. (P.E. 215, 22:41-45.) Terry did so, following his directions. (P.E. 215, 22:41-45.) Lewis used Terry's phone, and then CG got into the right rear passenger seat behind Lewis. (P.E. 215, 22:45-46). Lewis and CG talked about something "in code," then got out of the car and Terry drove away. (P.E. 215, 22:46-50). Shortly thereafter, as Terry was driving on Sacramento, Lewis flagged him down again, asked for and received a lift of about a block, and then left the car again. (P.E. 215, 22:39-40, 22:50-54). Terry did not hear any gunshots, did not see a gun and Lewis said nothing about shooting anyone. (P.E. 215, 22:39, 22:41, 22:52, 22:54.).

Motion for Mistrial

While the jury was not present during a break after Dr. Gates's testimony about the Slugg and Harris autopsies, defense counsel moved for a mistrial, arguing that so many photos relating to the Slugg autopsy had be admitted that it was "like a 'mini-trial'," and that the Harris photos were unduly inflammatory. (R. WW112-13.) The trial court found the autopsy photos were not "prejudicial or in any way would garner any – any traumatic and/or causing the potential juror to be inflamed by those photos," and denied the motion for mistrial. (R. WW116-17.)

Closing Argument

In closing, the State argued that evidence of the Slugg murder showed that "Harris died because she survived and could identify" Demarius. (R. XX20.) In making this argument, the State described Harris's testimony regarding the earlier

shooting, asserting that the "29 casings" found at the scene were "overkill," and that "Officer Garza told you when he arrived on scene it looked like something out of a movie." (R. XX21-22.)

The State also stressed the fact that Ms. Harris had identified Demarius as the shooter not only one time, but "over and over again":

> So she wanted everybody every emergency personnel, every police officer, anyone who could help her to know who the shooter was just in case I don't make it. She told Officer Garza the shooter is Demarius. His nickname is D[-Bo]. She said it at least 20 times. Just in case I don't make it. She told the paramedics the shooter is Demarius. His nick name is D[-Bo]. Please don't let me die. I want to see my daughter again. Just in case I don't make it she told Sergeant Gallagher just minutes before she went into surgery his name is Demarius. His nickname is D[-Bo]. He's from the [A]lba [] Homes just in case I don't make it.
>
> She laid in that hospital bed holes to her body bandages all around her and she told Assistant State's Attorney Kelly Coakley in a videotaped statement his name is Demairus. His nickname is D[-Bo] and yes that is a photograph of him just in case I don't make it she repeated[] over and over again. She came to this building testified before the Grand Jury. Told Assistant State's Attorney Toni Giancola and the jurors his name is Demarius. His nickname is D[-Bo] and yes that is a picture of him. Over and over again she made sure she wanted the justice. She told everyone and her fight her ability to survive is what le[]d to his brother's arrest in September of 2011.

(R. XX23.) The State went on to argue that the circumstantial evidence of the surveillance videos, telephone communications cell phone locations showed that Terry, Mr. Lewis, and Mr. English had successfully conspired to murder Harris (R. XX25-35), and to do so in a way that echoed the original Slugg murder: "The gun was aimed at her and the magazine was literally emptied. Emptied so much that when Sergeant Holey found the gun, it was still in a firing position. It was overkill." (R. XX38.)

Defense counsel argued that Terry's statement to the police that Ms. Harris's

out of court statements would be used at Demarius's trial after her death demonstrated that Terry lacked a motive to kill her. (R. XX51-52.) Furthermore, defense counsel argued that, absent any evidence showing the contents of the communications between Terry and Mr. Lewis, Demarius, and Mr. English, it could not be determined that Terry had not been unknowingly brought into the plan, like Mr. Allen:

> At the barber shop on Friday, Tyrell said that if we had money, he could help. He said I don't have any money. The spark that happened after Tyrell Lewis visited Demarius Bridges on April 1st in jail. The spark was this plan between Tyrell Lewis and Conley English. Tyrell Lewis and Conley English planned to get rid of Kim Harris and then they were going to either blackmail or extort Terry for money. Tyrell Lewis and Conley English used Andrew Allen as a ride. They used Ms. Charnice [] Chapman to bring Kimberly to the spot.

(R. XX54; *accord* XX57-58.)

In rebuttal, the State argued that Terry never told police that Mr. Lewis and Mr. English brought him unknowingly into their plan to kill Ms. Harris, and that his inconsistent statements to the police demonstrated consciousness of guilt. (R. XX66-67.)

Verdict, Post-Trial Motions, Sentencing

On May 16, 2016, the jury found Terry guilty of first degree murder, and found in special interrogatories that Terry had been armed with a firearm and that Ms. Harris was killed to prevent her from testifying. (R. XX112-14; Sup. C. 233-35.)

On June 14, 2016, defense counsel filed a motion for new trial, followed by an amended motion on October 4. (Sup. C. 239, 275.) Counsel claimed, among other things, that the trial court had erred in permitting evidence of the Slugg

murder, inflammatory autopsy photographs, and prior consistent statements from Ms. Harris. (Sup. C. 280, 291, 296.) The court denied the motion. (R. BBB11.)

A presentence investigation report indicated that Terry was born on November 29, 1985. (Sup. C. 241.) He had one prior conviction from 2014, based on an arrest after the death of Ms. Harris, for possession of a firearm with a defaced serial number. (Sup. C. 243.) He was the oldest of three children born to Sharnetta Dodson, who raised him alone in what Terry described as a strict but good upbringing. (Sup. C. 244.) Terry has a B.A. in business finance from Chicago State University, and was taking classes at UIC towards an M.B.A. at the time of his arrest. (Sup. C. 244.) At the time of his arrest, he was earning $42,000 per year as a linen manager with Superior Health Linens, the linen contractor for the University of Chicago Hospital, and lived with his mother and siblings in a house he purchased for them. (Sup. C. 245.)

At sentencing, the State presented a victim impact statement from Kourtney Harris in which she stated that Ms. Harris's family was sad that she was dead. (R. BBB13-15.) It asked for a sentence of life imprisonment. (R. BBB23.)

On October 4, 2016, the trial court, "because of the severity" of the offense, "taking into account your accomplishments, your intelligence," sentenced Terry to life imprisonment. (R. BBB33, Sup. C. 272.) A motion to reconsider sentence was filed and denied, and a notice of appeal was filed the same day. (Sup. C. 273, 311.)

ARGUMENT

I. The trial court erred in permitting the State to introduce excessive evidence relating to the murder of Keith Slugg, of which Terry Bridges was not charged, including seven out-of-court statements from Kimberly Harris identifying Terry's brother Demarius as Slugg's murderer, and numerous photos of Slugg's dead body both *in situ* and during an autopsy, where the only relevance of the Slugg murder to the charged case was in suggesting Terry killed Harris to prevent her from testifying against Demarius, and the details of the Slugg murder were highly inflammatory and prejudicial.

Terry Bridges was not charged with shooting Keith Slugg and Kimberly Harris in 2011, and the State specifically disclaimed any intent to prove he was responsible for those offenses. (R. L14.) Despite this, and despite defense counsel's repeated objections, the State devoted an entire day of its five days of presentation of evidence to the Slugg murder. (R. L20; Sup. C. 226; SR. A8-9; R. WW112-13.) Though multiple witnesses, the State piled on a total of seven different occasions on which Harris had told various people Demarius shot her or otherwise described the Slugg murder. (SR. A59-62, 96-98, 110-11, SR. A125-27; P.E. 10, 11.) This included extensive testimony about injuries Harris sustained in the 2011 shooting and her panic prior to surgery, as she pleaded for police and doctors to save her life for the sake of her four-year-old daughter, as well as a video-recorded statement taken while she was still lying in an intensive care unit post-operation. (SR. A62, 97; P.E. 10.) The state also presented four photos of Slugg's body *in situ* in the pose of driver's-seat coitus next to a blood-soaked passenger seat, 18 photos of his autopsy, and detailed testimony about the path that bullets took through his body. (R. WW12-13, 21-40; P.E. 63-80.)

Beyond Ms. Harris's grand jury testimony, none of this evidence had more than nominal probative effect; the State gave the jury evidence of the Slugg murder

"with detail and repetition greatly exceeding what [was] necessary to establish the particular purpose" for which it was offered: to show a motive for Harris's murder. *People v. Chromik*, 408 Ill. App. 3d 1028, 1041 (3d Dist. 2011) (citing *People v. Bartall*, 98 Ill. 2d 294 (1983)). There was no way Terry could seriously dispute that *someone* had shot Mr. Slugg to death, and that Harris told the State that Demarius was that someone. But the evidence had well more than nominal prejudicial effect upon the jury. It inflamed the jury's emotions and sympathy with a day's worth of details about Harris and Slugg's prior suffering, suffering of which the State reminded the jury in its closing argument. Furthermore, the numerous consistent out-of-court statements turned the jury's attention from whether Harris had accused Demarius of the Slugg murder to *whether Demarius had in fact committed it*, and in the process turned Terry's continued relationship with his brother into an indictment of his character forbidden by Illinois Rule of Evidence 404(a).

In admitting this evidence for "various reasons" and concluding there was nothing prejudicial about it, the trial court abused its discretion. (R. L26-27.) It cannot be determined that this abuse of discretion was harmless. It was undisputed that Terry did not shoot Ms. Harris himself, and while the State had evidence that Terry was near the scene and communicated with Mr. Lewis, the shooter, beforehand, it had no evidence as to the contents of those communications. It was possible that Terry was coopted into Lewis, Mr. English and Demarius's plan to murder Harris without Terry knowing that Lewis planned to shoot Harris – much like Mr. Allen, who according to the State's own theory was maneuvered into unknowingly delivering Harris to Lewis. It cannot be determined that such

possibilities were foreclosed beyond a reasonable doubt if the State had not made the case not only a chance to rectify Harris's murder but her and Mr. Slugg's suffering in the earlier shooting, and if it had not painted Terry not just as a person whose brother could benefit from Harris's death, but as a willing associate of the man who had already killed Slugg and riddled Harris with bullets. This Court should reverse Terry's conviction and remand for a new trial at which the jury will be focused on his guilt or innocence for Harris's murder, and not the salacious details of the Slugg murder and Terry's association with its perpetrator.

Evidence is generally admissible so long as it makes any fact of consequence to a charge more or less probable. Ill. R. Evid. 401, 402. However, relevant evidence should nonetheless be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Ill. R. Evid. 403. A trial court's decision whether to admit evidence is reviewed for abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

Here, *some* evidence relating to the Slugg murder had *some* probative value, specifically, evidence that Mr. Slugg had been shot to death and Harris shot in 2011, and that Ms. Harris had told the police or prosecutors that Demarius was the offender. Harris's assistance to the investigation and possible trial testimony showed an alleged motive that Terry, as Demarius's brother, might have to want her dead. That motive was not only an inference from circumstantial evidence, but an element of the State's case, as it had charged a sentence enhancement for the murder of a potential witness. (Sup. C. 36-38.)

However, as defense counsel noted repeatedly before and during trial, proving motive did not require the State to present extensive evidence on the *details* of

the Slugg murder. (R. L20; Sup. C. 226; SR. A8-9; R. WW112-13.) When applying Rule 403 to evidence of an uncharged crime admitted for a limited purpose, the court should not admit evidence "with detail and repetition greatly exceeding what is necessary to establish th[at] particular purpose." *People v. Chromik*, 408 Ill. App. 3d 1028, 1041 (3d Dist. 2011) (citing *People v. Bartall*, 98 Ill. 2d 294 (1983)). *Accord People v. Kimbrough*, 138 Ill. App. 3d 481, 489 (1st Dist. 1985). It is "not necessary to hold a mini-trial" of the uncharged crime, with all the "detailed evidence" that would be presented in a trial of the crime itself, in order to provide all probative value the uncharged crime has to the present case. *People v. McKibbins*, 96 Ill. 2d 176, 186-87 (1983). *Accord People v. Thigpen*, 306 Ill. App. 3d 29, 37-38 (1st Dist. 1999); *People v. Nunley*, 271 Ill. App. 3d 427, 432 (1st Dist. 1995); *People v. Sykes*, 161 Ill. App. 3d 623, 630 (1st Dist. 1987).

For example, in *Thigpen*, the defendant was charged with murdering a man from a rival faction of his street gang, the Unknown Vicelords. *Thigpen*, 306 Ill. App. 3d at 31-32. Two witnesses identified the defendant as one of the men who shot the victim as he stood on a street corner; although both recanted their statements at trial, their prior identifications were admitted as substantive evidence. *Id.* at 32-34. The State was also permitted to present evidence that, in the past, the defendant had killed two teenagers from the rival gang faction who were selling drugs on a street corner. *Id.* at 34-35. The defendant and eight armed men surrounded the two teenagers, who were crying, and forced them into a car, with the defendant saying that the teenagers would "make the news." *Id.* at 34. The State sought to present the jury with two photos of the teenagers' bodies, but the court only permitted the State to present one. *Id.* at 35. The defendant

was convicted and appealed, arguing that the trial court abused its discretion in admitting evidence regarding the uncharged murder of the teenagers. *Thigpen,* 306 Ill. App. 3d at 35.

The appellate court reversed, holding that while the evidence of the earlier murder was admissible to show a common scheme to eliminate drug-selling competition, the trial court "erred in allowing extensive details concerning that crime into evidence." *Id.* at 36-37. The details did not serve to advance the inference of a common plan and were highly prejudicial, such as the teenagers' weeping prior to being killed and the photograph of the dead bodies. *Id.* at 37-38. The court held that a standard limiting instruction was insufficient to cure the prejudicial effect of the unnecessary details, and reversed. *Id.* at 38-39. *Accord McKibbins,* 96 Ill. 2d at 186-87 (full details of uncharged jewelry store robbery not necessary to show lack of innocent frame of mind in charged robbery); *Nunley,* 271 Ill. App. 3d at 432 (details of uncharged aggravated battery for which defendant was arrested, including killing his mother's dog and intent to decapitate his mother, were unnecessary to explain why defendant was in custody prior to confessing to a separate, charged murder); *Sykes,* 161 Ill. App. 3d at 630 (four witnesses to uncharged kidnaping unnecessary to show *modus operandi*).

Here, evidence of the Slugg murder was admitted for a limited purpose: to show that Terry had allegedly killed Ms. Harris because she told the police or prosecutors that Demarius committed the Slugg murder, or to prevent her from testifying to that effect. (SR. A88.) As defense counsel noted, to do this the State needed to prove that someone had shot Mr. Slugg to death and shot Harris, and that Harris had told the State it was Demarius. (R. L20.) The State was not

obligated to accept a bare stipulation to those facts. *People v. Buss*, 187 Ill.2d 144, 218 (1999). Nonetheless, it could easily prove them with evidence of Harris's grand jury testimony, ASA Giancola's testimony that Harris was the sole eyewitness against Demarius, and a basic testimony on Slugg's cause of death, leaving Terry with no plausible way to dispute either point. (SR. A139-44, 150-67, 185; P.E. 11.)

Additional evidence regarding the Slugg murder added nothing to the proof of motive for which the evidence was admitted. Regardless of how *vicious* the Slugg murder was, or *how many times* Harris had repeated the same information to various parties, the assistance she had given the Slugg murder investigation remained the same, and she could only testify once at Demairus's murder trial. Nonetheless, although Terry was not on trial for the Slugg murder, the trial court permitted the State to present evidence of that crime equivalent to what one might expect at a trial. Critically for present purposes, the State exceeded the proper bounds of evidence on the Slugg murder in two prejudicial ways.

A. The State's cumulative seven statements from Ms. Harris regarding the Slugg murder contained inflammatory and prejudicial details about her injuries, terror, and children, and improperly focused the jury on Demarius's actual guilt of the Slugg murder and hence Demarius and Terry's character.

First, the State presented not only Ms. Harris's grand jury testimony but, over objection, evidence of *six additional* out-of-court statements Harris made to police officers, paramedics, doctors, and ASAs. (SR. A59-62, 96-98, 110-11, SR. A125-27; P.E. 10, 11.) The State emphasized the repetitive nature of its presentation to the jury in closing argument:

> So she wanted everybody every emergency personnel, every

police officer, anyone who could help her to know who the shooter was just in case I don't make it. **[1]** She told Officer Garza the shooter is Demarius. His nickname is D[-Bo]. She said it at least 20 times. Just in case I don't make it. **[2]** She told the paramedics the shooter is Demarius. His nick name is D[-Bo]. Please don't let me die. I want to see my daughter again. **[3]** Just in case I don't make it she told Sergeant Gallagher just minutes before she went into surgery his name is Demarius. His nickname is D[-Bo]. He's from the [A]lba [] Homes just in case I don't make it.

[4] She laid in that hospital bed holes to her body bandages all around her and she told Assistant State's Attorney Kelly Coakley in a videotaped statement his name is Demairus. His nickname is D[-Bo] and yes that is a photograph of him just in case I don't make it she repeated[] over and over again. **[5]** She came to this building testified before the Grand Jury. Told Assistant State's Attorney Toni Giancola and the jurors his name is Demarius. His nickname is D[-Bo] and yes that is a picture of him. Over and over again she made sure she wanted the justice. She told everyone and her fight her ability to survive is what le[]d to his brother's arrest in September of 2011.

(R. XX23) (numerals added). In fact, the State's argument left out additional statements it had presented to the jury. Ms. Basic testified that Harris also told doctors in the Stroger Hospital trauma bay that Demarius was the shooter (SR. A97-98), and Harris's grand jury testimony contained an unredacted reference to her prior identification of Demarius in a photo array on August 30, 2011 (SR. A167-77).

This was obviously cumulative, but the testimony also contained irrelevant prejudicial details of the kind that required reversal in *People v. Thigpen*, 306 Ill. App. 3d 29, 37-38 (1st Dist. 1999). While evidence from treating physicians about injuries Ms. Harris sustained during the Slugg murder could have been useful to explain the old, rusted bullets found during her autopsy, the State eschewed such probative details in favor of broadly shocking testimony about the cinematic "overkill" of the violence inflicted upon her and the pain and terror she experienced in the moment. (R. XX21-22.) Rather than establishing how many bullets remained

in Harris's body, it presented impressionistic testimony of how many times it *looked like* or *felt like* she had been shot: 14 times, 30 times, "a lot," enough to leave her "filled with blood," "exceedingly a significant amount of blood." (SR. A58-59, 92-94, 97, 110.) Post-surgery statements elicited irrelevant information about lingering pain and physical deficits that had nothing to do with the particular injuries she received or her eventual murder. She was unable to use a pen in the ICU afterwards, had to spend a month at a rehabilitation center. (SR. A125, 139-42.)

As in *Thigpen*, the State's witnesses also made sure that Ms. Harris's pre-surgery terror during the Slugg murder was kept squarely in the foreground.[4] She repeatedly told Officer Garza that she could not breathe, that she did not want to die, and that Demarius shot her, repeating the identification around 20 times. (SR. A58-62.) She was still in the same state as Ms. Basic treated her in the ambulance and at the trauma bay. (SR. A97.) The repetition described by the witnesses, the repetition *of* the witnesses, and the recapitulation of that repetition in closing argument drove home for the jury Harris's inescapable and overwhelming fear, and only served to inflame the passions of the jury. (R. XX23.)

Most egregiously, both Officer Garza and Ms. Basic testified that Ms. Harris told them that she had a four-year-old daughter. (SR. A62, 97.) That a victim's death resulted in hardships to family and dependents is classically irrelevant and prejudicial at trial. *See, e.g., People v. Hope*, 116 Ill.2d 265, 275-76 (1986);

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[4]Ms. Harris's belief that she faced imminent death would have been necessary to establish the dying declaration exception to the hearsay rule if her statements had been offered for the truth of the matter asserted, which they were not; whether Demarius had actually committed the Slugg murder was not relevant to this case. At any rate, whether the exception applied was not an issue for the jury. Ill. R. Evid. 104(a), (c).

People v. Brown, 253 Ill. App. 3d 165, 173-74 (1st Dist. 1993). Evidence that Harris had a young daughter was not "elicited incidentally" through a life-or-death witness or some fact unrelated to the murder itself. *Hope*, 116 Ill. 2d at 275. It came out *specifically* in the context of Harris's primal fear: she did not want to die *because* she wanted to go home to her four-year-old daughter. (SR. A97.) And the State, during closing argument, made sure to keep the irrelevant but inflammatory detail in its recitation of Harris's identifications of Demarius: "Please don't let me die. I want to see my daughter again." (R. XX23.) That Harris was a mother was irrelevant to the charges and was overtly prejudicial.

Finally, the cumulative repetition of Ms. Harris's identification had an additional prejudicial effect: stressing to the jury not just that Harris had identified Demarius to the State and police, but that she had done so *correctly,* and that Demarius was guilty of the Slugg murder. Indeed, if Harris's grand-jury statement had been live testimony at Demarius's trial for the Slugg murder, her video-recorded statement would have been excluded as a prior consistent statement precisely because of it was over-probative hearsay of Demarius's guilt. *See, e.g., People v. Emerson*, 97 Ill. 2d 487, 500 (1983).

Whether Demarius had *actually* committed the Slugg murder was not relevant to his motive to kill her after she identify him, and hence to Terry's alleged motive to murder her. That was fully established merely by the pending charge and the fact that she had, rightly or wrongly, identified him. But the State's cumulative identifications turned the jury's attention to Demarius's *actual* guilt of the Slugg murder, and in so doing permitted an inference to Demarius's character. And that negative character inference extended to Terry, who despite the plainly laid-out

evidence of Demarius's guilt not only continued to associate with his brother, but implausibly insisted upon Demarius's innocence of the Slugg murder to the police during the interrogation. (SR. E24-26, 31-33; P.E. 215, 15:12, 18:49-55, 22:34-36.) It showed that Terry maintained close relationships with the sort of person willing to commit the Slugg murder, from which the jury could have concluded he was the sort of person who would have no problem committing such a crime himself. This is precisely the inference from action in accordance with character forbidden by Illinois Rule of Evidence 404(a).

B. The State presented numerous unnecessary and inflammatory photos of the Slugg murder scene and aftermath.

Second, the State was permitted to introduce photos of the Slugg murder scene and wounds that Mr. Slugg and Ms. Harris suffered in that attack that had no relevance to the charged offense and served only to inflame the jury's emotions. Nothing about the State's presentation would have been inadmissible in Demarius's trial for the Slugg murder itself, regardless of the inflammatory nature of the photos, as that would not outweigh the probative value of the photos to the Slugg murder. *See, e.g., People v. Heard*, 187 Ill.2d 36, 77-78 (1999); *but see People v. Garlick*, 46 Ill. App.3d 216, 224 (5th Dist. 1977) (error in permitting "needlessly prejudicial" "gruesome, color photograph of the deceased's massive head wound to go to the jury"). However, where inflammatory photos concern an uncharged crime admitted for a limited purpose, their probative value, already doubtful in many cases, drops to the point that it is substantially outweighed by its inflammatory effect. *People v. Thigpen*, 306 Ill. App. 3d 29, 38 (1st Dist. 1999).

Indeed in *Thigpen*, where the trial court had erred in permitting the State to introduce unnecessary and inflammatory evidence regarding an uncharged

prior murder offered as proof of common plan, this Court found that the "clearest example of unnecessary detail" in the State's case was

> perhaps the photo of [the uncharged victims'] bodies that was sent to the jury room. Courts often find photos *of the victim of the crime charged* to be too inflammatory properly to be sent to the jury. To send back a photo of the victims of *another* crime laid at the defendant's feet is extraordinary.

Thigpen, 306 Ill. App. 3d at 38 (emphases in original, internal citation omitted).

In closing argument, the State characterized Officer Garza's description of the Slugg murder scene as "like something out of a movie." (R. XX21-22.) Though it was not relevant to the charges against Terry, the State made sure that the jury watched the "movie." (P.E. 26-27, 33, 35.) Multiple shots depict the large mass of Slugg's body behind the bullet-holed glass of the windshield. (P.E. 26-27.) However, the most lurid shots are undoubtedly a pair taken from near and in the passenger side of the Buick's front seat. (P.E. 33, 35.) In the background, Mr. Slugg's large body is splayed, still in the pose of coitus with belt unbuckled and jeans noticeably beneath his hips, his head lolled back and mouth gaping open; in the foreground, the white-upholstered passenger's seat, center console, and footwell are liberally smeared with the absent Ms. Harris's blood. (P.E. 35.) This grotesque photo had no probative value.

The State also provided, over objection, detailed testimony regarding the path that the three bullets that struck Mr. Slugg took through his body – front to back of the left arm; into the left side of the chest, between the 6th and 7th ribs, into the upper lobe of the left lung, through the left ventricle, the right lobe of the thyroid gland, the right jugular vein, before splitting in two and exiting the back of the neck; front of the right knee to the top of the right thigh. (R. WW26-

27, 28-29, 30.) The detailed discussion of Slugg's organs was accompanied by an "identification" shot of Slugg's face at his autopsy, close-up photographs of entrance and exit wounds, and photos of his blood-stained clothes laid out for the jury's inspection. (R. WW36-40; P.E. 63-80.) For an autopsy, it was not unusually gruesome, though the photos of the clothes were unusual and unnecessary. (R. WW25, 40.) But, as noted in *Thigpen*, there was no reason for *any* Slugg autopsy photos to be presented in this case. There was no question that someone had shot Slugg to death, and nothing for the State to gain from visually concretizing his corpse for the jury aside from arousing emotions of shock, disgust, and anger.

Finally, there was an additional unnecessary visual in the State's case: Ms. Harris's video-recorded statement to ASA Coakley. (SR. A125-27; P.E. 10.) Harris's statements in the video are entirely cumulative of her later grand jury testimony. It was sensible for the State to take a video statement at the time, but presenting it at Terry's trial served no purpose other than to give the jury a chance to see Ms. Harris "in that hospital bed[,] holes to her body[,] bandages all around her," unable to even pick up a pen. (R. XX23.) Adding this to the grand jury testimony served no purpose other than to further arouse the jury's sympathy.

C. The State's presentation of irrelevant and prejudicial evidence regarding the Slugg murder was reversible error, and it cannot be determined

Defense counsel objected to this evidence through a pre-trial motion *in limine* and in a motion for new trial, among other times; the error in admitting it is preserved. (SR. A8-9; Sup. C. 226, 280, 291, 296.) Nor does the record affirmatively demonstrate that the jury would have convicted Terry absent the extensive cumulative evidence of the Slugg murder. *People v. Thigpen,* 306 Ill. App. 3d 29,

39 (1st Dist. 1999) (citing *People v. Lindgren*, 79 Ill. 2d 129, 140-41 (1980)). The standard limiting instruction for other crimes evidence is not enough to prevent inflaming a jury's emotions where, as here, the State presents extensive, irrelevant, inflammatory details of the uncharged crime and reminds the jury of them in closing argument. *Thigpen*, 306 Ill. App. 3d at 38 (citing *People v. Nunley*, 271 Ill. App. 3d 427, 432 (1st Dist. 1995)).

The jury was presented not only with Harris's murder, but a *lengthier* campaign of suffering involving the murder of her sexual partner, a terrifying attack that left her in hospitals for months, only to leave her four-year-old daughter an orphan anyway. "Over and over again she made sure she wanted the justice," and the jury was in a position to grant that desire, not just for her murder, but for the entire ordeal suffered by her and her family. (R. XX23.) The State did not contend that Terry himself was legally responsible for the earlier attack, but the prejudice caused by inflammatory evidence of a victim's suffering does not depend on a *rational* connection to the defendant. For the State to contend otherwise would be equivalent to claiming that unnecessary and inflammatory evidence of a *charged* crime could not prejudice the defendant because the jury would only hold it against the defendant if it concluded he was guilty.

Furthermore, the State's campaign left an opening for the jury to hold the Slugg murder against Terry in a more rational, but nonetheless forbidden way: by concluding that his willing association with Demarius, rather than leaving him the black sheep of the family, demonstrated a character that would not shirk from crime, including the charged crime. Ill. R. Evid. 404(a). This inference posed a particularly insidious risk of evading the court's limiting instruction, as

discriminating between Terry's alleged motive to kill Harris – helping his brother beat criminal charges – and Terry's willingness to continue associating with his brother after the crime requires a conceptual precision that may not come easily to lay jurors. Unnecessarily stressing the brutality of the Slugg murder and giving the jury gruesome photos provided a way to impugn Terry's character by way of Demarius.

Nor can it be determined that any jury, even one without the inflammatory evidence, would have convicted Terry. The State's case against Terry, while significant, was entirely circumstantial. It was undisputed that he was not the shooter, and despite a lengthy interrogation by Detectives Wood and Korolis, Terry never admitted knowing that Mr. Lewis shot Ms. Harris, let alone that he knowingly aided him in doing so. The State had evidence that Lewis, Mr. English, Demarius had been communicating with each other and Terry leading up to and immediately prior to the murder, but no evidence as to the content of the communications, leaving open the possibility that Terry was not privy to the same information as the others.

A reasonable jury could conclude that Terry was an unknowing aid to the murder– that he thought that Mr. Lewis intended to buy a recantation from Ms. Harris with money Terry supplied, or even that he was unaware of an interaction with Harris at all. This is not an inherently implausible possibility, particularly given that, per the State's theory of the case, this *actually happened to Mr. Allen,* who Mr. English used to bring Harris to Lewis.

Indeed, there is a peculiar detail that suggests Terry did not know what was going to happen: Mr. Lewis's decision to throw the murder weapon on to the roof at the scene, where it was later recovered. (R. WW235-36; R. WW125, 136-37;

P.E. 211.) Leaving a murder weapon at the scene is generally not unusual, even when, like Lewis in this case, the murderer is not being pursued by the police at the time; it definitively forecloses the possibility of law enforcement later discovering the murderer in possession of the weapon, a highly incriminating circumstance. But this was not just some random weapon. It was a gun Terry had *legally purchased*, and which Terry knew could be identified as such based on the paperwork he had signed and the serial number on the weapon. (R. WW149-63; P.E. 213.) As soon as police had the gun, they had reason to look at Terry for the murder. If Terry was the mastermind of Harris's murder, as the State at times argued in closing argument, he would have made certain to tell Lewis not to leave his gun at the murder scene. If Terry and Lewis were willing co-conspirators, it is still unclear why Lewis would leave the gun at the scene: it implicated one of his co-conspirators, and increased the chance that Terry would testify against Lewis to obtain leniency for himself.

Other than naked stupidity, there is one obvious reason why Mr. Lewis would have thrown Terry's gun onto the roof: that Lewis *wanted* the police to have evidence incriminating Terry, because implicating him in the crime would give him a disincentive to go to the police with information he might otherwise willingly provide. If this happened, then it is not implausible, but rather precisely as Lewis hoped that Terry did not think that simply coming clean to the police would exonerate him, given the presence of his gun and his relationship to Demarius. The State may, in response, trot out the trope of "the unluckiest man in the world," but anyone with Demarius Bridges for a brother is consistently operating with a deficit of luck.

A jury might have convicted Terry even absent the inflammatory evidence about the Slugg murder. However, the standard for reversal is not whether a reasonable jury *could* have convicted absent the inflammatory evidence; it is whether it *must* have convicted. *People v. Thigpen,* 306 Ill. App. 3d 29, 39 (1st Dist. 1999) (citing *People v. Lindgren*, 79 Ill. 2d 129, 140-41 (1980)). A reasonable jury could have concluded, on the basis of the evidence presented, that Terry had not been proven guilty beyond a reasonable doubt.

The trial court abused its discretion in admitting seven different statements from Ms. Harris containing irrelevant, inflammatory details, and in admitting Mr. Slugg's death photos. This Court should reverse Terry's conviction and remand for a new trial that will be focused on his guilt or innocence of Ms. Harris's murder, and not the brutal details of the Slugg murder.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Terry Brooks

Date: April 24, 2020