

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE ANTONIO M. BOGAN

APPENDIX TO PETITION FOR WRIT OF HABEAS CORPUS

Antonio M. Bogan
ID No. R29595
10930 Lawrence Rd.
Sumner, IL 62466
PRO SE

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1 STATE OF ILLINOIS)
 2) SS
 3 COUNTY OF WILL)

4 IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL DISTRICT
 5 WILL COUNTY, ILLINOIS

6 THE PEOPLE OF THE)
 7 STATE OF ILLINOIS,)

8 vs)

9 13 CF 1631

10 ANTONIO M BOGAN)

11 REPORT OF PROCEEDINGS HAD at the hearing of the
 12 above-entitled cause, before the Honorable ROBERT P
 13 LIVAS, one of the Judges of said Division, on the 7th of
 14 OCTOBER, 2014

15 PRESENT

16 HON JAMES W GLASGOW,
 17 STATE'S ATTORNEY OF COOK COUNTY, by
 18 MR CHRISTOPHER KOCH and MS ELIZABETH
 19 DOMAGALLA,
 Assistant State's Attorneys,
 Appeared on behalf of the People,

20 MR TODD LENZIE and MS SHENONDA TISDALE,
 Appeared on behalf of the Defendant

21 *****

22
 23 Peter J. Paris
 Official Court Reporter
 24 #084-002875

FILED
 2015 APR 27 AM 11:19
 CLERK, CIRCUIT COURT
 WILL COUNTY, ILLINOIS

APPENDIX A

I N D E X

PETER PARIS
October 7, 2014
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Motion in limine

Page 3

Opening statements

Page 24

LIST OF WITNESSES

DX

CX

RDX

John Byrne

28

33

Larry Collins

35

45

Chris Delaney

47

69

74

Jeffery German

75

103

108

Michael Murphy

110

146

158

1 THE COURT All right This is Antonio Bogan,
2 13 CF 1631 The defendant is in custody of the Will
3 County Sheriff, obviously, present in person, also
4 present are his defense counsel, the State is present
5 This matter is being called for bench trial

6 Anything that either side wishes to address to
7 the Court before we begin?

8 MR LENZIE Yes, Judge, there is a couple of
9 things Motion to exclude, first of all

10 THE COURT Granted Is that mutual?

11 MR KOCH Yes

12 THE COURT Thank you, sir

13 Next?

14 MR LENZIE Judge, I do have a motion in
15 limine that I wish to address

16 THE COURT A motion in limine?

17 MR LENZIE Yes Mr Bogan's cuffs are on

18 THE COURT The cuffs will go off The leg
19 irons will stay on This is a bench trial I am not
20 going to be influenced one way or the other

21 All right The defendant's cuffs, for the
22 record, have been removed, so he can take notes and
23 participate

24 Now, you said you had a motion, sir?

1 MR LENZIE Judge, I do Before we get there,
2 I understand your Honor is about to retire Usually,
3 the PSI takes approximately eight weeks to return If
4 your decision is that Mr Bogan is guilty, my
5 understanding is that it will be another judge that will
6 sentence him Judge, I have had that discussion with
7 Mr Bogan

8 You understand that, Mr Bogan?

9 MR BOGAN Yes, sir

10 MR LENZIE And you're okay going forward to
11 trial today?

12 MR BOGAN Yes, sir

13 THE COURT Knowing that if you're found
14 guilty, another judge will actually sentence you?

15 MR BOGAN Yes

16 MR LENZIE I just wanted to add that to the
17 record, Judge

18 THE COURT Now, your motion in limine is what?

19 MR LENZIE Judge, there is a fingerprint
20 expert that the State tendered in discovery Judge, I
21 have a motion to bar that

22 THE COURT All right Hang on a minute
23 Is the State in receipt of this motion?

24 MS DOMAGALLA Yes, Judge

1 MR KOCH We received it this morning I
2 think we're ready

3 THE COURT All right Counsel?

4 MR LENZIE Yes, Judge Thank you

5 Judge, the State tendered an expert witness,
6 Mike Murphy, who works at the Joliet Police Department

7 Judge, as an exhibit, I did attach to this
8 motion his reports that the State tendered to me

9 Judge, his reports are basically all this is my
10 conclusion, without giving any kind of reasoning for
11 that conclusion Judge, I have tendered to the Court
12 People vs Safford It's a First District case from
13 2009, 392 Ill App 3d 212

14 Judge, in that case, it dealt with the
15 fingerprint experts They indicated fingerprint
16 evidence is extremely persuasive Any time there is an
17 expert witness that the State tenders, anyone tenders,
18 that witness is very persuasive

19 Judge, in that case, the Court made a holding
20 that the State has to provide some kind of foundation
21 for the fingerprint expert's ultimate conclusion
22 Basically, on page 10 of the report, it said the
23 underlying basis of an expert's opinion must be subject
24 to cross-examination, in order to allow the jury to

1 properly ensure the expert's testimony

2 Basically, they went on to say, that without
3 this proper foundation, it's almost impossible to
4 cross-examine a fingerprint expert

5 Judge, what the State has tendered to me so far
6 is just that Mike Murphy is saying I reviewed these
7 documents and this is my conclusion, this is my opinion,
8 without really telling me why it's his conclusion

9 In Illinois, there are no minimum number of
10 points that a fingerprint expert needs And I have not
11 asked for a Frye hearing on this evidence I think it's
12 well established that it's reliable scientific evidence
13 But, Judge, there is nothing here that they have given
14 me to show Mike Murphy -- of why he said these
15 fingerprints matched

16 So, Judge, since they didn't tender it, and
17 they have to put that evidence on in trial, I am asking
18 to bar it at this point, because I don't have that
19 discovery

20 Thank you

21 THE COURT State, response?

22 MS DOMAGALLA Judge, we did tender a report
23 in which Mr Murphy states his ultimate conclusion

24 Mr Lenzie was also shown a photograph, which Mr Murphy

1 is expected to testify to during the trial

2 THE COURT A photo?

3 MS DOMAGALLA A photograph that lists point
4 comparisons of the fingerprints and the point
5 comparisons that he used to form his conclusion It
6 indicates --

7 THE COURT This is a photo of what?

8 MS DOMAGALLA Of the fingerprint, the known
9 and the latent, and it is marked the point of comparison
10 that he considered to form his ultimate conclusion

11 In the case that Mr Lenzie presented, the
12 fingerprint expert simply stated his conclusion He
13 never testified as to the steps or the comparisons that
14 he made or took to draw that conclusion That's a
15 distinct difference between what I believe the testimony
16 will be in today's trial

17 Mr Murphy is going to take the stand He is
18 going to state his credentials Mr Lenzie will have an
19 opportunity to cross-examine those If the Court
20 accepts him as an expert, he will then testify as to the
21 steps he took, the comparisons he made and the
22 conclusion he drew from those steps, which is not what
23 happened in the case that Mr Lenzie is presenting to
24 the Court

1 Mr Lenzie will have an opportunity to
2 cross-examine Mr Murphy as to the conclusions that he
3 drew off of the steps he took in forming that
4 conclusion, which did not occur in this case

5 Based on what I believe the testimony will be,
6 I believe that you should deny Mr Lenzie's motion,
7 because Mr Murphy will testify as to the point of
8 comparison he made and the reasons that the latent print
9 and the known print match

10 THE COURT Hang on a minute
11 Response?

12 MR LENZIE Judge, I am sure that Mr Murphy
13 will testify as to that, but I didn't receive any notes
14 as to the procedures he used

15 Judge, the fingerprint is more than just a
16 comparison I believe what they first have to do is
17 look at the unknown print, the latent print, to
18 determine even if it is good enough to compare I don't
19 have any notes on that I don't have any notes on a
20 scientific method or his procedure that he used What I
21 have is, this is my opinion, and you have to take it
22 because I am the expert, which is directly -- it's
23 directly what Safford says can't happen at trial

24 The State has to produce some type of

1 foundation The evidence -- the discovery that I have
2 so far is well lacking in that foundation I have no
3 notes as to his procedures or his scientific methods
4 And just for the State just allowing me to see a
5 photograph of 8 9 is not enough

6 MR KOCH Judge, if I may?

7 THE COURT Just a minute

8 Go ahead

9 MR KOCH Judge, I think -- first of all, I
10 would like to just cover what was tendered in discovery,
11 because I think there might be some confusion there
12 There were seven lifts that were taken by the evidence
13 technician in this case Each one of those lift cards
14 were tendered in discovery to the defense attorney

15 In addition to that, Mr Murphy made findings
16 as relates to two of those seven latent lift cards The
17 other five, he found no -- he couldn't make any kind of
18 comparison, so that's been given to the defense attorney
19 and he has those in his possession

20 He was also given the arrest card with the
21 fingerprints of the defendant in this case, which were
22 used to form the comparison He was also given an
23 opportunity to examine last week, I presented this to
24 the defense attorney, which are eight points of

1 comparison that Mr Murphy made with regards to the
2 known and the unknown

3 So, he was -- the defense attorney was made
4 aware that Mr Murphy was going to discuss -- although
5 there is no set number of comparisons that are required
6 in Illinois, he has got eight of them right here that he
7 is going to discuss

8 I also informed Mr Lenzie that Mr Murphy used
9 a comparison microscope to make this determination So,
10 he has been given the type of microscope that he used
11 He has been given the comparison points that he intends
12 to use in his testimony He has been given the latent
13 lift cards He has been given the arrest card

14 Now, he has also been given an expert opinion
15 He has been given a curriculum vitae, indicating his
16 qualifications He has been given a work sheet and
17 documentation that Mr Murphy used in coming to his
18 conclusions

19 Now, if that worksheet doesn't fit what
20 Mr Lenzie considers to be appropriate expert
21 information, that's what cross-examination is for

22 This case, the Safford case, deals at the
23 testimony at trial It doesn't deal with what was given
24 in pretrial discovery It deals with the facts that the

1 witness that testified at trial didn't give any proper
2 foundation

3 Mr Murphy is going to get that foundation here
4 in trial, which is subject to cross-examination He is
5 also going to be given an opportunity to cross his
6 credentials, which I believe are impeccable in this
7 case, based on his CV, and Mr Lenzie is going to be
8 given an opportunity to express whether or not
9 Mr Murphy, in essence, knows what he is doing and is
10 following what's generally relied upon in the scientific
11 community

12 If and only if the Court is satisfied with
13 those credentials and the cross-examination and the
14 direct examination as to his credentials, you will allow
15 him to testify as an expert Once he is allowed to
16 testify as an expert, he will give his procedures that
17 he followed in this particular case He will talk about
18 why he -- how he looks at fingerprints He will talk
19 about the science behind fingerprint technology and how
20 he uses that science and is current on that science, and
21 how he is able to make these identifications

22 So, the difference in the Safford case seems to
23 be that the witness in Safford got on the stand and said
24 I am an expert, I looked at them, they match In that

1 case, that was the sole evidence that appears, that
2 there was a single fingerprint to link him to the crime
3 So, the court in this Safford case dealt more with the
4 ability to cross-examine as to what he did, and
5 apparently, that wasn't done But I don't think it's a
6 pretrial issue

7 When we put experts on the stand in any case,
8 whether it's DNA, firearms, latents, other biological
9 matter, gunshot residue, you know, we tender the notes
10 that the experts prepare

11 Now, those notes could be half a page long,
12 they could be a hundred pages long, and that's what's
13 the purpose of cross-examination That's Mr Lenzie's
14 job at that point, to attack the expert as to his
15 ability to document what he is doing It goes towards
16 the weight of that evidence to be submitted to the Court
17 and/or the jury, not the admissibility

18 I believe that we have properly given him the
19 expert opinion, the qualifications, his notes, the
20 latent fingerprint cards that were lifted from the
21 evidence, the arrest card with the defendant's
22 fingerprints All of those things now have been
23 provided, and the point of comparison that he is going
24 to use for one of them

1 I think it's clear that we have followed what
2 we're required to do in discovery and, you know, I think
3 that this motion in limine should be denied at this
4 point and we move forward to trial

5 THE COURT Mr Lenzie?

6 MR LENZIE Judge, obviously, I disagree with
7 Mr Koch I believe what they gave me is just --

8 THE COURT In what way are they lacking?

9 MR LENZIE Judge, there is no explanation of
10 how he came to his opinion Because they show me eight
11 points does not say this is how I came to my opinion
12 It's a little difficult to cross-examine an expert
13 witness when I don't know how he came to his opinion
14 Judge, that's what I am saying They didn't give me any
15 notes saying I used this scientific method, because I
16 know the microscope they used to look at the fingerprint
17 doesn't answer any questions about any scientific method
18 or how he came to his opinion Judge, they didn't
19 tender me any of that

20 Yes, I don't think there is any
21 misunderstanding what the State gave me I know exactly
22 what they gave me, and it does not say how he came to
23 his opinion That's what I was asking for, and that's
24 why I am asking to bar it

1 MR KOCH Judge, looking at this case, page
2 seven of this case, says we find no testimony, and
3 that's the key, testimony, not what was provided in
4 discovery, find no testimony by the examiner as to how
5 he arrived at his conclusion that the latent print --

6 THE COURT Where are you? I am on page 7
7 Where are you?

8 MR KOCH Page 7 on the right-hand side, about
9 two thirds of the way down, in the paragraph that starts
10 at oral argument We are going to have testimony here
11 today as how he came to his level of comparison, so
12 that's the difference here

13 The Safford case deals with the testimony that
14 was provided at court, in the trial, and what was
15 lacking foundation-wise at trial, not what was provided
16 to the defense attorney in discovery or -- I mean,
17 expert opinions -- he is expert We're not going to put
18 him on the stand and say you're an expert, tell us that
19 there was a finding We are going to lay out his
20 qualifications, and we are going to have him testify as
21 to science, just like we do with any expert, whether
22 it's DNA or gunshot residue We have to discuss the
23 science that's behind it

24 Now, is Mr Lenzie suggesting that in -- to

1 make an analogy in a gunshot residue test, that in the
2 notes or in the lab report that is provided, it says I
3 did this test? No, it doesn't say that It gives an
4 ultimate conclusion, and that's what happens here The
5 examiner gives a report that says I looked at these
6 things and there is -- they are -- they match or they
7 don't match Then when the witness testifies, that's --
8 before that opinion comes in, before we say within a
9 reasonable degree of scientific certainty we're able to
10 form an opinion as to whether or not this matches or
11 there was gunshot residue or there was DNA, we have to
12 lay the proper foundation, and if we don't, your Honor
13 is certainly not going to let that answer stand But it
14 doesn't talk about pretrial discovery what's required
15 We gave what this witness had

16 We can't make him do something that he doesn't
17 have If he doesn't have any additional notes or
18 anything, I can't make him create something That's
19 what the cross-examination is for That's what the
20 testimony is for here today

21 If Mr Lenzie does an excellent job of tearing
22 down Mr Murphy's ability in how he did, then the Court
23 will take that into consideration in weighing the
24 evidence, not the admissibility

1 THE COURT I am going to withhold making my
2 decision until this person gets on the stand I
3 understand what the point of the defense motion in
4 limine is But it is true, that in looking at this
5 case, it makes two points, to allow scientific evidence
6 to be admitted without revealing its underlying
7 scientific basis is to risk admitting such evidence
8 without any scientific standards

9 But furthermore, at the end of that, they say,
10 here the State, in that particular case that we have all
11 been citing, elicited Examiner Cutro's report without
12 establishing the specific scientific process he
13 undertook to arrive at his conclusion

14 I think this is a situation -- one of those
15 situations where these issues are going to have to be
16 addressed on a case-by-case basis, depending on what
17 that particular so-called expert gets up on the stand
18 and says Hang on

19 MR KOCH Judge, on page 12 of this
20 opinion --

21 THE COURT Just a minute
22 What were you saying?

23 MR KOCH On page 12 of the opinion, on the
24 left-hand side, just in the paragraph above harmless

1 error, it says Finally, to require the State to lay an
2 adequate foundation to his opinion can hardly be
3 described as an undue burden It goes on to say at the
4 very end, it says absent --

5 THE COURT Where are you? Page 12? I got
6 page 12

7 MR KOCH Page 12, harmless error On the
8 left, do you see a heading entitled harmless error?

9 THE COURT No Maybe we have got -- I have got
10 page 11 Go on

11 MR KOCH In the paragraph above that, it
12 starts finding It talks about they want the State to
13 lay an adequate foundation, and then at the end of that
14 paragraph it says Examiner Cutro was asked by the
15 defense to do more than just explain how he reached his
16 conclusion They wanted him to establish the foundation
17 for the introduction of that ultimate opinion That's
18 what we're going to do in the testimony

19 So, again, that -- this case dealt with the
20 lack of the foundation at trial for the opinion, not
21 what was provided -- there is no arguments in here about
22 like what was provided prior to trial The issue is at
23 trial The expert just got up there and said it is what
24 it is and that's the way it is We're not going to do

1 that This expert is going to explain his scientific
2 methodology, and he is going to explain how he came to
3 that conclusion That's what was lacking in the Safford
4 case When we put Mr Murphy on, I suppose we can
5 revisit this argument

6 THE COURT I am sure we will

7 MR LENZIE Judge, may I say one more thing?

8 THE COURT Yes

9 MR LENZIE I will be brief

10 THE COURT I am not making a ruling yet, you
11 understand that?

12 MR LENZIE I understand

13 THE COURT Go ahead

14 MR LENZIE Judge, that same paragraph that
15 Mr Koch cited, it also -- the defendant objected to
16 Examiner Cutro's testimony before he took the stand
17 They don't say what the objection was, but I can only
18 imagine it's the same substance of what I am objecting
19 to

20 Judge, what I have got here so far is that --

21 THE COURT Well, one of the things that
22 happened during the course of this trial, there was a
23 different number of prints that were being talked about
24

1 Go ahead

2 MR LENZIE Judge, as Mr Koch points out, it
3 should hardly be an undue burden for the State to lay
4 the foundation I don't know why they can't give me
5 those notes ahead of time, why they can't show their
6 discovery, this is the steps I took in Mr Murphy --
7 these are the steps I took in analysis and comparing
8 They haven't done that

9 MR KOCH Judge, we absolutely have done that
10 That's what our discovery was

11 MR LENZIE Judge, I disagree Their
12 discovery was this is my opinion, not as to what I did

13 MR KOCH Judge, I agree with Mr Lenzie that
14 it says it was objected to And what happened in that
15 case, he was allowed to testify, because the issue is,
16 can he lay the foundation at trial, not -- that's why he
17 wasn't barred beforehand, because the issue is can he
18 lay a foundation at trial

19 MR LENZIE For evidence that wasn't tendered

20 THE COURT I am sorry?

21 MR LENZIE For evidence -- the foundation
22 wasn't tendered They want to make -- they want to lay
23 the proper foundation, which they have to do, and it's
24 not evidence that's tendered to the defense counsel

1 It's a little hard to tear down the expert witness when
2 they don't give me his notes, anything about his
3 methodology, just his ultimate conclusion

4 MR KOCH Judge, we did provide the notes that
5 Mr Murphy has, which is why it goes towards the weight
6 of the evidence, not the admissibility We provided --

7 THE COURT So, you're saying in this
8 particular -- the latent print examination report, what
9 should have been included for your benefit, or rather
10 for the benefit of the defendant to properly
11 cross-examine this witness, would have been the
12 particular things he did with these cards and in the
13 manner in which he did them?

14 MR LENZIE Judge, I guess the overall answer
15 is yes In my research of fingerprint analysis, there
16 is something called ACE -- comparison evaluation of
17 verification These are steps that you would have had
18 to go through You would have to get the card, the
19 latent first, to see if you can compare it Then if
20 it's good enough --

21 THE COURT So, when somebody at the Illinois
22 State Police returns a study that says the DNA taken
23 from this defendant matched, does that person -- does
24 that particular forensic scientist have to include every

1 single step they took to reach that conclusion? Is that
2 what you're saying, because that's the analogy that you
3 draw? That's where you go with this

4 I mean, I am not talking about a DNA expert
5 just getting up there and just saying I am a DNA expert
6 and they match and gets off the stand, no I am
7 saying -- what I am listening to you represent to me,
8 Mr Lenzie, on behalf of your client, is that those
9 particular -- in a particular DNA case, each and every
10 step that that examiner takes, has to be in the DNA
11 report to comply with the discovery necessary to provide
12 you with the opportunity to adequately cross-examine
13 that person Is that what you're saying?

14 MR LENZIE Judge, I would say there has to be
15 more than what they tendered so far Maybe not every
16 single step, but the steps that they took, at least the
17 general overview of we did one, two, three, four

18 But, Judge, not to disagree with you, but I
19 believe the DNA analysis is probably not a good
20 comparison to this A DNA analysis is more objective
21 where this is subjective

22 THE COURT Wait Stop One is objective and
23 one is subjective?

24 MR LENZIE Yes, Judge I believe the

1 fingerprint and my research --

2 THE COURT Which one has been more accepted
3 for a longer period of time by the legal community, DNA
4 or fingerprints?

5 MR LENZIE I'm not sure

6 THE COURT Fingerprints, for about 40 years
7 longer, at least

8 MR KOCH And, Judge, Mr Lenzie sounds like
9 he has got a good working knowledge of fingerprints He
10 is talking about different things that they are supposed
11 to do

12 THE COURT Yes, but you know what, Mr Koch,
13 that's a cute statement, but that's not his burden

14 MR KOCH I understand that, but, Judge,
15 basically, he is saying that we didn't provide any
16 information to him, so that he can't cross-examine him,
17 and I don't believe that's accurate But again, you
18 know, when you do a gunshot residue test or a drug
19 chemistry test, the lab provides their opinion

20 When the expert comes in, they talk about the
21 steps that they took to render that opinion That's
22 what they do When they get the notes from those, it
23 doesn't list every step that's taken That's the
24 weight -- again, that's the cross-examination that you

1 provide when that witness is on the stand If Mr
2 Murphy gets up there and says I don't know, I pulled out
3 a broken machine, and the light wasn't working, and I
4 looked at it and I found one point of comparison, and
5 therefore, I am telling you, as an expert, they match,
6 then your Honor is going to give the appropriate weight
7 to that

8 That's the purpose of the cross-examination
9 That's what Mr Lenzie is going to do, I suspect, in
10 cross-examination, and that's for your Honor then to
11 determine how much weight to give his testimony

12 But to sit her and say that the State hasn't
13 provided enough information for Mr Lenzie to do that is
14 inaccurate We have given him all his notes We have
15 given his expert opinion We have given him the
16 evidence that he used to examine it Mr Lenzie was
17 allowed to look at the actual evidence yesterday before
18 trial to see exactly where the latents came from He
19 has been given the presentation pamphlet -- or printout,
20 that Mr Murphy is going to use and explain that, or has
21 been given an opportunity to look at it

22 So, I don't know what -- I mean, we are going
23 back and forth and round and round, but I don't know
24 what else we can give him And we told him that he used

1 a comparison microscope So, if there is different
2 levels of identification, then Mr Lenzie will ask that
3 on cross-examination as to what technique he used to
4 form his opinion

5 THE COURT All right I am going to withhold
6 my ruling until he gets on that stand

7 Go Opening statement?

8 MR KOCH Judge, at this time, we have been
9 unsuccessful in securing a witness, so the State is
10 going to make a motion to dismiss Count 2 of the home
11 invasion count

12 THE COURT Yes

13 MR KOCH Count 3, the aggravated discharge of
14 a firearm

15 THE COURT Yes

16 MR KOCH Count 4, unlawful use of a weapon by
17 a felon, and Count 5, unlawful use of weapon by a felon,
18 and proceed on -- oh, and Count 7, the unlawful
19 possession of controlled substance, and proceed on
20 defacing identification marks on a firearm and armed
21 habitual criminal

22 THE COURT All right Opening statement?

23 MR KOCH Yes

24 Judge, in the course of this trial, you're

1 going to learn that Antonio Bogan -- there is a vehicle
2 that registers to Antonio Bogan that is found just
3 outside of his residence That the officers were
4 looking for Mr Bogan on July 27th of 2013 A search
5 warrant was obtained to search the vehicle that
6 registers, and we have -- you will be presented with the
7 certified records showing the registration on that
8 vehicle registers to one, Antonio Bogan

9 And you will learn in the trial, that upon
10 searching that vehicle, they located a rifle and two
11 handguns, specifically, the handgun that's listed in --
12 in the count before the Court, a Hi-Point firearm

13 You will learn that in that vehicle, there was
14 paperwork that was recovered with the -- Antonio Bogan's
15 name and address on it, including a medical card and
16 Wal-Mart receipt, a towing receipt and a Rockdale
17 impound receipt, all dated within a few months of July
18 27th, 2013

19 In addition to that, you're going to learn
20 that -- well, you're also going to learn that the
21 defendant, when he was found just outside of his
22 apartment, just in the area of that vehicle on July
23 27th, 2013, you're going to find that he had a phone on
24 him And inside -- that phone was analyzed On that

1 phone was a picture of the rifle that was recovered out
2 of that vehicle, and that picture was taken just a few
3 weeks prior to the recovery of that weapon I believe
4 the evidence will show July 15th of 2013, 12 days prior
5 to the locating of that weapon in that vehicle

6 You will learn that there was also ammunition
7 that was found inside that vehicle, as well as other
8 evidence that will be used to corroborate the totality
9 of the circumstances to show that this defendant did
10 possess a firearm, that Hi-Point firearm on July 27,
11 2013

12 You will hear as evidence that he has two prior
13 convictions for armed robbery They will be presented
14 by certified copies of conviction

15 Also, when they recovered the firearm, you will
16 hear testimony that the weapon serial number was
17 unreadable as it relates to Count -- that would be
18 relating to Count 6, Judge

19 So, at the end of this trial, you will have
20 sufficient evidence to find beyond a reasonable doubt
21 that this defendant did possess that weapon on July
22 27th, 2013

23 And based on his -- the criminal history that
24 will be provided to the Court, we will have proved

1 beyond a reasonable doubt the offenses of harmed
2 habitual criminal and defacing a firearm

3 Thank you

4 THE COURT Thank you

5 Defense?

6 MS TISDALE Thank you, your Honor

7 Your Honor, as you are already aware, the
8 State's case is built on trying to show that Mr Bogan
9 had constructive possession over the 40 caliber
10 Hi-Point firearm

11 As your Honor may already be aware, your Honor,
12 the State has to show that Mr Bogan had the power and
13 the intention to exercise control over those items

14 Your Honor, I submit to you, that no matter how
15 you twist and turn the evidence that's going to be
16 submitted to you today, there is no way that the State
17 can meet their burden

18 Your Honor, the evidence that is going to be
19 presented to you is going to be insufficient, and I am
20 going to ask you find Mr Bogan not guilty on both
21 counts

22 THE COURT Thank you

23 Off the record

24 (WHEREUPON, a discussion was

1 had off the record)
2 Back on
3 Call your first
4 MS DOMAGALLA The State would call Officer
5 Byrne
6 (Witness sworn)
7 JOHN BYRNE,
8 called as a witness, having been first duly sworn, was
9 examined and testified as follows
10 DIRECT EXAMINATION
11 BY
12 MS DOMAGALLA
13 Q Officer, please state your name
14 A My name is John Byrne
15 Q Would you spell your last name for the record?
16 A B-y-r-n-e
17 Q Where are you employed?
18 A The City of Joliet
19 Q And in what capacity?
20 A I am a patrolman
21 Q How long have you worked for the Joliet Police
22 Department?
23 A 12 years
24 Q And do you have any prior law enforcement

1 experience?

2 A No, I don't

3 Q Did you go through training to become a police
4 officer?

5 A Yes, I did

6 Q What training did you go through?

7 A I completed the Illinois State Police -- basic
8 police officer training course in Springfield, Illinois

9 Q And when was that?

10 A In March of -- completed it in March of 2003

11 Q And directing your attention to July 27th of
12 2013, were you employed by the Joliet Police Department
13 at that time?

14 A I was

15 Q As a patrol officer?

16 A Yes, I was

17 Q And what are your duties as a patrol officer?

18 A To patrol my assigned area any given day

19 Q Now, do you recall the date of July 27th, 2013?

20 A I do

21 Q And do you recall what area you were
22 patrolling?

23 A I was patrolling the southern area, sector 16,
24 which is from Fourth and Chicago, down to the area south

1 of the racetrack

2 Q And on that date, did you obtain information
3 that you and your department were looking for an Antonio
4 Bogan?

5 A Yes, I did

6 Q Did that also provide -- or were you also
7 provided information that he may be in a Chevy Impala?

8 A Yes

9 Q And with that information, did you ultimately
10 make a traffic stop on a white Chevy Impala?

11 A I did

12 Q Where was that at?

13 A It was on the 1000 block of Monroe Street

14 Q And what happened when you made this traffic
15 stop?

16 A I conducted a traffic stop, activated my
17 headlights, the vehicle pulled over in front of a
18 residence

19 Q Can you describe the residence?

20 A It's an apartment complex building

21 Q And that's on Monroe?

22 A Yes

23 Q I'm sorry I misspoke

24 When you made contact with that vehicle, was

1 Antonio Bogan in the vehicle?

2 A No, he was not

3 Q Did you see Antonio Bogan?

4 A Yes, I did

5 Q Where did you see him?

6 A He was sitting in front of a residence on a
7 chair

8 Q And can you describe where he was when you say
9 outside the front of it?

10 A In a cement-pad area, a porch, I guess would be
11 the best definition of it

12 Q Now, do you see Antonio Bogan in court today?

13 A Yes, I do

14 Q Could you please point to him and identify him
15 by an item of clothing?

16 A He is wearing a blue shirt

17 MS DOMAGALLA May the record reflect an
18 in-court identification of the defendant?

19 THE COURT It will

20 BY MS DOMAGALLA

21 Q Now, when you first saw Mr Bogan, did you see
22 him ever leave that chair?

23 A Yes

24 Q Did you see where he went?

1 A He went inside his residence for a moment

2 Q And did he return?

3 A Yes, he did

4 Q Did you have any contact with him?

5 A No, I didn't

6 Q Now, did you make contact with a green
7 Oldsmobile Cutlass Supreme?

8 A Yes, I did

9 Q Where was that vehicle?

10 A It was right in front of the residence parked
11 in a parking stall

12 Q And did you learn who the registered owner of
13 that vehicle was?

14 A Yes, I did

15 Q And who was the registered owner?

16 A Antonio Bogan

17 Q Now, did you keep that vehicle in your line of
18 site while another officer obtained a search warrant for
19 it?

20 A Yes, I did

21 Q Did anyone have contact with that vehicle until
22 Officer -- or Detective German returned with the search
23 warrant?

24 A No one did

1 Q Just for clarification purposes, because I
2 believe I misspoke, the residence or the area that you
3 saw Mr Bogan, is that Moore Street?

4 A Yes

5 MS DOMAGALLA I have nothing further
6 THE COURT Cross?

7 CROSS EXAMINATION

8 BY

9 MS TISDALE

10 Q Officer, when you encountered the white Chevy
11 Impala, did you make any observation or find out who
12 that car was registered to?

13 A I did not

14 Q Did you make any observation as to who -- how
15 many people were in that vehicle?

16 A I did

17 Q How many people were in there?

18 A Three individuals were in that vehicle

19 Q And at that time, Mr Bogan was not in that
20 vehicle?

21 A That's correct

22 Q So, he was not in control of the vehicle at
23 that time?

24 A That's correct

1 Q All right And did it appear -- did -- when
2 you approached -- I mean, when you observed that
3 vehicle, you said that Mr Bogan was actually at a
4 residence?

5 A Yes, right next to where the traffic stop was
6 initiated

7 Q And did you ever come into contact or take
8 control over the keys of that Chevy Impala?

9 A I may have, most likely

10 Q Do you know what you did with them?

11 A Eventually, they were turned over to who the
12 officer that was dealing with that vehicle at that time

13 Q Do you know who that was?

14 A I don't know

15 Q Did you make any observation as to how many
16 keys were in there and what those keys went to?

17 A I don't recall specifically the number of keys
18 on that particular key ring, no

19 Q And did you have any contact with the other
20 three people that were in the car?

21 A Yes

22 Q Were any of those people arrested?

23 A Not that I am aware

24 MS TISDALE Nothing further

1 THE COURT Redirect?

2 MS DOMAGALLA I have no redirect Thank you

3 THE COURT You may step down, sir

4 (Witness sworn)

5 LARRY COLLINS,

6 called as a witness, having been first duly sworn, was
7 examined and testified as follows

8 DIRECT EXAMINATION

9 BY

10 MR KOCH

11 Q Sir, can you please state your state, spell
12 your last name for the record?

13 A Sure Larry Collins, C-o-l-l-i-n-s

14 Q And what is your current occupation?

15 A I am a sergeant with the Joliet Police
16 Department

17 Q And how long have you been with the Joliet
18 Police Department?

19 A 19 years

20 Q And how long have you been a sergeant?

21 A Since July of '06

22 Q Were you working as a sergeant for the Joliet
23 Police Department on July 27, 2014?

24 A Yes, I was

1 Q And -- I'm sorry, 2013?

2 A Yes

3 Q And do you recall -- what are your general
4 responsibilities as a sergeant on shift?

5 A I am assigned as the supervisor, frontline
6 supervisor for the neighborhood I have 11 officers
7 assigned to me that work specific neighborhoods

8 Q And on that particular day, on July 27, 2013,
9 were you -- as part of your assignment, were you looking
10 for someone known as Antonio Bogan?

11 A Yes

12 Q And had you been provided a photograph of
13 Antonio Bogan on that particular day?

14 A Yes, I was

15 Q And did there come an occasion, during your
16 shift, that you were made aware of the fact that someone
17 who appeared to be Antonio Bogan was located?

18 A Yes

19 Q And do you recall -- after receiving that
20 information, what did you do?

21 A I proceeded to the location My officers had a
22 vehicle stopped in the 1900 block of Moore, and I went
23 to that location

24 Q Okay And when you arrived in the area of

1 the 19 -- you said 1900 block of Moore Street?

2 A Yes

3 Q And that's in Joliet?

4 A Yes

5 Q When you arrived there, can you tell me what
6 you observed?

7 A Yes I observed Officer Byrne and Officer
8 Reilly, they had a white Chevy Impala stopped I then
9 got out of my vehicle My attention was turned to a
10 subject that was in shorts and a T-shirt that was
11 exiting a building in the 1900 block of Moore

12 Q Okay And did you recognize that individual
13 that you saw exiting out of that building?

14 A Yes

15 Q And who did you recognize that individual to
16 be?

17 A I recognized him as Antonio Bogan and from the
18 flier that was -- that I observed earlier in the day

19 Q Do you see that person that you recognize as
20 Antonio Bogan here in court today?

21 A Yes, I do

22 Q Can you please point to and identify that
23 person?

24 A He is the gentleman right here with the blue

1 jumper with the white shirt underneath

2 MR KOCH Your Honor, may the record reflect
3 the in-court identification of the defendant?

4 THE COURT It will

5 BY MR KOCH

6 Q Sergeant, did you come into contact with the
7 defendant at that point?

8 A I did

9 Q And can you tell me what happened at that
10 point?

11 A Based on the information for probable cause for
12 his arrest, I approached Mr Bogan, asked him his name
13 He told me his name was Antonio Myself, Officer Reilly
14 and Officer Alvarez placed the subject into custody

15 Q And did there come an occasion that you -- did
16 you locate anything on Mr Bogan?

17 A No

18 Q Okay Now, was the defendant transported to
19 the Joliet Police Department?

20 A Yes, he was

21 Q And did you have occasion to come into contact
22 with the defendant again?

23 A Yes, I did

24 Q And where did you come into contact with him?

1 A I came in contact with him at the Joliet Police
2 Department booking facility

3 Q Okay And what was the purpose of coming into
4 contact with him at the booking facility?

5 A To help process and print Mr Bogan

6 Q Okay And can you describe for me the process
7 that -- when you say print Mr Bogan, can you describe
8 for us the process that is used for the obtaining of
9 prints?

10 A Sure We enter all the subjects that we come
11 in contact with under the LRMS program, which is our log
12 records management system Anybody that we arrest is
13 entered into that system, any type of form that we take
14 is taken under that system

15 Q Okay And does that system -- can you describe
16 like -- do you enter information into that system, or
17 does it have some way of tracking who is the person that
18 you're entering that information into?

19 A Yes, it does

20 Q Can you describe that for us, please?

21 A Sure We take the general information on the
22 subject In this case, it was Antonio Bogan He was
23 arrested, so we list his general information, his name,
24 his date birth, any local numbers that we have,

1 addresses, and then the charges that we have pertaining
2 to the case

3 Q Okay As part of your responsibilities as the
4 sergeant on July 27th, 2014, did you have occasion to
5 fingerprint the defendant?

6 A Yes

7 Q And can you just briefly describe for me what
8 type of machine or what type of stuff do you use to
9 conduct your fingerprints?

10 A Sure The information that we enter into our
11 LRMS system is then transferred to our live scan system
12 Our live scan system is a digital fingerprint system,
13 the information that is transferred there I go there
14 and I select his name with the CR and open it up, and
15 then proceed to fingerprint the subject and photograph
16 him

17 Q And does that also provide for a control
18 number?

19 A It does

20 Q Okay And that is a control number that is
21 then tracked with this particular arrest of whatever
22 individual it is that you're working with on that
23 particular occasion?

24 A Yes After I am done fingerprinting and

1 photographing, we print out what we fingerprinted, or
2 who we fingerprinted and photographed, and there is a
3 document control number that is listed on the
4 fingerprints

5 Q And the -- you said you print out when you're
6 done, you're able to print out those particular
7 fingerprints, is that right?

8 A Yes

9 Q And are those fingerprints -- or that paperwork
10 that's printed out, is that something that's done at or
11 near the time of the arrest?

12 A Usually -- we may arrest somebody and there
13 might be a delay, but at the time we enter the stuff, it
14 all happens pretty quickly there I think we came in
15 contact with Mr Bogan around 1 00 I think we ended up
16 printing and processing him around 5 00 o'clock

17 Q Okay And so when you're -- when you print and
18 process him, those -- that paperwork is then produced at
19 that time, is that right?

20 A Yes, it is

21 Q So, it's actually produced at or near the time
22 of taking the actual prints?

23 A Yes, it is

24 Q Okay And those paper -- the paperwork that

1 you print out or produce that has his fingerprints on
2 them, is that something that is kept at the Joliet
3 Police Department as it relates to the normal course of
4 business?

5 A Yes, it is Each individual that is arrested
6 is also assigned a unique Joliet Police Department --
7 it's called a BOFI jacket We end up taking the prints
8 and the pictures from the arrest, assign the number to
9 the -- or take the assigned number from Mr Bogan and
10 put the prints in the actual BOFI jacket

11 Q I am going to approach what I have marked as
12 People's Exhibit Number 184

13 Judge, for the record, this is a group exhibit
14 that contains four pages that are double-sided

15 I ask you to take a look at People's Exhibit
16 Number 184 Sergeant, do you recognize what People's
17 Exhibit Number 184 is?

18 A Yes, I do

19 Q And what do you recognize that to be?

20 A These are the fingerprint cards that are
21 produced when we print a subject and then subsequently
22 print them out

23 Q Okay Do they appear to be true and accurate
24 copies of what you received or what you generated on

1 July 27, 2013?

2 A Yes

3 Q You indicated, I think, that the system that
4 you used also provides the capability of capturing
5 photographs as well as fingerprints, is that right?

6 A Yes, it does

7 Q And is that also done at or near the time of
8 the processing of the individual?

9 A Yes

10 Q And that photograph -- or those photographs
11 also kept at the Joliet Police Department in the
12 ordinary course of business?

13 A Yes

14 Q I am going to show you what I have marked as
15 People's Exhibit Number 185 I ask you to take a look
16 at that Do you recognize what that is, sir?

17 A Yes, I do

18 Q And what is that?

19 A That is a photograph that we take It's a
20 mugshot It's a front view and also a left-side view

21 Q And do you recognize the person that's captured
22 in that picture?

23 A Yes

24 Q And who is that?

1 A It's Antonio Bogan

2 Q Is that the same person that you identified
3 here in court today?

4 A Yes

5 Q Now, on People's Exhibit Number 185, is there
6 what's called a case number?

7 A Yes, there is

8 Q I am going to ask you to take a look at
9 People's Exhibit Number 185 and People's Exhibit Number
10 184, do those exhibits have the same case number?

11 A Yes, they do

12 Q And is that a way that the Joliet Police
13 Department further tracks the individual that's being
14 fingerprinted and photographed?

15 A Yes, and then they're -- the document control
16 number is cross-referenced When these print out, they
17 print out a unique document control number That
18 document control number is then entered back into our
19 LRMS system

20 Q And based on your review of the documents and
21 your recollection from that date, does the control
22 number match that of Antonio Bogan?

23 A Yes

24 Q And the person that you fingerprinted on July

1 27th, 2013, that was Antonio Bogan, is that correct?

2 A Yes

3 MR KOCH Judge, I will tender the witness

4 THE COURT Cross?

5 CROSS EXAMINATION

6 BY

7 MR LENZIE

8 Q Sergeant?

9 A Yes

10 Q Sergeant, when you -- on July 27th, 2013, you

11 testified that you did go out to the 1900 block of

12 Moore?

13 A Yes

14 Q Okay When you went out there, did you come in

15 contact with a white Chevy Impala?

16 A Yes

17 Q Okay And isn't it true, there were three

18 individuals in that car, and Mr Bogan was not in that

19 car?

20 A That is correct

21 Q You also testified as to the fingerprint

22 process?

23 A Yes

24 Q You testified that you fingerprinted Mr Bogan

1 on that July 27th date?

2 A Yes, I did

3 Q How long have you been fingerprinting people?

4 A Well, for approximately 19 years

5 Q Okay Lots of people?

6 A Yes

7 Q Do you have to take training in how to
8 fingerprint someone?

9 A On-the-job training, yes, and through the
10 police academy

11 Q Okay Would it be fair to say that a
12 temperature might affect the quality of a fingerprint?

13 A If we have any problems with the fingerprint on
14 this machine, it will kick back that the fingerprint
15 isn't good and then we have to re-roll it

16 Q So, your machine has a safety guard?

17 A Yes

18 Q Okay And so it happens enough that there is
19 problems with fingerprints that your machine has some
20 kind of safety guard on it?

21 A It has a safety guard, yes

22 Q That's correct?

23 A Yes

24 MR LENZIE No more questions

1 THE COURT Any redirect?

2 MR KOCH No, Judge I have nothing further

3 THE COURT Thank you You're done

4 Call your next

5 I just want to make sure, because of that
6 situation I have got in 305 today, that this person can
7 finish at 1 30?

8 MR KOCH Yes

9 THE COURT If not, we will stop This next
10 witness is on vacation, right?

11 MR KOCH Judge, yes We can put the next
12 witness on We can go out of order

13 THE COURT All right I just wanted -- go on
14 Do whatever you want

15 (Witness sworn)

16 CHRIS DELANEY,
17 called as a witness, having been first duly sworn, was
18 examined and testified as follows

19 DIRECT EXAMINATION

20 BY

21 MS DOMAGALLA

22 Q Officer, please state your name for the record

23 A Chris Delaney

24 Q Could you please spell your last name?

1 A D-e-l-a-n-e-y

2 Q Where are you employed?

3 A City of Joliet Police Department

4 Q How long have you been so employed?

5 A 11 years, approximately nine months

6 Q And what are your duties at the Joliet Police
7 Department?

8 A Evidence technician

9 Q And you have been an evidence technician the
10 entire time you have been with JPD?

11 A No

12 Q When did you become an evidence technician?

13 A Approximately 2011

14 Q And do you have any prior law enforcement
15 experience?

16 A Yes

17 Q Where?

18 A Village of New Lenox Police Department

19 Q How long were you with the Village of New
20 Lenox?

21 A Approximately two years

22 Q And prior to becoming a police officer, did you
23 go through training to become a police officer?

24 A Yes

1 Q When was that?

2 A January of 2001

3 Q Did you successfully complete your training to
4 become a police officer?

5 A Yes

6 Q Now, did you have to go through additional
7 training to become an evidence technician?

8 A Yes, I did

9 Q What training did you go through to become an
10 evidence technician?

11 A 200 hours of crime scene training at
12 Northwestern University in Evanston, Illinois

13 Q And when did you do that?

14 A After I became an evidence tech -- it's been
15 periodically since I started, so I have 200 hours of
16 training

17 Q So, you have continued training throughout your
18 time as being an evidence tech?

19 A Correct

20 Q When was your last training course?

21 A I don't remember the exact date of that

22 Q Okay Now, as an evidence tech, what are your
23 duties?

24 A I respond to crime scenes, photographs,

1 fingerprint collection, DNA collection, anything that's
2 required of collecting evidence or documenting evidence,
3 packaging, transportation of it

4 Q Now, directing your attention to July 27th of
5 2013, were you employed and on duty with Joliet?

6 A Yes

7 Q And do you recall being called to the area of
8 1911 Moore Street in Joliet?

9 A Yes

10 Q And what were you called to that area for?

11 A I was sent there by Detective German to take
12 photographs of a vehicle in the parking lot at 1911
13 Moore

14 Q When you arrived on the scene, what did you
15 see?

16 A There was officers there, and I was directed to
17 a green in color Oldsmobile

18 MS DOMAGALLA May I approach?

19 THE COURT Yes

20 BY MS DOMAGALLA

21 Q Officer, I am going to show you what I have
22 previously marked as People's Number 186 Do you
23 recognize what that is?

24 A Yes

1 Q What is that?

2 A This is a photograph of a green in color
3 Oldsmobile that I was sent to take photographs of

4 Q And is that the vehicle that was in the parking
5 lot at Moore?

6 A Yes

7 Q And when you arrived, where, if you can recall,
8 was this vehicle parked in relation to the residence?

9 A It was parked in the eastern part of the
10 parking lot and to the west was a building, but I am not
11 sure if that's the building in question 1911 is the
12 address I was sent to

13 Q So, you were called there, specifically, to
14 photograph and document the vehicle in the parking lot?

15 A Yes

16 Q And does this photograph fairly and accurately
17 depict the vehicle that you took a picture of on
18 July 27th of 2013?

19 A Yes

20 Q Now, when you arrived on the scene, did you
21 ultimately search that vehicle?

22 A I didn't search it I took photographs of it

23 Q Did you take the photographs of items that
24 Detective German asked you to?

1 A Yes

2 Q And so you worked in conjunction with Detective
3 German while he searched the vehicle?

4 A Yes

5 Q Now, officer --

6 May I approach?

7 I am going to show you Exhibits 187 through
8 199

9 A Okay

10 Q Could you please look at those and tell me if
11 they're the photographs you took?

12 A Yes, they are

13 Q And do all of those photographs fairly and
14 accurately depict the items that you took pictures of on
15 July 27th, 2013?

16 A Yes, they do

17 Q And Detective German found these items within
18 that car and then presented them to you when you
19 photographed them?

20 MR LENZIE Judge, objection as to when.

21 THE COURT Sustained

22 Were you there when Detective German searched
23 the car and found those items?

24 THE WITNESS Yes

1 MS DOMAGALLA That's what I thought
2 THE COURT Overruled It sounded like he
3 wasn't -- never mind Go on

4 BY MS DOMAGALLA

5 Q So, you observed Detective German remove the
6 items out of that vehicle, is that correct?

7 A Yes

8 Q And then you photographed those items?

9 A Yes

10 Q And the items that you photographed -- did you
11 take the items back into evidence at the Joliet Police
12 Department?

13 A I took the items with me to the Joliet Police
14 Department, yes

15 Q And when you arrived at the Joliet Police
16 Department, what did you do with them?

17 A Took them into our lab section of the evidence
18 section of the department

19 Q And who was with you?

20 A Officer German -- or Detective German
21 accompanied me in bringing -- helping me with evidence,
22 bringing it in

23 Q May I approach?

24 Officer, I am showing you what I have marked as

1 People's Number 2 Do you recognize what this is?

2 A Yes, this is an evidence bag

3 Q Does it have a label on it?

4 A It does

5 Q And did you package -- or secure an item in
6 that bag?

7 A Yes, I did

8 Q Do you know what item is secured in that bag?

9 A This is item number 16, 22 caliber handgun

10 Q And that bag is still in a sealed condition, is
11 that right?

12 A Yes

13 MS DOMAGALLA Judge, do you have scissors, or
14 something that the officer can use?

15 THE COURT I don't know It's not my
16 courtroom Yes

17 THE WITNESS Would you like me to open it?

18 BY MS DOMAGALLA

19 Q Yes, please

20 Officer, once you get your gloves on, would you
21 please open that bag?

22 Could you please show to the Court and explain
23 what is in that bag?

24 A There is a pistol, magazine and a 22 caliber

1 Ruger handgun

2 MS TISDALE Your Honor, I would object

3 THE COURT Basis?

4 MS TISDALE Your Honor, I don't know what the
5 relevance is of the 22 caliber handgun, at this point,
6 in the introduction of it to the Court in this trial,
7 period He is not charged with that I don't know for
8 what purpose this is being introduced

9 THE COURT I don't control their evidence of
10 what they're trying to present You're saying that this
11 handgun has nothing to do with anything in this case?

12 MS TISDALE In my opinion, yes, your Honor

13 THE COURT Oh, in your opinion, I got it

14 Go on

15 MS DOMAGALLA Do you want me to respond to
16 the objection?

17 THE COURT Sure

18 MS DOMAGALLA Judge, they are all the items
19 found within the defendant's vehicle I do believe that
20 they are relevant to the case

21 MS TISDALE Your Honor, every item that's
22 found in the vehicle wouldn't be relevant to the case
23 I believe it -- that this has anything that goes to
24 weight of what he is being charged with I don't know

1 what relevance it is, this 22 caliber goes to this
2 supposed possession of the 40 caliber

3 THE COURT You don't think if they found one
4 gun in the car, it wouldn't go to him possessing the
5 other one, based on knowledge?

6 MS TISDALE If he is not charged with it, no

7 THE COURT Okay Are you completely exhausted
8 on this point?

9 MS TISDALE Yes, your Honor

10 THE COURT Overruled

11 Answer

12 BY MS DOMAGALLA

13 Q Now, officer, you stated what that was, for the
14 record Is that item in the same or substantially the
15 same condition as when you located it within the green
16 Oldsmobile Supreme?

17 A This was shown to me by Detective German

18 Q You took that weapon back, though, when you
19 entered it into that sealed bag, is that correct?

20 A Yes

21 Q And so when you entered that gun into that
22 sealed bag, today, now that you have opened the bag, is
23 it in the same condition as when you put it in the bag?

24 A Yes

1 Q And it's your initials and date on the evidence
2 tape, is that correct?

3 A On the evidence tape, yes

4 MS DOMAGALLA May I approach?

5 THE COURT Sure

6 BY MS DOMAGALLA

7 Q Officer, I am showing you what is marked as
8 People's Number 201 Do you recognize what this is?

9 A Yes

10 Q And again, what is that?

11 A It's an open bag It has Evidence Number 13,
12 indicating a black 40 caliber semi-automatic handgun
13 Hi-Point

14 Q Now, can you please remove the item from the
15 bag?

16 A I am not sure what this is

17 Q Now, you just removed a gun from that brown
18 paper bag, is that correct?

19 A Yes

20 Q Is that the same gun that you placed into the
21 brown paper bag on July 27, 2013?

22 A It appears so

23 Q And is it in the same condition as when you
24 placed it in the bag?

1 A I don't recall removing the grip, but yes

2 Q Okay Now, did you -- after you collected that
3 item, did you seal it in the brown paper bag?

4 A Yes, I did

5 Q And did you send that item to the crime lab for
6 additional testing?

7 A Yes

8 Q You could put the item back in the bag

9 THE COURT Let's get some clarification here
10 You mentioned that that was -- he was opening 201 Is
11 that the bag, or is -- 13 the gun? I am confused by the
12 numbers you just used, referring to that item

13 MS DOMAGALLA 201 is -- I put the sticker on
14 the bag, but it is the gun

15 THE COURT What was 13?

16 MS DOMAGALLA I don't recall saying 13

17 THE COURT Someone mentioned 13

18 MS DOMAGALLA Oh, the officer mentioned 13
19 It's their Joliet number

20 THE COURT Their number?

21 MS DOMAGALLA Joliet number, yes

22 THE COURT All right So, it's 201, bag with
23 gun?

24 MS DOMAGALLA Yes

1 THE COURT All right I got it

2 MS DOMAGALLA And, Judge, I would just like
3 to state, for the record, I believe there was an
4 agreement to open that bag yesterday, so defense counsel
5 could see it

6 THE COURT Is that correct?

7 MR LENZIE It was done in our presence

8 THE COURT Thank you, sir

9 BY MS DOMAGALLA

10 Q And then the grip -- officer, I am showing you
11 what I have marked as 202, is this the brown envelope
12 that was within the brown paper bag you just took the
13 gun out of?

14 A Yes

15 Q Could you please open that as well? Do you
16 recognize what that is?

17 A This is part of the grip It would be on the
18 side of the handgun, and this is a rubber grip, or the
19 top of this

20 Q So, when you stated that you didn't recall the
21 grip not being on that gun, is that the grip from the
22 gun you just identified in court?

23 A Yes

24 Q Officer, I am going to put this up here because

1 it's heavy I have marked this as People's Number 203

2 Do you recognize what this is?

3 MS TISDALE Your Honor, I am going to object
4 again My same objection, your Honor I object as to
5 relevance

6 THE COURT This is a bench trial If it's
7 something that I find to be not relevant or pertinent to
8 this issue, I will dismiss it

9 Go ahead

10 BY MS DOMAGALLA

11 Q Do you recognize what this item is?

12 A Yes, I do

13 Q And what is it?

14 A This is AR-15 style rifle

15 Q And was it also located by Detective German in
16 your presence in that green car?

17 A Yes

18 Q And was that item taken back to the Joliet
19 Police Department?

20 A Yes, it was

21 Q Was it then sealed in this clear plastic bag?

22 A Yes

23 Q Did you do that?

24 A I did

1 Q Does this rifle -- is it in the same condition
2 as it was when you located it in that green car?

3 A I removed the scope and packaged it separate
4 for this packaging, but yes

5 Q Thank you

6 Officer, I am showing you what I have marked as
7 People's Number 204 Do you recognize what this is?

8 A It's a brown paper bag marked with Joliet
9 Police Evidence Number 17

10 Q And that is People's Number 204?

11 A 204, yes

12 MS DOMAGALLA Now, that bag is also open I
13 believe there is an agreement again Defense
14 counsel -- that bag was opened yesterday with them, so
15 they can see what was inside of it

16 MR LENZIE That's correct

17 BY MS DOMAGALLA

18 Q Can you please open that bag and remove the
19 items? And what is that?

20 A This is a black canvass bag

21 Q Are there items within the black canvass bag?

22 A Yes

23 Q What is within the black canvass bag?

24 A There are five 30 round magazines for a rifle,

1 a box of 32 caliber ammunition, and a 223 Remington
2 ammunition box, ammunition

3 Q Now, officer, just for clarification purposes,
4 I am going to put an evidence number on these items I
5 am going to put People's Number 205 on one of the
6 magazines

7 206 is the second magazine that he pulled out,
8 207 would be the third, 208 is the fourth, 209 is the
9 fifth, People's Exhibit 210 is the white Winchester box
10 and 211 is gray Winchester box

11 THE COURT Which caliber?

12 MS DOMAGALLA I am sorry 211 is the 223

13 THE COURT Okay

14 BY MS DOMAGALLA

15 Q And the 210 is the 32

16 Now, these items that are now before you,
17 People's Number 205, 206, 207, 208 and 209, those are
18 the magazines Are they in the same condition as when
19 you collected them out of the green car with Detective
20 German in July of 2013?

21 A Yes

22 Q And items 210 -- or item 210, that box, is that
23 in the same condition as when you located it in July of
24 2013?

1 A Yes

2 Q And 211, is that box also in the same condition
3 as when you located it in July of 2013?

4 A Yes

5 Q Now, did you do any additional steps on any of
6 these items, other than just logging them into evidence?

7 A At the Joliet Police evidence lab, I processed
8 the exhibits marked 211 and 210 for fingerprints

9 Q And what steps did you take to do that on each
10 item? Let's start with 210, what did you do to
11 item number 210?

12 A 210, I first did a visual inspection, and then
13 followed the visual inspection I used a fingerprint
14 powder

15 Q And how did you do -- or what did you do with
16 the fingerprint powder?

17 A I applied it to the outside surfaces of the
18 box

19 Q And were you able to identify any fingerprints
20 off of that box?

21 A I don't remember off that -- a specific item

22 Q Now, did you do the same process that you just
23 described to item 211?

24 A Yes

1 Q So, you visually inspected it and then you used
2 fingerprint dust again?

3 A Yes

4 Q Officer, I am showing you what I have marked as
5 People's Exhibit 212, do you recognize what that is?

6 A Yes

7 Q And within that envelope, that again, there are
8 seven fingerprints or latent fingerprint cards, is that
9 correct?

10 A Yes

11 Q And did you create those latent fingerprint
12 cards?

13 A I am not sure I understand

14 Q Create is possibly a poor word I am sorry
15 After you dusted the ammunition boxes for
16 fingerprints, did you observe fingerprints that you
17 could put on tape?

18 A Yes

19 Q And did you do that?

20 A Yes

21 Q And what did you do with the tape that you had
22 fingerprints on?

23 A I applied it to a backing card

24 Q Is that a backing card in your hand?

1 A Yes

2 Q So, are those the backing cards that you
3 applied the fingerprint lifts -- latent lifts that you
4 obtained onto the backing cards?

5 A Yes

6 Q Did you do anything else with those cards after
7 you put the lifts on them?

8 A Yes

9 Q What did you do with them?

10 A I entered them in as an item of evidence and
11 transferred them to fingerprint analyst Michael Murphy

12 Q And Michael Murphy works at the Joliet Police
13 Department?

14 A Yes

15 Q When you transferred them to him, did you put
16 those cards into a sealed envelope?

17 A I put them into this envelope I did not seal
18 them

19 Q Did you hand -- like how did you give him the
20 cards?

21 A Transferred them to his office

22 Q There are markings on the back of those cards,
23 is that correct?

24 A Yes

1 Q Did you put them there, the markings?

2 A Some of them

3 Q And does it list where you collected the
4 fingerprint from?

5 A Yes

6 Q And that's your markings?

7 A Yes

8 Q Can you explain for the Court then where you
9 were able to lift those seven items -- or seven lifts
10 from?

11 A Yes, two of the cards -- actually --
12 correction, three of the cards are marked 40 slide with
13 my initials, the date, the case report number

14 Q And what is 40 slide?

15 A That's what I wrote for the slide of the 40
16 caliber handgun

17 Q Okay

18 A Two for the grinder, and the case report number
19 and my initials and the date, and two marked 223 ammo
20 box, my initials, the date and the case report number

21 Q So, when you read -- the two of them came from
22 the 223 ammo box, is that the ammo box that is sitting
23 next to you marked as People's Number 211?

24 A Yes

1 Q And Officer, may I see the -- thank you

2 Now, on the other side, you read the markings
3 on the back On the other side is the lift tape that
4 you put on the backing card, is that correct?

5 A Yes

6 Q And five of the seven cards have Xs through the
7 lift tape, is that correct?

8 A Yes

9 Q And the two that do not have Xs on them, can
10 you please state where those fingerprints were lifted
11 from?

12 A These two were taken from the 223 ammo box

13 Q The other cards, the cards that have the Xs on
14 them, are lifts that you took off the -- you stated
15 the -- you said the 40 slide and then grinder, is that
16 correct?

17 A Yes

18 Q So, there were other items that you -- did you
19 follow the same process as you described for the Court
20 with the ammo box, being a visual inspection and then
21 the fingerprint dust, and then if you were able to see a
22 fingerprint, you use lift tape to secure it?

23 A Which box?

24 Q No, I am saying the other item

1 A Okay

2 Q Because you have five fingerprints that you
3 lifted off of the 40 slide?

4 A Yes

5 Q And the grinder, is that correct?

6 A Yes

7 Q Now, when you -- what did you do to get those
8 lift cards for the items off the 40 slide?

9 A Same process, a visual inspection, followed by
10 application of fingerprint powder

11 Q And was that the same for the grinder as well?

12 A Yes

13 Q And then after your visual inspection, the
14 fingerprint dust, you used the lift tape and placed that
15 on the backing card?

16 A Yes

17 MS DOMAGALLA Judge, I have no further
18 questions for this witness

19 THE COURT Cross?

20 Hang on a minute Off the record

21 (WHEREUPON, a discussion was
22 off the record)

23 CROSS EXAMINATION

24 BY

1 MS TISDALE

2 Q Officer, do you know -- are you familiar with
3 the locations of where all these items were found in the
4 vehicle?

5 A Somewhat, yes

6 Q Okay And so you know that the rifle was in a
7 separate bag of its own?

8 A Yes

9 Q Okay And do you know exactly where in that
10 vehicle that bag was?

11 A I didn't see it, but I was told it was in the
12 back seat of the car

13 Q Okay And you know that the 40 caliber and
14 the 22 caliber was in another area in the sweatshirt,
15 correct?

16 A Correct

17 THE COURT In a sweatshirt? Is that what you
18 said?

19 THE WITNESS That's where the gun was

20 THE COURT All right Got it

21 THE WITNESS Or guns

22 THE COURT Got it Move on

23 BY MS TISDALE

24 Q There was another bag that contained the ammo

1 and the clips, is that correct, or magazines?

2 A Yes

3 Q So, there were different places where
4 everything was found, you have two bags and two guns and
5 a sweatshirt?

6 A Correct

7 Q All in different locations of the vehicle?

8 A Correct

9 Q And officer, you testified that you were able
10 to lift latent prints off certain items When you say
11 latent lift, what does that mean?

12 A Well, best I can describe it is I do a visual
13 inspection to see if I can see anything with my naked
14 eye fingerprint-wise If I don't see something that's
15 left in blood or another substance, then I go to
16 fingerprint powder to enhance it, so I can see it and
17 lift it

18 Q So, the items that you did lifts off of, those
19 are things with your visual eye after the powder that
20 you thought you saw something, fingerprint-wise?

21 A After the application of powder, yes

22 Q Okay And you actually testified that you were
23 able to get three of those lifts off of that 40
24 caliber, right?

1 A Well, I lifted something that I thought I could
2 see with the assistance of the fingerprint powder

3 Q Okay And there were actually -- and those --
4 there were three of those off of that 40 caliber?

5 A Yes

6 Q That you thought you could see something with
7 your visual eye after the application of the powder?

8 A Right

9 Q And you testified that after you got the lifts
10 and put them on the backing cards, you transferred those
11 to Officer Murphy?

12 A Well, he is not a sworn officer

13 Q I'm sorry How did you label him?

14 A As a fingerprint analyst

15 Q And you said you transferred those to him?

16 A I transferred them to his office

17 Q How did you do that?

18 A Once it's entered into an item of evidence, it
19 goes from me for chain of custody right to the latent
20 print office, the section of the evidence section
21 itself That's his office So, I take this item right
22 to his desk, and that's where I set it

23 Q Okay You just set it on the desk there?

24 A Set it on the desk

1 Q And you didn't send any of those to the
2 Illinois State Police, any of those latent prints?

3 A No, not the latent prints, no

4 Q And how do you make a determination as to
5 whether you're going to send something to the Illinois
6 State Police or whether you're going to send them to
7 fingerprint analyst Murphy?

8 A I am not sure I understand that question

9 Q Well, you testified that you took those lifts
10 to Officer -- I am sorry, fingerprint analyst Murphy,
11 but on some occasions, you sometimes would send
12 fingerprints to the Illinois State Police Crime Lab,
13 correct?

14 A If I have an item that I process and it's
15 requested of me to send it to the State Police Crime
16 Lab, I will do that

17 Q So, it's not you that makes that determination
18 as to where it's going to go?

19 A Sometimes, sometimes not

20 Q Did you make this determination?

21 A To?

22 Q To -- rather than send them to the Illinois
23 State Police Crime Lab, you took them to fingerprint
24 analyst Murphy?

1 A Yes

2 Q And you made that determination?

3 A Yes

4 Q Why did you make that determination?

5 A That's the first step in the process

6 Q So, it's your testimony then all
7 fingerprints -- I'm sorry, you took these fingerprints
8 to fingerprint analyst Murphy, and it stopped there
9 Why didn't it go further to the Illinois State Police
10 Crime Lab?

11 A I wasn't requested to send them there

12 Q Well, you keep saying you weren't requested,
13 but you said it's your determination as to whether it
14 goes to the Illinois State Police Crime Lab or
15 fingerprint analyst Murphy, right?

16 A The first step

17 Q What is the second step?

18 A If I am requested to send it, I will

19 Q Okay So, is it just -- if you can just
20 describe, what instances do you decide to send them to
21 fingerprint analyst Murphy, rather than Illinois State
22 Police Crime Lab? What's your criteria in deciding
23 where they are going to go in your first step?

24 A I would say almost every case that I do, the

1 first step is to him

2 MS TISDALE Nothing further

3 MS DOMAGALLA Just very briefly

4 REDIRECT EXAMINATION

5 BY

6 MS DOMAGALLA

7 Q Fingerprint analyst Murphy's office is within
8 the secured evidence section of the Joliet Police
9 Department, is that correct?

10 A Yes

11 Q And the latent cards that you reviewed before
12 the Court today, those are the latent cards that -- or
13 the lifts that you took in July of 2013?

14 A Yes

15 MS DOMAGALLA I have nothing further

16 MS TISDALE No

17 THE COURT Thank you, sir You may step down

18 The Court is going to be in recess for half an
19 hour for lunch

20 (WHEREUPON, a lunch recess
21 was had)

22 All right We're back on the record on Bogan,

23 13 CF 1631 We are still in our State's case in chief

24 If you're ready, continue

1 MR KOCH Yes, Judge

2 (Witness sworn)

3 JEFFREY GERMAN,

4 called as a witness, having been first duly sworn, was
5 examined and testified as follows

6 DIRECT EXAMINATION

7 BY

8 MR KOCH

9 Q Can you please state your name and spell your
10 last name for the record?

11 A Jeffrey German, G-e-r-m-a-n

12 Q And what's your current occupation?

13 A I am a detective with the City of Joliet
14 Police

15 Q And how long have you been with the City of
16 Joliet?

17 A Approximately 11 years

18 Q And how long have you been a detective?

19 A Approximately a year and a half

20 Q Were you a detective and working for the City
21 of Joliet on July 27th of 2013?

22 A Yes

23 Q Were you aware of an investigation in which the
24 Joliet Police Department was looking for someone known

1 as Antonio Bogan?

2 A Yes

3 Q Did there come a time, during your shift on
4 July 27, 2013, that you became aware that someone
5 identified as Antonio Bogan had been located?

6 A Yes

7 Q Do you recall where he was located at?

8 A Near 1911 Moore Avenue

9 Q Okay And is that in the City of Joliet?

10 A It's in the county, Will County jurisdiction
11 within -- by Joliet

12 Q Okay And did you proceed to the area of 1911
13 Moore Street in Will County, Illinois?

14 A Yes

15 Q And when you got there, what did you observe?

16 A I observed the defendant handcuffed in the rear
17 of Sergeant Alvarez's squad car with him standing by

18 Q Now, you just indicated the defendant Did you
19 observe someone out there that day that you see here in
20 court?

21 A Yes, the defendant sitting in the blue jump
22 suit

23 MR KOCH Your Honor, may the record reflect
24 the in-court identification of the defendant?

1 THE COURT It will

2 BY MR KOCH

3 Q And you said -- when you arrived, he was in a
4 vehicle?

5 A Yes

6 Q And did you approach that vehicle?

7 A Yes

8 Q And when you approached that vehicle, did you
9 locate anything that the defendant was holding?

10 A He was holding a cell phone

11 Q I am going to show you what I have marked as
12 People's Exhibit Number 213 Do you recognize People's
13 Exhibit Number 213?

14 A Yes

15 Q And what do you recognize that to be?

16 A An Apple iPhone recovered from that address

17 Q And was that recovered from the defendant?

18 A Yes

19 Q And you observed that -- where did you observe
20 that when you arrived on July 27th?

21 A He was sitting in the back of the vehicle with
22 the back door open while I was speaking with him, and he
23 was holding -- his hands were behind his back, and he
24 had the cell phone in one of his hands behind his back

1 THE COURT Your Honor, do you have those
2 scissors?

3 MS DOMAGALLA I put them on your bench
4 BY MR KOCH

5 Q And is that currently in a sealed condition?

6 A Yes

7 Q Can you go ahead and open that up, please?

8 A Remove it?

9 Q You can go ahead and remove it

10 Is that the phone that you observed in the
11 defendant -- the defendant had on July 27th?

12 A Yes

13 Q Okay Did you speak with the defendant with
14 regards to getting permission to enter into his
15 residence?

16 A Yes

17 Q And did he give you consent to enter into his
18 residence?

19 A Yes, he did

20 Q I am going to show you what I have marked as
21 People's Exhibit Number 214 Do you recognize People's
22 Exhibit Number 214?

23 A Yes, I do

24 Q And what do you recognize that to be?

1 A This is a voluntary authorization to search the
2 residence signed by the defendant for 1911 Moore,
3 apartment 103

4 Q Okay And is that a true and accurate copy of
5 the consent-to-search his residence?

6 A Yes, and the vehicle, a Chevy Impala

7 Q Okay Did you subsequently -- was a search
8 conducted at 1911 Moore Street, apartment, I think you
9 said 103?

10 A Yes

11 Q And with regards to the search, can you tell me
12 what, if anything, did you discover as it relates to any
13 kind of targets?

14 A In the closet, which is --

15 MR TISDALE Objection, your Honor Relevance
16 as to targets? Target of what? What kind of target? I
17 don't know

18 THE COURT It's a little vague Rephrase
19 this I don't know where you're going here I don't
20 understand what you mean

21 MR KOCH I mean, I could explain the
22 relevance aspect of it

23 THE COURT Then you're going to explain the
24 question to me

1 BY MR KOCH

2 Q Are you familiar with what is commonly referred
3 to as a target?

4 A Yes

5 Q What would you describe a target to mean to
6 you?

7 A A target used at a shooting range, either
8 firearm or a bow and arrow

9 Q Okay And have you seen targets in your
10 professional life -- your professional career as a
11 Joliet police officer?

12 A Yes

13 Q Have you seen targets of this type?

14 THE COURT Let's go on

15 BY MR KOCH

16 Q Okay During your search of the residence, did
17 you come upon -- what can you tell me about coming upon
18 any targets?

19 A In the closet, near the living room in the
20 kitchen, I found a homemade target, which were several
21 pieces of what appeared to be cardboard tape themselves
22 with a target drawn on it

23 Q When you say, a target drawn on it, what do you
24 mean?

1 A Like a bull's eye circles

2 Q Okay

3 A And then there is also, I believe, about five
4 holes, which appear to be made by an arrow

5 Q Okay Did you -- did you subsequently obtain a
6 search warrant for a vehicle that was located in the
7 parking lot of 1911 Moore Street?

8 A Yes

9 Q And prior to obtaining that search warrant, had
10 you been given any information as to the owner of that
11 vehicle?

12 A Yes

13 Q And who did you learn was the owner of that
14 vehicle?

15 A The registration was registered to the
16 defendant

17 MR KOCH Judge, at this time, I am going to
18 ask leave to enter into evidence People's Exhibit Number
19 215, a certified copy of vehicle registration for one
20 Antonio Bogan at 1911 Moore street

21 THE COURT Defense counsel?

22 MR LENZIE Judge, it's a self-authenticating
23 document I have no objection

24 THE COURT Thank you So admitted

1 BY MR KOCH

2 Q Did you -- so, you obtained a search warrant
3 for a Cutlass Supreme, is that correct?

4 A Yes

5 Q And I am going to show you what's been marked
6 as People's Exhibit Number 186

7 Judge, may I see that exhibit, please?

8 THE COURT Take it back

9 BY MR KOCH

10 Q Do you recognize People's Exhibit Number 186?

11 A Yes

12 Q And what do you recognize that to be?

13 A As the vehicle parked at the defendant's
14 address that was registered to him that was searched

15 Q Okay And did you observe this vehicle on July
16 27th, 2013?

17 A Yes

18 Q And does that picture truly and accurately
19 depict that vehicle?

20 A Yes, it does

21 Q Does that vehicle have a license plate
22 identified in that picture?

23 A Yes

24 Q And can you read the license plate into the

1 record, please?

2 A The license plate is N75 6688

3 Q Now, I am going to show you what's been
4 admitted as People's Exhibit Number 215 and ask you to
5 take a look on that document, and let me know if you can
6 identify those same numbers on that page

7 A Yes, it's same license plate, N75 6688 on a
8 1997 Oldsmobile Coupe

9 Q Okay

10 A Registered to the defendant, Antonio Bogan, at
11 1911 Moore Street, apartment 103

12 Q And that's the same license plate that's on the
13 certified registration as the license plate that's on
14 that vehicle, is that correct?

15 A Yes

16 Q And that picture depicts a Cutlass Supreme, is
17 that right?

18 A That's correct

19 Q And that's -- the vehicle registration is for
20 that vehicle, is that correct?

21 A Yes

22 Q Okay You had occasion to search that vehicle
23 then, Detective German?

24 A Yes

1 Q First thing upon -- and were you with -- was
2 Evidence Technician Delaney present with you during the
3 search of this vehicle?

4 A Yes

5 Q And do you recall what he was doing as you were
6 searching the vehicle?

7 A He was photographing items, and then the items
8 were eventually placed into his vehicle to be
9 transported to the police station for the processing

10 Q And I guess starting with the search of the
11 vehicle, can you tell me, did you open that vehicle?

12 A Yes

13 Q And what, if anything, did you observe in that
14 vehicle, I guess starting in the backseat area?

15 A In the backseat, there was a large garment bag
16 that was laying on the backseat

17 Q And I am going to show you what's been marked
18 as People's Exhibit Number 216 Do you recognize
19 People's Exhibit 216?

20 A Yes

21 Q And what do you recognize that to be?

22 A This would be the black zipper garment bag that
23 was recovered from the backseat of this vehicle

24 Q And did you recover this item?

1 A Yes

2 Q And is it in a sealed condition?

3 A Yes, it is

4 Q Can you go ahead and open it up for me, please?

5 And can you tell me, Detective German, what it
6 is that you took out of People's Exhibit Number 216?

7 A This is a black zipper garment bag, also a
8 black rifle case that was located in this bag when I
9 first recovered it

10 Q Okay And I am going to show you what's been
11 marked previously as People's Exhibit Number 188 Do
12 you recognize People's Exhibit Number 188?

13 A Yes

14 Q And what do you recognize that to be?

15 A This was a black rifle that had a scope
16 attached

17 Q And does this picture also show some type of
18 carrying case?

19 A The black zipper rifle case that was inside the
20 black garment bag

21 Q That you just took out of People's Exhibit
22 Number 216, is that right?

23 A Correct

24 Q Okay And showing you what's been marked as

1 People's Exhibit Number 203, do you recognize People's
2 Exhibit Number 203?

3 A Yes

4 Q And what do you recognize that to be?

5 A The same black rifle that did have a scope on
6 the top that we recovered from the vehicle in the
7 garment bag in the zipper rifle case

8 Q Okay Besides the removal of the scope, does
9 it appear to be the same weapon that you recovered out
10 of that vehicle on July 27th?

11 A Yes

12 Q Okay And it's actually in a clear plastic
13 bag, you're able to see the weapon, is that right?

14 A Correct

15 Q Okay And it's also in a sealed condition, is
16 that correct?

17 A Yes

18 Q Now, after you recovered the garment bag in the
19 backseat, did you -- what's the next area or the next
20 thing that you observed as it relates to this vehicle?

21 A There were several items recovered from the
22 rear driver's side floorboard

23 Q Okay And I would like to ask you, what's the
24 first item that you recovered from the rear driver's

1 side floorboard?

2 A That would have been a red plastic bag that had
3 items in it

4 Q Okay Do you recognize what is People's
5 Exhibit Number 217?

6 A Yes

7 Q And what do you recognize that to be?

8 A This would be the red plastic bag recovered
9 from the rear driver's side floorboard of the vehicle

10 Q Okay Now, when you observed the rear driver's
11 side floorboard, was that the only item that you
12 observed, or the only thing that was on that floorboard?

13 A No, there was also some items wrapped up in a
14 black sweatshirt There was also a black zipper case
15 that had items in that

16 Q Okay And can you tell us -- based on
17 searching that vehicle, you indicated three separate
18 items were on the rear floorboard area of the driver's
19 side, is that right?

20 A Yes

21 Q What was the top or highest thing, the first
22 thing that you came in contact with?

23 A The first would have been this red plastic bag
24 that was pulled from the vehicle

1 Q Okay And is that in a sealed condition?

2 A Yes

3 Q Okay Can you go ahead and open it up, please?
4 And can you tell me what you just took out of People's
5 Exhibit Number 217?

6 A This would be the same red bag that was
7 recovered from the vehicle containing various
8 paraphernalia and a health card

9 Q Can you go ahead and can you take out -- you
10 said something about a health card, can you take that
11 out of the bag? And I am going to mark that as People's
12 Exhibit Number 218 Do you recognize what People's
13 Exhibit Number 218, sir?

14 A Yes

15 Q What do you recognize that to be?

16 A This would be Aetna, A-e-t-n-a, health card,
17 with the name of Antonio Bogan on the front, and the ID
18 card for that plan

19 Q Okay And is that the card that you located in
20 that red bag on July 27th of 2013?

21 A Yes

22 Q Okay And can you just describe for People's
23 Exhibit Number 217 what else is in the red bag?

24 A There is a handheld grinder with white powder

1 residue, a Dormin Sleep Aide pill bottle, a box of new
2 sandwich plastic bags, a digital scale in a box, a
3 toothbrush and a pair of scissors, a metal rod, unknown
4 type of plastic piece, and that appears to be it

5 Q Okay As well as -- and all of that was
6 contained within the red bag that also had the medical
7 card in the name of Antonio Bogan, is that right?

8 A Yes

9 Q Okay If you could put that stuff back in the
10 bag, officer

11 Now, I am going to show you what's been marked
12 as People's Exhibit Number 187 Do you recognize what
13 People's Exhibit Number 187, sir?

14 A The backseat of the Oldsmobile

15 Q And can you describe -- the backseat of that
16 Oldsmobile, is that where that garment bag was that you
17 previously testified that held the rifle?

18 A Yes

19 Q And can you tell me the condition of the
20 vehicle at that point, as far as what's in the vehicle?

21 A It appears to be pretty empty, other than what
22 was on the driver's side floorboard, and some items are
23 on the front-passenger's seat

24 Q Okay And you indicated that there were -- the

1 items that are on the floorboard that started out with
2 the red baggie previously testified I am now going to
3 show you People's Exhibit Number 190 Do you recognize
4 People's Exhibit Number 190, sir?

5 A Yes

6 Q And what do you recognize that to be?

7 A This would be the black sweatshirt laying on
8 top of a black zipper bag and a black handgun magazine
9 sticking out of the black sweatshirt

10 Q Okay And where in the vehicle was this item,
11 this sweatshirt you're talking about, and magazine
12 located?

13 A The same rear driver's side floorboard

14 Q And was that above or below the red bag that
15 you just previously testified to?

16 A It would have been below the red bag The red
17 bag was the first item removed

18 Q Okay Does that picture truly and adequately
19 show the vehicle after the red bag was removed?

20 A Yes

21 Q Okay Now, you indicated in this picture, this
22 observes -- that there appears to be something in the
23 sweatshirt Did you search that sweatshirt and locate
24 anything?

1 A Yes

2 Q What did you locate?

3 A Two handguns, a black Hi-Point 40 caliber
4 semi-automatic handgun and a Ruger revolver

5 Q I am going to show you what's been marked
6 previously as People's Number 200 If you could take a
7 look at People's Exhibit Number 200, and it has already
8 been opened If you could take a look at that exhibit
9 and let me know if you recognize what that exhibit is

10 A This would be the handgun

11 Q And where did you locate that handgun?

12 A This would be in the -- in the black -- inside
13 the black sweatshirt that was in the rear-driver's side
14 floorboard

15 Q All right And is that, in fact, the handgun
16 that you recovered on July 27, 2013?

17 A Yes

18 Q Okay I am going to show you what's been
19 marked as People's Exhibit Number 201 and ask you to
20 take a look at that Let me know if you recognize what
21 that is, sir?

22 A Yes, it's the 40 caliber Hi-Point
23 semi-automatic handgun

24 Q And can you go ahead and take that item out as

1 well and let me know -- do you recognize that item that
2 you have in your possession now?

3 A Yes

4 Q And what is that?

5 A The Hi-Point 40 caliber semi-automatic
6 handgun

7 Q And did you recover that handgun out of that
8 Cutlass Supreme on July 27, 2013?

9 A Yes

10 Q And is that, in fact, the handgun that you
11 recovered on that date?

12 A Yes, other than now the serial number is --
13 appeared to be -- is observable now

14 Q Okay Let me ask you some questions about
15 that When you recovered that item on July 27, 2013,
16 did you examine that item for any kind of serial
17 numbers?

18 A Yes

19 Q And can you tell the Court whether or not you
20 were able to identify any serial numbers on that weapon?

21 A At that time, no It appeared it had been
22 defaced

23 Q And looking at that now, you said that there
24 appears to be some serial numbers on that weapon, is

1 that right?

2 A Correct

3 Q And where are those numbers located, if you can
4 tell the Court, please?

5 A On the bottom of the slide right before the
6 trigger guard

7 Q Okay I am going to show you what's been
8 previously marked as People's Exhibit Number 193 and ask
9 you to take a look at People's Exhibit Number 193 Do
10 you recognize what People's Exhibit Number 193 is?

11 A Yes It would be the same bottoms of the slide
12 of the same handgun

13 Q Okay And in People's Exhibit Number 193, are
14 you able to observe the serial number on that weapon?

15 A No

16 Q And is People's Exhibit Number 193, is that a
17 true and accurate picture of how the weapon appeared on
18 that date, July 27, 2013, regarding the serial numbers?

19 A Yes, it is

20 Q Okay Now, I am going to show you what I am
21 marking as 219 I ask you, do you recognize People's
22 Exhibit Number 219?

23 A Yes

24 Q And what do you recognize that exhibit to be?

1 A This would be the magazine that contains four
2 live rounds that were located in the same black
3 sweatshirt on the rear driver's side floorboard

4 Q And did you locate that on July 27th, 2013?

5 A Yes

6 Q And is it currently in a sealed condition?

7 A Yes

8 Q Can you go ahead and open that, please? And do
9 you recognize what is inside People's Exhibit
10 Number 217?

11 A Yes

12 Q What is that?

13 A This would be a black magazine which did fit
14 the Hi-Point 40 caliber handgun that has four live --
15 40 caliber rounds in the magazine

16 Q I am sorry, People's Exhibit Number 219, that's
17 the magazine that fits the 40 caliber?

18 A Yes

19 Q Okay And I am going to show you People's
20 Exhibit Number 191 and ask you, what is People's Exhibit
21 191?

22 A That would be the same black magazine with live
23 ammunition

24 Q And is that a true and accurate photograph of

1 that magazine as it appeared on July 27, 2013?

2 A Yes

3 Q Okay I am going to show you what's been
4 previously marked as 192 Can you tell me what People's
5 Exhibit Number 192 is, please?

6 A This would be the same Hi-Point 40 caliber
7 semi-automatic handgun

8 Q And is that a true and accurate picture of that
9 handgun?

10 A Yes

11 Q Okay Now, after you located the two handguns
12 and the magazine that were contained within that
13 sweatshirt, was there anything left on the rear driver's
14 side floorboard?

15 A Yes, zipper bag that contained items

16 Q Okay I am going to show you what's been
17 marked as People's Exhibit Number 194 I ask you to
18 take a look at People's Exhibit Number 194 and ask you,
19 do you recognize what that picture depicts, sir?

20 A This would be the same zipper bag that
21 contained some items

22 Q All right And does that picture truly and
23 accurately depict how it appeared after you've now
24 removed the red bag and the sweatshirt with the weapons?

1 A Yes

2 Q So, that was on the bottom of the pile of stuff
3 that you previously testified to?

4 A Correct

5 Q Okay I am going to show you what's been
6 previously marked as People's Exhibit Number 204 Can
7 you go ahead and take that item out? Can you tell me
8 what is in that -- what was in that exhibit?

9 A There were five rifle magazines that were
10 empty, 30 caliber capacity, I believe -- 30 round
11 capacity, and then two boxes of ammunition, 32 caliber,
12 and I believe 223 caliber rifle rounds, six rifle
13 rounds, and I believe 47 of the 32 caliber ammunition

14 Q Okay And just for purposes of the record, the
15 five magazines, can you just tell me the exhibit numbers
16 that are on those magazines?

17 A 208, 205, 209, 207 and 206

18 Q Okay And People's Exhibit Number -- or you
19 said there was a box of 223, does that have an exhibit
20 number on it?

21 A Exhibit 211

22 Q And you pulled something out of them Can you
23 just tell me what was inside People's Exhibit 211?

24 A This would be six 223 Winchester rifle rounds

1 Q And the 32 caliber bullets you testified to,
2 does that have an exhibit number on it?

3 A Exhibit 210

4 Q And what was inside People's Exhibit
5 Number 210?

6 A Forty seven 32 caliber live ammunition rounds

7 Q Okay And all these things were contained
8 within the nylon bag, is that correct?

9 A Yes

10 Q That was contained in People's Exhibit
11 Number 204?

12 A Correct

13 Q Okay And you actually located those items in
14 the vehicle, is that correct?

15 A Yes

16 Q Now, was there anything else in the back area
17 of the vehicle that you were searching at that point?

18 A Nothing that we took into evidence

19 Q Okay Did you observe anything in the front
20 seat of the car that you were searching?

21 A Yes, the front-passenger seat, there was some
22 paperwork with the name of Antonio Bogan, tow sheets, a
23 tow bill, a Wal-Mart receipt, I believe, and a MoneyGram
24 order with his name on it

1 Q I am going to show you what's been previously
2 marked as People's Exhibit Number 196 I am going to
3 ask you to take a look at those -- that picture, and
4 tell me if you recognize what that picture depicts,
5 please?

6 A These would be two of the paperwork that was on
7 the front-driver's side -- I am sorry, passenger's seat,
8 the Rockdale Police Department vehicle bond receipt, and
9 also an Anderson Towing bill for a '97 Oldsmobile
10 Cutlass registered to Antonio Bogan at the same address,
11 1911 Moore Street, apartment 103 There is also a
12 signature at the bottom stating Antonio -- or under the
13 name Antonio Bogan

14 Q Okay And this picture truly and accurately
15 depicts the -- those items that you recovered from the
16 front-passenger's seat, as far as those two things that
17 are in this picture?

18 A Yes

19 Q Okay Now, I am going to show you what I am
20 marking as People's Exhibit Number 220 -- I am going to
21 show you what's previously been marked as People's
22 Exhibit Number 220 I ask you to take a look at
23 People's Exhibit Number 220 Do you recognize what that
24 is, sir?

1 A Yes, these would be the documents that were
2 recovered from the front passenger seat of the vehicle

3 Q Okay And is it currently in a sealed
4 condition?

5 A Yes

6 Q And actually, are you the one that sealed that
7 up?

8 A Yes

9 Q Okay Can you go ahead and open that up,
10 please?

11 The first thing I am going to do is mark what
12 will be marked as People's Exhibit Number 221 I am
13 going to show you what I have now marked as People's
14 Exhibit Number 221 and ask you if you recognize what
15 People's Exhibit Number 221 is, sir?

16 A This would be a receipt -- or a bill for an
17 Oldsmobile Cutlass from Anderson Towing

18 Q And does it have a date on there?

19 A The date is March 3rd, 2013, 11 45 a m

20 Q Does it have any names on there?

21 A There is a signature at the bottom left I can't
22 decipher It starts -- the last name starts with a B
23 It looks like a middle initial M

24 Q And where was that located in the car?

1 A On the front-passenger's side seat

2 Q Okay I am going to show you what's been
3 marked as People's Exhibit Number 222 Do you recognize
4 what that is?

5 A This would be a receipt from the Wal-Mart on
6 Jefferson Street in Joliet

7 Q And does it indicate what it was for?

8 A For a MoneyGram, \$50

9 Q Okay Showing you what's been marked as -- and
10 showing you People's -- it's still with 222, does it
11 have a date on there?

12 A March 18th, 2013 at 19 51 hours

13 Q And showing you People's Exhibit Number 223,
14 can you tell me what that is?

15 A This would be Wal-Mart receipt from the same
16 store, the same date and time, for a MoneyGram for the
17 same \$50

18 Q Okay

19 A Under the name of Antonio Bogan is the sender
20 with the address of 1911 Moore in Joliet, Illinois, and
21 there is a phone number also listed

22 Q Okay And showing you what's been marked as
23 People's Exhibit 224, can you tell me what People's
24 Exhibit 224 is?

1 A This would be paperwork for the MoneyGram for
2 \$50, the same sender is defendant at the same address,
3 also phone number listed, sent to Cecily Ratliff in
4 Montgomery Alabama

5 Q And People's Exhibit Number 225?

6 A This would be the Rockdale Police Department
7 vehicle bond receipt that was in the earlier photo that
8 you showed me for the vehicle, the '97 Oldsmobile
9 Cutlass for the defendant listed at his address with a
10 phone number That does match the phone number on the
11 MoneyGram receipt

12 Q And these -- and all of these items were
13 located in the front passenger's seat of that vehicle,
14 is that correct?

15 A Correct

16 Q Now, did you have occasion to access and search
17 the trunk of the vehicle?

18 A Yes

19 Q Can you tell me if you located anything in the
20 trunk of the vehicle?

21 A Yes, there was a crossbow with arrows I
22 believe it was camouflage in color

23 Q I am going to show you People's Exhibit
24 Number 197 Do you recognize that exhibit?

1 A Yes

2 Q What is that?

3 A Camouflage-colored crossbow with five or six
4 arrows

5 Q And does that picture truly and accurately
6 depict the crossbow that you observed in the trunk of
7 that Cutlass?

8 A Yes

9 Q I am going to show you People's Exhibit
10 Number 189 Do you recognize 189?

11 A Yes, this is the red plastic bag that had been
12 recovered from the rear driver's side floorboard along
13 with the health card for Antonio next to it

14 Q Does that picture truly and accurately depict
15 what was taken out of the vehicle that day?

16 A Yes

17 Q And showing you 195, what is 195?

18 A This would be the Ruger semi-auto handgun that
19 was recovered from the rear-driver's side floorboard and
20 the black sweatshirt

21 Q And does that picture truly and accurately
22 depict that Ruger handgun as you observed it on
23 July 27th?

24 A Yes

1 Q Of 2013?

2 A Correct

3 Q Now, these items, were they transferred back to
4 the Joliet Police Department by Evidence Technician
5 Delaney?

6 A Yes

7 Q And did you assist in the processing of
8 securing these items in evidence?

9 A Yes

10 Q And, in fact, other than the weapons
11 themselves, the two handguns and the rifle, did you seal
12 up the remaining items?

13 A Yes

14 Q And those items were in a sealed condition
15 today prior to you opening except for the handguns and
16 the -- or the bag with the ammunition, is that correct?

17 A Correct

18 MR KOCH One moment, your Honor

19 Judge, I will tender the witness at this time

20 THE COURT Cross?

21 CROSS EXAMINATION

22 BY

23 MR TISDALE

24 Q Detective, the area of 1911 Moore, that area

1 is -- it's an apartment complex, correct?

2 A Yes

3 Q Is that considered to be the Pheasant Run
4 Apartments?

5 A Yes, I believe that's the name of it

6 Q Do you know about how many apartment buildings
7 make up that complex?

8 A I would say more than 10, maybe

9 Q Okay And do you know how many apartments are
10 within each unit?

11 A At least, I would say, maybe six or more

12 Q And when you entered that area, it's not secure
13 at all, is it?

14 A I believe there is a fence around the parking
15 lot, but it's open There is no gate

16 Q So, anyone could just drive in?

17 A Yes

18 Q Okay And you're not familiar with the
19 procedures of parking? You don't know whether or not
20 there is assigned spaces or not?

21 A I am not aware

22 Q Okay And you testified that the -- you were
23 the officer that searched the Oldsmobile Cutlass, you
24 don't know if that vehicle was in working condition or

1 not?

2 A I never drove it I am not sure if it was
3 drivable

4 Q And you don't know how long that vehicle had
5 been sitting there?

6 A No

7 Q And you don't know when the last time it was
8 moved?

9 A Sometime after March, when it was towed by the
10 Rockdale PD

11 Q So, it's the last time you know for sure it was
12 probably moved was at least March?

13 A As far as I know

14 Q Okay And you -- when you searched the
15 vehicle, you testified that you found the 40 caliber
16 Hi-Point firearm wrapped in a black sweatshirt, correct?

17 A Yes

18 Q And officer, you wrote a report in this matter,
19 correct?

20 A Yes

21 Q And in your report, you stated that that --
22 those two firearms in that black sweatshirt was actually
23 found on the -- behind the -- the driver's seat,
24 correct, floorboard?

1 A It was under the rear driver's side floorboard

2 Q So, is it your testimony then today, that the
3 black sweatshirt with the two handguns, the red bag and
4 the black canvass bag with the ammo in it, all that was
5 found in the rear driver's side passenger's seat?

6 A Rear driver's side floorboard

7 Q And so the -- it was actually -- in your
8 report, where you wrote that there was -- the rear
9 passenger side where you found the ammunition?

10 A I believe that was a typo on one of the items

11 Q Okay But it's your testimony today that all
12 those items were on the same side?

13 A Yes, they were

14 Q And officer, the garment bag that had the rifle
15 in it, was that garment bag zipped?

16 A I believe it was

17 Q And the black canvass bag that had the
18 ammunition in it, was that bag zipped?

19 A On the floorboard?

20 Q Yes

21 A I don't recall if that was zipped

22 Q You don't know if that was zipped

23 And in the ammunition -- the bag that had the
24 ammunition in it, there were no guns found in that bag,

1 correct?

2 A No, not in that bag

3 Q And the -- Mr Bogan gave you consent to search
4 the -- he had a white heavy Impala on the scene that
5 day, correct?

6 A Yes

7 Q And he also gave consent to search his home?

8 A Yes

9 Q Okay And you made entry into his home with
10 his keys, correct?

11 A Yes

12 Q And he gave you those keys?

13 A I don't remember -- I don't know if another
14 officer had them already or if he gave them to me, but
15 eventually I did have them

16 Q And did you make any observation as to -- well,
17 let me put it this way, there were no keys to that
18 Oldsmobile Cutlass on that key chain, correct?

19 A Correct

20 Q And how did you get into the Oldsmobile
21 Cutlass?

22 A The use of a Slim Jim

23 Q And Mr Bogan's person was, I am pretty sure,
24 thoroughly searched, correct?

1 A Yes

2 Q And his home was thoroughly searched, correct?

3 A Yes

4 Q And you never recovered any keys to that green
5 Oldsmobile Cutlass, correct?

6 A Correct

7 Q And officer, you never -- I am sorry,
8 detective, you never recovered any insurance paperwork
9 as it relates to that Oldsmobile Cutlass?

10 A I don't recall that -- finding any

11 Q And the -- I don't know if you were the officer
12 on the scene initially, but did you make any
13 observations as to who was in that white Chevy Impala?

14 A No When I arrived, they were out of the
15 vehicle

16 MS TISDALE Okay Nothing further

17 THE COURT Any redirect?

18 REDIRECT EXAMINATION

19 BY

20 MR KOCH

21 Q You were asked some questions about --
22 indicating in your report that the bag with the ammo
23 was -- in the report says it was located on the
24 passenger's side, is that right?

1 A Correct

2 Q And is that an error?

3 A Correct The evidence report also states the
4 driver's side rear

5 Q And I am going show you People's Exhibit
6 Number 190 again Can you please tell me, in 190, does
7 that show the sweatshirt?

8 A Yes

9 Q Does it also show that ammo bag?

10 A Yes, bottom portion, corner of it

11 Q Okay And that's how it was when you found it,
12 is that correct?

13 A Yes, once we removed the red plastic bag from
14 the top

15 Q And that shows that ammo bag being on the rear
16 of the driver's side floorboard, is that right?

17 A Yes

18 Q And then also, People's Exhibit Number 194,
19 does that also show that ammo bag in that picture?

20 A Yes

21 Q And where does that picture show that ammo bag
22 being located?

23 A The rear driver's side floorboard

24 Q And both those pictures are true and accurate

1 pictures as it relates to where those items were found,
2 is that right?

3 A Correct

4 MR KOCH Okay Judge, I have nothing
5 further

6 MS TISDALE Nothing

7 THE COURT Thank you, sir You may step down

8 MS DOMAGALLA We will call Michael Murphy
9 (Witness sworn)

10 MICHAEL J MURPHY,
11 called as a witness, having been first duly sworn, was
12 examined and testified as follows

13 DIRECT EXAMINATION

14 BY

15 MS DOMAGALLA

16 Q Sir, would you please state your name for the
17 record?

18 A My name is Michael, middle initial J , last
19 name Murphy, spelled M-u-r-p-h-y

20 Q Thank you

21 What is your current occupation?

22 A I am currently working at the Joliet Police
23 Department examining latent print cases

24 Q And what is your official job title?

1 A It's a latent print examiner

2 Q And how long have you been performing latent
3 print examinations for the Joliet Police Department?

4 A Since March of 2012

5 Q And can you describe your duties with Joliet?

6 A Yes The majority of my duties consist of
7 examining latent lifts to determine whether or not they
8 contain any latent prints that are suitable for
9 comparison I make comparisons between suitable latent
10 prints and known inked prints I perform AFIS
11 examinations of latent prints that are suitable for AFIS
12 processing I write reports, testify in court when
13 required, and then I also do a minimal amount of
14 processing of evidence that's submitted from the
15 evidence officers

16 Q And what specialized education and training did
17 you receive to become a fingerprint examiner?

18 A I began my career in fingerprints back in March
19 of 1978 At that time, I was hired as a forensic
20 scientist trainee in the field of latent prints by the
21 State of Illinois in their forensic science command

22 Training-wise, when I initially began, it
23 consisted of a six-month training program and the
24 development, evaluation and comparison of latent prints

1 This comparison -- training consisted of readings, oral
2 instruction and supervised practice under the direct
3 supervision of an experienced latent print examiner

4 After having been give that -- those
5 fundamentals, I performed actual case work under the
6 direct supervision of a latent print examiner Since
7 that time, I have also attended numerous in-service
8 training sessions, educational conferences and so on

9 Q How many years did you work with the Illinois
10 State Police?

11 A I worked with the Illinois State Police from
12 February of 1978, and I retired in December of 2002

13 Q And where did you work after that?

14 A After I left the State of Illinois, I went to
15 work with the drug enforcement administration in -- at
16 the North Central Lab, located in Chicago, Illinois

17 Q And what were your duties there?

18 A Pretty much the same I performed all aspects
19 of latent print examination Towards of the end of my
20 career in 2009, I was promoted to fingerprint
21 photography program manager for the drug enforcement
22 administration, and I worked there until January of
23 2012

24 Q Now, are you a member of any professional

1 organizations relating to the field of latent prints?

2 A Yes, I am I am a member of the International
3 Association for Identification, a member of the Illinois
4 Division of the International Association for
5 Identification, and then also the AFIS Internet Group

6 Q And have you received any certifications in the
7 field of fingerprint examination?

8 A Yes, I am certified as a latent print examiner
9 with the International Association of Identification

10 Q And have you attended any seminars in relation
11 to fingerprint examination?

12 A Yes Throughout my career, I have obtained
13 many, many in-service training sessions, educational
14 conferences and training seminars that were given by the
15 State of Illinois, the Drug Enforcement Administration,
16 AFIS International Association Identification and other
17 groups

18 Q And have you had occasion to identify persons
19 by comparing latent fingerprints with a known inked
20 fingerprint?

21 A Yes, I have

22 Q And approximately how many times?

23 A I have probably made 200 identifications a year
24 to individuals, so times 35 years, quite a few

1 Q And have you ever testified in a court of law
2 regarding your findings in latent print examination?

3 A Yes, I have

4 Q Approximately how many times?

5 A At least 50 times I stopped counting after
6 50

7 Q And have you previously been qualified as an
8 expert in the field of fingerprint examination?

9 A Yes, ma'am, in both state and federal court

10 Q When you retired with the Illinois State
11 Police, what was your actual title when you left that
12 place of employment?

13 A I had been promoted in February of 2002 to
14 assistant laboratory director

15 Q So, you said that you were issued a
16 certification in regards to the field of fingerprint
17 examination?

18 A Correct

19 Q Is that certification current?

20 A Yes, it is

21 MS DOMAGALLA Your Honor, at this time, the
22 People would ask to have Michael Murphy declared as an
23 expert in the area of fingerprint examination

24 THE COURT Defense counsel?

1 MR LENZIE Judge, I just have a couple of
2 questions

3 THE COURT You want to voir dire?

4 MR LENZIE Yes

5 THE COURT Go on

6 BY MR LENZIE

7 Q Mr Murphy, good afternoon

8 A Good afternoon

9 Q Am I correct in saying that you're kind of part
10 time right now with the Joliet Police Department?

11 A Yes, I volunteer three days a week

12 Q You volunteer, so are you paid by Joliet?

13 A No, I am not

14 Q You're not paid at all?

15 A No, I am not

16 Q You work for them out of the goodness of your
17 heart, right?

18 A Yes, I am a volunteer Correct

19 Q Thank you

20 You testified that for some time, you worked at
21 the Illinois State Police Crime Lab, is that correct?

22 A Yes, sir

23 Q If you know, the State Crime Lab, who are they
24 accredited by?

1 A You know, that may have changed, because there
2 are several accrediting agencies in the country, and I
3 am not sure who their current accrediting agency is

4 Q Is the Joliet Police Department, or that lab,
5 the one you work at, are they accredited by any agency?

6 A Not by a forensic science agency I believe
7 that they are accredited by another agency

8 Q Do you know what that agency is?

9 A No, I don't

10 Q Who else works with you at the Joliet Police
11 Department?

12 A In the evidence section, I work with a person
13 by the name of Larry Kane, K-a-n-e, who has been with
14 the Joliet Police Department for quite some time I
15 knew Larry when he was working at the Bureau of
16 Identification for the State of Illinois

17 Q Is it just the two of you at the Joliet Police
18 Department?

19 A No, there are other evidence officers
20 Actually, the folks who collect the evidence I believe
21 there may be seven or eight of them

22 Q Mr Murphy, would it be fair to say since
23 you're not sure who is -- what agency accredits the
24 Joliet Police Department, you're not involved with their

1 standards?

2 A Not that I am aware of, as far as a latent
3 print aspect of it

4 Q Does the Joliet Police Department, the lab, do
5 they give you guidelines of how you conduct your
6 analysis?

7 A Larry and I talked about it, yes

8 Q Are there any written guidelines?

9 A Not that I am aware of

10 Q So, it's basically your background, your
11 experience that dictates how you conduct these analysis,
12 is that right?

13 A That would be correct, yes

14 Q Okay It's -- there is no written documents
15 that you have to follow step A, step B, step C, is that
16 right?

17 A Not from the Joliet Police Department, no

18 Q Mr Murphy, you have indicated you do trainings
19 routinely, is that right?

20 A I am sorry, do --

21 Q You do trainings? You go back for trainings?

22 A Yes

23 Q When was the last training that you received?

24 A August of this last year

1 Q Of 2014?

2 A Yes

3 Q What was that training?

4 A It was an AFIS Internet conference located in
5 Salt Lake City, Utah

6 Q Did the Joliet Police Department pay for you to
7 go to that conference?

8 A No, sir I did myself

9 Q You went yourself

10 And you indicated that you're currently
11 certified is that correct?

12 A Yes, I am

13 Q What agency certifies yourself?

14 A Latent print-wise?

15 Q Yes

16 A It's the International Association for
17 Identification

18 Q Does the International Association, do they
19 have written guidelines on how you're supposed to
20 conduct fingerprint analysis?

21 A Many of them -- no, they have established --
22 they are not formal guidelines in a sense of minimum
23 numbers, points or anything like that They are
24 suggestive policies maybe, but there is nothing formal

1 Many of them -- many of the policies are administrative
2 policies that are determined by the particular agency
3 that you're working for

4 Q Let me ask this The accreditation that you
5 have for this association, did you have to pass a test?

6 A Yes

7 Q On that test, were there guidelines of what you
8 have to do in order to analyze a latent fingerprint?

9 A The tests consisted of comparisons in which you
10 had to have a specific number of right comparison with
11 no wrong ones It consisted of pattern interpretation
12 and it consisted of questions specifically related to
13 fingerprints

14 Q Okay

15 A So, there were no -- if you're looking for
16 guidelines, no

17 Q So, what you're indicating to me, there is no
18 real guidelines to fingerprint analysis?

19 A Well, if I would have made a wrong
20 identification, I would not have been certified, so in
21 that sense, yes, there was

22 Q What about steps that you're supposed to
23 perform?

24 A In making an identification?

1 Q Yes

2 A No

3 MR LENZIE I have nothing further, Judge

4 THE COURT Do you wish to cross him on the
5 qualification issue? Are you objecting?

6 MR LENZIE Judge, I would object --

7 THE COURT Wait If we're going to do
8 anything -- here is my point I am going to tender him
9 back to the State for the purpose of any redirect on his
10 qualifications unless there is an objection now When
11 the State is done, if they are going to ask any
12 questions on redirect, I am then going to excuse him for
13 a moment

14 Go ahead

15 MR LENZIE Judge, I would object

16 THE COURT You what? You're not?

17 MR LENZIE I am

18 THE COURT Okay I understood that

19 MS DOMAGALLA I just have a few brief
20 questions if I may?

21 THE COURT Yes

22 BY MS DOMAGALLA

23 Q Mr Murphy, you stated that you started
24 fingerprint analysis in 1978, correct?

1 A That's correct

2 Q And you have been performing your job duties
3 and following -- although there is not written
4 guidelines, industry standards in examination of these
5 fingerprints or latent prints, is that correct?

6 A I am not quite sure what you folks mean by no
7 written standards or guidelines If I made a wrong
8 identification, there -- I wouldn't be certified

9 THE COURT Let me ask you a question, since we
10 are in this area To the best of your knowledge, have
11 you ever made a wrong identification?

12 THE WITNESS Never have, to the best of my
13 knowledge Correct

14 THE COURT Well, to the best of your
15 knowledge, my point about that being, I am sure defense
16 counsel would ask this too, if you make -- how do you
17 know that you're always right? I mean, does anybody
18 say, whoops, Mike, you made a bad call?

19 THE WITNESS This gentleman could have had a
20 defense expert look at the identification that I made

21 THE COURT Okay Let me ask you that
22 question You have been doing this since 1978 Has
23 that ever happened?

24 THE WITNESS No

1 THE COURT You have never once been challenged
2 in a courtroom as to the veracity or clarity of your
3 finding?

4 THE WITNESS No, never have

5 THE COURT Okay Go on

6 MS DOMAGALLA I have no further questions

7 THE COURT Would you step outside for a
8 moment, sir?

9 (WHEREUPON, the witness left the
10 courtroom)

11 All right Mr Murphy has left the area Your
12 objection?

13 MR LENZIE Judge, he has lots of experience
14 doing this but the crime lab that he is working for at
15 the JPD, he doesn't know what certification they have
16 This is the State's expert, and he doesn't know what
17 certification the lab has

18 THE COURT Wait, wait The lab he works for
19 is Joliet on a voluntary basis, so I don't -- you're
20 calling it a lab I don't really think -- understand
21 whether or not that's a forensic crime lab specializing
22 in only fingerprints

23 MR LENZIE Judge, he is a forensic scientist,
24 so that's why I am calling it a lab He would analyze

1 the fingerprints in a lab That's where I go for the
2 lab

3 THE COURT Okay

4 MR LENZIE Judge, he doesn't know what
5 written standards to follow He obviously didn't do any
6 notes on this case I have been asking for them from
7 the get-go He started talking about notes

8 THE COURT Wait You'll have a chance to
9 respond

10 MR LENZIE Judge, I don't believe what you
11 heard is -- this is the basis of my objection, to begin
12 with, that we don't have his procedure, what he does,
13 what steps It doesn't sound like he follows them He
14 is basically saying I am an expert, this is what I do,
15 that's tough, you're just stuck with it

16 THE COURT Well, we haven't really gotten to
17 the standards yet that he would use What we have got,
18 what you're arguing about is his ability to testify as
19 an expert to begin with That's the basis of your
20 objection When you voir dire someone, for example, as
21 an expert, you're challenging his qualifications to be
22 an expert, to begin with, not in his procedures
23 There's a difference

24 MR LENZIE May I?

1 THE COURT No

2 MR LENZIE Judge, I would think an expert
3 would know the proper procedures to follow He
4 testified he doesn't really even know what the proper
5 procedures to follow are He took a test and he passed

6 THE COURT Well, I don't quite understand when
7 you're saying procedures What you're indicating,
8 because he seems as confused by that question as I did,
9 procedures You know, procedures -- what he was saying
10 to you was I take my procedures, in terms of qualifying
11 myself -- or how he is qualified as an expert has to do
12 with something pretty simple Is he qualified each and
13 every year, does he ever make a mistake, does he test
14 constantly, the answer is yes So, when you see say
15 procedures I am confused by that

16 MR LENZIE Judge, it's forensic science I
17 would think a science would have set procedures that
18 everyone should use He didn't even know what those
19 were

20 THE COURT Like climate control, climate
21 change has set procedures? Never mind Don't answer
22 that You will get yourself --

23 You have something to say, or nothing?

24 MS DOMAGALLA Just that he testified that he

1 has been doing this for over 30 years, that he has a
2 large amount of experience There was no direct
3 question from the defense, as far as notes or
4 procedures

5 As far as the certification, he himself is
6 certified He, himself, does these examinations He
7 testified about his qualifications, his credentials and
8 his experience

9 As far as the policy, Mr Murphy was very frank
10 with both counsel and myself about how he didn't
11 understand what we're asking, because he took his test,
12 he passed his test, and so now he is qualified There
13 is not like a written procedure as Mr Lenzie is looking
14 for as part of his certification

15 THE COURT That's kind of like this, based on
16 what I asked him, if a man has been say mixing paint
17 colors for 30 years, and for 30 years, he said this is
18 the color, here is how I match it And the question
19 becomes, has he ever been corrected, he answers no, no,
20 nobody has ever corrected me on when I decide that
21 something is chartreuse, which is a horrendous color,
22 but the guy says I have never been corrected And the
23 way to correct me is, has any expert challenged me For
24 30 years, I am testifying numerous occasions and

1 qualified as an expert more than 50 times, and nobody
2 has ever corrected my work. How do I not now accept him
3 as an expert?

4 I mean, suppose you were at trial -- concerning
5 Mr. Lenzie, let's pretend you are, for 30 years, you
6 walk into a courtroom and you win. For 30 years in a
7 row, you win every case, would you be an expert?

8 MR. LENZIE I would hope so.

9 THE COURT There you go. Now, that's a
10 different issue. That's a different issue. He is
11 qualified -- I am going to qualify him as an expert over
12 your objection. That's a different issue than what we
13 are about to hear, in terms of how he did this analysis.
14 Now, you're going toward the case of Safford. But his
15 ability to sit on that stand, to begin with, is far
16 different than what is about to happen next.

17 So, if you would get Mr. Murphy back in
18 here.

19 MR. LENZIE Judge, instead of me objecting to
20 him, because I am still --

21 THE COURT You want a standing objection?

22 MR. LENZIE Right. Correct.

23 THE COURT I will note that for the record.

24 All right. As the witness comes back to the

1 stand, he is, in my estimation, qualified and accepted
2 as an expert to testify in this particular field

3 You may proceed, State

4 BY MS DOMAGALLA

5 Q Sir, can you explain what a known fingerprint
6 is?

7 A Sure The undersides of the fingers and the
8 palms are covered with an intricate design, which is
9 composed of ridges that are separated by furrows Known
10 impressions are a recording of this design, which is
11 taken either by placing a thin coating of ink on the
12 fingers and recording that design on the fingerprint
13 card, or photographically recording them through a
14 process known as the live scan, which records the
15 designs and puts them in the appropriate place on an ink
16 fingerprint card They are referred to as known prints,
17 because the individual who is taking the prints knows
18 who the individual's prints belong to

19 Q And what is a latent print?

20 A A latent print is also an impression of the
21 ridge detail or this design, which is left on an object,
22 as a result of a person having touched that object The
23 hands become coated or covered with a substance such as
24 perspiration or oils or makeup, or something of that

1 nature, and it's kind of similar to how an ink pad and
2 stamp work. You get a coating of ink on the stamp and
3 when you press it down, it leaves an impression of what
4 that design was on the item that was touched.

5 Q So, what is the difference between a known
6 fingerprint and a latent fingerprint?

7 A It's known who the individual's prints
8 impressions are in a known print, a latent print, it's
9 not known until a comparison process was made to
10 determine who had made those impressions.

11 Q And you started to describe how a person can
12 leave a fingerprint by -- you said makeup or oil or
13 substances on the fingers. What kind of surfaces can a
14 person leave a fingerprint on?

15 A The best surfaces are smooth surfaces, such as
16 glass or tin or metals, something that is hard and
17 shiny. Smooth is a big one, though. So, paper material
18 that's smooth, cardboard, surfaces of that nature, as
19 opposed to a piece of clothing or cloth that is coarse
20 and doesn't have a smooth surface to it.

21 Q Now, after receiving a latent print from --
22 well, what do you do with a latent print after you
23 receive it?

24 A After we receive a latent lift, actually, the

1 lift is evaluated to determine whether or not there are
2 any latent prints on the latent lift that are suitable
3 for comparison

4 Q And what is meant by evaluating the latent?

5 A An evaluation is a detailed examination of a
6 latent print using a magnifying glass to determine
7 whether or not the ridge detail of the latent print is
8 clear enough and there are sufficient number of points
9 by identification that are clear enough within the
10 latent prints, so that it can be used to make a
11 comparison

12 Q And what are points points identification?

13 A As I mentioned before, the undersides of the
14 hands are covered with an intricate design When you
15 look at these under a magnifying glass, it may appear
16 that some of the ridges run continuously from one side
17 of the pattern to the other without change, however,
18 although some of them will, you can see when they are
19 magnified that some don't Some ridges run for a
20 distance as a single ridge and then stop, while the
21 other ridges continue on That's referred to as an
22 ending ridge, and each ending ridge is an identifying
23 characteristic

24 Some ridges run for a distance as a single

1 ridge, and then at a point divided by the split into two
2 ridges, like a fork in the road The point where the
3 single ridge divides into two is a called a bifurcation
4 Each bifurcation is an identifying characteristic

5 And then there is the third identifying
6 characteristic that's called a dot, which looks similar
7 in appearance to a period that you will find at the end
8 of a sentence

9 So, what makes -- these are the three basic
10 ones, the ending ridge, bifurcation and the dot There
11 are others, however, that are just variations of the
12 ones that I just mentioned

13 And what makes identifying characteristics
14 important in latent prints work are identification work
15 is that it's their presence, because they are found in
16 unique combinations, locations and group relationships
17 in everybody's fingerprints and palm prints, that makes
18 them unique from all others

19 Q And do two people have the same fingerprints?

20 A No, they don't

21 Q And what is a comparison of a latent lift with
22 a known fingerprint?

23 A A comparison involves the use of two magnifying
24 glasses One is placed over a latent print, one is

1 placed over the known print that it's being compared to
2 And basically, the comparison process is a process of
3 identifying and -- or a particular point of
4 identification or two in a latent print, and then seeing
5 whether or not that combination of identifying
6 characteristics is contained within the known print If
7 they are not contained there, well, then you can
8 eliminate the known print as having been the print that
9 made the latent print If they are, then you continue
10 to go from that point of identification in the latent
11 print to find another point of identification and see
12 then if that point of identification is contained in a
13 known print

14 So, basically, the comparison process is a
15 cycle of going back and forth between a latent print and
16 a known print, to look for corresponding identifying
17 characteristics that are the same type located in the
18 same relative position and maintained in the same group
19 relationship or ridges that separate the individual
20 points, and that's what makes up a comparison

21 Q And so what is an identification and how is it
22 made?

23 A After you go through a comparison and you find
24 that, in fact, that the identifying characteristics in

1 the latent print are also contained in the known print,
2 they are the same type located in the same relative
3 positions and maintained in the same group relationship
4 and there are no explainable differences between the
5 two, then you can make a identification, which is the
6 final determination that the individual who made the
7 latent print was the same individual who made the known
8 print

9 Q And what are the basic premises upon which
10 identifications would be used for fingerprints is based?

11 A That no two individuals have the same
12 fingerprint, and that they don't change throughout his
13 or her lifetime except through disease or scarring

14 Q Now, I --

15 May I approach? May I approach?

16 THE COURT Defense?

17 MR LENZIE That's fine, Judge

18 THE COURT Go on

19 BY MS DOMAGALLA

20 Q Mr Murphy, I am showing you what's been marked
21 as People's Exhibit Number 212 Do you recognize what
22 that is?

23 A Yes, I do

24 Q And what is it?

04/29/15 09 16 40 WCCB

1 A This is an envelope in which there are seven
2 latent lifts

3 Q Have you seen those latent lift cards before?

4 A Yes, I have I received these at the Joliet
5 evidence section on July 30th of 19 -- or of 2013

6 Q And how did you receive them?

7 A They were left on my desk in this envelope

8 Q And is your desk in a secure location at the
9 Joliet Police Department?

10 A Yes, it is It's within the locked evidence
11 section

12 Q And when you're given these latent lift cards,
13 what do you do with them?

14 A When I begin to work the latent prints, I look
15 at the latent lifts with a magnifying glass to evaluate
16 them, to determine whether or not they have latent
17 prints within the latent lifts that are suitable for
18 comparison

19 Q And what makes a latent print suitable for
20 comparison?

21 A Once again, it would be that the latent print
22 itself is clear enough and it has a sufficient number of
23 identifying characteristics, those ending ridges,
24 bifurcations that I mentioned, so that the latent prints

1 can be used to compare to known prints

2 Q Now, how many latent lift cards were provided
3 to you in that envelope?

4 A There are seven

5 Q And did you evaluate them to see if any of the
6 lift cards had a sufficient lift print?

7 A Yes, I did

8 Q And did any of them?

9 A Yes, there are two of the latent lifts that had
10 suitable latent prints on them

11 Q And did you evaluate that latent lift, the two
12 that were suitable?

13 A Yes, I did

14 Q And how did you do that?

15 A Once again, with a magnifying glass, to examine
16 the ridge detail that was present within the latent
17 lifts, and there were two of them, which I had marked as
18 Exhibit 28A-1 and Exhibit 28B-1 that were suitable for
19 comparison

20 Q Now, the cards that were not suitable for
21 comparison, did you make any markings on them?

22 A Yes, I use a grease pen, a black grease pen
23 just to put an X over it, the latent lift itself, just
24 as a reminder to me that, in fact, I did evaluate it and

1 there were no latent prints that are suitable for
2 comparison

3 Q And in this particular instance, were you also
4 provided a known print card for your examination?

5 A Yes, I was

6 Q May I approach?

7 Mr Murphy, I am showing you what was
8 previously marked as People's Exhibit Number 184 Do
9 you recognize what that is?

10 A Yes, I do

11 Q What is it?

12 A These are known prints, fingerprint cards with
13 the name Antonio M Bogan, and palm print cards that I
14 had received also on July 30th of 2013

15 Q And did you compare the latent prints on the
16 suitable prints off of People's Exhibit 212 with the
17 known prints provided to you on People's Exhibit 184?

18 A Yes, I did

19 Q And what steps did you take to make this
20 comparison?

21 A Well, once I had examined the latent lifts and
22 found the two latent prints that were suitable for
23 comparison, I compared those latent prints to the known
24 prints with the name Antonio M Bogan, and the process

1 that I described before, where I would locate
2 identifying characteristics within the latent print and
3 look for those characteristics within the known prints,
4 and that's the process that I used in making the
5 comparison

6 Q Now, you had previously provided us a
7 side-by-side photograph of a latent print with a known
8 print Did you bring that mounted on a cardboard with
9 you today?

10 A Yes, I did

11 Q And that's the same photograph that you had
12 previously provided us?

13 A Yes

14 Q Do you have that with you?

15 Mr Murphy, I marked the photograph that you
16 brought with as People's Number 226 Can you explain to
17 the Court what that is?

18 A Sure

19 MS DOMAGALLA Judge, I would ask that he be
20 able to publish that photograph as explains it

21 THE COURT It's being done right now

22 MS DOMAGALLA Thank you

23 THE COURT All right Sir, do you need a
24 pointer or something?

1 THE WITNESS Just a pencil

2 BY MS DOMAGALLA

3 Q I can give you my pen

4 A The photograph on your left is a photographic
5 enlargement of the latent print Actually, it's
6 Exhibit 28B-1 that was on one of these lifts, so that is
7 a photographic enlargement of that latent print

8 The photograph on your right is a photographic
9 enlargement of the known print, actually, the left thumb
10 on the known fingerprint card with the name Antonio M
11 Bogan

12 The numbers that I put on with the red lines go
13 to just eight of the points that are present in the --
14 that correspond in the latent print with corresponding
15 points in the known print There are others, however, I
16 just -- I just chose these eight to show the members of
17 the court the process involved in the comparison that
18 was made between the latent print and the known print

19 So, the first thing I did was to find a
20 starting point So, I found an ending ridge located
21 right here It comes down from the pattern and stops at
22 this point right here So, that would be the starting
23 point and ending ridge Going to the known print, you
24 find an ending ridge to a corresponding ending ridge

1 comes down and stops at this point right here So,
2 that's the first point of identification that I have
3 marked here

4 Q And is that marked as Number 1 on your
5 photograph?

6 A Yes, ma'am

7 Q Okay

8 A The second point is obtained by going to the
9 first point And just counting down one ridge a little
10 to the right, and then you notice a point where two
11 ridges come together and form a single ridge and the
12 single ridge continues on here, or a bifurcation

13 Going to the known print, located at the first
14 point, that ending ridge, count down one, goes slightly
15 to the right, and you will find a point where two ridges
16 come together as one and continue as a single ridge at
17 that point So, a bifurcation, which I designated as
18 point number two

19 Point number three is obtained by locating the
20 second point That bifurcation, counting down one, two
21 ridges, and the second ridge then is a short-ending
22 ridge at this point right here Going back to the known
23 print, located at the second point, count down one, two,
24 and that second point is an ending ridge, a

1 corresponding ending ridge, which I designated as point
2 number three

3 To locate the fourth point of identification,
4 you count -- go to the third point You count down one,
5 two, three ridges, and you notice that there is an
6 ending ridge at this point right here There is the
7 ending ridge The other ridges continue on

8 Going to the third point in the known print,
9 count down one, two, three ridges, and there is a
10 corresponding ending ridge at the fourth point

11 To locate the fifth point, you just go to the
12 fourth point, drop down one ridge and follow that ridge
13 along, and there is an ending ridge right here where it
14 stops while the other ridges continue on If you drop
15 down from the fourth point on the known print, one
16 ridge, follow that over to the left, and there is a
17 corresponding ending ridge

18 The sixth point is obtained by counting down
19 one, two ridges -- one, two ridges, and at this point,
20 number six here, there is the place where the two ridges
21 become one ridge, or it's a bifurcation Going to the
22 known print, count down one, two, and you have the same
23 corresponding bifurcation in the known print

24 The seventh point is obtained just by following

1 that one ridge up -- go up one ridge, and there is a
2 corresponding ending ridge coming down right here at
3 this point If you go to the sixth point on the known
4 print, follow this one ridge over, and there is a
5 corresponding ending ridge coming down

6 The last point, the eighth point that I have
7 marked off, is obtained by counting one, two ridges up,
8 following that up in the pattern, and you will find an
9 ending ridge Going to the seventh point in the known
10 print, count up one, two ridges, follow that ridge up,
11 and there is the corresponding ending ridge, or point
12 number eight

13 As I mentioned, I just marked off these eight
14 There were several other identifying characteristics --
15 actually, 16 more identifying characteristics that
16 corresponded between the known print and latent print,
17 however, I just marked these here to give an example of
18 how the comparison process was made

19 Q Mr Murphy, I am going to show you what I
20 marked as People's Exhibit Number 227 Do you recognize
21 what that is?

22 A Yes, these are also chart enlargements that I
23 made up --

24 Q Now, the first --

1 A -- of the same prints that we were talking
2 about

3 Q So, the first picture that you demonstrated for
4 the Court, that is the same photograph as what is in
5 your hand, is that correct?

6 A Exactly Except that in this photograph here,
7 I marked off -- I just put little red dots where the
8 corresponding identifying characteristics were between
9 the latent print and the known print

10 Q So, in People's Number 227, you have the eight
11 marks that you just explained to the Court, and then
12 there are additional red dots also marked on that
13 photograph, is that correct?

14 A Correct

15 Q And what do those red dots represent?

16 A The red dots represent the additional
17 corresponding identifying characteristics that existed
18 between the latent print and the known print

19 Q And after you made this comparison between the
20 latent and the known print, did you form an opinion with
21 a reasonable degree of scientific certainty as to the
22 prints that you examined?

23 A Yes, I did

24 Q And what is that opinion?

1 A That the latent print, Exhibit 28B-1, and the
2 known print designated as the left thumb on the known
3 print card with the name Antonio M Bogan, were made by
4 the same person

5 Q And was that opinion based on everything you
6 just explained to the Court?

7 A Yes, ma'am

8 Q Now, you have an enlarged photograph for one of
9 the latent lifts compared to the known prints Did you
10 do the same procedure with an additional latent lift
11 card?

12 A I made a comparison, however, I did not make a
13 chart enlargement of the additional identification

14 Q Did you take -- the steps that you just used to
15 explain to the Court, is that the same steps you used on
16 the other latent lift?

17 A Absolutely

18 Q And after following all of those steps --

19 MR LENZIE Judge, I am going to object to
20 foundation We don't know what points they're talking
21 about It's the State's burden, at this point, to
22 provide the foundation for that I don't think they
23 have

24 THE COURT Overruled

1 BY MS DOMAGALLA

2 Q After you followed the procedures that you just
3 testified to with the other print, the other latent
4 lift, did you also form an opinion within a reasonable
5 degree of scientific certainty as to the prints you
6 examined in the second lift card?

7 A Yes, I did

8 Q And what was your opinion?

9 A That that latent print designated as
10 Exhibit 28A-1 in the left-little finger on the
11 fingerprint card with the name Antonio M Bogan were
12 made by the same person

13 MS DOMAGALLA If I could have one moment,
14 please?

15 THE COURT Yes

16 BY MS DOMAGALLA

17 Q The technique that you used to make this
18 comparison in using the -- I believe you said a
19 magnifying glass or microscope -- I am sorry, what did
20 you use?

21 A Yes, a magnifying glass

22 Q Okay The technique that you used in using
23 that magnifying glass to make this comparison, is that a
24 technique that is relied upon -- generally relied upon?

1 THE COURT Universally relied upon? Go on
2 BY MS DOMAGALLA

3 Q Universally relied upon by the scientific
4 community?

5 A Yes, it's a very common method of making
6 comparisons, yes

7 Q The community of latent print examiners?

8 A Yes

9 Q Sorry I didn't finish my question

10 A That's fine

11 THE COURT Is there a reason, sir, why you
12 limit it to eight points?

13 THE WITNESS Actually, your Honor, as I
14 mentioned, I did go through the entire print I always
15 do I always, regardless of how many -- I chart off
16 here, which I usually do eight, just as a demonstration
17 of how the comparison processes were made and what the
18 corresponding minutiae or characteristics were, but I
19 always go through the whole print to see how many were
20 made, but then even more importantly, to make sure that
21 there are no differences between the two prints that I
22 had throughout that entire print

23 THE COURT Is there a minimum number of
24 identical points that you find which are accepted?

1 THE WITNESS I look at the whole print, and so
2 I will count up to eight and then continue to go on
3 after that to examine the entire print

4 THE COURT Well, what if there is just three?

5 THE WITNESS You know, it would depend on the
6 area of the print I would not -- I would not want to
7 say that I would not make an identification on three
8 points if an entire impression had only three points to
9 it An average impression, fingerprint impression, has
10 between 75 and 150 identifying characteristics in it
11 If I had an entire fingerprint impression that had only
12 three characteristics, that's more rare than I have ever
13 seen in my life, and I would identify that So, it's
14 necessary to examine the whole impression, in terms of
15 its clarity in the area that you have before I would
16 make a final decision on it

17 THE COURT All right

18 BY MS DOMAGALLA

19 Q I just have one quick question

20 Now, you explained how you make a match Is
21 there a similar process in how you eliminate a
22 fingerprint from matching?

23 A Yes, if I find an unexplainable difference
24 existing between the two latent prints and the known

1 print, I would not make -- I would not call that a
2 match

3 Q As then you testified to the Court the points
4 that you saw in these two prints, there were not any
5 differences available to negate it being a match?

6 A There were no unexplainable differences No,
7 there weren't

8 MS DOMAGALLA I have nothing further

9 CROSS EXAMINATION

10 BY

11 MR LENZIE

12 Q Mr Murphy, is there any way to determine how
13 long a fingerprint was on an item?

14 A No No, other than common-sense type of
15 things For example, and I know if someone had broke
16 window glass and glaze -- fresh glaze was put on the
17 window and there was a fingerprint impression on that,
18 well, you would have to know that it had to be after
19 that glaze was put on But other than something --

20 Q Let me ask it this way In this case, you
21 didn't do any kind of evaluation to see how long this
22 fingerprint was on there?

23 A No, I couldn't have All I had was the lift

24 Q Okay Do you still have your cardboard, or did

1 the State take that back?

2 A I think they have it

3 THE COURT You're handing back People's
4 Exhibit what?

5 MR LENZIE Judge, I am not sure

6 THE WITNESS It's 22, is that right?

7 THE COURT 22?

8 MS DOMAGALLA 226

9 MR LENZIE Yes, 226

10 THE COURT You see, that 6 fooled me too Go
11 on

12 THE WITNESS I wasn't sure if that was
13 initials

14 BY MR LENZIE

15 Q Mr Murphy, I am looking at the latent print
16 It's on my left Is that on your left as well?

17 A Well, I got it, latent print It's designated
18 latent print

19 Q Okay It appears to the upper right-hand
20 corner that there is a black smudge, do you see that?

21 A This here?

22 Q Yes

23 A Yes

24 Q Do you know what that is?

1 A No

2 Q Okay Is it fair to say that because of that
3 black smudge, you couldn't identify any points within
4 that area?

5 A You couldn't distinguish points in that area,
6 correct

7 Q There is also a white blotch just to the left
8 of that black smudge? That's it

9 A Here?

10 Q Yes

11 A Yes

12 Q You see that's also -- because of that, you
13 couldn't identify any points of that portion?

14 A No, there are no points visible there, no

15 Q Okay So, it's fair to say that this latent
16 print, you didn't have the whole finger to examine?
17 Some of it was not good enough to examine?

18 A Yes, there was no -- there was no
19 characteristics there

20 Q Thank you

21 Mr Murphy, you indicated that no two people
22 have the same fingerprint, is that right?

23 A Yes

24 Q Okay It would be fair to say that some -- two

1 people could have one point, as you kind of described
2 it, the same?

3 A Yes

4 Q How about two? Possible?

5 A Yes

6 Q Do you know what number that ends at?

7 A No

8 Q Okay How much of a fingerprint do you need,
9 percentage-wise, before you can say that no two people
10 could have the same fingerprint?

11 A It depends on clarity of the print and then
12 also on the number, in combination with the clarity of
13 the minutiae that are present For example, if you had
14 a circle, quarter square inch, and within that square
15 within that circle, there were 13 or 14 or 15 minutiae
16 very clear, yes

17 Q Okay So, it depends on the flow of a
18 fingerprint? Do you know what I mean by flow of a
19 fingerprint?

20 A Ridge directions and clarity, is what I am
21 assuming

22 Q Okay And this fingerprint -- there was some
23 areas that you couldn't get points on, is that correct?

24 A Correct

1 Q Mr Murphy, do you know what I mean by ACE?
2 Have you heard that term before?

3 A Yes, I do ACE-V is actually --

4 Q ACE-V The first part is analysis, and that's
5 where you look at the latent print So, did you follow
6 this ACE program?

7 A Yes

8 Q Okay The first -- the A is analysis, is that
9 right?

10 A Yes

11 Q And that's where you look at the latent print
12 to determine if it's good enough for comparison, is that
13 correct?

14 A Correct

15 Q Okay You were actually given, was it seven
16 cards?

17 A Yes, sir

18 Q Okay And you came back with a match on two?

19 A I found two that were suitable for comparison,
20 yes

21 Q Okay The other five, they were not suitable
22 for comparison?

23 A That's correct

24 Q If you remember, were some of those suitable

1 and just not all of it, or were they just all bad and
2 you couldn't tell anything on those cards?

3 A You couldn't tell anything by the prints
4 themselves that were -- there were several partials,
5 however, the ridge detail wasn't clear enough, nor were
6 the identifying characteristics

7 Q By excluding it, do you mean that there is not
8 enough points or not enough area to either confirm or
9 exclude an individual, is that what you mean by --

10 A As I recall, the ridge detail itself was just a
11 total blur

12 Q Okay The next, C, comparison, is that where
13 you compare the known prints?

14 A To the latent print?

15 Q Yes

16 A Yes

17 Q How did you know that Mr Bogan was who the
18 police were looking for in this case?

19 A I didn't know who he was looking for I
20 received a known tin print card

21 Q What is a tin print card?

22 A A fingerprint card that has a recording -- a
23 known fingerprint card that has a recording of all ten
24 fingers on it

1 Q So if you received that from an officer from
2 the Joliet Police Department?

3 A Yes

4 Q Did you compare anyone else, or was Mr Bogan
5 the only one you compared?

6 A No, that was the only one -- the only tin print
7 card that I had

8 Q How did you go about getting his fingerprints?

9 A They were given to me on the desk

10 Q So, you had the latent print, correct?

11 A Yes

12 Q You had the known print for Mr Bogan?

13 A Yes

14 Q Mr Murphy, have you ever heard of cognitive
15 bias? Do you know what that means?

16 A I have heard, yes, that term

17 Q It's where you will find what you expect to
18 find, is that right?

19 A It's predisposition, yes

20 Q You think it's possible that you could -- that
21 you would expect it to be Mr Bogan, because that's what
22 the police gave you and that's what you see here?

23 A Absolutely not

24 Q But you buy the fact that someone could see

1 what they expect to see?

2 A I have heard the term before

3 Q And the only fingerprints you had were from
4 Mr Bogan Did anyone else at the Joliet Police
5 Department, did they speak with you before you did your
6 examination?

7 A No

8 Q And you just received the paperwork and -- I
9 don't know, you have a mailbox at the Joliet Police?

10 A Desk

11 Q On your desk?

12 A Yes

13 Q How many fingerprints do you -- on a weekly
14 basis, how many do you do for Joliet?

15 A I -- you mean comparison-wise?

16 Q Yes

17 A I may look at -- most of my work is AFIS

18 Q What is the AFIS?

19 A AFIS is a computer-based system in which you
20 can encode the minutiae of latent prints and search it
21 against a known print database that is on file at the
22 Bureau of Identification, in terms of looking to make a
23 match candidate-wise, as far as picking out candidates,
24 that you can compare them

1 Q Is it where a computer would find points?

2 A Computer, no You mark the points on the
3 latent print The computer encodes via an algorithm,
4 known prints, and that's the database that you're
5 comparing the latent prints against

6 Q So, that system, you go and you mark the
7 points, as many as you can?

8 A Yes

9 Q And you put it in a computer, and it would
10 do -- like a national database to see if there is a hit?

11 A Actually, there is a state database The
12 Illinois State Police has about 7,000,000 of those tin
13 print cards that I mentioned before

14 Q I am going to jump ahead On the ACE, you said
15 there is ACE-V Is that V, for verification?

16 A Yes

17 Q Who verified your work?

18 A Larry Kane does

19 Q Do you have any notes from Mr Kane?

20 A He marked the matrix that I have as the fact
21 that he verified it

22 MR LENZIE Can I have a moment?

23 THE COURT Yes

24 MR LENZIE May I approach the witness, Judge?

1 THE COURT Sure

2 BY MR LENZIE

3 Q Mr Murphy, I am showing you what I have marked
4 as Defendant's Number 1 Do you recognize that sheet?

5 A Yes, I do

6 Q What is that sheet?

7 A It's a matrix

8 Q Okay Is that the one you referred to just a
9 moment ago regarding Larry Kane?

10 A Yes

11 Q Okay Did Mr Kane mark anything, any notes
12 about points on that sheet?

13 A No

14 Q Okay Did he mark anything other than --

15 A His initials and date

16 Q Mr Murphy, before this was set for trial, did
17 you take any notes regarding number of points, or ridge
18 flow, or anything else that would be a basis for
19 identification?

20 A In this particular case, I made photographs of
21 it, and I look at the photographs on the screen

22 Q That's what the State showed you earlier?

23 A Yes, but I did not have the markings on it at
24 that time

1 Q Okay So, throughout this process, before the
2 State contacted you, you didn't point out how many
3 points there were?

4 A No

5 Q You just marked out which ones you couldn't
6 compare?

7 A Yes

8 Q Mr Murphy, would you agree that on a known
9 print -- strike that

10 Do you agree that comparing it to a properly
11 taken known print is important for your comparison?

12 A Yes

13 Q That certain things can -- when they take the
14 known print, could factor into the quality of that known
15 print?

16 A Yes

17 Q Okay The elasticity of the skin, for
18 instance, is that correct?

19 A Yes

20 Q And a latent print isn't done in a lab, is that
21 correct, or in a booking station?

22 A That's correct

23 Q It's not a controlled environment and --

24 A The latent print

1 Q So, there are never a perfect comparison, just
2 because the latent print is not in a controlled
3 environment, would that be correct?

4 A I wouldn't say the comparison is not a perfect
5 depiction maybe of the finger because of a latent being
6 not under controlled conditions

7 Q Well, your depiction of it is what you're using
8 to analyze it, is that right?

9 A Yes

10 Q And so that -- there is a huge variance based
11 on that?

12 A Can be

13 Q Can be

14 And very rarely would a latent print be
15 perfectly taken out in the field?

16 A Well, the latent print can be taken perfectly
17 of the impression that is there to be taken, but that
18 doesn't necessarily -- like obviously, there were
19 non-suitable latent prints on the card, so those prints
20 weren't suitable for comparison, but they were preserved
21 correctly

22 Q You weren't there when the known print was
23 taken, is that right?

24 A The known print, no

1 MR LENZIE No more questions

2 THE COURT Redirect?

3 MS DOMAGALLA Just briefly

4 REDIRECT EXAMINATION

5 BY

6 MS DOMAGALLA

7 Q Mr Lenzie asked you about the black spot and
8 the white spot and the latent print on the photograph?

9 A Yes

10 Q And in your experience as an expert, is it
11 common for the latent lift to have, I guess markings,
12 like a white spotlight or black spot from the print that
13 was lifted?

14 A All the time

15 Q And what are some of the reasons for that?

16 A Well, whether or not a latent print
17 quality-wise is a good representation of what the finger
18 is, it depends on three factors, actually The first is
19 subject factors An example of that would be how much
20 residue was on the individual's fingers and palms at the
21 time that the print was being lift

22 If someone had just wiped their finger on their
23 shirtsleeve and didn't have a lot of residue when he or
24 she touched a subject, there wouldn't be a lot of

1 material to transfer, so the print wouldn't be as
2 pronounced as it would if there were a lot of residue

3 If the surface was not a good surface, if it
4 was pebbly for example, as opposed to flat, smooth,
5 there would be depressions in the surface, so that it
6 didn't recode the transferred residue And then the --
7 so surface, subject and then the environmental factors,
8 depending where the item was that was touched after it
9 had been -- the latent print had been left

10 If it was in a place where -- covered with a
11 cloth or something like that, that there was friction on
12 it, it could have -- it could have rubbed off some of
13 the residue that had been deposited at the time of the
14 latent prints There are several factors that determine
15 what the quality of the latent print will be

16 Q Now, on the lift cards that you reviewed for
17 this case, or you used for this case, five of them were
18 not suitable?

19 A Correct

20 Q Two of them were?

21 A Correct

22 Q And it was you who determined, by reviewing or
23 looking at these prints, whether or not it was suitable
24 for comparison, is that correct?

1 A Correct

2 Q And the two that were suitable, are there
3 markings given to you on those cards? Do you know where
4 they were collected from?

5 A On the back of the cards?

6 Q Yes

7 A Yes

8 Q What are the markings on the back of the cards
9 that had suitable prints?

10 A Do you mean markings as to the location?

11 Q Yes

12 A I am seeing the words ammo box on the back of
13 Exhibit 28A-1, and also ammo box on the back of
14 Exhibit 28B-1

15 Q And when you're giving the Exhibit 28 numbers,
16 those are numbers that you assigned, for purposes of
17 your comparison?

18 A Well, this was -- I received this in a white
19 envelope and it was marked as being Exhibit Number 28 on
20 the envelope itself

21 Q Did you -- there was a letter, though, or a
22 distinguishing mark between the --

23 A Yes, I added that to distinguish the latent
24 print

1 Q And in those two suitable prints, you had
2 sufficient ridge detail to make the comparison that you
3 explained to the Court?

4 A Yes

5 Q And the procedure that you followed -- or the
6 steps that you followed to make this comparison, is the
7 same steps that you relied on in doing your job since
8 1978, is that fair to say?

9 MR LENZIE Judge, objection

10 THE COURT Overruled

11 THE WITNESS Yes

12 MS DOMAGALLA I have nothing further

13 THE COURT Thank you

14 Anything on those points?

15 MR LENZIE No

16 THE COURT Thank you, Mr Murphy You may
17 step down, sir

18 I don't know how many of those items are his or
19 how many are the Court's or the State's

20 THE WITNESS This is you guys, and here is
21 your pen

22 MS DOMAGALLA Thank you

23 THE COURT All right It's five after 4 00

24 I would like to stop at this point I am not going to

1 try to certainly control the State's case in chief

2 We will reconvene tomorrow on this case, on
3 this case, tomorrow at 11 00 o'clock I will see what
4 the status is of what Carlson is doing in my courtroom,
5 and then, if necessary, we can finish this back over
6 here

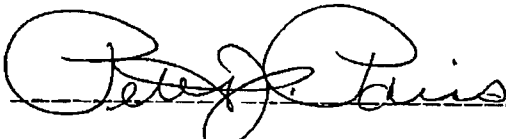
7 So, in any case, that will adjourn the case for
8 this afternoon The defendant will be remanded We
9 will be back in 407 tomorrow at 11 00 o'clock and see
10 where we go

11 (WHEREUPON, the hearing in the
12 above-entitled case was
13 adjourned and scheduled to
14 reconvene on 10-8-14)
15
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STATE OF ILLINOIS)
) SS
COUNTY OF W I L L)

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL DISTRICT
WILL COUNTY, ILLINOIS

I, Peter J Paris, an Official Court
Reporter in the Circuit Court of Cook County, County
Department, Criminal Division, do hereby certify that I
reported in shorthand the proceedings had at the hearing
of the aforementioned cause, that I thereafter caused
the foregoing to be transcribed, which I hereby certify
to be a true and accurate transcript taken to the best
of my ability of the proceedings had before the
Honorable ROBERT P LIVAS, Judge of said Court


Official Court Reporter

Dated this 27th day
of APRIL 2015
CSR# 084-002875

1 IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT

2 WILL COUNTY, ILLINOIS

3 THE PEOPLE OF THE)
4 STATE OF ILLINOIS,)

5 Plaintiff,)

6 vs)

No 13 CF 1631

7 ANTONIO M BOGAN,)

8 Defendant.)

9
10 REPORT OF PROCEEDINGS had at the hearing of the
11 above-entitled cause, before the Honorable ROBERT P. LIVAS,
12 Judge of the Twelfth Judicial Circuit, Will County, Illinois,
13 on the 8th day of October, 2014, 11:00 a m
14

15 APPEARANCES

16 HON JAMES W GLASGOW,
17 WILL COUNTY STATE'S ATTORNEY
18 BY MR CHRISTOPHER R KOCH
19 BY MS ELIZABETH M DOMAGALLA
Appearing on behalf of the People
of the State of Illinois,

20 HON FRANK ASTRELLA,
21 WILL COUNTY PUBLIC DEFENDER
22 BY MR TODD LENZIE
BY MS SHENONDA TISDALE
Appearing on behalf of the Defendant

23 LAURA S KLEBENOW
24 Official Court Reporter
CSR No 084-003142

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1 MR KOCH Judge, we are ready

2 THE COURT All right This is Bogan, 13 CF 1631

3 This is a continuation of a bench trial that was begun
4 yesterday Defendant is present He is obviously present
5 with his counsel, the State is present We are still in the
6 State's case in chief State ready to continue?

7 MR KOCH Yes, Judge We do have a couple of
8 stipulations

9 THE COURT All right

10 MR KOCH The first one, Judge, I believe is just an
11 oral stipulation between the defense and the State, People's
12 Exhibit Number 213

13 THE COURT 213?

14 MR KOCH Which is the Apple iPhone that was
15 recovered from defendant by Officer German He gave that to
16 Detective Schumacher, who then gave it to Officer Chris
17 Botzum with the RCFL unit He is going to testify

18 We have a stipulation The stipulation would
19 be that Detective Schumacher would testify that he gave
20 People's Exhibit Number 213 in a sealed condition to
21 Detective Botzum for his cell phone extraction That would
22 be the extent --

23 THE COURT Let me see if I understand this It went
24 from the defendant to Schumacher?

1 MR KOCH The defendant to German Detective German
2 who testified yesterday and opened this sealed envelope, and
3 then Detective Schumacher took it out of evidence with
4 Detective Botzum

5 THE COURT Botzum?

6 MR KOCH B-O-T-Z-U-M Who conducted a cell phone
7 extraction

8 THE COURT All right Is this just on the chain?

9 MR KOCH It is

10 MR LENZIE Judge, we can do it this way I ran
11 this by Mr Bogan We are not objecting to the chain of
12 custody

13 THE COURT Mr Bogan, is that right?

14 THE DEFENDANT Yes, sir

15 THE COURT Basically you are agreeing that you gave
16 the phone to German, German gave it to Schumacher, Schumacher
17 gave it Botzum, so you have no argument with that?

18 MR LENZIE We have testimony they recovered it from
19 Mr Bogan yesterday We are not saying that Mr Bogan -- you
20 heard the testimony

21 THE COURT Right

22 MR LENZIE That part we are not We are not going
23 to object to the chain of custody as to the officers that
24 recovered it from Mr Bogan and then gave it to their expert

1 who will testify here

2 THE COURT All right So that's agreed upon by you
3 to Mr Bogan?

4 THE DEFENDANT Yes, sir

5 THE COURT So that's a verbal stipulation concerning
6 the Apple iPhone, People's Exhibit Number 213 Next?

7 MR KOCH Judge, we have two other stipulations as
8 well as some certified convictions but I do have a live
9 witness I will call him and we can do that after that

10 THE COURT Sure Go on

11 (Witness sworn)

12 CHRISTOPHER BOTZUM,
13 called as a witness herein on behalf of the People of the State
14 of Illinois, after having been first duly sworn, was examined
15 and testified as follows

16 DIRECT EXAMINATION

17 BY MR KOCH

18 Q Sir, can you please state your name, spell your
19 last name for the record?

20 A Christopher Botzum, B-O-T-Z-U-M

21 Q And what's your current occupation?

22 A I'm a police officer with the Joliet Police
23 Department

24 Q And do you currently have a particular

1 assignment within your duties as a police officer?

2 A Yes, I do I'm a task force officer with the
3 FBI's Regional Computer Forensic Laboratory

4 Q And where is that located at, in what city?

5 A Chicago

6 Q In Chicago And can you tell me prior to being
7 assigned or once you were assigned to the Regional Computer
8 Forensics Laboratory, did you have to undergo any type of
9 training?

10 A I did

11 Q And can you just briefly describe to the Court
12 the type of training that you had?

13 A I have done computer forensics training, cell
14 phone training I have also done video enhancement training

15 Q And have you successfully completed those
16 trainings?

17 A Yes, I have

18 Q Have you -- are you a member of any societies
19 or organizations?

20 A Are you referencing to the Law Enforcement
21 Video Association?

22 Q Yes

23 A Yes

24 Q What are they?

1 A That is an organization that is based out of
2 Indianapolis in reference to doing video forensics

3 Q Okay And have you attended -- well, let me
4 ask you this

5 Have you had an opportunity to testify as an
6 expert in cell phone extraction as part of your
7 responsibilities with the Regional -- Chicago Regional Crime
8 Forensics Lab?

9 A Yes, I have

10 Q And approximately how many times have you
11 testified as an expert in cell phone extraction?

12 A Cell phone extraction is one time

13 Q Was that here in Will County?

14 A Yes, it was

15 Q And that was -- do you recall the case?

16 A It was Miner

17 Q People versus Joshua Miner?

18 A That's correct

19 Q Have you received any awards, certifications or
20 awards as part of your expertise?

21 A I've reached certification I have been
22 certified by the FBI as a computer forensic examiner I have
23 also been as a certified video analyst through the LEVA
24 organization

1 Q And how many examinations or how many
2 extractions would you say you have done over the years with
3 regards to cell phones?

4 A With cell phones and GPS units and tablets,
5 which run on a lot of the same software, is probably about
6 100

7 Q And were you trained in how to extract data
8 from cell phones through your current assignment?

9 A Yes, I was

10 Q And are you familiar with the equipment or
11 program that's used to extract that information?

12 A I am

13 Q And are you current as it relates to the
14 equipment that's generally relied upon in your expertise?

15 A I am

16 MR KOCH Judge, I would ask to have this officer
17 testify as an expert in cell phone extraction

18 THE COURT Defense?

19 MR LENZIE Judge, just a couple of questions

20 THE COURT Yes, sir

21 CROSS-EXAMINATION

22 BY MR LENZIE

23 Q Sir, what is meant by cell phone extraction?

24 A What you do is -- this is talking about taking

1 data off the phone and putting it into a readable format

2 Q So what you do is you download the phone onto
3 another computer so you are able to access what is on that
4 phone?

5 A What it does is you have a system, software
6 which we use, which will extract a certain amount of
7 information and put it into a readable report for you

8 Q So you are basically telling us what's on the
9 phone?

10 A Part what's on the phone, not everything

11 Q Part?

12 A Correct

13 Q Are you qualified in every cell phone because
14 there's different manufacturers?

15 A Am I qualified in a particular phone?

16 Q Any phone?

17 A I have never been qualified on a particular
18 phone, no

19 Q So it's just a general field that you would be
20 qualified?

21 A Correct, in general cell phone extraction

22 MR LENZIE I have no more questions, Judge

23 THE COURT Any argument?

24 MR LENZIE No

1 THE COURT Thank you He will be accepted Please
2 continue

3 REDIRECT EXAMINATION

4 BY MR KOCH

5 Q Detective, did you have an opportunity to
6 extract information from an Apple iPhone as it relates to
7 this case People versus Antonio Bogan?

8 A I did

9 Q And I'm going to show you what's been marked as
10 People's Exhibit 213 and ask you do you recognize that item?

11 A Yes, I do

12 Q And did you have occasion to extract
13 information from that phone?

14 A I did

15 Q And can you tell us the process of how you were
16 able to conduct that extraction, please?

17 A We use equipment by a company called
18 Cellebrite, it's a UFED system, which what we end up doing is
19 finding out the make and model of the phone

20 Once we determine that the system is allowed
21 to, we are able to download the data We take the phone and
22 we will hook it up, and we will select certain items to be
23 downloaded, sometimes we select all, sometimes we select, you
24 know, if we are just looking for text messaging Then in

1 turn it will dump the information to either a computer or to
2 a thumb drive into a report format

3 Q And on this particular occasion, do you recall
4 if you did a complete extraction or a dump as you call it?

5 A Yeah, we selected everything that would allow
6 us to extract

7 Q Okay And were you able to get information
8 that downloaded or extracted from this cell phone which is
9 identified in People's Exhibit Number 213?

10 A Yes

11 Q Can you tell me did you review that information
12 prior to coming in court here today?

13 A I did

14 Q And are you familiar with the information as it
15 relates to the phone number of that item 213?

16 A I am

17 Q Can you tell us what the phone number was?

18 A It's (708) 646-8528

19 Q Now, on that phone or through the extraction
20 process, were you able to come upon numerous photographs that
21 were on that phone?

22 A I did

23 Q And prior to coming in court today, have you
24 had occasion to look at not only all the photographs but four

1 particular ones as it relates to this case here?

2 A I have

3 Q And I'm going to show you first what I have
4 marked as People's Exhibit Number 230 and ask you if you
5 recognize that picture?

6 A I do

7 Q And was that picture taken off the phone
8 identified as People's Exhibit 213?

9 A Yes, it was

10 Q Now, as part of the extraction process, are you
11 given properties or information with regards to when the
12 items are generated or placed on the phone?

13 A Yes, some of the -- in reference to some of the
14 images that are extracted do come with data associated with
15 the image

16 Q Okay And were you able to determine as
17 relates to that particular photograph what the data was with
18 regards to the data that was created?

19 A Yes There was a time stamp that was
20 associated with the date that this picture was taken

21 Q And do you recall what that time stamp was?

22 MR LENZIE I'm just going to object There's been
23 no testimony if the phone was working properly, if there was
24 any tests done on the time clocks or any kind of foundation

1 as to time

2 THE COURT. Sustained

3 BY MR KOCH

4 Q Can you tell us the type of technique that you
5 used? Can you explain it I guess a little more in detail as
6 it relates to the property information that's recovered from
7 the phone?

8 A Yes When you take a picture off an iPhone or
9 a lot of these other smart phones, what it will do is, it's
10 just like a normal camera, it's going to put a lot of
11 metadata within a picture

12 Q I'm sorry to interrupt you but you said
13 metadata, what's metadata?

14 A Metadata is data about data It's not part of
15 the picture itself, it's more about when the picture was
16 taken, any type of properties, like if it was taken by a
17 certain type of camera It will embed this information with
18 the picture, so if someone else looks at the picture, they
19 can tell when it was taken, any type of properties that might
20 have happened, like the camera, shutter speeds and such

21 Q And with regards to those particular
22 properties, are those things that are automatically generated
23 upon the picture being taken or how does that information end
24 up on the phone?

1 A When you take a picture off a cell phone, the
2 software on the cell phone will put metadata automatically on
3 there for the phone

4 Q And when you examined this phone as part of
5 your examination, were you able to determine whether or not
6 the phone was working properly?

7 A From what I can tell it appeared to be working,
8 yes

9 Q Did you have any indication after you did your
10 extraction that I guess the property aspect of the images
11 were altered in any way?

12 A They did not -- I could not tell if they were
13 altered in any way

14 Q And the information that's provided on these
15 are specific to each image, is that correct?

16 A That's correct

17 Q Okay And in looking at that particular image,
18 was there any indication to you that the information provided
19 for that photograph was not accurate?

20 A No

21 Q Okay What was -- do you recall the date that
22 photo was taken?

23 MR LENZIE Judge, I'm still going to object He is
24 not qualified if the phone was working and his answer was

1 from what I can tell Judge, there's not been a foundation
2 as to if the phone was correct or if it was working properly
3 on those dates

4 THE COURT I think the answers from what I can tell
5 it seems to be inferred that it was

6 MR LENZIE Judge, but he didn't testify as to what
7 tests he did I know from what I can tell means he might
8 have just looked and it looked fine, but there was no test
9 There's no testimony --

10 THE COURT Well, I assumed We are using logic here
11 that the test to determine whether or not a cell phone is
12 working is does it go on, does it work in my hand, can I see
13 things on it

14 MR LENZIE Judge, but further it's date and time we
15 are talking about I don't know if that cell phone was
16 correct as to its date and time I don't know how each cell
17 phone works

18 THE COURT That goes to -- you are talking about
19 admissibility or weight rather You're talking about weight,
20 not admissibility Well, on that basis, I will allow him to
21 continue

22 BY MR KOCH

23 Q Detective, in your field as an expert in cell
24 phone extraction, is it common to rely on the properties that

1 are associated with each of the images?

2 A Yes

3 Q And as part of your responsibilities and
4 working through the FBI, the Regional Computer Forensics
5 Laboratory, have you been trained in utilizing those
6 properties to make expert opinions or explanations as it
7 relates to properties of those images?

8 A Yes

9 Q And so it's something that you commonly refer
10 to when you do these cell phone extractions as it relates to
11 the date and time the photographs were taken or in some cases
12 modified, is that right?

13 A That's correct

14 Q I now want to show you People's Exhibit
15 Number -- do you recall, I'm sorry, the date that that
16 photograph was taken that you have before you?

17 A It's dated March 31, 2013

18 Q I'm going to show you what has been marked as
19 People's Exhibit 231, do you recognize that photograph?

20 A I do

21 Q And was that a photograph that you recovered
22 from the cell phone identified as People's Exhibit 213?

23 A It is

24 Q And did that photograph also come with

1 particular properties as it relates to that photograph?

2 A It did

3 Q What does that photograph depict? I'm sorry

4 A It appears to be possibly a rifle

5 Q And does that picture truly -- does that
6 picture you have before you truly and accurately represent
7 the item or the image that you saw when you extracted the
8 phone?

9 A Yes, it is

10 Q And can you tell me what the properties were
11 for that particular picture as far as when that picture was
12 taken?

13 A This one was taken on July 15, 2013

14 Q I'm going to show you what's been marked as
15 People's Exhibit 232 and ask you if you recognize that image?

16 A I do

17 Q And what is depicted in that picture?

18 A An individual wearing a white and red striped
19 Polo shirt wearing a red cap

20 Q And does that picture truly and accurately show
21 the image that you extracted from that Apple iPhone?

22 A Yes, it does

23 Q And did that picture also come with properties?

24 A It did

1 Q Can you tell us the date that that photograph
2 was taken?

3 A June 22, 2013

4 Q Showing you one more photo Showing you what
5 has been marked as Exhibit 233, can you tell me what that is?

6 A That's the same as the picture before It
7 appears to be a rifle

8 Q And is that picture -- is the actual picture
9 itself different than the previous exhibit that I showed you?

10 A Yes, it is

11 Q So there were two separate images, is that
12 correct?

13 A That's correct

14 Q And is that a true and accurate depiction of
15 the image that was recovered from the cell phone that you did
16 your extraction on?

17 A Yes, it is

18 Q And did that also come with properties?

19 A It did

20 Q And can you tell us the date that that
21 photograph was taken?

22 A July 15, 2013

23 MR KOCH Thank you One moment, your Honor

24 (Brief pause)

1 Judge, I will tender the witness at this time

2 RECROSS-EXAMINATION

3 BY MR LENZIE

4 Q Thank you The State just showed you two
5 pictures of two rifles, is that correct?

6 A Two that appear to be rifles, yes

7 Q They were both taken on the same date, is that
8 right?

9 A According to the metadata, yes

10 Q And one of the pictures was of an individual
11 sleeping, is that correct as well?

12 A It appears so, yes

13 Q You are an expert on extraction of cell phones,
14 is that right?

15 A That's correct

16 Q So it's fair to say you weren't there when
17 these pictures were taken?

18 A No, I was not

19 Q You don't know who took these pictures?

20 A I do not

21 Q Did you actually do any tests of the time on
22 the phone?

23 A In reference to whether it was taken to times
24 accurately?

1 Q Let me strike that question

2 You testified that these four pictures were
3 taken on certain dates, is that right?

4 A That's correct

5 Q And those dates you said were generated by the
6 iPhone?

7 A That's correct

8 Q Did you test the iPhone to determine if those
9 dates were accurate?

10 A I have worked with the iPhones and the dates
11 that are associated within the metadata of the created time
12 comes off the iPhone

13 Q Exactly Did you test this iPhone to see if
14 those dates were correct?

15 A I did not test this exact iPhone, no

16 Q Is that something you do for most cell phones
17 that you extract data from?

18 A No What you do is you look at the dates and
19 times

20 Q But you don't do any tests to make sure they
21 are accurate?

22 A The only way you can do tests on a phone is to
23 put more data on the phone We don't put more data on the
24 phone

1 Q So there is a way to test it?

2 A If you put data on the phone you could

3 Q So the answer is, yes, there is a way you can
4 test it?

5 A Yes You can test the phone by putting the
6 phone onto --

7 Q And you did not do that?

8 MR KOCH Objection, Judge I would ask that he be
9 allowed to answer the question He was trying to give an
10 explanation when he was cut off

11 THE COURT Finish your answer

12 THE WITNESS Yes, you can sit there and do a test on
13 this particular phone, but what you are going to be doing is
14 altering the phone by putting evidence on in order to do a
15 test on the dates and times to confirm

16 BY MR LENZIE

17 Q And you didn't do any type of test?

18 A No, we do not do that

19 MR LENZIE I have nothing else

20 FURTHER REDIRECT EXAMINATION

21 BY MR KOCH

22 Q In your experience as an expert in cell phone
23 extraction, it would be fair to say that you don't want to
24 put evidence onto a phone that you are examining, is that

1 correct?

2 A That's correct

3 Q And in this particular case, you indicated that
4 with the iPhone you look at to see whether or not the date
5 and time is accurate on the phone, is that right?

6 A That's correct

7 Q And was -- it was accurate on this particular
8 phone, is that right?

9 A Yes, on that day we did the extraction, it was
10 accurate

11 Q Okay So the date was accurate, the time was
12 accurate on the phone the day you did your extraction And
13 based on your expert opinion and in your training and
14 background, that's what you use in part to rely on the date
15 and times of the photographs that are on the Apple iPhone, is
16 that right?

17 A That's correct The way the Apple when it
18 takes a picture off the cell phone, it takes the time off of
19 that phone So if the phone is correct, that's where the
20 times are coming off of

21 Q And when you examined this phone, the time and
22 date was correct?

23 A Yes, it was

24 MR KOCH Judge, I have nothing further

1 FURTHER RECROSS-EXAMINATION

2 BY MR LENZIE

3 Q You indicated if it's correct the date would be
4 correct, is that what you just said to Mr Koch's question?

5 A If the date is correct?

6 Q Yes, then it's correct if it's correct?

7 A I'm sorry I don't recall exactly what I said to
8 that9 Q Okay You indicated that these pictures were
10 taken March 31, 2013, correct?

11 A Correct

12 Q July 15, 2013, two of them?

13 A Correct

14 Q June 22, 2013, correct?

15 A Correct

16 Q When did you analyze the phone, what date?

17 A August 8, 2013

18 Q So at least a month after the last picture was
19 taken?

20 A Correct

21 Q And that was the first time you came into
22 contact with the phone was on August 8th?

23 A That's correct

24 Q And you didn't check to see if the dates were

1 correct before that August date?

2 A I'm sorry, rephrase your question

3 Q You didn't check to make sure -- you didn't
4 check that phone before that August 8th date to check the
5 time and date on it?

6 A I didn't have the phone then

7 Q So, no, you did not check it?

8 A I couldn't have

9 Q You didn't have the phone?

10 A I did not

11 Q Sir, you would agree with me that some machines
12 break?

13 A Yes

14 Q And some computers aren't always accurate,
15 correct?

16 A It depends on what you are talking about

17 Q You have worked with computers before, correct?

18 A Yes

19 Q And sometimes they are not accurate?

20 A In regards to?

21 Q Sometimes they don't work correctly?

22 A Correct

23 MR LENZIE Nothing further

24 THE COURT Let me ask you a question because I'm

1 going to make this simple

2 I want you to remember something, the
3 prosecutors and everybody in this courtroom knows that I'm
4 the only man left in America without a cell phone, okay

5 THE WITNESS Okay

6 THE COURT And I like it that way, watching
7 everybody else drive themselves into trees while they are
8 texting

9 EXAMINATION

10 BY THE COURT

11 Q Basically when you got this phone on August 8,
12 2013, the way you interpret whether or not it was accurate on
13 all other dates is, and tell me if I'm wrong, when you turn
14 that cell phone on, that tells you the date and time of which
15 you turn it in when you are looking at the phone?

16 A Yeah, when you're looking at the phone, it
17 tells you the date and time

18 Q And you confirmed based on that simple piece of
19 information on the phone, if it said August 8th, you knew it
20 was August 8th, therefore the phone is correct?

21 A Correct

22 Q And going backwards, what you did from that
23 point on, and I understand it's an assumption, that if it
24 wasn't incorrect on the date you looked at it, the other

1 | dates it's showing you you are assuming are correct?

2 A Yes, because a lot of the phones when you turn
3 them on, they are connecting to a network, they are
4 connecting to the cellular network And a lot of these
5 phones are pulling dates and times from the cellular network

6 Q Did you watch my eyes glaze over? Did you see
7 that? My whole point is, it's a simple assumption, you look
8 at a phone when you turn it on, if it says the date which you
9 know to be accurate which is the date of August 8th, then the
10 only logical conclusion you make when you look at that phone
11 is all the other dates on there are correct?

12	A	Correct
----	---	---------

13 THE COURT Got it That's the way to ask that
14 question Okay, you can step down Off the record

15 (Discussion had off the record)

16	Okay State?
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17 MR KOCH Judge, we have a couple more stipulations
18 at this point

19	THE COURT	Sure
----	-----------	------

20 MR KOCH Judge, what I have marked as People's
21 Exhibit Number 228 is a stipulation as agreed to between
22 defense, State, and Mr Bogan has actually signed it as
23 well I can read it into the record if you --

24 THE COURT It's up to them I have been tendered

1 what's been marked 228 by the prosecution, Mr Lenzie And
2 this has to do with the stipulated testimony of a Lauren
3 Wiesivic (phonetic) who is a forensic scientist in the field
4 of latent prints, basically saying in the six points of the
5 stipulation that she found no latent impressions on the
6 Hi-Point handgun, is that correct?

7 MR LENZIE That's correct, Judge I reviewed it
8 I allowed Mr Bogan to review it

9 THE COURT Is that correct, Mr Bogan?

10 THE DEFENDANT Yes, sir

11 THE COURT And so you are agreeing to waive the
12 testimony of Lauren Wiesivic or the cross examination of her?

13 THE DEFENDANT Yes, sir

14 THE COURT And accepting the stipulation as true and
15 accurate?

16 THE WITNESS Yes, sir

17 THE COURT That's number one

18 MR KOCH Judge, People's Exhibit Number 229 is a
19 stipulation regarding Jeffrey Parisi from the Illinois State
20 Police Crime Lab He is an expert in firearm and toolmark
21 analysis

22 THE COURT All right I've been handed a second
23 stipulation, Mr Bogan, by the prosecutor It's signed by
24 all parties, it looks like including you too, indicating that

1 on January 28th of this year the forensic scientist, Jeffrey
2 Parisi, received People's Exhibit 28, the Ruger model 22 and
3 the 40 Smith & Wesson semiautomatic pistol

4 Exhibit 22 -- Exhibit 200, the Ruger 22 was
5 found to be inoperable, however, the Hi-Point 40 Smith &
6 Wesson was examined and found to be in firing condition when
7 test fired

8 When they use the restoration techniques which
9 are commonly used in attempting to determine serial numbers,
10 it revealed the number X7117478 The Remington semiautomatic
11 was also examined and found to be in firing condition when
12 test fired, and that was also -- just a minute Oh, I see
13 That also was an operating weapon and that is an expert
14 opinion

15 Exhibit 201, the Hi-Point 40 Smith & Wesson,
16 this serial number was obliterated and unreadable on the
17 firearm when he received it, so it's my understanding what
18 they are saying in totality is two of these weapons or one of
19 these weapons rather -- sorry, let me try it again

20 The 22 caliber was inoperable The other two
21 weapons, the Hi-Point 40 Smith & Wesson and the rifle were
22 operable

23 On the Smith & Wesson when they got it, the
24 serial number was obliterated, unreadable, but by using the

1 restoration techniques he used, they were able to raise the
2 serial number and that number is what I read, is that
3 correct?

4 MR LENZIE Yes

5 THE COURT Mr Bogan, is that correct?

6 THE DEFENDANT Yes, sir

7 THE COURT So you are waiving your right to either
8 call Mr Parisi or to cross examine Mr Parisi as to his
9 testimony including his qualifications and the methodology he
10 used, the examination he used of the weapons, and the
11 ultimate result, is that right?

12 THE DEFENDANT Yes, sir

13 THE COURT All right That's 229

14 MR KOCH Judge, then the last two are -- Judge, our
15 two certified convictions in the name of Antonio Bogan, 234
16 His case number 02 CR 63101 out of Cook County, that's a
17 certified self-authenticating document signed by Dorothy
18 Brown, Circuit Clerk of Cook County, indicating the defendant
19 plead guilty to an armed robbery

20 THE COURT Thank you

21 MR KOCH And People's Exhibit Number 235 is 01 CR
22 3121401, certified statement of conviction out of Cook
23 County, signed -- self-authenticating and signed by Dorothy
24 Brown, Clerk of the Circuit Court of Cook County indicating

1 that the defendant plead guilty or has a conviction for the
2 offense of armed robbery Both of these being submitted are
3 armed robbery convictions

4 THE COURT All right Any objection to those
5 exhibits?

6 MR LENZIE No

7 THE COURT All right It's part of the State's case
8 in chief, both are admitted and accepted as
9 self-authenticating documents

10 MR KOCH Judge, at this point we would ask to go
11 through our list of evidence and move those into evidence

12 THE COURT Let me try it this way, it might save
13 everybody a lot of time The State has a number of exhibits
14 here Does the defense have any particular objections to
15 any -- reserving any other rights you may have -- to any
16 exhibits?

17 MR LENZIE Judge, I believe during trial we did
18 object to the introduction of the AR-15, the pictures of the
19 AR-15 and the 223 weapon as they are not relevant He is not
20 charged with that

21 The only thing he is charged with is the
22 40 caliber Hi-Point firearm so I won't object to that, but
23 everything else I do wish to object to

24 THE COURT The other weapons?

1 MR LENZIE Yes

2 THE COURT As not being relevant State?

3 MR KOCH Judge, well, I guess specifically with the
4 rifle itself, which was People's Exhibit 203, that rifle was
5 located in the back seat of the car that's registered to the
6 defendant Antonio Bogan

7 And Antonio Bogan's phone which was just
8 testified to by an expert are two photographs which we are
9 asking to admit into evidence Those two photographs were
10 taken on July 15th of 2013, 12 days prior to the location of
11 the weapon

12 In looking at both of those, your Honor can see
13 that they appear to be one in the same, and, therefore, it is
14 relevant because the phone that the defendant has on him has
15 a picture of this weapon that's located in a car and we are
16 trying to show the Court -- we believe we have shown the
17 Court that he possessed the 40 weapon, and part of that goes
18 towards the fact that he's aware that weapon is in his car,
19 which is registered to him

20 And we know he has accessed that car because he
21 has a photograph and the photograph that I would -- two
22 photographs that I'm asking to admit, People's Exhibit 233
23 and 231 are not taken inside the car They appear to have
24 some type of bedding on them, and then it appears to be

1 carpet, which means that these two photographs of that weapon
2 which is --

3 THE COURT What he is objecting to basically is he's
4 saying he's not charged with the rifle, he's charged with the
5 pistol Why are we talking about the rifle, is that right?

6 MR LENZIE Yes

7 THE COURT It's too prejudicial, it's not relevant

8 MR KOCH Because, Judge, all of these items are
9 found within the back seat of the car, the rifle is in the
10 back seat, the 40 Hi-Point is on the floorboard

11 THE COURT So you are saying that if a guy was
12 charged with meth for having it in his house and they found
13 cocaine and heroin and marijuana, all that could be
14 introduced too?

15 MR KOCH What I'm saying is --

16 THE COURT Am I right or wrong?

17 MR KOCH Yeah, because it would go towards his --
18 Judge, it goes towards his knowledge

19 THE COURT His state of mind?

20 MR KOCH His state of mind, absolutely

21 THE COURT I got it

22 MR KOCH If he's taking a photograph --

23 THE COURT I just gave you a simple analogy,
24 Right?

1 MR KOCH Yes

2 THE COURT I'm waiting for him to swat it away,
3 isn't that true?

4 MR LENZIE Judge, I think they are all highly
5 prejudicial

6 THE COURT Well, anything is prejudicial to the
7 defendant in terms of evidence from that perspective, but the
8 point that the State was making is that's his state of mind,
9 that's his knowledge

10 He has got a mini warehouse of weapons, that's
11 what they are going to argue to me in a second I'm sure, in
12 his car registered to him that he took photographs of, and so
13 while they may not be charged with that particular offense of
14 the rifle, the cumulative affect of all this material is
15 saying to that defendant that they are proving his state of
16 mind at the time of the offense

17 MR LENZIE Judge, may I respond?

18 THE COURT Sure, of course

19 MR LENZIE Judge, these weapons were separate and
20 distinct from each other I think most of them were wrapped
21 in a bag separate from each other

22 THE COURT So back to my analogy If the cocaine
23 that I talked about was on the kitchen sink and a huge bundle
24 of marijuana was on the dining room table and the meth lab

1 was down in the bedroom, those are all three distinct areas
2 of the house

3 MR LENZIE And I would object to them if I was
4 doing that trial too

5 THE COURT And I know what my ruling would be at
6 that trial too

7 MR KOCH I don't know what other items that --

8 THE COURT Well, obviously -- listen, he is going
9 to -- he objected to that, he is going to object to the
10 photographs

11 MR LENZIE Yes, and the crossbow

12 THE COURT The what?

13 MR LENZIE There was a crossbow photo too

14 MR KOCH Judge, that would be photo --

15 MR LENZIE 226

16 MR KOCH 226

17 THE COURT What's the relevance of the crossbow?

18 MR KOCH Actually that's not 226, I'm sorry, Judge
19 197 was a picture of the crossbow

20 THE COURT Is it illegal to own a crossbow?

21 MR KOCH Judge, here's my point again

22 THE COURT Here we go again

23 MR KOCH I'm assuming Mr Lenzie is going to make
24 an argument, we are not at closing arguments now, but there's

1 going to be an argument made that he didn't possess that
2 weapon

3 Part of our state of mind that you just talked
4 about goes to this with the crossbow, vehicle registered to
5 the defendant, has a crossbow in the trunk of that car

6 THE COURT Is it illegal to own a crossbow? No

7 MR KOCH For him it might be because of --

8 THE COURT It's not illegal to own a crossbow Do
9 you know who owns a crossbow? No, no Do you know who owns
10 a crossbow and fires it continuously? Craig Stebic

11 MR KOCH Judge, here's my issue on why we want to
12 admit that picture if I may

13 THE COURT The missing Lisa Stebic in Plainfield
14 It was a quarter mile from me I know his next door
15 neighbor, yes So?

16 MR KOCH So if you recall from --

17 THE COURT So it's not illegal to own a crossbow

18 MR KOCH So it should be admitted then
19 automatically because it's not prejudicial

20 THE COURT What's the relevance?

21 MR KOCH I'm trying to get to the relevance
22 Here's the relevance, Judge, the relevance is again we are
23 establishing the defendant's knowledge of a weapon being in
24 that car

1 The defendant consented to a search of his home
2 at 1911 where there is a target set up where there are five
3 holes that appear to be from Detective German made from
4 arrows

5 Now we walk outside to a car that's registered
6 to the defendant, and in that car is a crossbow with arrows
7 You can draw reasonable inference again that the defendant is
8 aware of the items that are in that car

9 And it's such a limited space, we are not even
10 talking about the basement, the kitchen, the bedroom We are
11 talking about a vehicle and his knowledge of putting a
12 crossbow in the car, putting a rifle into the car also goes
13 towards his knowledge that that 40 caliber Hi-Point Smith &
14 Wesson is in that car

15 THE COURT So you are indicating that in this
16 particular instance what you are arguing to me is it's an
17 indicia of ownership?

18 MR KOCH Yes

19 THE COURT Because of the target coming off and
20 connecting back to that?

21 MR KOCH Yes

22 THE COURT That's what you are saying?

23 MR KOCH Yes

24 THE COURT It has nothing to do with being a weapon,

1 it could be the pot is found in the car and the lid to the
2 pot is found in the house?

3 MR KOCH Absolutely

4 THE COURT Brilliant Go

5 MR LENZIE Judge, I still think it's irrelevant
6 Going to Mr Koch's argument, I don't believe they actually
7 proved this was Mr Bogan's apartment He was arrested
8 outside in shorts and a T-shirt There's been no evidence of
9 he actually owns this apartment or has ever been in the
10 apartment

11 THE COURT What say ye?

12 MR KOCH Well, Judge, he gave consent to search
13 that apartment, that goes towards ownership of that
14 apartment Also on the certified registration of the
15 vehicle, lists that as his address, 1911 Moore Street I
16 would say that it is his apartment He gave consent to go in
17 there

18 THE COURT Maybe he is giving consent to somebody
19 else's

20 MR KOCH Well, Judge, then I guess you will give it
21 whatever weight that you want to give it

22 THE COURT It's in Go on

23 Those arguments have been made Now, unless
24 you have got another argument, everything else is coming in

1 Because the way I did this was kind of reverse because
2 there's so many particular exhibits, I just asked what are
3 you objecting to?

4 MR LENZIE Can I have one minute?

5 THE COURT Sure, absolutely

6 (Brief pause)

7 MR LENZIE Nothing else

8 THE COURT Then those exhibits are allowed over
9 defense's continuing objection to the ones that they are
10 protesting against The State now is resting?

11 MR KOCH Yes

12 MR LENZIE Judge, I'm sorry

13 THE COURT Yes, sir? Go on

14 MR LENZIE No, that was it That was it

15 THE COURT They rested

16 MR LENZIE Judge, I have a motion for directed
17 finding

18 THE COURT Argument

19 MR LENZIE Yes, please

20 Judge, first of all, on the Bill of Indictment
21 what's left after being nolle prosecu'd, Count I --

22 THE COURT We only have Count I and Count VI?

23 MR KOCH Yes

24 MR LENZIE That's correct

1 Judge, to start with, Count I on the armed
2 habitual criminal indicates that the State has to prove the
3 defendant was convicted two or more times of the offense of
4 armed robbery You have the certified copies of conviction
5 in front of you The one finding of guilt was 4-27, 2004

6 THE COURT Just a minute Which one are you talking
7 about, Counsel?

8 MR LENZIE The 401 case

9 THE COURT Hang on The one that ends with 401?

10 MR LENZIE Yes

11 THE COURT All right Hang on Let's see, what's
12 your argument on that?

13 MR LENZIE Judge, just to take note that the one
14 finding of guilt was April 27, 2004 The other certified --

15 THE COURT Go ahead

16 MR LENZIE The other certified copy of conviction,
17 the 02 CR 63101 is 3-24 of 2004, both the same year

18 Judge, after the sentences are -- they have to
19 prove that he was convicted two or more times This is not a
20 situation where it was commit/convict situation These armed
21 robbery convictions were all pending at the same time So
22 just like the habitual --

23 THE COURT So what?

24 MR LENZIE Judge, as my argument is, as to the

1 habitual criminal statute it requires for that statute that
2 they be commit/convict situation That statute requires that
3 someone commit an offense, convicted, and then they get out
4 again, commit/convict

5 Judge, that's not the situation we have here
6 This is two or more times Judge, what I'm arguing here is
7 that they didn't prove two or more times because it was not a
8 commit/convict situation

9 THE COURT So he gets one free pass?

10 MR LENZIE Judge, I'm just arguing as to the
11 statute that they require two or more times that that wasn't
12 proven beyond a reasonable doubt

13 THE COURT What's the statute you are quoting?

14 MR LENZIE They charged it under 720/5 24-1

15 THE COURT 725 what?

16 MR LENZIE 5/24-1 7

17 THE COURT 725 -- I'm sorry 720/5 slash 24-1 71?

18 MR LENZIE Right

19 THE COURT All right Hang on

20 Okay Here's the way I read this Commits the
21 offense of being an armed habitual criminal if he or she
22 receives, sells, possess -- having been convicted of a total
23 of two or more times of any combination of the following
24 offenses Forcible felony, one, UUV by a felon, and it lists

1 all of them, any violation of the Illinois Controlled
2 Substances Act So what are you saying?

3 MR LENZIE Judge, I'm saying that it should be a
4 commit/convict situation, that the statute is unclear, that
5 it doesn't say commit/convict It doesn't say anything other
6 than two or more

7 THE COURT Did you read this?

8 MR LENZIE Yeah, I read it, Judge

9 THE COURT I know you did Convicted a total of two
10 or more times by any combination

11 MR LENZIE Judge, my argument is that it wasn't
12 commit/convict so they didn't prove the two or more

13 THE COURT Yes

14 MR KOCH Judge, the statute with regards to the --
15 that Mr Lenzie was referring where he talks about commit and
16 convict specifically says it in the statute, it's not
17 specifically stated in here in the armed habitual criminal
18 statute

19 All it requires is that he be convicted a total
20 of two or more times You have before you two certified
21 convictions of two convictions There is no requirement that
22 it be commit/convict There is no case law on that issue
23 There is none presented to the Court The statute is clear
24 It should be given plain reading by this Court which is he is

1 convicted of two or more and I gave you two armed robbery
2 convictions

3 THE COURT Both on which he was --

4 MR KOCH Convicted of Count I, armed robbery

5 THE COURT On two different days?

6 MR KOCH Yes

7 THE COURT All right Continue

8 MR LENZIE Judge, I do wish to reference People
9 versus Zentz, Z-E-N-T-Z, cited at 26 Illinois Ap 3d 265
10 It's a Third District case from 1975

11 THE COURT '75?

12 MR LENZIE Yes I did give a copy to the State

13 THE COURT Are you talking about the document of
14 constructive possession on this issue?

15 MR LENZIE Yes, Judge

16 THE COURT Go ahead

17 MR LENZIE Judge, I guess I can address straight
18 possession right now, actual possession

19 Judge, Mr Bogan wasn't found in actual
20 possession of any weapons They searched him, they didn't
21 find anything on his person

22 The evidence of the automobile where the
23 weapons were found by the officers was outside of an
24 apartment complex where this is multiple buildings, multiple

1 apartments in each building

2 Judge, any one of those could have been --
3 could have put these weapons in that car Judge, we are not
4 talking about actual possession here, they were not found on
5 Mr Bogan's person, they were found -- there was really no
6 testimony as to how far away he was arrested, so you can't
7 even assume that he was arrested right at the car, Judge, so
8 we are not talking actual possession

9 THE COURT Isn't it a presumption that the things
10 that you -- it's been established that that was the
11 defendant's car to me Isn't there a presumption, although
12 rebuttal, that the items found within the things you own,
13 like your house or your car are yours?

14 MR LENZIE Judge, I don't believe so

15 THE COURT Okay Go ahead

16 MR LENZIE Judge, I don't believe this is an actual
17 possession I think they have to prove constructive
18 possession

19 THE COURT Well, that's what I'm saying Go on

20 MR LENZIE Sure Judge, the Zentz case that I
21 presented to your Honor is a case where the defendant was
22 convicted of possession of a 410 shotgun

23 The defendant in that case was arrested outside
24 a tavern on two outstanding misdemeanor warrants On that

1 same afternoon, the deputies in that case located an Opel
2 automobile outside the tavern

3 The deputy that arrested him had to use a pry
4 bar to get into the trunk where they found the 410 Judge,
5 that's the same as what we have here The officers never
6 found keys on Mr Bogan

7 They pulled over another Chevy with three other
8 individuals, and they asked Mr Bogan for permission to
9 search that vehicle, and I can presume because they thought
10 that was his car

11 So, what we have here is he has two vehicles,
12 and obviously he lets other people use his vehicles because
13 the Chevy they pulled over, which he gave permission to
14 search had three individuals in it that were not Mr Bogan

15 They searched his apartment from the keys that
16 they had on that Chevy because that Chevy had the apartment
17 keys on it At no time did they find keys on Mr Bogan or in
18 his apartment to that Oldsmobile out back, the Oldsmobile
19 they found all these weapons in

20 And, Judge, the Third District in the Zentz
21 case put a lot of emphasis on the fact in overturning the
22 constructive possession conviction, they put a lot of
23 emphasis on the fact that the State didn't prove the
24 defendant actually had the ability to get back into the car

1 That's what we have here

2 In fact, the deputies, they didn't find a key,
3 so they had to forcibly enter this car to get in there
4 Judge, the State did not prove that Mr Bogan at any time had
5 access to this car

6 Judge, focusing on the fingerprints The
7 fingerprints that came back that Mr Murphy said were found
8 to be Mr Bogan's, they were in a 226 box, not the
9 40 caliber

10 Judge, the State put that in as long as -- and
11 the rifle just to make Mr Bogan look bad That is a -- he
12 is not charged with that gun The only thing he is charged
13 with is that 40 caliber weapon, the H1-Point

14 You didn't hear one witness put that weapon in
15 Mr Bogan's hand, not one The fingerprints on that box of
16 ammunition were wrapped in a separate bag Nothing put the
17 40 caliber H1-Point, which is the only thing Antonio Bogan
18 is charged with, in his hands

19 The fingerprints don't put it in his hands,
20 because that box was a different caliber ammunition and it
21 was wrapped up in a separate bag It is very possible
22 someone else had access to that vehicle because they never
23 found keys on him It's very possible that someone else
24 wrapped that 40 caliber up

1 THE COURT State, how do you respond to that
2 argument?

3 MS DOMAGALLA Judge, how I would respond to that
4 argument is if you read People v Zentz --

5 THE COURT I have done it

6 MS DOMAGALLA If you look at the last paragraph

7 THE COURT Yeah

8 MS DOMAGALLA It states that the recital of these
9 facts to the effect that the defendant on some indefinite
10 occasion in the past carried a shotgun with him, and that
11 there were credit cards and tax forms in the trunk bearing
12 his name hardly suffices to establish the possession No
13 evidence was presented by the State indicating defendant
14 owned the car in question In Zentz you have a man sitting
15 in a tavern drinking and a car in a parking lot

16 THE COURT He gets arrested at least three days
17 later I got it

18 MS DOMAGALLA When they searched that car, he is
19 not the registered owner There is no proof given in this
20 case that he is the registered owner In fact, no evidence
21 was presented by the State indicating the defendant owned the
22 car That is extremely different than the facts before you
23 today

24 THE COURT How did they reach the conclusion on the

1 first page?

2 MS DOMAGALLA Where are you?

3 THE COURT On the same afternoon of the arrest, an
4 unoccupied Opel automobile believed by the deputies to have
5 belonged to Zentz It doesn't say how they got to that
6 conclusion

7 MS DOMAGALLA They had seen him driving that
8 vehicle on different occasions, but they did not actually
9 enter any proof other than he was driving the vehicle
10 That's not what happened throughout this trial

11 We presented certified Secretary of State
12 documents that he is the registered owner of the Oldsmobile,
13 it's not just that we see him driving the car and in the
14 trunk of that car is documentation that's his

15 He is the owner of that vehicle He is the
16 person who lives in the apartment, that he gave consent to
17 search The weight is not placed on just the fact that there
18 weren't keys discovered

19 The defendant was arrested at a bar and they
20 searched a car that he doesn't own In this case the
21 defendant is arrested in his apartment, outside of his
22 apartment is his car, his green Oldsmobile that he is the
23 registered owner of, that the address matches the apartment
24 that he lives in, that he gave consent to search I don't

1 believe factually they are even similar

2 THE COURT Mr Lenzie, how do you respond to that?

3 MR LENZIE Judge, the evidence that you see --
4 actually, I think Zentz was even stronger because they had
5 another witness that said he chauffeured the defendant
6 around, and he actually put the 410 shotgun kind of in the
7 defendant's hands We don't have any witness that even puts
8 Mr Bogan in that car They didn't show anything to say that
9 he had access to that car or that --

10 THE COURT Well, it's his car

11 MR LENZIE Judge, that doesn't mean he didn't give
12 the keys to someone else Not everyone follows when they
13 sell cars, not everyone follows the proper procedures

14 THE COURT Isn't that where we go to the presumption
15 and it becomes a rebuttal for presumption? It's my car,
16 here's the glove box, here's everything I have got

17 So, technically -- or legally isn't that mine?
18 If it's my car, doesn't the law say that everything in that
19 car unless it's been showed by rebutting it is Judge Livas',
20 it's mine?

21 MR LENZIE Judge, I don't believe that's the way it
22 is

23 THE COURT Really?

24 MR LENZIE No, I don't

1 THE COURT So it's my car, the stuff is assumed to
2 be mine, isn't it?

3 MR LENZIE Judge, anyone can go through another
4 person's vehicle, anyone can put that stuff there Just
5 because someone -- we are not talking ownership, it doesn't
6 say he had that Ownership is the element, it's possession

7 THE COURT Correct

8 MR LENZIE And, Judge --

9 THE COURT Do I possess the things in my vehicle?

10 MR LENZIE Maybe or maybe not

11 THE COURT. It's just mine, my vehicle, right there
12 I'm on the registration, just me

13 MR LENZIE Judge, the State didn't present any
14 evidence as to who else had those vehicles All we have --

15 THE COURT Tell me something, what are you requiring
16 the State to do? I'm curious Because one thing with
17 Mr Lenzie what you do do is you always give me
18 interesting -- and I'm not being condescending -- I find your
19 arguments pretty fascinating sometimes You do a lot of
20 research, but my question to you would be what would you
21 expect the State to do? Bring in everybody in the area where
22 he lives to say I never drive that car to prove a negative?

23 MR LENZIE Some witness to say they have even seen
24 him at that car, someone to say I have seen him in the

1 vicinity of that car

2 THE COURT Isn't the registration saying that's his
3 car enough?

4 MR LENZIE It just says he owns it It doesn't
5 mean he drives it It doesn't mean it's his There are
6 situations where people own a car but they let other people
7 drive it Just because it's in his name, doesn't mean he was
8 the only driver

9 THE COURT Then we go back to that same point How
10 does the State possibly overcome -- if that's the hurdle you
11 are setting up, how do they ever get over that hurdle? They
12 have a car and they say here's the registration of that car,
13 that's his ownership

14 And then you want them to bring in someone else
15 to say, well, he could have lent it to someone or didn't lend
16 it to someone How do they do that? Think of the burden you
17 are setting up for any prosecution at that level

18 MR LENZIE Judge, I believe in this type of case,
19 they should have a high burden Judge, it's beyond a
20 reasonable doubt

21 THE COURT But it's not impossible

22 MR LENZIE I don't think that is impossible to
23 bring a witness in to say that I have seen him near that car

24 THE COURT So they have to search the world to find

1 a witness to say, yeah, I saw him standing two feet from that
2 car?

3 MR LENZIE Someone, yes

4 THE COURT Anybody?

5 MR LENZIE The mighty power of the State and the
6 Joliet Police Department, I think that's well within their
7 capabilities

8 THE COURT The power of the registered plates
9 belonging to him isn't enough for you?

10 MR LENZIE No, it's not

11 THE COURT It's a good argument

12 But the point that the State caught -- in all
13 honesty I was fascinated by this case until they caught a
14 simple point with me, which means in the Zentz case there's a
15 big difference, there never was any proof of ownership of the
16 vehicle

17 They just came to this position that it was
18 believed by the deputies to have belonged to Zentz In this
19 case during the State's case in chief that I just heard, they
20 pretty well established by the registration and the plates,
21 it's his car Isn't that a significant difference to you?

22 MR LENZIE Judge, it is definitely a difference

23 THE COURT I notice you left out the word
24 significant but that's okay Okay Go on Remember this is

1 just a directed verdict, so I'm just looking at the evidence
2 in the light most favorable to them

3 MR LENZIE Correct Judge, like I indicated before
4 in the Zentz case, I think it goes a step further because
5 they actually present a witness, a guy that chauffeured the
6 defendant around in that case and put the 410 in the
7 defendant's hand We don't have any of that

8 THE COURT Let me change that argument to you, let's
9 do it this way

10 Let's suppose the State can find no other
11 witness on the planet They searched everywhere on the
12 planet to find a witness Wouldn't that mean that total
13 possession of that car and who drives it is just him?

14 Turn it around, do it the reverse way They
15 have looked everywhere, they have talked to every human being
16 who has ever met him, gone through his entire life biography
17 and nobody can they find anywhere who has driven that car
18 Then who drives the car? He does

19 MR LENZIE Judge, in this type of case there is no
20 guaranty that someone is going to admit that either

21 THE COURT Okay Well, all right So doesn't that
22 elevate your whole point about bringing in a witness who
23 doesn't obviously want to get on that stand and say, yeah, I
24 drove this car loaded with weapons

1 MR LENZIE Judge, but the evidence is the Joliet
2 police officers didn't even do that There is no evidence
3 that they talked to anyone, asked anyone else any questions,
4 do you drive this Oldsmobile I don't believe the evidence
5 was that they even tried

6 THE COURT So if the police stop a car of a guy
7 driving it, his car, right?

8 MR LENZIE Okay

9 THE COURT He has got a passenger in the back,
10 there's a load of cocaine in the back seat, they should ask
11 the passenger do you ever drive this car?

12 MR LENZIE Well, that's a different situation

13 THE COURT Just based on those facts, you're looking
14 at him Who is in possession of the cocaine, the driver or
15 the passenger?

16 MR LENZIE Possibly both

17 THE COURT Well, I want to see you defend that poor
18 passenger then if that's your position Keep going

19 MR LENZIE Judge, the pattern jury instructions,
20 constructive possession indicates a person has constructive
21 possession when he lacks actual possession of a thing, but he
22 has both the power and the intention to exercise control over
23 a thing

24 Judge, like I indicated before, without finding

1 any keys on Mr Bogan in his apartment because they searched
2 his apartment, they found a target for a bow and arrow in
3 there, that was a big thing They never found any keys in
4 there

5 THE COURT When you said that jury instruction,
6 control over the item, right?

7 MR LENZIE Both the power and the intention to
8 exercise control over a thing

9 THE COURT Is the car registered to him?

10 MR LENZIE That's the evidence

11 THE COURT Could he sell it? Isn't that power over
12 the item? Could he sell the car? It's registered to him

13 MR LENZIE Owning a car isn't illegal, it's the
14 stuff inside

15 THE COURT You are talking about the possession
16 issue, constructive possession His car, his title, can he
17 sell the car?

18 MR LENZIE Yeah

19 THE COURT Sure Correct?

20 MR LENZIE Yes

21 THE COURT So look at that instruction

22 MR LENZIE Judge, I'm still arguing that without
23 the keys, he didn't have the control to exercise and they
24 can't prove that he had the intent to exercise control over

1 those items in the car That evidence wasn't there Just
2 because it was his car does not mean they proved that

3 THE COURT I gave you a hard time I'm going to go
4 to these guys

5 Can intent be inferred? He's saying you can't
6 prove intent based on the fact that the car was in his name
7 because he had no car keys

8 MS DOMAGALLA Judge, I disagree with that

9 THE COURT Well, I know that but tell me how

10 MS DOMAGALLA He is the sole owner He has
11 exclusive possession, sole ownership of that vehicle The
12 items in that car are his It's his medical card It's his
13 Walmart receipt, his paperwork from his Rockdale tow sheet,
14 his ammo, his bow and arrow, his fingerprints on the ammo box
15 underneath the guns wrapped in a sweatshirt underneath the
16 medical card that is found in the bag All of the items in
17 that vehicle are his The car is his

18 THE COURT And you are saying to me that during the
19 course of this search of the vehicle and the inventory, they
20 found no other items belonging to anyone else?

21 MS DOMAGALLA You've heard everything that they
22 found

23 THE COURT I got it I'm not arguing with you

24 MS DOMAGALLA Yes

1 THE COURT How about that, Mr Lenzie? Every single
2 item found in the car in one way or the other was connected
3 to this man?

4 MR LENZIE Judge, I don't believe --

5 THE COURT The guns, the prints, the ID cards, the
6 medical cards

7 MR LENZIE That stuff might have been There might
8 have been someone else's stuff in there, just the State
9 didn't present that evidence

10 MR KOCH Objection, speculation, never asked of
11 those officers whether anything else was found in that car

12 THE COURT Everything presented in this trial I have
13 heard Listen to me, every piece of evidence I have heard in
14 this case, nothing else was outside

15 The problem you have is, and I understand your
16 argument, but even if it was, if there's something else
17 there, his car, tons of I D 's in that car, to me if you have
18 ownership of the vehicle, it's registered to you, do you have
19 power over the vehicle?

20 MR LENZIE Judge, the only thing I can respond
21 there, the Zentz case, there was other documents from the
22 defendant in that car

23 THE COURT But they never proved ownership like the
24 State pointed out of who owned that car

1 MR LENZIE That's correct All we are talking
2 about here is the other items that were found in this
3 Oldsmobile

4 I just want to point out in the Zentz case
5 there was Federal tax forms, credit cards buried in the
6 defendant's name in the vehicle So from the Zentz case it
7 doesn't look like they found anything else from any other
8 individual

9 THE COURT But I think what happened, and I will be
10 honest about this case, it looks to me like what basically
11 happened in this case, the State's attorney prosecuting the
12 case didn't do an adequate job in all honesty

13 He assumed, and I'm going to read into this
14 case, that the items he found they found in the car were
15 sufficient enough to establish ownership He never bothered
16 to introduce who owned the car in reality, the State here in
17 our case before us did Is that right, Miss Domagalla?

18 MS DOMAGALLA Yes I was just stating I would
19 concede that if all we presented was a receipt in the car,
20 that's not enough to show ownership of that car or the items
21 That's not what we presented We presented receipts,
22 registered ownership, and all of the items that those are
23 factually very different

24 MR LENZIE Judge, I'm maintaining my argument I

1 have one other case Judge, it's People versus Whalen, 145
2 Ill App 3d 125

3 THE COURT What's the name?

4 MR LENZIE Whalen, W-H-A-L-E-N

5 THE COURT A different issue It is control of the
6 vehicle, not ownership, that is pertinent to proving
7 exclusive control of the area of the premises where the items
8 illegally possessed were situated

9 MR LENZIE And that's where the key is involved
10 They didn't prove that he had control of that automobile
11 The ownership doesn't matter

12 THE COURT: Hang on

13 (Brief pause)

14 Is this the case where the plates came off the
15 passenger's mother's car and put it on this car, this car
16 gets stopped with Whalen driving it, right?

17 MR LENZIE Yes Judge, I believe --

18 THE COURT And then they find marijuana in the back,
19 right?

20 MR LENZIE The only reason I'm using this case is
21 as to the head note on page four where it says ownership can
22 indicate control but is not the only manifestation of
23 control

24 THE COURT I got that But that case is hardly --

1 MR LENZIE Judge, but it's the general principle
2 that ownership doesn't prove possession and that's what I'm
3 arguing They have to prove some kind of control of a
4 vehicle And without the keys or even Mr Bogan being in the
5 vicinity of the car, they can't prove control of that
6 vehicle

7 THE COURT Hum, wait a minute The requisite
8 knowledge may be proved by evidence of acts, declarations, or
9 conduct from which it may fairly be inferred that the accused
10 knew the existence of the narcotics at the place they were
11 found, not only may possession of drugs be constructed but
12 the rule that possession must be exclusive does not mean that
13 possession may not be joint

14 It's noted that several Illinois cases
15 involving contraband found in the accused's car have found
16 that the circumstance and the fact that it was located in
17 places where he could or should have been aware of it, were
18 sufficient evidence of his knowledge and control in order to
19 sustain convictions

20 So if the defendant's fingerprints were taken
21 off of a box of ammo, which established to me that he is in
22 that car, he is touching the box of ammunition in the car,
23 doesn't that establish he could or should have known about
24 it, wasn't that sufficient?

1 MR LENZIE Judge, number one, we don't know when
2 the prints were put on the box of ammo

3 THE COURT They are his prints

4 MR LENZIE That's correct

5 THE COURT It's a different issue

6 MR LENZIE They could have been in there prior to
7 the 40 caliber He is not charged with the ammunition or
8 the gun that the ammunition went to He is charged with only
9 the 40 caliber So, no, I don't believe the prints on there
10 have any bearing on whether he had knowledge or control over
11 the 40 caliber

12 MR KOCH Judge, first of all, People's Exhibit
13 Number 225, which is the Rockdale Police Department vehicle
14 bond receipt releasing the vehicle, 1997 Oldsmobile Cutlas,
15 to one Antonio Bogan at 1911 Moore Street, Apartment 103 in
16 Joliet, signed by Antonio Bogan after posting \$250 cash bond
17 If that doesn't show possession and ownership of that
18 vehicle, I don't know what else would

19 THE COURT Plus it shows total control over it

20 MR KOCH Yes, because they released the vehicle to
21 him In addition to that you have a medical card and a red
22 bag which is the first thing and on top of the sweatshirt
23 with the firearm sticking out according to the picture

24 So you have a medical card in his name, number

1 one Then you have sandwiched -- then you have these two
2 weapons in this sweatshirt, number two

3 And at the bottom of that in the picture you
4 have got him on the bottom and you have got him on the top
5 So, in the middle of that is this weapon that, you know, all
6 the evidence suggests --

7 THE COURT Where did you get that? I totally forgot
8 about that

9 MR KOCH That was located in the vehicle that was
10 searched

11 THE COURT What do you say about this?

12 MR LENZIE Judge, the date on that is March, this
13 was in July Maybe it shows possession in March but nothing
14 more than that

15 THE COURT Okay

16 MR KOCH We deal in circumstantial evidence every
17 day You can prove a case solely on circumstantial evidence
18 Totality of the circumstances suggest possession, ownership,
19 exclusive control over that

20 THE COURT 1997 Oldsmobile Cutlas Antonio Bogan,
21 he signed for it, he got it back Posted bond Don't you
22 think that's pretty good evidence of control?

23 MR LENZIE Back in March maybe

24 THE COURT Oh, okay

1 MR LENZIE But not in July

2 THE COURT Would you like a bond sheet from July?

3 It's circumstantial evidence, do you agree with that?

4 MR LENZIE Yes, absolutely

5 THE COURT All right Off the record

6 (Brief pause)

7 Go back Mr Koch, response

8 MR KOCH Judge, I think we have been heard I
9 think the evidence that's been presented in this case, and
10 your Honor is to rely on the evidence presented here in
11 these -- in this courtroom which shows the paperwork
12 recovered from that has Antonio Bogan's name on it, the
13 evidence in this case show that his personal belongings as
14 far as his prints are on ammo and a medical card and Rockdale
15 receipts showing possession and ownership of that vehicle and
16 all the other arguments that Miss Domagalla has made today as
17 well as myself, we are asking that you deny the motion for a
18 directed finding I have already made my argument on the
19 conviction aspect of the armed habitual statute

20 THE COURT The motion for directed verdict is
21 denied Defense case

22 MR LENZIE Judge, can I have just a moment?

23 THE COURT Mr Bogan, I'm going to explain something
24 to you for the benefit of your attorneys and for you At

1 this moment in time we are going to take a few minutes so you
2 can talk to your attorneys in private, give you some privacy

3 You have the opportunity obviously, and a
4 constitutional right to not take that stand, all right If
5 you do that, if you exercise your constitutional right to
6 remain silent, the State can't do anything It can't be held
7 against you in any way

8 On the other hand, you have the right to get up
9 and testify knowing full well you will be cross-examined, but
10 ultimately that decision is one of the decisions that only
11 you can make for yourself You can talk to your attorneys
12 They can explain the situation to you, but when I come back,
13 I'm going to give you a few minutes to talk to them, figure
14 out what is in your best interest, and then you and you alone
15 are going to make that decision whether or not you want to
16 get up there and testify or not, okay

17 THE DEFENDANT Yes, sir

18 THE COURT We will take a few minutes

19 (Short recess taken)

20 We are back on the record on Bogan, 13 CF 1631
21 I afforded the defendant the opportunity to speak with his
22 counsel regarding his desire or lack of desire to testify

23 Mr Bogan, you've had the opportunity to speak
24 to counsel, is that right?

1 THE DEFENDANT Yes, sir

2 THE COURT Have you made a decision?

3 THE DEFENDANT Yes, sir

4 THE COURT Whether or not you wish to testify?

5 THE DEFENDANT Yes, sir

6 THE COURT And what do you wish to do?

7 THE DEFENDANT I want to testify

8 THE COURT All right, sir Show for the record that

9 the defendant is obviously being unhandcuffed His leg irons

10 have been removed

11 I should ask this, Mr Lenzie, do you have any

12 other witnesses other than the defendant?

13 MR LENZIE Just the defendant

14 THE COURT Sir, would you come forward Do you want

15 to be sworn in over here?

16 (Witness sworn)

17 ANTONIO M BOGAN,

18 called as a witness herein on behalf of the Defendant, after

19 having been first duly sworn, was examined and testified as

20 follows

21 DIRECT EXAMINATION

22 BY MR LENZIE

23 Q Sir, are you Antonio Bogan?

24 A Yes, sir

1 Q Do you spell the last name B-O-G-A-N?

2 A Yes, sir

3 Q What's your date of birth?

4 A August 31, 1979

5 Q And you are the defendant in this case, is that

6 correct?

7 A Yes, sir

8 Q First of all, Mr Bogan, is it true that you

9 have convictions for armed robbery, is that correct?

10 A Yes, I do

11 Q You have six of them?

12 A Yes, sir

13 Q I want to focus your attention on July 27,

14 2013 Were you arrested by the Joliet Police Department?

15 A Yes, I was

16 Q When they arrested you, where were you?

17 A I was standing in the parking lot of Pheasant

18 Run Apartments, 1900 block of Moore.

19 Q Do you live there?

20 A Yes, I do

21 Q What was your apartment?

22 A My apartment was 103

23 THE COURT This is at 1911?

24 THE WITNESS Yes, sir

1 THE COURT It's 1911 and Apartment 103?

2 THE WITNESS Yes, sir

3 THE COURT All right Thank you

4 BY MR LENZIE

5 Q What were you wearing when you were arrested?

6 A I was wearing a t-shirt and some shorts and
7 some flip flops

8 Q And where were you exactly? Were you inside or
9 outside?

10 A I was standing outside

11 Q How close to your apartment?

12 A I was on the -- probably the south side of the
13 building I was actually sitting on the patio of one of my
14 friend's apartments, directly behind my apartment

15 Q Your apartment was on the lower level, is that
16 right?

17 A Yes

18 Q And these apartments, do they have a patio out
19 back?

20 A Yes

21 Q So is there two entrances, two exits to these
22 apartments?

23 A Yes

24 Q And you were outside the -- your patio area?

1 A Yes

2 Q But on a friend's patio?

3 A Yes

4 Q Mr Bogan, you have heard throughout this trial
5 reference to a green Oldsmobile, are you familiar with that
6 car?

7 A Yes, I am

8 Q Did you actually own that vehicle?

9 A No, I didn't

10 Q You also heard testimony and evidence that it
11 was registered in your name, why was it registered in your
12 name?

13 A My God-brother, someone who I consider as a
14 God-brother

15 Q Who was that?

16 A His name was Anton Spencer

17 THE COURT He is your God-brother?

18 THE WITNESS Yes, sir

19 BY MR LENZIE

20 Q What do you mean by God-brother?

21 A We are really close He is one of the guys
22 that I kind of hang out with every day We go to the bars
23 together and we shoot ball together and play PlayStation
24 together So he is like a really close friend so I consider

1 him like a God-brother to me

2 Q So he was not blood relation, you're just a
3 really good friend with Mr Spencer?

4 A Yes, sir

5 Q How long have you known Mr Spencer?

6 A I've been knowing Mr Spencer probably since
7 '89, since I came to Chicago

8 Q Approximately 25 years?

9 A Yes, sir

10 Q How old are you?

11 A I'm 35

12 Q So, you met him when you were roughly ten years
13 old?

14 A Yes, sir

15 Q Were you guys in school together or just in the
16 neighborhood?

17 A Same neighborhood

18 Q Okay Mr Spencer, did he own the green car?

19 A Yes, he did

20 Q Why was it in your name then?

21 A The day that he bought the car, him and his
22 girlfriend --

23 Q Who is his girlfriend?

24 A His girlfriend, her name is Micah, M-I-C-A-H,

1 Schmidt The day that they actually bought the car, neither
2 one -- Micah doesn't have a license She never had a license
3 before

4 Q What about Mr Spencer, does he have a license?

5 A Spencer, his license was suspended So when
6 they needed to buy a car, they talked to the owner, the
7 previous owner of the Cutlas and he agreed to sell them the
8 car So when we went to the --

9 Q Let me stop you right there How do you know
10 they spoke with the owners?

11 A I was with him I actually took them in my
12 white Impala

13 Q Do you have two cars? You mentioned two Do
14 you have the white Impala, is that the car you drive?

15 A That was the car that I drive, yes

16 Q And the green Oldsmobile is in your name?

17 A Yes

18 Q But you don't drive that?

19 A No

20 Q Where did you take them to buy this car?

21 A On Jefferson Street in front of -- there's a
22 cell phone store on Jefferson I can't think of the name

23 Q So in Joliet?

24 A It's in Joliet, yes

1 Q And approximately when was this, when did they
2 buy this car?

3 A I would say probably in March maybe, I'm not
4 for sure

5 Q March of 2013?

6 A Yes

7 Q So you drove them in the white Impala --

8 A Correct

9 Q -- to this location?

10 And you agreed to have it in your name because
11 he had a suspended license?

12 A Yes

13 Q And is it your belief that he couldn't own a
14 car because of that license?

15 A When he went to the currency exchange to put
16 the car in his name, the clerk at the currency exchange
17 wouldn't allow him to put the car into his name because of
18 his suspended license and he owed fines and stuff

19 Q Did you agree to have the car in your name
20 because of that?

21 A Yes

22 Q Mr Bogan, after you were arrested, Joliet
23 Police searched that vehicle, are you aware of that?

24 A Yes

1 Q Did you see them go through that green
2 Oldsmobile?

3 A No, I didn't

4 Q Where were you seated when they went through
5 that Oldsmobile?

6 A I was at the Joliet Police Department

7 Q So, you were arrested on July 27, 2013?

8 A Yes, sir

9 Q And then at some time you were transported to
10 the Joliet Police Station?

11 A Yes, sir

12 Q Before that, did you speak with officers?

13 A I spoke to, I think, Detective German

14 Q Okay They asked you -- did they ask you if
15 they could search your apartment?

16 A Yes, they did

17 Q Did they ask you if they could search the white
18 Impala?

19 A Yes, they did

20 Q That white Impala, was it on scene at that
21 time?

22 A Yes, it was

23 Q And tell me exactly where it was?

24 A It was in the parking lot outside of 1911, the

1 building

2 Q Were you driving it that day?

3 A No, sir

4 Q Who was driving it?

5 A I had my mechanic

6 Q Who was that?

7 A Potter, his name is Timothy Potter, but his
8 girlfriend her name is Sara Senifer (phonetic) She was
9 actually driving and my brother Anton was in the back

10 Q So Mr Spencer was in that car that day?

11 A Yes, sir

12 Q Those three individuals, did they stay in your
13 apartment the night before?

14 A Senifer did and Potter did

15 MR KOCH Objection as to relevance as to where they
16 were the night before

17 THE COURT Overruled

18 BY MR LENZIE

19 Q Did they stay at the apartment the night before
20 with you?

21 A Senifer did and Potter did

22 Q What about Spencer?

23 A Spencer showed up that morning He showed up
24 probably about an hour and a half before I was arrested

1 Q And did you allow those three individuals to
2 use your white Chevy?

3 A Yes, I did

4 Q Where were they going?

5 A I was getting brakes done on the Impala, so
6 Potter went to Auto Zone on Larkin to buy brakes for me and
7 Spencer just rode along with him

8 Q Were they getting alcohol that day?

9 A No

10 Q Not to the best of your knowledge?

11 A Not to the best of my knowledge

12 Q Who did you give the keys to?

13 A I gave them to Potter but Potter has a
14 suspended license also, so Senifer was the driver

15 Q Which car do you normally drive?

16 A White Impala

17 Q Going back to the green Oldsmobile Did you
18 actually -- when was the last time you were in that car?

19 A Probably in, I don't know, maybe March

20 Q Of 2013?

21 A Yes

22 Q Other than that, Spencer, was he the individual
23 that drove it?

24 A Yes

1 Q Mr Bogan, you also heard evidence that there
2 was papers found There was an Aetna insurance card in that
3 car Do you know how that card got in the car?

4 A I believe it may have gotten in the car through
5 Spencer Spencer is at my house He is there all the time
6 He stays there He spends the night I leave him with my
7 keys when I'm going with my girlfriend He has access to my
8 apartment, to my paperwork That card possibly might have
9 gotten there through him The card was invalid It was no
10 good

11 Q Did you put that insurance card in the car?

12 A No, I didn't.

13 Q There was also evidence that the police found
14 an ammo box with your fingerprints on it Would you tell the
15 Court how the fingerprints got on that ammo box?

16 A The fingerprints got on that box on the day
17 that Spencer actually bought the AR-15 and the box He know
18 that I can't be around guns, so he sent me a picture and then
19 he brought the box, the ammo box and allowed me to see his
20 new buy So that's -- I actually touched the box, that's how
21 it got on there

22 Q That's another point That picture that was on
23 your phone, he texted it to you?

24 A Yes, he did

1 Q Did you know what you were touching when he
2 handed you the box of ammo?

3 A Yes, I knew

4 Q Did you give it back?

5 A Yes, sir

6 Q Did you put any weapons in that green
7 Oldsmobile?

8 A No, I did not

9 Q Had you ever seen that 40 caliber Hi-Point
10 before at all?

11 A No, sir

12 Q Mr Bogan, there was also paperwork found in
13 the car, the towing sheet from Rockdale Are you familiar
14 with that?

15 A Yes, sir

16 Q It was in your name?

17 A Yes, sir

18 Q Why was it in your name if the car was
19 Mr Spencer's?

20 A On the day that the car got towed in Rockdale,
21 Spencer was -- I guess he was with somebody else, and they
22 got pulled over in Rockdale

23 MR KOCH Objection as to I guess he was with
24 somebody else

1 THE COURT Overruled

2 THE WITNESS They -- it was a female I don't know
3 her name but she got pulled over in Rockdale They towed the
4 car He can't get the car out because he has a suspended
5 license for one, and for two, the car is in my name, so he
6 called me I came in my Impala to Rockdale, the towing place
7 in Rockdale, and I actually got the car out for him with his
8 money

9 Q And that was in March of 2013?

10 A Yes, sir

11 MR LENZIE Can I have just a moment?

12 THE COURT Uh-huh

13 (Brief pause)

14 BY MR LENZIE

15 Q Mr Bogan, one more time Who owned the car?

16 A Anton Spencer

17 Q And why did you have a registration in your
18 name?

19 A Like I said, he is like a brother to me He
20 needed to get around, he needed the car, him and his
21 girlfriend to get around and they couldn't put one in their
22 name

23 Q And to the best of your knowledge, was the guns
24 and ammo found in the car, do they belong to Mr Spencer?

1 A Yes, sir

2 MR LENZIE I have nothing else

3 CROSS-EXAMINATION

4 BY MR KOCH

5 Q Mr Bogan, you said you bought that car in
6 March of 2013, is that right?

7 A No, sir

8 Q When did you buy that car?

9 A I never bought the car

10 Q You registered that car in your name, correct?

11 A Yes, sir

12 Q And you say that was done in March of 2013?

13 A I'm not for sure I don't know the exact month
14 and date and time that it was registered

15 Q Okay You signed the vehicle title slip on
16 that vehicle, didn't you?

17 A Yes

18 Q And the plates on that car are registered to
19 you, is that right?

20 A Yes, they are

21 Q And the plates were still -- they were current
22 at the time of your arrest, is that right?

23 A I believe so

24 Q You picked that vehicle up from the Rockdale

1 Police Department, is that right?

2 A Yes, I did

3 Q You drove that car off their lot, correct?

4 A No, I did not

5 Q Who drove the car?

6 A Anton Spencer

7 Q All right You signed the paperwork and paid

8 the money, correct?

9 A I signed the paperwork He paid the money

10 Q You went into the police department and signed

11 off on receiving the car back, is that right?

12 A No, I did not

13 Q Well, that document that was previously shown,

14 People's Exhibit 225, that's your name on there, isn't it,

15 sir?

16 A Yes

17 Q And that's your signature on there, isn't it,

18 sir?

19 A Yes

20 Q And that was done in March of 2013, is that

21 right?

22 A Yes, but it was not done at the police station

23 It was done at the towing place

24 Q All right And you signed that receipt, right?

1 A Yes, I did

2 Q And that indicates you are the registered
3 owner, is that right, registered to Antonio Bogan?

4 A Yes, sir

5 Q Okay

6 A Registered but not owner

7 Q Registered, right?

8 A Yes

9 Q And you signed -- you acknowledge you signed
10 the vehicle title for that vehicle, is that right?

11 A Yes

12 Q And it would be safe to say that people -- when
13 you sign a title, you own that vehicle, is that right?

14 A No

15 MR LENZIE Objection, is that a legal conclusion he
16 is asking for?

17 THE COURT Sustained

18 BY MR KOCH

19 Q Okay Now, Detective German spoke with you in
20 the parking lot of 1900 Moore on July 27, 2013, didn't he?

21 A Yes, he did

22 Q And he asked you at that time when you were
23 standing out in the parking lot, and that was in front of
24 your apartment complex, is that right?

1 A It was in front of another building, not in
2 front of my apartment complex

3 Q It's all like one parking lot that has several
4 apartments, is that right?

5 A Right, right

6 Q And that Cutlas that you signed the title for
7 was sitting in that parking lot, is that also correct?

8 A Yes

9 Q And at that time Detective German asked you if
10 you owned any other vehicles, is that right?

11 A Yes, he did

12 Q And you told him just the Chevy Impala,
13 correct?

14 A Yes, I did

15 Q And then he said that he knew that you owned
16 another one with regards to that green Cutlas, do you recall
17 him saying that to you?

18 A Yes, yes

19 Q And you denied that you owned that car, is that
20 right?

21 A That's right

22 Q And then he asked you whether or not he knew
23 that to be accurate since he had run the registration on your
24 car, is that right?

1 A Right

2 Q And at that point after you had denied
3 repeatedly that you owned that car, you told him that you
4 actually did own the car, isn't that correct?

5 A No, I did not

6 Q In fact, you actually told him that you had
7 sold it approximately two weeks prior to July 27th, did you
8 tell him that?

9 A No, I did not

10 Q And you told him that you sold it to a person
11 named Mike Smith, do you remember telling him that?

12 A No, I did not

13 Q And do you recall Detective German asking you
14 on July 27th out in that parking lot if you could identify
15 Mike Smith's phone number? Do you remember him asking you
16 that?

17 A No

18 Q And do you remember indicating that you could
19 not provide any information as to who Mike Smith was that you
20 sold the car to?

21 A No

22 Q Do you recall telling Detective German that the
23 only thing you knew was his name was Mike Smith?

24 A No

1 Q No, you didn't say that?

2 A No

3 Q Do you recall Detective German asking you why
4 your plates would still be on the vehicle if you sold the car
5 to Mike Smith? Do you recall -- and your answer being -- you
6 did not give any answer to that question, do you recall that?

7 A No

8 Q Who is Mike Smith?

9 A I have no idea who Mike Smith is

10 Q Okay I'm going to show you what's been marked
11 as People's Exhibit 215 Who did you get the Oldsmobile
12 from, sir?

13 A I don't know who Anton Spencer got the
14 Oldsmobile from I just know he was a white guy from
15 Wilmington

16 Q All right Did you go with him to get the car?

17 A Yes I took them there to actually purchase
18 the car

19 Q Because you purchased it?

20 A I didn't purchase it

21 Q I'm showing you People's Exhibit 215 On that
22 document it says owner information, is that right?

23 A Yes

24 Q And it has your name there, is that correct?

1 A Yes

2 Q It says Antonio Bogan, is that right?

3 A Yes

4 Q It doesn't say Anton Smith, does it?

5 A No

6 Q Or I'm sorry Anton Spencer?

7 A No, it doesn't say that

8 Q It doesn't say Mike Smith either, right?

9 A No

10 Q You said that -- is it your testimony you have

11 never been in that car?

12 A No, I never said that

13 Q So you have been in that car?

14 A Yes

15 Q When was the last time you were actually in

16 that vehicle?

17 A Maybe in March, maybe I'm not for sure

18 Q You are aware that your receipts were found for

19 the MoneyGram inside that vehicle, is that right?

20 A Yes

21 Q Actually sitting on the passenger seat of that

22 car, correct?

23 A So they say

24 Q Well, so they say, that's what the testimony

1 was of the officer, you heard that testimony, is that right?

2 A Yes

3 Q And that ammo that you saw, that was -- you
4 acknowledge the fact that that's -- that ammo, you had
5 touched that ammo, is that right?

6 A Yes, I did

7 Q You acknowledge the fact that your phone has
8 the picture of this rifle on it, is that right?

9 A Yes

10 Q And that's the rifle that's been admitted into
11 evidence as 203; is that correct?

12 A Yes

13 Q And you acknowledge that that medical card is
14 your medical card, is that right?

15 A Yes

16 Q I mean it has your name on it and it was found
17 inside that vehicle, is that correct?

18 A Yes

19 Q You never told -- well, when you were out there
20 on July 27th talking to Detective German, they had not yet
21 searched that car, right?

22 A No

23 Q I think your testimony was that you had gone --
24 you were going back to the Joliet Police Department at the

1 time that they searched -- to the best of your knowledge, at
2 the time that they searched your car you had already been
3 taken to the Joliet Police Department?

4 A Correct

5 Q Okay And it's your testimony that -- is it
6 your testimony that you didn't know what was in that vehicle,
7 is that right?

8 A Correct

9 Q Okay And so when they were asking you about
10 who owned that green Cutlas, you didn't tell them Anton
11 Spencer, right?

12 A No, I said Michael Smith

13 Q So now you said you did tell them Michael
14 Smith?

15 A When he asked me whose car it belongs to, I
16 said Michael Smith and after that I stopped talking

17 Q Well, I apologize, Mr Bogan, I'm confused now
18 A few moments ago I asked you a series of questions about did
19 you tell the officer that Mike Smith owned the car and you
20 answered, no, I did not?

21 A Right

22 Q Now, you are saying that you did tell him that
23 Mike Smith owned the car?

24 A No, I said Micah, M-I-C-A-H He might have

1 understood it as Mike because that's what he wanted to hear,
2 but I said Micah, which is the girlfriend of Anton Spencer

3 Q Okay The girlfriend of Anton Spencer that you
4 are saying is the person that actually owns that car?

5 A Her and Anton Spencer

6 Q Hang on

7 MR LENZIE Judge, objection It's argumentative
8 Let him answer

9 MR KOCH I asked him if Anton Spencer owned the
10 car

11 MR LENZIE And he was trying to answer

12 THE COURT Everybody want to wait Ask the question
13 again We'll start again

14 BY MR KOCH

15 Q Your testimony here today is that the car was
16 actually owned by Mr Spencer, is that right?

17 A Mr Spencer and Mrs Micah Smith

18 Q So, on that particular day now that you say you
19 told the officers who owned that car, you never told them
20 that Mr Spencer owned that car, is that right?

21 A No, sir

22 Q And it's actually Micah, you say it's Micah
23 Schmidt is the person?

24 A Smith, S-M-I-T-H

1 Q Okay And just a minute ago when I was asking
2 you, you indicated that you told the officers it was Micah
3 Smith that owned the vehicle, isn't that correct?

4 A Yes

5 Q So that's inaccurate then, you weren't accurate
6 with the police, is that right?

7 A What are you --

8 Q You said Micah Smith?

9 A Right

10 Q But it's actually -- you're saying Micah
11 Schmidt that owns the vehicle?

12 A No I said Micah Smith, M-I-C-A-H, last name
13 Smith, S-M-I-T-H

14 Q On direct examination you said the name was
15 Micah Schmidt, isn't that correct?

16 A No

17 Q In fact, I think you might have spelled it on
18 direct examination Do you remember spelling the last name?

19 A I said S-M-I-T-H

20 Q Are you sure you didn't spell it as
21 S-C-H-M-I-D-T?

22 A Who?

23 Q Do you recall spelling that on direct
24 examination?

1 A No

2 Q And both Mr Spencer and Miss Smith were at the

3 scene in the Chevy Lumina on that day, is that right?

4 A No

5 Q No Who was in the white car?

6 A First of all, it was a white Impala

7 Q Right

8 A It was Anton Spencer

9 Q Okay

10 A It was Timothy Potter

11 Q Okay

12 A And Sara Senifer

13 Q Okay So, when the officer asked you who owned

14 the vehicle that day, Mr Spencer was there in the parking

15 lot, right?

16 A Yes

17 Q And you never turned to the officer and said

18 that man right there owns that Oldsmobile, you didn't tell

19 him that, did you?

20 A No

21 Q And he was standing right there?

22 A It's my right not to talk to the police

23 Q But you did talk to the police, didn't you?

24 A Yeah, once he -- once I found out that he lied

1 to me, I quit all conversations with him

2 Q Who lied to you?

3 A Detective German

4 Q He asked you if you owned that car, right?

5 A That was after he lied to me

6 Q But you answered that car -- you actually
7 answered that you didn't own that car, right?

8 A Right

9 Q And you answered -- you said Detective German
10 lied to you and after that you didn't want to talk anymore,
11 right?

12 A When Detective German asked me who owned the
13 car and I gave him a name, then I asked him am I being
14 arrested and he told me yes . That's when I told him, well, I
15 don't want to talk anymore, because he lied to me and told me
16 if he doesn't find any contraband inside of my home and in
17 the Impala, he was going to let me go

18 After that that's when I told him, well, since
19 you lied to me about not finding anything in my home and in
20 my Impala, then I don't want to talk anymore

21 Q That was after you told him that Micah Smith
22 owned the vehicle?

23 A Right, Micah Schmidt, yes

24 Q So it's your testimony that you told him Micah

1 Smith owned the vehicle before or after did you say Detective
2 German lied to you?

3 A Once -- I told him Micah Schmidt before

4 Q Now, you just said Schmidt again

5 A Smith Smith Smith

6 Q Schmidt?

7 A Yes S-M-I-T-H

8 Q Smith?

9 A Yes, Smith with a T-H

10 Q Okay So you told him that Micah Smith owned
11 that vehicle before or after you say Detective German lied to
12 you?

13 A I told him that before he lied to me

14 Q And after you told Detective German about this
15 female owning the car, he asked you to give some information
16 about that and you said you didn't know anything else other
17 than the person's name, is that right?

18 A No

19 Q And all the while Mr Spencer even at the time
20 that you informed Detective German that Miss Smith, that this
21 female owned the car, at that time Mr Spencer was on the
22 grounds in there, right?

23 A Yes, he was

24 Q And so when you were first asked about who

1 owned the car, he was standing right there in the parking lot
2 and you could have said that man right there, correct?

3 A I could have

4 Q Okay And that was all before you say
5 Detective German lied to you?

6 A Yeah

7 Q And other than Mr Spencer sleeping on your
8 couch or hanging out at your house, you lived there by
9 yourself, is that right?

10 A Yes

11 Q And your phone number is (708) 646-8528, is
12 that right?

13 A Yes, I believe so

14 Q And that Apple iPhone that was testified to by
15 the detective as well as the expert from the FBI, that was
16 your iPhone, is that right?

17 A I don't know I never got a chance to look at
18 it

19 Q Okay

20 A It looks like it was mine

21 Q So this is your phone, those pictures were on
22 your phone, is that right?

23 A Yes

24 Q You had that phone in July of 2013, right?

1 A Yes

2 Q And you had that phone on July 15th when that
3 picture was on your phone, is that right?

4 A I don't know I'm not for sure

5 Q And that picture -- you said that picture was
6 sent to you?

7 A Yes

8 Q And the ammo that you touched was for that
9 weapon, right?

10 A Yes

11 Q And the weapon -- you got that picture on
12 July 15th, so then you touched the ammo after that weapon,
13 right, after that picture was sent to you?

14 A Probably so Probably -- yeah, probably so,
15 probably at the same time, maybe not at the same time but
16 like right after the picture was sent maybe

17 Q Because you are saying he sent you a picture
18 about a gun that he got?

19 A Yeah

20 Q And then he brought the gun and ammo over to
21 your house?

22 A No, he did not bring the gun He actually went
23 to Walmart I believe with someone else and maybe purchased
24 the ammo, because I don't think the ammo came with the gun

1 Purchased the ammo and on his way back stopped at my house

2 Q Okay And showed you this ammo --

3 A Yes

4 Q -- that he had for this gun?

5 A Yes

6 Q And you felt the need to touch it?

7 A I didn't see any harm in it

8 Q And when he brought that over, was it just that
9 ammo box with it?

10 A Yes

11 Q And that was after July 15th of 2013?

12 A I believe so

13 Q And prior to your arrest on July 27th?

14 A Yes

15 Q And that ammo found its way into that Cutlas
16 that you signed the title for?

17 MR LENZIE Judge, objection It's in evidence I
18 don't know how you are asking Mr Bogan, he doesn't have any
19 foundation about what the police got out of the car

20 THE COURT Overruled

21 BY MR KOCH

22 Q That was found inside that Cutlas --

23 A Yeah

24 Q -- you are the registered owner for?

1 A That's registered in my name, not the owner

2 Q You were arrested on July 27, 2013 for various
3 different offenses, is that right?

4 A Correct

5 Q Some of which you are on trial for today and
6 others which you are not?

7 MR LENZIE Judge, objection, relevance

8 THE COURT Overruled

9 THE WITNESS Correct

10 BY MR KOCH

11 Q And that was all -- initially when you were
12 taken down to the station, that was all surrounding one
13 series of events that occurred according to Detective German
14 speaking with you, is that right?

15 A Say that again

16 Q Well, when you were arrested on July 27th, that
17 was after an investigation was conducted, is that right?

18 A I guess

19 Q And when you were placed under arrest, you were
20 charged with -- initially charged with various different
21 offenses, is that right?

22 A Correct

23 Q And Detective German made you aware of the fact
24 that you were going to be arrested, is that right?

1 A Yes Well, after -- when they first put me in
2 handcuffs, no one told me anything They just put me in
3 handcuffs, took the keys out of the Impala, went inside of my
4 apartment I told them they couldn't go in and they told me
5 we don't need your consent, you are on parole

6 Q You signed a consent to search, right?

7 A Correct After he told me -- I signed the
8 consent because he said that if I sign this consent and they
9 don't find anything inside of my home to connect me to the
10 crime that was being investigated, I will be let go,
11 therefore, I signed the consent to search form And after he
12 lied, that's when I didn't want to talk to him anymore

13 Q All right And then they ultimately found
14 weapons inside -- well, let me ask you this You were
15 actually arrested prior to them finding the weapons inside
16 your vehicle, is that right?

17 A Correct

18 Q Because you were taken down to the police
19 station?

20 A Correct

21 Q And you say Mr Spencer came to your house the
22 night before and stayed with you the whole night?

23 A No, no, I didn't

24 Q He came to your house the night before?

1 A He came to my house the morning of my arrest

2 Q And you gave him a car to use?

3 A No, I gave the car to Timothy Potter and Sara
4 Senifer

5 Q And what were they doing with your car?

6 A They was going to buy brakes to put brakes on
7 the Impala

8 MR KOCH One moment, your Honor

9 (Brief pause)

10 BY MR KOCH

11 Q How come you didn't go with Mr Spencer and
12 Mr Potter that day?

13 A I was actually at home getting ready My
14 girlfriend's brother was in the hospital in Downers Grove,
15 and I was actually getting ready to take a shower and wait on
16 her to come pick me up so I can go to Downers Grove with her

17 Q But when the police came, you were hanging out
18 on your buddy's porch, right?

19 A I was sitting there, smoking a cigarette

20 Q So you hadn't left yet to go to this hospital?

21 A No

22 Q You say that the reason why you went to get the
23 car out of the impound was because what, sir?

24 A Because Mr Spencer was in the car with another

1 female that was driving She got pulled over They towed
2 the car in Rockdale, towed it to a place in Channahon I
3 believe

4 Mr Spencer called me because they didn't have
5 a ride They was stuck in Rockdale on the side of the road
6 I drove to Rockdale, picked them up And the next day when
7 Mr Spencer came up with the 250, I took him to Channahon to
8 get the car

9 Q Do you have a valid license?

10 A Yes, I do

11 MR KOCH Judge, that's all I have

12 REDIRECT EXAMINATION

13 BY MR LENZIE

14 Q Antonio, there have been a lot of questions
15 surrounding the ownership

16 A Right

17 Q What's ownership mean to you?

18 A Ownership means when someone has something in
19 their possession all the time and it's theirs

20 Q Does the fact that something that might not be
21 registered to you, does that have any bearing on your
22 definition of ownership?

23 A No

24 Q You had a white Impala?

1 A Yes

2 Q Last year, July of last year, was that
3 registered to you?

4 A No, it wasn't

5 Q Does that affect whether you believe that white
6 Impala was owned by yourself?

7 A No

8 Q And the fact that the green Oldsmobile was
9 registered to you, does that have any factor in you believing
10 it was owned by you or Mr Spencer?

11 A No In my belief it was owned by Mr Spencer
12 He drove it He took care of the maintenance on it He
13 possessed the keys to it He had the car

14 Q Do you know how Mr Spencer got to your
15 apartment on that July date?

16 A Yes, he drove the Cutlas to my house from where
17 he stayed, where he lives at

18 Q Did you actually see him get out of the car?

19 A No

20 Q Before that morning, when was the last time you
21 looked into the parking lot?

22 A I actually was in the parking lot earlier that
23 morning smoking a cigarette

24 Q Did you see the green Oldsmobile at that point?

1 A No

2 Q Then after Mr Spencer got to your apartment,
3 was the green Oldsmobile there?

4 A Yes

5 Q One more time The State asked you several
6 questions about conversations you had with Joliet police
7 officer German?

8 A Right

9 Q To clarify, you told him something about a
10 Micah Smith?

11 A Yes

12 Q M-I-C-H --

13 A M-I-C-A-H

14 Q Last name Smith, S-M-I-T-H?

15 A Yes, sir

16 Q What did you tell the officer about that
17 individual?

18 A Officer German asked me who owns the car I
19 told him Micah Smith He said why is it in my name? I guess
20 he wanted to search He asked me why is this car in my name
21 First he asked me can he search and I told him it's not my
22 car Then he said whose car is it I said Micah Schmidt
23 Then he said why is it registered into your name And that's
24 when I said am I under arrest, what am I being arrested for

1 Q Why didn't you tell him Spencer if you believed
2 that's who owned the car?

3 A I don't know I just didn't want to put my
4 brother out there I don't know what he has in that car

5 Q Did you know they were looking to search it?

6 A Yes, they wanted to search the -- I knew they
7 wanted to search it because they brought it up, they brought
8 the car up As soon as they pulled up into the parking lot,
9 they put me in cuffs When they had Spencer, Potter and
10 Senifer detained, they took the keys out of the car and just
11 instantly went inside of my house, then he came back out and
12 started

13 Q Did they search your apartment before or after
14 they asked you?

15 A They searched my apartment before they asked
16 me

17 Q And you say that Detective German lied to you?

18 A Yes

19 Q How did he lie?

20 A He lied to me

21 MR KOCH Objection, asked and answered already

22 THE COURT Overruled

23 THE WITNESS He lied to me because he said that if
24 he go inside of my apartment and search, you know, if they

1 don't find anything -- he wasn't in the apartment yet There
2 was three other officers in the apartment before he even
3 showed up to the scene

4 He said if there is nothing found in my
5 apartment, they will let me go as soon as my parole agent
6 come or whatnot So my parole agent pulled up and he still
7 didn't let me go He still didn't let me go

8 BY MR LENZIE

9 Q So the white Chevy, you are familiar with the
10 keys on that white Chevy?

11 A Yes

12 Q What keys are on that white Chevy?

13 A You have my house key to my apartment door
14 You have the key to the building because my building locks
15 and you have the Impala key

16 Q So three keys on there?

17 A Three keys

18 Q Is there any key chain or anything else?

19 A Yeah, there was a key chain I don't exactly
20 remember what was on it

21 Q Did you see them enter your apartment, the
22 police?

23 A No I was outside

24 Q So, are you assuming -- how do you know they

1 used that key to get in your apartment?

2 A Well, I know because for one -- I don't even
3 know if they used a key My door was unlocked, but you have
4 to use a key to get inside of the building

5 Q So there is a security door on the outside
6 before you get in?

7 A Yes

8 Q To the best of your knowledge that was locked?

9 A Yes I saw them use the key, put the key in,
10 turn it and go inside

11 Q Then they went inside and you don't know what
12 they did inside?

13 A No, I was in handcuffs by that time and they
14 was walking me to a police car

15 Q And in your mind Detective German lied to you?

16 A Yes

17 Q How did that make you feel?

18 A It made me feel like really bad because --

19 MR KOCH Objection

20 THE COURT Sustained

21 BY MR LENZIE

22 Q Mr Bogan, there was also evidence of a Walmart
23 receipt in the car?

24 A Correct

1 Q Do you know how that Walmart receipt got in the
2 car?

3 A Yes At the time, I don't know the exact date,
4 but my friend her name is Sicily Ratliff (phonetic), she text
5 me She was staying in Montgomery, Alabama She told me
6 that she needed \$50 to pay her cell phone bill She asked me
7 if I can loan her \$50 So I was with Spencer that day, we
8 was actually at my apartment We hopped in his car and drove
9 to Walmart, and I wired her the money through MoneyGram

10 Q Was that -- what month was that?

11 A I don't know I don't remember

12 Q Was it July of 2013?

13 A I don't think so I don't know I'm not for
14 sure

15 Q Could it have been March of that year?

16 A It could have been

17 Q Was it the same month that you went to Rockdale
18 to get the car out of the impound?

19 A It could have been I'm not for sure

20 Q The insurance card that was found in the
21 Oldsmobile, you are aware that that was in your name,
22 correct?

23 A Yes

24 Q Was that card current or was it expired?

1 A It was expired

2 Q Were you currently using that card?

3 A No

4 Q Did you put anything, any of the guns, the
5 card, into that Oldsmobile?

6 A No

7 MR LENZIE I have no further questions

8 MR KOCH Just very briefly, Judge, if I may

9 RECROSS-EXAMINATION

10 BY MR. KOCH

11 Q You said that Detective German made these
12 representations that if they didn't find anything in your
13 house, that you would be let go, is that right?

14 A Yes

15 Q Well, they actually found some stuff in your
16 house, didn't they?

17 A I don't know

18 Q Are you aware of the fact that they found in
19 your bedroom in a clear plastic bag --

20 MR LENZIE Judge, I'm going to object It hasn't
21 been entered into evidence

22 THE COURT It's cross examination Your client
23 opened it up Go on

24

1 BY MR KOCH

2 Q So are you aware of the fact that they found 30
3 pills inscribed with Watson 853 that were in a plastic bag,
4 the corner of the plastic bag knotted and found in your
5 bedroom closet, top shelf?

6 A No, he never told me he found anything He
7 never questioned me about any pills He never brought up any
8 pills

9 Q And if those pills -- if the officers had
10 information and belief that those pills contained a
11 controlled substance, that would be one reason why you could
12 be arrested, is that right?

13 MR LENZIE Objection, that's a legal conclusion

14 THE WITNESS Sustained

15 BY MR KOCH

16 Q Well, you were arrested that day, is that
17 right?

18 A Yes

19 Q You were initially charged with possession of a
20 controlled substance, is that correct, as one of your
21 charges?

22 A Yes

23 Q And that was after they searched your
24 residence, right, that you were arrested?

1 A Yes Well, no, I was arrested before they
2 searched my residence

3 MR KOCH Judge, I have nothing further

4 MR LENZIE Judge, very briefly It's about
5 something the State alluded to

6 BY MR LENZIE

7 Q Sir, those pills that they found --

8 THE COURT This is re-redirect?

9 MR LENZIE Yes

10 THE COURT Is there such a thing? No, let me ask
11 you a question

12 THE WITNESS Yes, sir

13 EXAMINATION

14 BY THE COURT

15 Q You got arrested before they searched your
16 apartment?

17 A Yes, sir

18 Q And they told you if we find anything -- did
19 you tell us this before that if they found nothing in the
20 search, they would let you go?

21 A Yes, sir They didn't --

22 Q Let me finish

23 So they arrest you first According to you,
24 you didn't sign any consent form, correct?

1 A Yes, sir

2 Q Until after they came down?

3 A Yes, sir

4 Q So they arrest you, go up and search your
5 apartment, come down and then you voluntarily signed a
6 consent search?

7 A Yes, sir

8 Q Why? Why would you sign a consent search after
9 they come down and have already searched your apartment?

10 A Because they told me -- well, they was still in
11 the apartment searching Detective German showed up on the
12 scene There was regular patrol officers inside of my
13 apartment

14 Q Wait Wait I thought you told me German was
15 the one that talked to you about the search?

16 A He did He showed up to the scene after the
17 officers was already in the house He pulled up, came to the
18 car with a folder, and he said if they don't find anything,
19 he said sign this consent to search to search your apartment
20 and the Impala

21 Q Wait I thought you told us just before that
22 you signed nothing until after the search was done?

23 A No, I signed the search while they was still
24 searching

1 Q Oh, while they were searching?

2 A While they were searching, yes

3 Q Oh, I see Why did you do that?

4 A Because he said if there was nothing in the
5 apartment, he was going to let me go

6 Q They were already searching, what did they need
7 your consent for?

8 A Because it was an illegal search I guess

9 Q This guy Spencer is your God-brother?

10 A Yes, sir

11 Q Where is he today?

12 A Well, he's not around

13 Q This guy is your lifelong friend, you went and
14 got the car for him, you went down with the car, got stuck in
15 Channahon and you drove him down there, got him a ride, he
16 stays at your house Where is he today?

17 A He abandoned me, your Honor

18 Q I hate when that happens When was the last
19 time you saw him?

20 A On the day that I got arrested

21 Q The guy who is your God-brother, the guy you
22 said is your God-brother, just like that, the guy who you
23 have known since you were ten, the guy you did all of this
24 for, you get arrested in July of last year?

1 A Yes, sir

2 Q And you have never seen him since?

3 A He hasn't come to visit me He sent me money a
4 few times but that's it

5 Q Well, did you know he was like that before
6 that?

7 A No

8 Q That he could do that to you?

9 A No, no

10 Q Well, let me ask you one last question
11 After you go into custody and you understand
12 what they are doing with these accusations and you say
13 Spencer did all this, did you ever pick up the phone and call
14 the State's Attorney's Office or the sheriff and say to them,
15 hey, this guy Spencer did it all? I'm stuck in jail, he did
16 it Did you ever tell them that?

17 A No, sir

18 Q Why not?

19 A I just --

20 Q I can see you not saying it in July of 2013 or
21 August of 2013, but with each passing month you are sitting
22 in custody and you are not getting a visit even by Mr -- your
23 God-brother, Mr Spencer, why didn't you do it last December?

24 By that time five months have gone by, you

1 don't see Spencer, and you are still sitting in jail Why
2 didn't you say, wait a minute, Spencer is the guy that messed
3 up, Spencer did it?

4 A I just felt like I just couldn't -- I'm not
5 that type of person I take responsibility for what I did,
6 but I can't tell on somebody I can't do it I took
7 responsibility if it was mine I take responsibility

8 Q Did you tell on him here today?

9 A I didn't say he put the guns in the car I
10 just say it's his car

11 Q His car, his guns, his box of ammo You just
12 got through telling us that

13 A Like I said, there's a lot of people that have
14 access to the cars

15 Q To your car?

16 A Not my car

17 Q To the green Olds registered to you?

18 A Yes, sir

19 Q A lot of people were in and out of that car?

20 A It can be, just like my Impala My Impala was
21 opened up to three people that was driving it the day that I
22 was arrested

23 Q And that was your car?

24 A Yes, that was my car

1 Q The one they took to go to the automobile
2 store?

3 A Yes, sir

4 Q The car that needed the brakes?

5 A Yes, sir

6 Q You let three people get into a car that needed
7 brakes and let them drive it all the way to an automobile
8 store? That's your car

9 A That was my car

10 Q You understood totally that the car needed
11 brakes and you let those three people drive?

12 A The brakes wasn't that bad, your Honor

13 Q Not that bad?

14 A They were squeaky

15 Q Squeaky?

16 A Yes

17 Q They were okay to drive?

18 A Yes, sir

19 Q But they were going to be replaced?

20 A They was being replaced

21 Q Who is paying for that?

22 A I paid for it

23 Q You gave him the money?

24 A Yes, sir

1 Q Spencer among those guys?

2 A Yes, sir

3 Q The other two people, who were they?

4 A Timothy Potter and Sara Senifer Potter is my
5 mechanic He works on -- does everything, maintenance on my
6 Impala

7 Q Where is he?

8 A Well, actually, your Honor, we tried to find
9 him, but at the time that I was arrested, he was homeless

10 Q A homeless mechanic?

11 A Yeah, that's why he was staying in my apartment
12 the night before he stayed I let him and his girlfriend
13 sleep in my --

14 Q Wait Hold on Stop You get arrested
15 Potter's been staying in your apartment, right?

16 A Yes, sir

17 Q That's all I asked Is he still there?

18 A No, sir

19 Q Where is he?

20 A I don't know

21 Q What about the other person, the third person
22 that went to the automobile store? What was her name?

23 A Sara Senifer

24 Q Where is she?

1 A I don't know I guess she is with Potter I
2 tried to find them

3 Q So spencer and Potter and the girl are all
4 gone?

5 A Yes

6 Q What about Micah Schmidt, the true owner of the
7 green Olds, where is she?

8 A I don't know I don't know

9 Q She was with Spencer, wasn't she?

10 A She was with Spencer

11 Q Did you know where they lived?

12 A Yes, sir

13 Q Where?

14 A They stayed in Evergreen Terrace

15 Q Did you try to get a hold of her?

16 A We tried to get a hold of both of them

17 Q Gone?

18 A Gone, changed phone numbers I don't know
19 where they are

20 Q I just want to get this summed up

21 All of the five other people that you stay had
22 contact or could have contact with the green Olds or the
23 white Impala are gone, never to be seen again?

24 A Yes, sir

1 THE COURT Okay I just want to get that clear
2 Anything else?

3 MR LENZIE No

4 THE COURT Thank you

5 (Witness excused)

6 Rebuttal?

7 MR KOCH Yes, Judge, if I may have a moment to see
8 if he is here

9 THE COURT Yeah, I have to talk to Judge Schoenstedt
10 about something

11 MR KOCH I don't know if the defense rested either

12 MR LENZIE We rest

13 THE COURT Do you want to wait for a minute?

14 (Break taken)

15 THE CLERK Come to order Remain seated Court is
16 back in session

17 THE COURT All right We are back on the record on
18 Bogan, this is 13 CF 1631 The defense having concluded
19 their case Is there anything in rebuttal?

20 MR KOCH Yes

21 THE COURT Please Sir, do you understand you are
22 still under oath in this matter?

23 THE WITNESS Yes, your Honor

24 THE COURT Thank you Proceed State

1 JEFFREY GERMAN,
2 called as a witness herein on behalf of the People of the State
3 of Illinois, after having been first duly sworn, was examined
4 and testified as follows

5 DIRECT EXAMINATION

6 BY MR KOCH

7 Q Detective German, you are the same detective
8 that testified here yesterday in this case, is that correct?

9 A Yes

10 Q I want to draw your attention back to July 27,
11 2013, did you have occasion to speak with Antonio Bogan in
12 the parking lot of the 1900 block of Moore Street?

13 A Yes

14 Q When you spoke to him, did you learn from other
15 officers that the green Cutlas was registered to Antonio
16 Bogan?

17 A Yes

18 Q Did you ask Antonio Bogan whether or not he
19 owned that green Cutlas?

20 A Yes

21 Q And what did he say to you?

22 A He stated he did not

23 Q And what did you say back to him after he
24 responded to that question?

1 A I asked him if he had ever owned it or ever
2 seen the car or been in the car and he again stated no

3 Q So you asked him if he had ever been inside
4 that vehicle?

5 A Yes

6 Q And he responded no?

7 A Yes

8 Q Did he indicate to you whether he had seen that
9 vehicle before?

10 A He stated he did not at that time

11 Q Had never seen that vehicle before?

12 A Correct

13 Q And what did you say to him? Did you have
14 knowledge at this point that that car was registered to him?

15 A Yes

16 Q So did you confront him with regards to that
17 information?

18 A Yes, I did

19 Q Let me ask you At this point when you were
20 speaking to him, how far away were you from him?

21 A I was standing right next to him

22 Q Was there anything in between you that was
23 blocking your ability to speak and hear Mr Bogan?

24 A No, he was sitting in the back seat, the door

1 was open, and I was in the door right next to him

2 Q So he was actually in the squad car when you
3 spoke to him?

4 A Yes

5 Q Was the sirens -- were the sirens going off in
6 the squad car?

7 A No

8 Q Was there any loud noises coming from inside
9 that squad car?

10 A No

11 Q Could you understand -- how would you describe
12 Mr Bogan, the defendant, how would you describe his speech?

13 A Clear

14 Q When you asked him questions, could you
15 understand his answers?

16 A Yes

17 Q Did you confront him after he denied ever
18 seeing that vehicle or being inside that vehicle, did you
19 confront him with the knowledge that the plates were
20 registered to him?

21 A Yes

22 Q And what did he tell you at that point?

23 A He still continued denying any knowledge of the
24 vehicle, and then eventually he did state that he did own the

1 vehicle but had sold it

2 Q So, after you confronted him, he indicated to
3 you that he owned the vehicle, is that correct?

4 A Correct

5 Q And did he tell you that he sold that vehicle
6 approximately two weeks prior to July 27th?

7 A Yes, he did

8 Q Now, did he tell you who he sold the vehicle
9 to?

10 A He stated a person by the name of Mike Smith

11 Q Now, you said the name Mike Smith, is that
12 correct?

13 A Yes

14 Q Did you have any trouble understanding the name
15 that he gave you with regards to who he sold that vehicle to?

16 A No

17 Q Did you then ask him if he could identify any
18 information regarding Mike Smith?

19 A I did ask him that

20 Q And what did he tell you about Mike Smith?

21 A He stated that he didn't know where he lived, a
22 phone number to get a hold of him or any other way of helping
23 me identify that person to contact him

24 Q Now, two things I want to ask you about

1 You just indicated that he said he didn't know
2 where he lived Did he use the term "he" when he was
3 explaining who Mike Smith was?

4 A Yes

5 Q And did you use the words "he" when you were
6 asking him questions about Mike Smith?

7 A Yes

8 Q Now, a search was conducted at the residence of
9 the defendant, is that correct?

10 A Yes

11 Q When you arrived on scene that morning, had
12 anyone to your knowledge had anyone been inside Mr Bogan's
13 residence?

14 A No, no police officers to my knowledge

15 Q Okay Who entered the residence of the
16 defendant's?

17 A After the consent was given?

18 Q Okay Yeah, I will back up

19 Did you obtain written consent from the
20 defendant to search the residence at 1911 Moore Street,
21 Apartment 103?

22 A Yes

23 Q Was that written consent, was that given by
24 Mr Bogan, the defendant, before anyone entered into his

1 residence?

2 A Yes

3 Q All right And how was entry made into his
4 residence?

5 A A key

6 Q And who used the key to enter into the
7 residence?

8 A I did

9 Q And were you the first one then to actually
10 approach the residence and open the door to your knowledge?

11 A Yes, myself and three other officers who
12 accompanied me

13 Q No one else had that key, no other police
14 officers used that key to enter that residence prior to
15 getting that consent to search, is that correct?

16 A Correct

17 Q Now, during that -- let me ask you also, at the
18 time that you were sent to that address, you were sent there
19 because Mr Bogan had been located, is that right?

20 A Yes, that's correct

21 Q And you were the detective that was assigned to
22 review a case regarding Mr Bogan, is that correct?

23 A Yes

24 Q And you, yourself, issued a -- does the Joliet

1 Police Department, do they issue any type of probable cause
2 fliers or anything?

3 A Yes, we do

4 Q And is that something that you issued in this
5 case?

6 A Yes, it was

7 Q And the probable cause flier was sent out
8 regarding Antonio Bogan, is that right?

9 A Yes

10 Q And the probable cause means that you as an
11 officer reviewing this case had made a determination that
12 Mr Bogan could be arrested, that probable cause existed for
13 an arrest, is that right?

14 A That's correct

15 Q And so when Mr Bogan was found on July 27,
16 2013, that determination had already been made based on your
17 review of a case being investigated, is that right?

18 A Yes, myself and my supervisor

19 Q And so did there come at any time during your
20 dealings with Mr Bogan out on -- out in the squad car that
21 you ever relayed to him that he would be let go if nothing
22 was found inside his apartment?

23 A No, I told him he was under arrest for the home
24 invasion

1 Q And that was the -- not getting into the
2 specifics of that investigation, but the probable cause was
3 for a home invasion, is that right?

4 A Yes

5 Q And so regardless of whether or not anything
6 was found, any contraband was found inside his residence, he
7 was under arrest for that, is that correct?

8 A That's correct

9 Q And you never told him that you would let him
10 go if nothing was found?

11 A That's correct, I never did

12 Q And, in fact, during the search of his
13 residence, you were present when some pills were found, is
14 that right?

15 A Yes

16 Q And through your investigation, you identified
17 those pills to be based on your belief that they were a
18 controlled substance, is that right?

19 A That's correct

20 Q And that was another charge that was pending --
21 that Mr Bogan, the defendant, ended up being charged with,
22 is that right?

23 A That's correct

24 Q Okay Now, you also were the detective that

1 received or got the search warrant for the Cutlas, is that
2 right?

3 A Yes

4 Q And you informed the defendant that you were
5 going to be searching that car, is that correct?

6 A Yes, once the search warrant was signed

7 Q And what did he tell you about whether or not
8 you would find any items of his inside that vehicle?

9 A He said we would not find any of his items or
10 paperwork in the vehicle

11 Q And so he said you wouldn't even find any
12 paperwork inside that vehicle, is that right?

13 A Correct

14 Q In fact, you did find paperwork belonging to
15 Antonio Bogan inside that vehicle, is that right?

16 A Yes, we did

17 MR KOCH Judge I will tender the witness

18 CROSS-EXAMINATION

19 BY MS TISDALE

20 Q Detective, when you were speaking to Mr Bogan
21 about Mike Smith, you never had him actually spell out the
22 name Mike Smith, correct?

23 A No, he just told me the name

24 Q Okay And, Detective, you testified that you

1 were the first one inside of Mr Bogan's residence?

2 A Yes

3 Q And you testified you made entry into that
4 residence through a key?

5 A Using a key, yes

6 Q Detective, you have been with the Joliet Police
7 Department for how long?

8 A Approximately 11 years

9 Q And so you have been there a pretty long time?

10 A I think so

11 Q And you are familiar with how things are logged
12 in evidence?

13 A Yes

14 Q Like if you collect an item, you know how to
15 put it into evidence?

16 A Yes

17 Q And so you know -- you are familiar with those
18 procedures?

19 A Yes

20 MS TISDALE Your Honor, I'm going to ask to
21 approach

22 MR KOCH I am going to object at this point

23 THE COURT What does this have to do with -- this is
24 a rebuttal witness

1 MS TISDALE It is, your Honor

2 THE COURT So I'm not sure where you are going about
3 logging in

4 MS TISDALE Because, your Honor, there's been a
5 representation made that he was the first person inside of
6 the residence and --

7 THE COURT All right Go on

8 MR KOCH Judge, I'm still going to object There's
9 no question posed I don't know what --

10 THE COURT Yes, what is the question?

11 MR KOCH -- what she is presenting to him I mean
12 I looked at it, but I don't know what the relevance is

13 BY MS TISDALE

14 Q Detective, when something is logged into
15 evidence, are you familiar with the department case report?

16 A Can you be more specific?

17 Q A case report that lists the item number,
18 the --

19 THE COURT The inventory report

20 BY MS TISDALE

21 Q It's titled department case report but it lists
22 the date, the collection item, who collected it, the time
23 Are you familiar with that?

24 A In reference to the evidence report?

1 Q Yes

2 A Yes

3 Q And so you know what that is and you know how
4 that's entered?

5 A Yes

6 Q And do you know what time the 30 pills that
7 were recovered at Mr Bogan's residence, do you know what
8 time that was?

9 A What time they were -- I'm sorry, what was the
10 question?

11 Q What time they were collected?

12 A I don't recall

13 Q Do you think that this department case report
14 may refresh your recollection?

15 A Possibly

16 MS TISDALE Your Honor, may I approach? This is --
17 I am going to mark this as Defendant's Exhibit Number 2

18 THE COURT Two

19 BY MS TISDALE

20 Q Will you let me know when your memory has been
21 refreshed?

22 (Witness peruses document)

23 A Yes

24 Q Is your memory refreshed as to what time those

1 items were collected?

2 A As far as what was entered in, yes

3 Q Yes And after reviewing this, do you know
4 what time those prescription pills were entered -- were
5 collected?

6 MR KOCH Objection, as to time they were collected

7 THE COURT Does he know what time they were
8 collected or entered into evidence? What's the question?

9 MS TISDALE Collected

10 THE COURT That sheet would indicate when it was
11 collected?

12 MS TISDALE Yes

13 THE COURT Go on.

14 THE WITNESS I believe 1356 hours

15 BY MS TISDALE

16 Q And do you know what that date is?

17 A July 27, 2013

18 Q And you indicated that that's 1356 hours?

19 A Yes

20 Q And you indicated that's the time that it was
21 collected?

22 MR KOCH Objection I don't believe that's what he
23 indicated That's what's on that form, but there's been no
24 testimony as to the actual time that it was actually

1 collected

2 THE COURT Rephrase the question

3 Let me try it Do you know what time the pills
4 were collected in the residence?

5 THE WITNESS The exact time would be after the
6 consent was given while we were searching the residence I
7 don't know the exact time we were in there I would have to
8 look at my other report

9 THE COURT Your other report?

10 THE WITNESS The consent to search residence form,
11 it would be some time after that

12 THE COURT Let me ask you this How is it that the
13 time of 1356 came down there as collected?

14 THE WITNESS Sometimes that's auto-populated from
15 the most recent evidence that was put in there If it's not
16 changed, it will stay in there as that time

17 THE COURT I don't know what that means

18 THE WITNESS Say item number eight says 1356 hours
19 When you enter an item number, the following item number it
20 will stay that time unless you physically change it

21 THE COURT He's your witness I didn't follow that
22 You go ahead

23 BY MS TISDALE

24 Q As to these prescription pills, it's listed on

1 this department case report that it was collected at what
2 time?

3 A I believe it was 1356 hours

4 Q And you just -- when the judge asked you a
5 question, you indicated that sometimes it's auto-populated?

6 A Sometimes, yes

7 Q So you are saying that sometimes that time may
8 not be correct?

9 A Correct, or it could be a typo

10 Q Okay And so -- you said something about the
11 time before it, it may just bump right down to the next time?

12 A Sometimes, unless it's a typo or entered
13 incorrectly

14 Q So you mean like if something said -- so if it
15 said 1353 hours, then the next one it may just auto-populate
16 and say 1354, is that what you mean?

17 A No, it will say the exact time you put for the
18 previous item or it does that for the location too unless you
19 change it

20 Q Do you recall what time it was that Mr Bogan
21 gave the signed consent to search his apartment?

22 A No, I would have to look at the form

23 Q Is there anything that would refresh your
24 recollection?

1 A The consent to search form

2 MS TISDALE May I approach, your Honor?

3 THE COURT Uh-huh

4 BY MS TISDALE

5 Q Do you know what time that was when he gave
6 that consent?

7 A That was at 1406 hours

8 MS TISDALE May I have a moment, your Honor?

9 THE COURT Uh-huh

10 (Brief pause)

11 BY MS TISDALE

12 Q You indicated that sometimes it may
13 auto-populate based on when the first item or the previous
14 item was entered?

15 A Yes, sometimes

16 Q You don't know what happened in this situation,
17 correct?

18 A I would have to look at the form All I know
19 is that that's an incorrect time that is on the form

20 Q So by looking at this, you would know if this
21 is a situation of it auto-populating or not?

22 A By looking at the previous item I would know

23 MS TISDALE Your Honor, may I approach?

24 THE COURT Sure

1 BY MS TISDALE

2 Q Okay Does that appear to be a situation where
3 it auto-populated?

4 A No

5 Q Do you know what time that previous time was?

6 A 1600 hours

7 Q And that was for the previous item on this
8 list?

9 A Yes

10 Q And all of these items are related to the
11 investigation of Antonio Bogan?

12 A Yes

13 MS TISDALE Nothing further, your Honor

14 REDIRECT EXAMINATION

15 BY MR KOCH

16 Q Detective German, the consent to search form
17 that Mr Bogan signed off on, that's completed -- that was
18 completed -- that's People's Exhibit Number 214, that's
19 actually completed at the scene in the presence of the
20 defendant, is that right?

21 A Yes

22 Q And you completed that form, is that correct?

23 A Yes, I did

24 Q And you put the time down as it was at that

1 time, right?

2 A Correct

3 Q And that was 1406?

4 A Exactly

5 Q And you proceeded into the residence with other
6 officers using the key, is that right?

7 A Yes, three other officers

8 Q And you were present then when Officer Wascher
9 located those pills, is that right?

10 A Yes, I was right next to him as he took them
11 from the shelf

12 Q Did -- based on you being the one to open that
13 residence, had anyone located those pills prior to you and
14 Officer Wascher being in that bedroom?

15 A No

16 Q And you were in the room and you were searching
17 the room when Officer Wascher pointed you in the direction of
18 these pills, is that right?

19 A Yes

20 Q Now, the time that's put on the sheet that was
21 shown to you by defense attorney, I don't know if that was
22 marked as an exhibit or not, but the time -- I think this is
23 the one that they showed you -- the time that's put on here,
24 that's a time that is generated whenever -- that's a time

1 that has to be entered, is that right?

2 A Yes

3 Q And so that's not done out at the scene either,
4 is that right?

5 A No Once we collect the evidence, process it,
6 come back to the station, and then enter it into the system

7 Q Okay And so if the evidence is collected and
8 then the evidence is taken back to the police department, it
9 could be hours before it's actually sealed up and entered
10 into evidence, is that right?

11 MR LENZIE Objection, this is leading

12 THE COURT Rephrase that question I will sustain
13 it

14 MR KOCH Sure

15 BY MR KOCH

16 Q When items go back to -- are taken back to the
17 Joliet Police Department, are they immediately -- do you know
18 whether they are immediately placed into evidence?

19 A Depends on the case but many times the evidence
20 is collected and entered by different officers at different
21 times depending on who collected it

22 In this case there was evidence collected from
23 multiple scenes For example, in this instance, the item
24 that was put in before was put in by Detective Lauer at a

1 residence where he was doing an interview That interview
2 was done after we collected the evidence of the pills
3 However, he was at the station doing his evidence processing
4 before I ever even got back to the station to put in all the
5 evidence I collected That's why the time is different, but
6 many times the items will be out as we are processing it

7 If there is video, we've got to review the
8 video before we put that video into evidence Also if there
9 is any type of evidence processing, fingerprints, stuff like
10 that, that delays our time to place the items into evidence

11 Q Okay And based on your experience as a
12 detective with the Joliet Police Department, that time that's
13 put down as far as collected is an estimation, is that right?

14 A Many times, yes

15 Q And that's because you don't -- do you have the
16 ability to log in at the scene and put down the exact time
17 that items are selected?

18 A Not all the time, no

19 Q And on this particular occasion, you -- those
20 pills were collected at the time you were in the residence,
21 is that right?

22 MR LENZIE Objection, this is leading

23 THE WITNESS Yes, it was

24 THE COURT Try it again, Mr Koch I will overrule

1 the objection

2 BY MR KOCH

3 Q Were you present when the pills were recovered?

4 A Yes, I was

5 Q And did you enter the residence before or after
6 Mr Bogan signed that consent?

7 A That would be after he signed consent we had
8 entered into the residence and located the pills They were
9 handed to me, I collected them And I believe in this
10 instance I handed them off to Detective Lauer who would have
11 placed them into evidence and he would have possibly put the
12 estimated on there when they were collected

13 Q Okay And the time that's on that consent to
14 search form was a time that you filled out at the time that
15 it was signed?

16 A Correct

17 MR KOCH Nothing further

18 RECROSS-EXAMINATION

19 BY MS TISDALE

20 Q Real briefly, Detective

21 On that department case number, the case report
22 that you saw, there is no time as to when the time was
23 entered listed on that item, correct?

24 A For which report are you referring to?

1 Q For the time that the pills were collected,
2 there is no space or a time on there when this information
3 was entered, correct?

4 A Physically entered into the computer system?

5 Q Yes

6 A No, it goes chronologically, but I don't
7 believe on that page there is a time as to when it's actually
8 entered

9 Q And so the only time that's listed here is the
10 collection time, correct?

11 A Yes

12 Q And that collection time in this case was 1356
13 hours as listed in this report?

14 MR KOCH Objection

15 THE COURT Overruled

16 THE WITNESS That would be the time that the person
17 entering it placed it into the computer system

18 BY MS TISDALE

19 Q Oh, so you are saying what's listed as the
20 collection time is the time that the person is sitting there
21 entering this into the computer?

22 A No, that's the time that that officer,
23 detective puts it in as to when they believe that the item
24 was collected

1 Q Okay This collection time is what the officer
2 who collected these pills believe was the time that it was
3 collected?

4 A Or if it's the officer who had the items
5 transferred to them and then they placed those items into
6 evidence

7 Q Okay But nonetheless this is -- the 1356
8 hours is what's listed on this sheet as the collection time?

9 A That's what was listed on the sheet

10 Q And one other question When you went into the
11 residence of Mr Bogan, you used the keys that were from the
12 Chevy Impala, correct?

13 A I don't recall which key ring they were on
14 They were handed to me by another officer

15 Q Were there multiple keys on there?

16 A I don't recall

17 Q Okay So you made no observation as to how
18 many keys or what other keys were on there?

19 A At the time I did, I just don't recall now how
20 many

21 Q Okay You didn't look for -- you didn't look
22 for the Oldsmobile key, did you?

23 MR KOCH Objection, beyond the scope of redirect

24 THE COURT Overruled

1 THE WITNESS Once we were attempting to search the
2 vehicle, I did look but they were not on there

3 MS TISDALE Nothing further

4 THE COURT Let me see if I understand this

5 EXAMINATION

6 BY THE COURT

7 Q He signed the consent form at 2 06?

8 A Yes

9 Q And then you walked to the apartment?

10 A Correct

11 Q With his keys and you go in the apartment,
12 right?

13 A Yes

14 Q How long are you in the apartment?

15 A All together maybe a half hour We first
16 searched the residence for safety reasons for people since we
17 had not been in there yet

18 Q Who's the guy that finds the pills?

19 A Officer Wascher with me next to him

20 Q Wascher is the guy that takes the pills out
21 with him?

22 A No, no I collect them there and then I turned
23 those over I believe to Detective Lauer who I believe placed
24 them into evidence

1 Q All right So Lauer was with you at the scene?

2 A Yes

3 Q So you are in there for half an hour, right?

4 A Yes

5 Q You come out with the pills?

6 A Yes

7 Q You hand them to Lauer?

8 A Correct

9 Q You guys stay together?

10 A No, because I was at that time getting the
11 information to get the search warrant for the vehicle He
12 was processing those items, plus an interview he had
13 previously conducted with some of the witnesses and victims
14 from the home invasion case

15 Q So then he takes the pills back with him to the
16 station?

17 A Yes

18 Q How far away are you from the station?

19 A Approximately ten minutes, five- to ten-minute
20 drive, if that, not more than five minutes

21 Q Is that his first responsibility is put those
22 pills into evidence?

23 A I believe among other duties of the home
24 invasion report

1 Q Forget about the home invasion, just this case
2 Does he then go right back to the station and
3 enter those pills?

4 A I don't know if he did that immediately or if
5 he continued with the other part of the --

6 Q Let's assume he takes a while before he enters
7 those, right?

8 A Yes

9 Q So lets suppose he takes 20 more minutes,
10 correct?

11 A Yes

12 Q So now according to the original time, it's now
13 1506, between the time you sign the consent form, right?

14 A Yes

15 Q To the time that you search the residence,
16 found the pills, gave it to his deputy, officer, he comes
17 back to the station and let's suppose he gets involved in
18 something else, so it's 1506, correct?

19 A Correct

20 Q How do you account for time that he logged in
21 and said it was collected at 1356, how does that happen?

22 A The time that's entered in as 1356 hours would
23 be a time that he would estimate when I collected the pills

24 Q That you collected them?

1 A Correct And that's what he would manually put
2 in as a time that he believed that the pills were taken from
3 the scene It would not be the time that he is either
4 actually physically processing them or entering them

5 Q So he is putting down there the information
6 that he believes --

7 A He would ask me --

8 Q -- when did you find those?

9 A -- when did we find them, and I would give him
10 an approximate time and he would enter that into the system

11 THE COURT All right I got confused by that whole
12 thing You may step down Thanks a lot

13 (Witness excused)

14 All right

15 MR KOCH Judge, we have no further witnesses

16 MR LENZIE Nothing else, Judge

17 THE COURT Okay Closing arguments

18 MS DOMAGALLA Judge, you heard evidence throughout
19 the last two days of this trial, and throughout all of that
20 evidence, the State has proven beyond a reasonable doubt that
21 that vehicle, that green Cutlas parked outside the
22 defendant's apartment was registered to him, owned by him,
23 and the items within that vehicle are his

24 He did have actual legal ownership of that

1 vehicle The items in that car are in order where the
2 ammunition with his fingerprint is at the bottom

3 Then there are guns wrapped in a sweatshirt and
4 then there's a bag that contains his health insurance card
5 He has all of those items in the car he owns with his
6 fingerprint on the bottom item and his health insurance card
7 stacked on top

8 In the passenger front seat of that car you
9 have a Walmart receipt with his name and phone number on it
10 You have the Rockdale tow sheet for his vehicle and him
11 signing out or back possession of that vehicle, his vehicle
12 that he owns You also have heard testimony by way of
13 stipulation that the serial number was obliterated on that
14 gun

15 For Count I we have to prove that he is
16 convicted two or more times of the offense of armed robbery
17 We have done that with the certified convictions

18 And we have to prove that he possessed the
19 Hi-Point firearm We have done that through testimony You
20 have seen the weapon You have seen pictures of the weapon,
21 and you heard multiple witnesses testify as to the location
22 of that gun and the ownership and registration of that car
23 We have proven that count

24 The additional count is the -- we have to prove

1 that the Hi-Point handgun that the defendant possessed had a
2 serial number obliterated Through stipulation we proved
3 that it was obliterated, and that he possessed that firearm
4 because all the evidence we also presented for Count I I
5 would ask that you find him guilty on both counts

6 THE COURT Defense?

7 MR LENZIE Judge, the State has the burden to prove
8 this case beyond a reasonable doubt You heard my arguments
9 on directed finding, I don't believe there is any need to
10 rehash those, but I would ask you to consider those
11 arguments

12 Judge, you also heard Mr Bogan himself as he
13 took the stand He indicated that Anton Spencer was one of
14 his really good friends, was the actual one who had the
15 control of this car

16 In legal terms it may be it was registered to
17 Mr Bogan and legally it was -- he owned that green
18 Oldsmobile, but in actuality and the way Mr Bogan thought
19 about it, he didn't own it

20 He may have been in there in March of 2013, and
21 they found these weapons in July of that year That is the
22 closest anyone can put him in that car is March of that prior
23 year

24 Judge, it is beyond a reasonable doubt Judge,

1 I don't believe Mr Bogan had constructive possession of this
2 car, and there was certainly no evidence that he intended to
3 repossess those items in the car Judge, the State's
4 evidence is lacking, especially considering that he is only
5 charged with the H1-Point firearm, the 40 caliber, that's
6 it

7 The fingerprints, they were not on any
8 ammunition that would go to the 40 caliber He testified
9 that the picture of the AR-15 assault rifle was texted to him
10 on his phone and that's how it got there

11 Judge, I maintain the State did not prove all
12 of the elements necessary in this case and I'm asking that
13 you find him not guilty

14 THE COURT Rebuttal?

15 MR KOCH Thank you The defendant does have a
16 right to testify but when he does testify, his credibility is
17 at issue just like any other witness

18 You are to weigh the credibility of the
19 defendant's testimony when he testified here today The
20 thing that is just absurd to think about in this situation is
21 that ironically Mr Bogan takes the stand and he says that on
22 July 27, 2013 I happen to be outside when the police were
23 talking to me and a female of the name of Micah Schmidt or
24 Smith, you heard the testimony I believe he spelled Schmidt

1 in direct and then changed it to Smith in cross, and then
2 actually went back to Schmidt at one point in redirect He
3 couldn't get it straight

4 You have to weigh his credibility You have
5 Detective German sitting here who just took the stand and
6 said I spoke to him on July 27, 2013 and I asked him about
7 who owned that car and he said Mike Smith, and he used the
8 words he, not she, but he I don't have any information for
9 him I don't know where he lives I don't know what his
10 phone number is Clearly at the time on July 27th he's
11 telling the officers someone by the name of Mike Smith owns
12 that vehicle

13 But in addition to that, Judge, you have -- so
14 that's this Micah Smith, this person who for all purposes
15 wasn't there I don't know if that person exists or not, but
16 Mr Spencer is the other person that he says owns that
17 vehicle, and Mr Spencer is standing right there, his buddy,
18 his Godson or brother or whatever

19 He said he didn't want to rat him out
20 because -- he said I don't want to rat him out Well, what
21 is he ratting him out for? What is he ratting him out for
22 that day, like there's a car that's in the parking lot that
23 he says is owned by Mr Spencer, what does he have to be
24 concerned about ratting somebody out for?

1 Well, the reason is because he doesn't want
2 anybody going in that car because he knows he's got three
3 guns in that car, including the 40 caliber Hi-Point that
4 he's charged with That's why he is sitting there saying,
5 you know, I sold that car

6 I mean initially you remember, initially he's
7 saying I don't own that car According to Detective German,
8 and you will weigh his credibility as well, never seen that
9 car, never been inside that car, don't know who owns that
10 car, not my car

11 Hey, wait a minute, Mr Bogan, your car -- that
12 car is registered to you Nope, don't own it Are you sure?
13 It's registered to you Oh, do you know what, I did own that
14 car, but I sold it two weeks ago to Mike Smith, two weeks ago
15 would be approximately July 13th or July 10th, and I sold it
16 to this Mike Smith

17 Now, that's what he told Detective German on
18 that day, but then he takes the stand here today and he says
19 that he never sold the car because he never owned the car,
20 although, again, his credibility is at issue and he signed a
21 legal document saying he owned that car

22 The certified registration, the title of that
23 car is in his name That is his ownership of that car, so he
24 absolutely owned that car on that day

1 And I dispute what Mr Lenzle says about no one
2 can put him in that car except in March Now, remember he
3 said he was in that car to go pick it up from the tow yard,
4 and then in that car when he went to Walmart to do the
5 MoneyGram, but he told Detective German on July 27th he has
6 never been in that car

7 In fact, when they told him that they were
8 going to search his car, he said you're not going to find any
9 paperwork in there of mine, which they did find

10 But the fingerprints that he acknowledges
11 touching that ammo box are found in that car, and I would
12 submit to your Honor that reasonable inferences can be drawn
13 that puts him in that car accessing that car between
14 July 15th and July 27th Because if you remember what he
15 acknowledged on the stand, that he touched the ammo box after
16 he received -- he says after he received that picture of that
17 rifle which was on July 15th

18 So some time after the 15th and before the
19 27th, he is touching the ammo box that he says Mr Spencer
20 just happened to bring over, just ammo, not the gun, just
21 ammo

22 And then that ammo ends up underneath two other
23 items inside that vehicle So in order to believe his
24 testimony, you would have to find that I guess Mr Spencer

1 then walked out to the car, lifted other items up and tucked
2 that bag down underneath everything and that doesn't make
3 sense, your Honor, that's not credible testimony

4 You have his paperwork in the car, you have his
5 health card on top, followed by the two weapons, followed by
6 his fingerprints You have the pictures on his phone of that
7 rifle which is found in the back seat

8 You have the crossbow in the trunk which is the
9 issues with the target that Detective German located inside
10 the residence All of that leads to reasonable inferences
11 being drawn that he is in possession of those items found in
12 that car

13 He says like he didn't want to -- I keep going
14 back to him saying like I'm not going to rat out my buddy,
15 I'm not going to rat out my buddy or whatever I guess he
16 apparently has no issues with ratting out his buddy's
17 girlfriend, this Micah Schmidt, Smith, Smid, however he wants
18 to spell it differently each way he testifies

19 So, I think when you look at the credibility,
20 you can also take his criminal history into account and
21 credibility, Judge, for impeachment purposes And I'm asking
22 you to find that his testimony is just not credible

23 So if you disregard his testimony, then you are
24 left with the evidence that's been presented here and you've

1 heard the officers, you've heard where they found, what they
2 found, and how they found it

3 You have the certified documents in front of
4 you indicating he is the owner of that vehicle, the legal
5 owner of that vehicle

6 And it's just, again, it's interesting that
7 everything that has to be done by Mr Bogan, it just happens
8 to include Mr Spencer, like he has to go get the car out of
9 the impound, Mr Bogan does because Mr Spencer doesn't have
10 a license but I guess Mr Bogan doesn't care about that when
11 he is giving him this car that he's registered and owns, that
12 he is going to allow Mr Spencer to drive without a license

13 Then you have, you know, well, the paperwork
14 for the Walmart thing is because even though I own a Chevy
15 Lumina or Impala, even though I own a Chevy Impala, I'm going
16 to go with Mr Spencer to Walmart to get this MoneyGram It
17 just doesn't make sense, Judge

18 I mean it's clear that Mr Bogan owned that
19 car It's clear from the evidence that his testimony is not
20 credible I think Detective German's testimony is credible,
21 including in rebuttal when he came in here and told you how
22 nobody had entered that house prior to getting that consent
23 and that Detective German is the one that accessed that house
24 with those keys

1 I think his testimony disputes the testimony of
2 Mr Bogan and I believe we have proven each of the elements
3 required, certainly the firearm being the serial number by
4 way of the stipulation is proved

5 The only issue left for your Honor to decide is
6 whether or not that he possessed them The two prior
7 convictions for armed robbery certainly proved we believe the
8 evidence shows he did possess those items, and ask that you
9 find him guilty Thank you

10 THE COURT All right Well, without beating this to
11 death because we have gone over it and over during arguments
12 on other issues, there's little doubt in my mind based on the
13 evidence that is presented by the State that the defendant
14 owned that vehicle

15 It's ludicrous to assume that according to the
16 defendant he was never in the vehicle, but all these items of
17 ownership or indicators of ownership or indicia of ownership
18 suddenly pop up in that vehicle with his name all over the
19 place

20 Certainly I can't see the defendant handling a
21 box of ammunition that suddenly winds up in a car that
22 suddenly is at his residence The car belongs to him and
23 somehow this lifelong friend of his, Spencer, happened to put
24 it in there and leave it there

1 What Mr Bogan is asking us to believe he is
2 the victim of a terrible number of horrific coincidences all
3 confirmed by nobody but him

4 That with all these people that were at that
5 scene at the time of that arrest, not a single person has
6 come forward to confirm or verify anything

7 The most ludicrous thing he said was that with
8 the police officers, having probable cause to arrest him on
9 another case would show up, confront him, and a police
10 officer would tell him, you know, let us just search your
11 residence and this car, and if we find nothing, we will let
12 you go, okay That's astounding to me It's really not so
13 much factually because Mr Bogan has kind of established for
14 me the ultimate reason why so many defendants shouldn't get
15 on the stand

16 In terms of the legal issues that are involved,
17 obviously are tied to the factual situation of each, the
18 defendant did, in fact, possess a firearm if I believe that
19 there is sufficient evidence to put that gun in that car
20 belonging to him, the Hi-Point handgun where a serial number
21 was obliterated, and that Hi-Point firearm comes down to the
22 issue of whether or not I believe that the way that the case
23 is presented and the factual representations that were made
24 at the time of July 27, he possessed a firearm having two or

1 more convictions for the offenses of armed robbery

2 The offense of armed robbery? Yep, he's got
3 them, the Hi-Point firearm found in the car, car registered
4 to him, other indicators of ownership He's got them Did
5 he possess it under those circumstances in that situation?

6 Yes

7 I find the defendant guilty of both counts

8 Okay So let's first of all, we need a sentencing thing

9 It's a legal term, Cory We need a sentencing thing

10 THE CLERK Are you revoking his bond?

11 THE COURT Could I have a minute here? All right

12 Based on the defendant's prior record and the charges for
13 which he was just convicted, I'm going to revoke the
14 defendant's bond

15 I don't even know if it would have made any
16 difference I'm going to revoke his bond I will set a --
17 if you want to give me a date for the PSI and then the
18 sentencing dates

19 There will also be an issue for Mr Lenzie to
20 file any motions he wants for new trial based on the huge
21 number of errors I must have undoubtedly made

22 MR LENZIE Judge, my normal procedure is I file a
23 motion for new trial, argue on the same day as sentencing

24 THE COURT Are you going to do something abnormal?

1 MR LENZIE For how I normally operate, yes

2 THE COURT So show defense counsel is admitting he
3 is going to be abnormal for a while Go ahead

4 MR LENZIE Judge, just for motions for new trial,
5 can I have the 15th of next week? And then I will set a
6 sentencing -- we will ask for a two-month date for
7 sentencing

8 THE COURT Normally I wouldn't do that Mr Koch,
9 will you be ready by then? I think what we are going to be
10 doing is arguing some legal issues that took place during the
11 course of this trial and Mr Lenzie's position that I ruled
12 incorrectly

13 What I'm going to do is return to the defense
14 the Whalen and Zentz case if you want them back I don't
15 know if you have got copies or if they were just for me I
16 don't know if you need those for these motions, but we will
17 do it that way I don't know what your trial situation is on
18 the 15th

19 MR KOCH Judge, I believe Miss Domagalla will be
20 able to address any issues that arise on that

21 THE COURT Off the record

22 (Discussion held the record)

23 MR KOCH The 15th is fine Mr Lenzie said he is
24 going to have it on file by the end of this week and we will

1 be able to review it by then

2 THE COURT All right Arguments for new trial on
3 the 15th We still -- do you want to wait until that day to
4 give me a sentencing date, Mr Lenzie, or do you want to do
5 it now?

6 MR LENZIE No, we can set one right now

7 THE COURT Okay Whatever day you want

8 MR KOCH Judge, it's going to take approximately
9 eight weeks We will have to order -- well, at the start of
10 this trial we talked about sentencing

11 THE COURT: I'll be back

12 MR KOCH Well, I'm just saying is there an attempt
13 to get it done in time?

14 THE COURT You are never going to get it done in
15 time

16 MR KOCH So then I will set it out for eight weeks
17 for full PSI

18 THE COURT Okay December what?

19 MR KOCH We can say December 12th for the return of
20 the PSI

21 THE COURT Uh-huh

22 MR KOCH And the following week, December 17th, for
23 sentencing if that works for defense

24 MR LENZIE That does

1 THE COURT And Miss Domagalla?

2 MS DOMAGALLA Uh-huh

3 THE COURT Well, wait Aren't you going to ask me
4 what I'm doing?

5 MR KOCH No

6 THE COURT All right We are adjourned
7 (Which were all the proceedings had)
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IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

I, LAURA S KLEBENOW, Official Court Reporter for the Circuit Court of Will County, Twelfth Judicial Circuit of Illinois, do hereby certify that I reported in shorthand the proceedings in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable ROBERT P LIVAS, Judge of said Court.

Dated at Joliet, Will County, Illinois, this 22nd
day of April, 2015

Laura S Klebenow
Laura S Klebenow
Official Court Reporter
CSR No 084-003142

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOISPEOPLE OF THE
STATE OF ILLINOISvs.
Antonio Bogan

Defendant

Case No. 13 CF 1031Date of Sentence: 3/11/15Defendant D.O.B: 8/31/79Victim Birth Year 1 1

JUDGMENT — SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below.

IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense, followed by the listed period of mandatory supervised release ("MSR"):

Count	Date of Offense	Statutory Offense	Citation	Class	Sentence	MS
<u>I</u>	<u>7/27/13</u>	<u>Armed Habitual Offender</u>	<u>720 ILCS 5/24-1.2(4)(c)</u>	<u>X</u>	<u>30 yrs</u>	<u>3</u>
said sentence shall run <input checked="" type="checkbox"/> concurrent with <input type="checkbox"/> consecutive to the sentence imposed in Count(s) <u>VI</u> ;						
<u>II</u>	<u>7/27/13</u>	<u>Defacing Identification Mark Presum</u>	<u>720 ILCS 5/18-5(b)</u>	<u>1</u>	<u>5 yrs</u>	<u>1</u>
said sentence shall run <input checked="" type="checkbox"/> concurrent with <input type="checkbox"/> consecutive to the sentence imposed in Count(s) <u>I</u> ;						
<u>III</u>	<u>/ /</u>					
said sentence shall run <input type="checkbox"/> concurrent with <input type="checkbox"/> consecutive to the sentence imposed in Count(s) _____;						
<u>IV</u>	<u>/ /</u>					
said sentence shall run <input type="checkbox"/> concurrent with <input type="checkbox"/> consecutive to the sentence imposed in Count(s) _____;						

THE COURT FINDS THE FOLLOWING:

- ☒ The Defendant is entitled to receive credit for time actual served in custody from 7/27/13 to 3/11/15 and from _____ to _____; and from _____ to _____; and from _____ to _____.
- ☐ The Defendant is convicted of a Class _____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-3(c)(8).
- ☒ The Defendant is eligible for an extended term sentence in Count(s) I & VI under 730 ILCS 5/5-8-2(a), and has acknowledged (his) (her) awareness on the record in open court as per 730 ILCS 5/5-8-2(b).
- ☐ The Defendant is ordered to pay costs of prosecution herein. These fees, costs, and restitution (if applicable) are reduced judgment against the defendant and are declared a lien upon the defendant's property.
- ☐ Conduct in the offense(s) in Counts _____ resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii)).
- ☐ That the defendant meets the eligibility requirements and is approved for placement in the impact incarceration program; s attached written consent form and impact incarceration order for further details.
- ☐ The offense(s) were committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance.
- ☐ IT IS FURTHER ORDERED that the sentence(s) imposed on count(s) _____ be ☐ concurrent with ☐ consecutive to the sentence imposed in case no. _____ in the Circuit Court of _____ County; be ☐ concurrent with ☐ consecutive to the sentence imposed in case no. _____ in the Circuit Court of _____ County;
- ☒ The defendant must serve ☐ 75% ☒ 85% ☐ 100% of the sentence due to (type of offense) (other: _____).
- IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this order to the Sheriff.
- IT IS FURTHER ORDERED that the Sheriff take the defendant into custody and deliver him to the Department of Corrections who shall confine said defendant until expiration of his sentence or until he is otherwise released by operation of law.
- ☒ This order is effective immediately. ☒ This order is stayed until 3/12/15.
- ☐ IT IS FURTHER ORDERED that: _____

ENTERED: 3-11-15

TWELFTH CIRCUIT JUDGE

Print Judges Name here: Dave Carlson

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017 ,

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,)	
	)	Appeal No. 3-15-0156
v.	)	Circuit No. 13-CF-1631
)	
ANTONIO M. BOGAN,	)	Honorable
	)	David M. Carlson,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court, with opinion.
Justices Wright and O'Brien concurred in the judgment and opinion.

OPINION

¶ 1 The defendant, Antonio M. Bogan, appeals from his conviction for being an armed habitual criminal. He argues that the State failed to present evidence sufficient to prove that he possessed a firearm.

¶ 2 **FACTS**

¶ 3 The State charged the defendant by indictment with being an armed habitual criminal (720 ILCS 5/24-1.7(a)(1) (West 2012)) and defacing the identification marks of a firearm (720 ILCS 5/24-5(b) (West 2012)). The armed habitual criminal count alleged that the “defendant

possessed a firearm, to wit: a High Point firearm, after having been convicted two or more times of the offense[] of Armed Robbery.” The latter count alleged that the defendant possessed “a High Point handgun, upon which the manufacturer’s serial number was obliterated.”

¶ 4 At the defendant’s bench trial, officer John Byrne of the Joliet police department testified that on July 27, 2013, he received information to be on the lookout for the defendant, possibly driving a white Chevrolet Impala. Upon observing a white Impala, Byrne performed a traffic stop. Three individuals were in the Impala, but the defendant was not among them. However, Byrne noticed the defendant sitting on a porch in front of an apartment building “right next to where the traffic stop was initiated.” Byrne also observed a green Oldsmobile Cutlass in the parking lot of the apartment complex. After learning that the defendant was the registered owner of the green Cutlass, Byrne maintained visual contact with that vehicle until a search warrant could be obtained.

¶ 5 Officer Chris Delaney, an evidence technician for the Joliet police department, testified that he was directed to search the green Cutlass parked at 1911 Moore Street. Delaney performed the search alongside Detective Jeffrey German. Delaney testified that he discovered the following items in the backseat of the Cutlass: a .22-caliber Ruger handgun; “a black .40 caliber semi-automatic handgun Hi-Point”; an “AR-15 style rifle”; and a black canvas bag containing five 30-round magazines for the rifle, a box of .32-caliber ammunition, and a box of .223-caliber ammunition for the rifle. Delaney explained that the rifle was in its own bag, while the two handguns were wrapped in a sweatshirt. Delaney found latent fingerprints on the box of rifle ammunition, and submitted those for analysis.

¶ 6 Detective German testified that he was dispatched to 1911 Moore Street on the afternoon of July 27, 2013. When he arrived at the scene, the defendant was handcuffed in the back of a

squad car, holding an iPhone. German collected the iPhone for evidence and obtained the defendant's consent to search his apartment. The State submitted into evidence the form signed by the defendant authorizing the search. That form listed the defendant's address as 1911 Moore Street, apartment No. 103. The State also submitted into evidence the vehicle registration for the green Cutlass. That vehicle was registered to defendant with an address of 1911 Moore Street, apartment No. 103.

¶ 7 German testified that he participated in the search of the defendant's apartment. During that search, German found a handmade cardboard target. German testified that he observed five holes in the target, and surmised that those holes had been made by arrows.

¶ 8 German also participated in the search of the green Cutlass. He described in detail the nature of the location of the items found during that search. Across the backseat of the vehicle was a black garment bag. Inside that garment bag was a rifle case, and inside the case was the rifle. A pile of items were found on the rear driver's side floorboard. At the top of that pile was a red plastic bag, which contained, among other items, a health insurance card bearing the defendant's name. Immediately beneath the red bag, wrapped in a black sweatshirt, were two handguns: a .40-caliber semiautomatic handgun and a .22-caliber Ruger revolver. German testified that the serial number on the .40-caliber semiautomatic handgun had been defaced. Beneath those handguns was a zipped bag, containing five empty rifle magazines and two boxes of ammunition.

¶ 9 German also found a number of papers in the front passenger seat of the green Cutlass. These papers included a towing receipt for the Cutlass, dated March 3, 2013, and signed by the defendant. They also included a receipt from Walmart dated March 18, 2013, bearing the

defendant's name and address. In the trunk of the green Cutlass, German found a crossbow with arrows.

¶ 10 German testified that he entered the defendant's apartment using keys that the defendant provided. That keychain did not include a key for the green Cutlass. German testified that a slim jim was used to open that vehicle. He testified that the keys to the green Cutlass were never found.

¶ 11 Michael Murphy was qualified as an expert in the field of fingerprint examination. He testified that two of seven latent prints submitted by Delaney were suitable for comparison. He testified that a print found on the box of rifle ammunition matched the defendant. Murphy gave no testimony regarding the second fingerprint.

¶ 12 Officer Chris Botzum of the Joliet police department testified that he performed an extraction on the defendant's phone. The extraction produced four photographs, each of which was submitted into evidence by the State. Two of the pictures were of the rifle found in the backseat of the green Cutlass. Botzum testified that each of those pictures was dated July 15, 2013. The other two pictures were of the defendant himself, one dated March 31, 2013, and the other dated June 22, 2013.

¶ 13 Following Botzum's testimony, the State entered into evidence two certified convictions, showing that the defendant had previously been convicted twice of armed robbery. The State rested.

¶ 14 The defendant testified in his own defense. He testified that the green Cutlass belonged to Anton Spencer. The defendant and Spencer had been close friends for approximately 25 years. Using Spencer's money, the defendant had purchased the vehicle for Spencer and Spencer's

girlfriend, Micah Smith, in the defendant's name in March 2013. The defendant did this because both Spencer's and Smith's driver's licenses were suspended.

¶ 15 The defendant testified that his vehicle was the white Impala stopped by Byrne on the date in question. The defendant explained that his mechanic, Timothy Potter, was driving the vehicle to a store to have the brakes replaced. Potter's girlfriend and Spencer were also in the vehicle. According to the defendant, Spencer had driven the green Cutlass to the defendant's apartment, parked in the parking lot, then left in the white Impala with Potter and his girlfriend.

¶ 16 The defendant further testified that he had not been in the green Cutlass since March 2013. He hypothesized that his papers, such as his expired medical insurance card, had gotten into the vehicle through Spencer, who also had access to the defendant's apartment. Once, when the vehicle had been towed, the defendant retrieved it from the impound lot for Spencer because the vehicle was registered in the defendant's name. Spencer had also once driven the defendant to Walmart in the vehicle.

¶ 17 The defendant testified that at some point Spencer had purchased an AR-15 rifle and sent the defendant a picture of it. Spencer also brought the weapon to show to the defendant. The defendant admitted that he had touched a box of ammunition. He denied ever putting any weapons into the green Cutlass.

¶ 18 On cross-examination, the defendant denied that he originally told German he had purchased the green Cutlass from a Michael Smith. He explained that he had actually said "Micah Smith," the name of Spencer's girlfriend.¹

¶ 19 The State called German in rebuttal. He testified that upon arriving at the scene, he asked the defendant if he had ever been in the green Cutlass before. The defendant told German that he

¹Throughout his cross-examination, defendant referred interchangeably to a "Micah Smith" and a "Micah Schmidt."

had not. In fact, the defendant told German that he had never seen the vehicle before. When confronted with the registration in his name, the defendant told German that he did own the vehicle, but that he had sold it two weeks earlier to a Mike Smith. The defendant did not have any contact information for Mike Smith. German was certain that the defendant had used the name Mike Smith. German testified that the defendant used the pronoun “he” when referencing Mike Smith.

¶ 20 The circuit court found the defendant guilty of both charged offenses. The court sentenced the defendant to a term of 30 years’ imprisonment for being an armed habitual criminal, and 5 years’ imprisonment for defacing the identification marks of a firearm, to be served concurrently.

¶ 21 ANALYSIS

¶ 22 On appeal, the defendant contends that the State failed to prove him guilty beyond a reasonable doubt of either of the charged offenses, being an armed habitual criminal or defacing the identification marks of a firearm. Specifically, the defendant maintains that the State’s evidence was insufficient to prove that he possessed the .40-caliber semiautomatic handgun, a mandatory element of each offense.

¶ 23 One commits the offense of being an armed habitual criminal “if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of” certain enumerated offenses. 720 ILCS 5/24-1.7(a) (West 2012). One commits the offense of defacing the identification marks of a firearm if he or she “possesses any firearm upon which any such importer’s or manufacturer’s serial number has been changed, altered, removed or obliterated.” 720 ILCS 5/24-5(b) (West 2012). The State presented no evidence that the defendant received, sold, or transferred a firearm. Thus, for each charged offense, the State was

burdened with proving beyond a reasonable doubt that the defendant possessed a firearm. *E.g.*, *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 82 (“Each essential element of the offense must be proved beyond a reasonable doubt.”).

¶ 24 At the outset, we recognize that officers in the present case actually found three firearms: an AR-15 style rifle, a .22-caliber Ruger revolver, and a .40-caliber handgun.² The .40-caliber handgun was the only firearm referenced in the indictment charging the defendant with being an armed habitual criminal. Moreover, it was the only firearm for which any evidence of an obliterated serial number was presented. Thus, conviction on each of the charged offenses turned on the State’s ability to prove that the defendant was in possession of the .40-caliber handgun. Accordingly, the element of possession, as it relates to that particular firearm, will be the sole focus of our analysis.

¶ 25 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 26 It is not the purpose of a reviewing court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Instead, great deference is given to the trier of fact. See, *e.g.*, *People v. Saxon*, 374 Ill. App. 3d 409, 416-17 (2007). All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). “ ‘Where evidence is presented and such evidence is capable of producing conflicting inferences, it is best left to the

²While the latter of these firearms was referred to throughout the trial as a .40-caliber semiautomatic handgun or a “Hi-Point,” we will refer to that weapon in this analysis as the “.40-caliber handgun.”

trier of fact for proper resolution.’ ” *Saxon*, 374 Ill. App. 3d at 416 (quoting *People v. McDonald*, 168 Ill. 2d 420, 447 (1995)). The trier of fact is not required to accept or otherwise seek out any explanations of the evidence that are consistent with a defendant’s innocence; nor is the trier of fact required to disregard any inferences that do flow from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 233 (2006); see also *Saxon*, 374 Ill. App. 3d at 416-17.

¶ 27 Where possession is an element of a charged offense, and a defendant is not found in actual possession, the State must instead prove constructive possession. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. “Constructive possession exists where there is no actual, personal, present dominion over contraband, but the defendant had knowledge of the presence of the contraband, and had control over the area where the contraband was found.” *People v. Hunter*, 2013 IL 114100, ¶ 19; see also *People v. Hampton*, 358 Ill. App. 3d 1029, 1031 (2005) (“As this is a constructive possession case, the State had to prove that the defendant (1) had knowledge of the presence of the weapon and (2) had immediate and exclusive control over the area where the weapon was found.”). Constructive possession is frequently proven through circumstantial evidence alone. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23.

¶ 28 In the instant case, the defendant was clearly not found in actual possession of the .40-caliber handgun. Accordingly, to prove constructive possession, the State was obligated to show that the defendant had control over the green Cutlass and that the defendant knew the .40-caliber handgun was in that vehicle. The defendant asserts that the State failed on both fronts.

¶ 29 Before proceeding, we note that the two components of knowledge and control are commonly listed in that order. However, one’s knowledge of contraband may be, at least in part, inferred from one’s control over the area in which the contraband is found. Control, on the other hand, may not be inferred from knowledge. *People v. Minniweather*, 301 Ill. App. 3d 574, 578

(1998) (“ ‘[W]here narcotics are found on premises under the defendant’s control, it may be inferred that the defendant had both knowledge and control of the narcotics,’ [citation] the inverse inference does not follow.”) (quoting *People v. Nettles*, 23 Ill. 2d 306, 308 (1961)). Accordingly, we will address the two components in reverse order, beginning with control.

¶ 30

I. Control

¶ 31

The primary piece of evidence in support of the proposition that the defendant had immediate and exclusive control³ over the green Cutlass is the fact that the defendant was the legal owner of that vehicle. The defendant does not dispute that he purchased the vehicle, and concedes that he is the vehicle’s legal owner. However, the defendant points out that “there are countless cases when owners allow other people to use their vehicle although the owner is not present.” He urges that “control, rather than ownership, is the dispositive issue.”

¶ 32

The defendant’s argument is well-taken. It is not unreasonable to believe that some persons give up complete control of their vehicle, in some way or another, yet remain on the registration—and thus remain the technical owner. Indeed, this court has said as much in holding that “[i]t is control of a vehicle where [contraband is] found, rather than ownership, which is pertinent to proving exclusive control of the area.” *People v. Robinson*, 233 Ill. App. 3d 278, 287 (1992). While we agree with the defendant that ownership is not *dispositive*, we disagree insofar as he implies that ownership is irrelevant to or not probative of the issue of control. It seems unquestionable that proof of one’s ownership of a vehicle tends to make more likely the fact that

³Though frequently recited in illustrating the control component of constructive possession, the term “exclusive” tends to be misleading. It is well-settled that—perhaps counterintuitively—more than one person may share “exclusive” control over an object or area. *E.g.*, *People v. Scott*, 152 Ill. App. 3d 868, 871 (1987). Consequently, whether some other person in addition to defendant also had control of or access to the green Cutlass would not undermine the State’s ability to prove control. Of course, such evidence might be relevant to the element of knowledge. See *infra* ¶¶ 43-48.

that person also has control over the vehicle. While such evidence alone is surely not sufficient to demonstrate control, it is nonetheless highly probative of that element.

¶ 33 In addition to the uncontested evidence of ownership, the State produced an abundance of other evidence tying the defendant to the green Cutlass. For instance, officers found two receipts bearing the defendant's signature in the front seat of the vehicle, each from March 2013. The defendant's health insurance card was also found in the vehicle. A fingerprint on a box of ammunition found on the backseat floorboard was determined to match the defendant. The rifle found on the backseat was the same as the rifle seen in pictures found on the defendant's phone, dated just 12 days prior to the search. Finally, a crossbow with arrows was found in the trunk of the green Cutlass, while a homemade target with apparent arrow holes was found in the defendant's apartment.

¶ 34 For his part, the defendant points out supposed shortcomings in much of the State's circumstantial evidence. For example, the receipts bearing the defendant's name were dated more than four months prior to the search of the green Cutlass. The box on which the defendant's fingerprint was found contained ammunition for the rifle, as opposed to the .40-caliber handgun that the State had to show the defendant possessed.⁴ Finally, the defendant testified that Spencer sent him the pictures of the rifle, and there was no testimony that the pictures were actually taken by the defendant's phone.

¶ 35 We reject the State's repeated assertion that "the evidence was overwhelming" in this case. It was not. However, the *Collins* standard does not mandate that we determine if the

⁴We disagree with the defendant regarding the relevance of his fingerprint. In making its case for constructive possession, the State merely had to prove that the defendant had control over the green Cutlass, *i.e.*, "the area where the contraband was found." *Hunter*, 2013 IL 114100, ¶ 19. Thus, the defendant's fingerprints on *any* object found within the vehicle would tend to make such control more likely.

evidence against a certain defendant is overwhelming. Nor does it even require a reviewing court to determine whether it would find the defendant guilty beyond a reasonable doubt. Instead, our task on appeal is determine whether *any* rational trier of fact, when making all reasonable inferences in favor of the State, could have found the elements of the offense proven beyond a reasonable doubt. *Collins*, 106 Ill. 2d at 261.

¶ 36 In the instant case, we conclude that some rational trier of fact could conclude that the defendant had control over the green Cutlass. Though imperfect, the State presented sufficient evidence tying the defendant to the green Cutlass, including the fact the defendant was the legal owner of the vehicle. From this evidence, a rational trier of fact could infer that the defendant was a regular driver of the vehicle. Because such an inference is reasonable, it is allowed, and this court must defer to the trier of fact. See *Bush*, 214 Ill. 2d at 326; *Saxon*, 374 Ill. App. 3d at 416-17. Moreover, while the defendant's own testimony may have presented an innocent explanation of all of the State's evidence, the trier of fact was under no obligation to find the defendant's testimony credible in light of the State's impeachment evidence. More importantly, the trier of fact was not obligated to accept such an explanation in the fact of an alternative, reasonable inference of control. *Sutherland*, 223 Ill. 2d at 233.

¶ 37 We write further on the component of control in order to address certain specific cases cited by the defendant in his cogent and extremely well-argued *pro se* brief. The defendant puts substantial emphasis on the fact that officers in this case never recovered a key to the green Cutlass. Citing to *People v. Scott*, 367 Ill. App. 3d 283 (2006), the defendant insists that "[p]ossession of a key necessary to access something is pertinent to proving control."

¶ 38 In *Scott*, the arresting officer observed Scott and a codefendant, Watson, remove cocaine from a mailbox. *Id.* at 284. Each time cocaine was removed from the mailbox, the removal was

performed by Watson, and Watson remained in possession of the mailbox key at all times. *Id.*

The appellate court reversed Scott's conviction, writing:

“[T]he State failed to establish that defendant had the capability to maintain control and dominion over the larger bag of cocaine found in the mailbox. The evidence at trial revealed that defendant never possessed or had access to the key needed to open the mailbox where the larger bag of cocaine was later found. Each time defendant and Watson approached the mailbox, Watson opened the mailbox with the key and Watson retained possession of the key. Without the key, the mailbox containing the larger bag of cocaine was not accessible to defendant.

Defendant could not control that which he could not access.” *Id.* at 286.

¶ 39 To be sure, we do not disagree with the defendant that the presence of a key is relevant to the issue of control. Had the State been able to produce a key to the green Cutlass found in the defendant's possession, such evidence certainly would have bolstered its case. Moreover, the First District's decision in *Scott* is sound; where the evidence shows that one person always maintained possession of the only key to a certain area, it is nigh impossible to show that another person had exclusive control over that area.

¶ 40 However, *Scott* differs from the present case in an extremely significant way. In *Scott*, the key in question was not simply missing. It was specifically in the possession of another person, the same person who always physically possessed the cocaine. This *directly* contradicted any inference that Scott was in immediate and exclusive control of the mailbox. In the present case, no key was ever found. Presuming that a key existed, officers' failure to find the key does not

foreclose the possibility that the defendant had one.⁵ Insofar that the lack of a key militates against an inference of control, it certainly does not serve to fully negate the evidence presented by the State that does tend to demonstrate such control. See *Sutherland*, 223 Ill. 2d at 233 (trier of fact is not required to accept explanations of evidence that would be consistent with the defendant's innocence).

¶ 41 Next, in arguing that the State failed to sufficiently prove the component of control, the defendant also emphasizes the fact that he was at no point observed driving the green Cutlass. He also maintains that the receipts bearing his name, which ostensibly tie him to the vehicle, were so attenuated in time that they lack probative value. In support, the defendant cites to *People v. Zentz*, 26 Ill. App. 3d 265 (1975), in which this court reversed a conviction in part on those grounds.

¶ 42 To be sure, the issue of control is noncontroversial in the great majority of cases where a defendant is stopped while actually driving a vehicle. While direct evidence of a defendant driving a vehicle is surely sufficient evidence of control, the defendant cites no authority in support of the proposition that it is *necessary*. Here, the State resorted to circumstantial evidence in proving that the defendant controlled the vehicle. See *supra* ¶¶ 32-33. This is sufficient. See *People v. Brooks*, 7 Ill. App. 3d 767, 777 (1972) (“The law makes no distinction between direct and circumstantial evidence which have the same legal weight and effect.”). Finally, the evidentiary weight given to the months-old receipts—as related to the question of the defendant's present control of the green Cutlass—is squarely a function reserved for the trier of fact, and we will not substitute our own judgment. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999).

⁵We also note that Spencer, whom the defendant claimed to be the actual possessor of the green Cutlass, was stopped in the white Impala. The fact that, despite the detention of Spencer, the key to the green Cutlass was still not found, would seem to cast doubt onto the defendant's testimony.

¶ 43

II. Knowledge

¶ 44

Having concluded that the State's evidence was sufficient in proving that the defendant had control over the green Cutlass, we must next consider whether the State sufficiently proved the other component of constructive possession: knowledge. That is, we ask whether the State's evidence would allow a rational trier of fact to conclude beyond a reasonable doubt that the defendant knew the .40-caliber handgun was in the green Cutlass.

¶ 45

As noted earlier, knowledge may often be inferred from one's control over an area. See *supra* ¶ 30. Such an inference is certainly not always appropriate, such as where a defendant's control over an area is relatively brief. For example, in *Hampton*, 358 Ill. App. 3d at 1032, the evidence showed that Hampton was driving his brother's vehicle, and had only been driving for a few minutes before he was arrested. Though Hampton was obviously in control of the vehicle, the appellate court held that his control was not sustained enough that one would expect him to know what items were in the vehicle's glove compartment. *Id.* at 1032. While any sort of control will satisfy the first component of constructive possession, the court pointed out that only "regular, ongoing control" may give rise to an inference of knowledge. See *id.*

¶ 46

In the instant case, the nature of the State's evidence was such that an inference that the defendant had knowledge of the contents of the green Cutlass is reasonable. Because the defendant was not actually stopped or observed in the green Cutlass, proof of the fleeting type of control seen in *Hampton* was unlikely. Instead, the State necessarily had to show that the defendant had regular, ongoing control of the vehicle. By proving the defendant's ownership of the vehicle, as well as numerous connections between the defendant and the contents of the vehicle, the State carried its burden. See *supra* ¶¶ 30-42. As the State was able to show that the

defendant had regular, ongoing control over the green Cutlass, a rational trier of fact could reasonably infer that the defendant would know what was in that vehicle.

¶ 47 The precise location of the evidence found in the green Cutlass gives rise to an independent inference of knowledge, further bolstering the State's case as to that component. German testified that on the rear driver's side floorboard, he found what was essentially a stack of evidence. On top was a red bag, in which the defendant's health insurance card was found. Beneath the bag was the .40-caliber handgun, wrapped in a black sweatshirt along with another handgun. On the bottom was a canvas bag of ammunition, including a box bearing the defendant's fingerprint. Thus, the item at the top and the item at the bottom of the stack could each be directly linked to the defendant. The sheer unlikelihood of the defendant lacking knowledge of items in the middle of the stack gives rise to an inference that he did, in fact, know about the .40-caliber handgun. It would similarly undermine any inference that the weapon was placed in the vehicle by another person. This inference, combined with the inference deriving from control, would allow a rational trier of fact to conclude beyond a reasonable doubt that the defendant had knowledge of the .40-caliber handgun.

¶ 48 In summary, the evidence presented by the State was sufficient to allow a rational trier of fact to conclude beyond a reasonable doubt both that the defendant was in control of the green Cutlass, and that the defendant had knowledge of the .40-caliber handgun. Thus, the State sufficiently proved that the defendant had constructive possession of that firearm.

¶ 49 CONCLUSION

¶ 50 The judgment of the circuit court of Will County is affirmed.

¶ 51 Affirmed.



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
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FIRST DISTRICT OFFICE
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September 27, 2017

In re: People State of Illinois, respondent, v. Antonio M. Bogan,
petitioner. Leave to appeal, Appellate Court, Third District.
122365

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 11/01/2017.

Very truly yours,

Carolyn Taft Gosbell

Clerk of the Supreme Court

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

APPENDIX E

PART I – TRIAL AND DIRECT REVIEW

1. Kind of trial: (Check one): Jury () Judge only (✓)
2. Did you testify at trial? YES (✓) NO ()
3. Did you appeal from the conviction or the sentence imposed? YES (✓) NO ()

(A) If you appealed, give the

- (1) Name of court: 3rd District Appellate Court
(2) Result: Convictions affirmed
(3) Date of ruling: April 3, 2017
(4) Issues raised: Sufficiency of the evidence / Reason-
able doubt

(B) If you did not appeal, explain briefly why not:

N/A

4. Did you appeal, or seek leave to appeal, to the highest state court? YES (✓) NO ()

(A) If yes, give the

- (1) Result: Petition for leave to appeal denied
(2) Date of ruling: Sept. 27, 2017
(3) Issues raised: Sufficiency of the evidence / Reasonable doubt

(B) If no, why not: N/A

5. Did you petition the United States Supreme Court for a writ of *certiorari*? Yes () No (✓)

If yes, give (A) date of petition: N/A (B) date *certiorari* was denied: N/A

PART II – COLLATERAL PROCEEDINGS

1. With respect to this conviction or sentence, have you filed a post-conviction petition in state court?

YES () NO (✓)

With respect to *each* post-conviction petition give the following information (use additional sheets if necessary):

A. Name of court: _____ N/A _____

B. Date of filing: _____ N/A _____

C. Issues raised: _____ N/A _____

D. Did you receive an evidentiary hearing on your petition? YES () NO (✓)

E. What was the court's ruling? _____ N/A _____

F. Date of court's ruling: _____ N/A _____

G. Did you appeal from the ruling on your petition? YES () NO (✓)

H. (a) If yes, (1) what was the result? _____ N/A _____

(2) date of decision: _____ N/A _____

(b) If no, explain briefly why not: _____ N/A _____

I. Did you appeal, or seek leave to appeal this decision to the highest state court?

YES () NO (✓)

(a) If yes, (1) what was the result? _____ N/A _____

(2) date of decision: _____ N/A _____

(b) If no, explain briefly why not:

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

2. With respect to this conviction or sentence, have you filed a petition in a **state court** using any other form of post-conviction procedure, such as *coram nobis* or habeas corpus? YES () NO (✓)

A. If yes, give the following information with respect to each proceeding (use separate sheets if necessary):

1. Nature of proceeding N/A
2. Date petition filed N/A
3. Ruling on the petition N/A
4. Date of ruling N/A
5. If you appealed, what was the ruling on appeal? N/A
6. Date of ruling on appeal N/A
7. If there was a further appeal, what was the ruling? N/A
8. Date of ruling on appeal N/A

3. With respect to this conviction or sentence, have you filed a previous petition for habeas corpus in **federal court**? YES () NO (✓)

A. If yes, give name of court, case title and case number: N/A

B. Did the court rule on your petition? If so, state

- (1) Ruling: N/A
- (2) Date: N/A

4. With respect to this conviction or sentence, are there legal proceedings pending in any court, other than this petition? YES () NO (✓)

If yes, explain:

N/A

PART III – PETITIONER'S CLAIMS

1. State briefly every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. You may attach additional pages stating additional grounds and supporting facts. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds later.

BEFORE PROCEEDING IN THE FEDERAL COURT, YOU MUST ORDINARILY FIRST EXHAUST YOUR STATE COURT REMEDIES WITH RESPECT TO EACH GROUND FOR RELIEF ASSERTED.

- (A) Ground one The State's evidence is insufficient to support convictions.
Supporting facts (tell your story briefly without citing cases or law):

The Fifth and Fourteenth Amendments rights to Due Process protects a person against conviction except upon proof beyond all reasonable doubt of every fact necessary to constitute the crime for which a person is charged. Despite this guarantee, Illinois Courts have clearly and deliberately violated Petitioner's right to Due Process by spuriously and unsubstantially convicting him of being an armed habitual criminal and defacing identification marks of a firearm through his alleged possession of a defaced .40 caliber handgun recovered from a parked, locked vehicle that Petitioner was not in possession of at or about the time of his arrest. (Continued on pg.8)

- (B) Ground two _____
Supporting facts: _____

N/A

(C) Ground three N/A
Supporting facts:

(C) Ground three _____
Supporting facts:

N/A

(D) Ground four _____
Supporting facts:

N/A

2. Have all grounds raised in this petition been presented to the highest court having jurisdiction?
YES (✓) NO ()
3. If you answered "NO" to question (2), state briefly what grounds were not so presented and why not:

N/A

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

PART IV – REPRESENTATION

Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (A) At preliminary hearing Will County's Public Defender's Office, Joliet, IL
- (B) At arraignment and plea Will County's Public Defender's Office, Joliet, IL
- (C) At trial Will County's Public Defender's Office, Joliet, IL
- (D) At sentencing Will County's Public Defender's Office, Joliet, IL
- (E) On appeal Pro Se
- (F) In any postconviction proceeding N/A
- (G) Other (state): N/A

PART V – FUTURE SENTENCE

Do you have any future sentence to serve following the sentence imposed by this conviction?

YES () NO (✓)

Name and location of the court which imposed the sentence: N/A

Date and length of sentence to be served in the future N/A

WHEREFORE, petitioner prays that the court grant petitioner all relief to which he may be entitled in this proceeding.

Signed on: 10-3-17
(Date)

Antonio M. Bogan, Pro Se
Signature of attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

[Signature]
(Signature of petitioner)

R29595
(I.D. Number)

P.O. Box 1000
Menard, IL 62259
(Address)

And although knowing this, the Courts have refused to correct such an egregious, clear-cut error.

It is undeniable that Illinois and federal jurisprudence describes "possession" as being actual or constructive. Actual possession is defined as having "immediate and exclusive control over a thing." Constructive possession, on the other hand, is defined as "lacking actual possession of a thing but having both the intent and capability to exercise immediate and exclusive control over a thing."

Accordingly, absent a showing of Petitioner having actual possession of the defaced handgun, the State was obligated to show Petitioner had constructive possession of the weapon. To do so, the State was burdened with proving beyond a reasonable doubt Petitioner's immediate and exclusive control (i.e., actual possession) of the vehicle where the gun was situated, or alternatively, constructive possession (i.e., intent and capability to exercise control) of the vehicle and Petitioner's knowledge of the gun being in the vehicle. The evidence adduced at Petitioner's bench trial clearly demonstrated the State's failure to meet its burden on all three fronts and, despite showing this on direct appeal, Illinois Courts refused to overturn Petitioner's convictions, thus keeping him incarcerated in violation of his Fifth and Fourteenth Amendment rights.

The facts supporting Petitioner's assertions are: On July 27, 2013, unbeknownst to Petitioner, officers of the City of Joliet Police Department were on the look-out for him, possibly driving a white Chevy Impala. Upon observing Petitioner's Impala pull into the parking lot of an apartment complex, an officer commenced a traffic stop of the vehicle. Petitioner's Impala was occupied by three people — Petitioner's god-brother, Anton Spencer, and two of Petitioner's friends. While commencing the stop of Petitioner's Impala, the stopping officer observed Petitioner sitting on the patio of one of the apartment units. The officer observed Petitioner enter the apartment building for a moment. When Petitioner exited the building, he was immediately arrested. In the parking lot of the apartment complex was a parked, locked Oldsmobile Cutlass Supreme, which was revealed to be registered in Petitioner's name. The officer who stopped Petitioner's Impala secured the Cutlass until other

Officers returned with a search warrant.

In order for officers to commence the search of the Cutlass, they had to forcibly enter it by use of a "Slim-jim" because, although they thoroughly searched Petitioner, his Impala and an apartment believed to be his, they did not obtain the key needed to access the vehicle. During the search of the Cutlass, on the backseat, officers discovered a black garment bag, concealing a black rifle bag, containing a .223 caliber AR-15 rifle. There were also items piled up on the rear driver's side floorboard - on top was a red plastic bag containing an expired health card with Petitioner's name on it, amongst other miscellaneous items; beneath the plastic bag was a black sweatshirt containing a .22 caliber handgun, the defaced .40 caliber handgun and the .40 caliber's magazine; underneath the sweatshirt and handguns was a black, zippered canvas bag containing .32 caliber ammunition, .223 caliber rifle ammunition and five empty rifle magazines. In the front seat of the Cutlass was a tow receipt and a Walmart/MoneyGram receipts bearing Petitioner's name and signature, each dated more than four months prior to the search of the vehicle. In the trunk of the Cutlass was a cross-bow.

Prior to the search of the Cutlass, from Petitioner's possession, officers confiscated his iPhone, which contained two photos of the AR-15 rifle. Despite the photos of the rifle and Petitioner's fingerprint being found on the box of .223 caliber rifle ammunition, Petitioner was not charged with that weapon; neither was Petitioner charged with the .22 caliber handgun nor the .32 caliber ammunition. Petitioner was only charged and convicted of possessing the defaced .40 caliber handgun, which was found to not have Petitioner's fingerprints on.

Petitioner testified on his own behalf that the Cutlass was registered in his name but only as a favor for his god-brother, Anton Spencer, and Spencer's girlfriend, Micah Smith, because Spencer's license was suspended and Smith never had a license. Petitioner further testified that Spencer was in sole possession of the Cutlass, as he retained possession of its key on July 27, 2013 after he drove it to the apartment complex's parking lot, where he parked it as he rode to Auto Zone with two of Petitioner's friends in Petitioner's Impala. Petitioner

also testified that he had not been inside the Cutlass in over four months, and that the Impala was the car he drove regularly.

Based on the foregoing, reasonable doubt of Petitioner's guilt evidently existed when the facts established: (1) officers' testimony placed Petitioner sitting on a patio and exiting an apartment building, not entering/exiting the Cutlass or in close proximity of it at the time of his arrest, thus negating immediate and exclusive control (i.e., actual possession) of the vehicle; (2) without the key to the vehicle, Petitioner could not access it and/or the defaced handgun, thus negating constructive possession (i.e., intent and capability to exercise control) of the vehicle and/or gun; (3) none of the evidence taken from the vehicle put Petitioner in actual or constructive possession of the vehicle on or about the day of his arrest; (4) since it is reasonable to believe that articles in a person's name will be found in a vehicle registered to that person, the expired health card and old receipts went toward ownership, which alone is insufficient to establish constructive possession; (5) even inferring that Petitioner knew about or placed the AR-15 rifle in the vehicle twelve days before the search, he was not charged with that weapon, and since the defaced .40 caliber was not found in the bag with the rifle or the rifle ammunition, it cannot be reasonably inferred that it was placed in the vehicle at or about the same time as the rifle; (6) without Petitioner's fingerprints being found on the defaced .40 caliber handgun, it cannot be reasonably inferred that he ever handled that gun; and (7) with the key to the vehicle outright missing, it is not unreasonable to believe that the defaced handgun was placed in the vehicle by a person other than Petitioner, without Petitioner's knowledge.

Presented with these unequivocal facts, the trial court blatantly ignored its duty to find Petitioner not guilty but instead decided to support its finding of guilt based on the Cutlass being registered in Petitioner's name, other indicator of ownership and evidence placing Petitioner in the vehicle sometime in the past, not on Petitioner's actual possession or intent and capability to actually possess the vehicle on July 27, 2013. The trial court, subsequently, sentenced Petitioner to 30 years and 5 years, to be served concurrently.

Petitioner appealed to the Third District Appellate Court, contending that the State's evidence was insufficient to prove him guilty beyond

a reasonable doubt. Even in the State's response to Petitioner's brief, the State clearly points to no evidence or inferences of Petitioner having actual possession of the Cutlass on July 27, 2013, which was their burden to prove (See Brief and Argument for Plaintiff-Appellee, attached hereto as "Exhibit A"). Although faced with obvious insufficient evidence, the appellate Court still affirmed Petitioner's convictions in a published opinion (See Court's Opinion "CO" at para. 50, attached hereto as "Exhibit B"). Contrary to Illinois and federal precedent cited by Petitioner in his briefs, the Court erroneously held that evidence of the Cutlass being registered in Petitioner's name, along with other evidence tying Petitioner to the vehicle, creates a reasonable inference of Petitioner being a "regular driver" of the vehicle, thus establishing control of it. (Exhibit B at para. 31-42). Originally, in the State's response brief, they cited to no case-law to support this proposition; Surprisingly, neither does the Court in its opinion. Yet, both the State and the Court gave little to no consideration to the cases, similar in fact and logic, cited by Petitioner in support of his contentions. Their analyses were based on their unsupported opinion, not law. And as such, the Court concluded in error that Petitioner's "regular, on-going control" of the vehicle created a reasonable inference of knowledge of the defaced .40 caliber handgun, over-interrupting the case-law they cited. (Exhibit B at para. 44-48).

The Court, just like the State, failed to establish Petitioner's immediate and exclusive control (i.e., actual possession) or his intent and capability to exercise control (i.e., constructive possession) of the vehicle at the time of his arrest, but relied on the assumption of control based solely on the vehicle being registered in his name, items in the vehicle tending to show him as the technical owner and evidence placing him in the vehicle in the past. To hold that such meager evidence is sufficient is to directly oppose the case-law in support of the Court's statement:

"It is not unreasonable to believe that some persons give up complete control of their vehicle, in some way or a-

nothing, yet remain on the registration - and thus the technical owner. Indeed, this court has said as much in holding that 'it is control of a vehicle where contraband is found, rather than ownership, which is pertinent to proving exclusive control of the area.' (Exhibit B at para. 32).

Based on the Court's own words - here and throughout their entire opinion - it is evident that the Court purposely slighted Petitioner as a "pro se" litigant, thus causing him to remain incarcerated unlawfully. This is further evidenced in the fact that Petitioner went more in-depth with his argument and authorities pertaining to such cases in a petition for rehearing and the Court denied the petition. (See Appellate Court Rehearing Denial Notification, attached hereto as "Exhibit C").

Relying on the same arguments made to the trial and appellate courts, Petitioner petitioned the Illinois Supreme Court for leave to appeal. The court, subsequently, denied Petitioner's petition. (See Supreme Court Appeal Denial Notification, attached hereto as "Exhibit D").

Petitioner has exhausted all State remedies, giving Illinois Courts adequate opportunities to correct their miscarriage of justice, to no avail. It is undeniable that the Circuit Court, appellate court and Supreme court has deliberately disregarded the law, resulting in Petitioner's right to Due Process being violated. As a consequence, Petitioner was sentenced to and remain in prison unlawfully, when the "immediate and exclusive control" element - equating to actual possession - was not proven beyond a reasonable doubt.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTONIO M. BOGAN, R29595,)	
)	
Petitioner,)	
)	
v.	)	No. 17 C 7294
)	
JACQUELINE LASHBROOK, Warden,)	
Menard Correctional Center,	)	The Honorable
	)	Jorge L. Alonso,
Respondent.	)	Judge Presiding.

ANSWER

Pursuant to this Court's October 26, 2017 and December 8, 2017 orders, Docs. 6 & 11, respondent answers petitioner's 28 U.S.C. § 2254 petition for a writ of habeas corpus, Doc. 1.

BACKGROUND

1. Following a bench trial in the Circuit Court of Will County, Illinois, the state trial judge found petitioner guilty of (1) being an armed habitual criminal and (2) defacing the identification marks of a firearm, and sentenced him to concurrent thirty- and five-year prison sentences. Common Law Record, *People v. Bogan*, No. 13 CF 1631 (Will Cty. Cir. Ct.) (Exh. A at 219). The evidence at trial showed that police found a semi-automatic handgun in a green Oldsmobile Cutlass owned by petitioner, who claimed that he had purchased the vehicle on behalf of his friend. See *People v. Bogan*, 2017 IL App (3d) 150156 (Exh. C) at 2-4.

2. Petitioner appealed, arguing that there was insufficient evidence that he was in constructive possession of the gun or the vehicle to find him guilty beyond a reasonable doubt. Pet. Br., *People v. Bogan*, No. 3-15-0156 (Exh. D).

3. The state appellate court affirmed, explaining that constructive possession exists when a defendant had knowledge of the presence of contraband and control over the area where the contraband was found. Exh. C at 5. The court held that the evidence was sufficient to establish petitioner's control over the vehicle: petitioner owned the vehicle; officers found receipts bearing his signature in the front seat; his health insurance card was in the vehicle; a fingerprint on a box of ammunition on the backseat floorboard matched petitioner's; the rifle in the backseat matched recent pictures on his phone; and a crossbow with arrows were in the trunk and a homemade target with arrow holes was discovered in petitioner's apartment. *Id.* at 6. The court "conclude[d] that some rational trier of fact could conclude that the defendant had control over the green Cutlass." *Id.* at 7.

4. The state appellate court also found sufficient evidence that petitioner knew of the vehicle's contents. *Id.* at 9. This included his ownership of the vehicle and the other evidence that established his control of it. *Id.* at 9. Further, the location of the evidence evinced his knowledge: his insurance card was found in a red bag lying on top of the handgun; the handgun was wrapped in a black sweatshirt along with another handgun; below that bundle police discovered a canvas bag containing boxes of ammunition, one of which bore petitioner's

fingerprint. *Id.* at 9. All of these items discovered under and atop the handgun “could each be directly linked to” petitioner. *Id.*

5. Petitioner filed a petition for leave to appeal (PLA) that raised the same sufficiency of the evidence claim; the Illinois Supreme Court denied review. Order denying PLA, *People v. Bogan*, No. 122365 (Ill. 2017) (Exh. H); PLA, *People v. Bogan*, No. 122365 (Exh. I).

6. In October 2017, petitioner filed this timely habeas petition, raising the same sufficiency of the evidence claim he raised in state court. Doc. 1.

ARGUMENT

I. The State Court Reasonably Determined That the Evidence Was Sufficient to Establish that Petitioner Had Control of the Vehicle and Knowledge of its Contents.

Under 28 U.S.C. § 2254(d), a habeas petitioner cannot obtain relief on a claim adjudicated on the merits in state court unless the state court’s adjudication “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” § 2254(d)(1), or “resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding,” § 2254(d)(2). “This is a difficult to meet . . . and highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt.” *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (internal quotations and citations omitted); *see also Hardy v. Cross*,

565 U.S. 65, 72 (2011) (“Under AEDPA, if the state-court decision was reasonable, it cannot be disturbed.”).

Under established Supreme Court precedent, there is sufficient evidence for a conviction so long as “viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). And under Section 2254(d), that standard is even more difficult to meet. *See Cavazos v. Smith*, 565 U.S. 1, 6 (2011) (“already deferential review” of sufficiency claim is compounded by the “deference to state court decisions required by § 2254(d)”).

Here, the state appellate court set forth the correct standard. *See* Exh. C at 5 (“we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt”). The court reasonably held that sufficient evidence established petitioner’s knowledge of the presence of contraband and control over the vehicle where the contraband was found: petitioner owned the vehicle; receipts bearing his signature were in the front seat; his health insurance card was in the vehicle; a fingerprint on a box of ammunition on the backseat floorboard matched petitioner’s; the handgun was found between the insurance card and the ammunition box; the rifle in the backseat matched recent pictures on his phone; and a crossbow with arrows were in the trunk and a homemade target with arrow holes was discovered in petitioner’s apartment. *Id.* at

5-9. The state appellate court set forth the correct legal standard and reasonably, indeed, correctly, applied that rule to the facts, thus precluding federal habeas relief.

II. This Court Should Not Issue a Certificate of Appealability.

Petitioner is not entitled to a certificate of appealability (COA). A “district court must issue or deny a [COA] when it enters a final judgment adverse to” a habeas petitioner. Habeas Rule 11; *see also Gonzalez v. Thaler*, 132 S. Ct. 641, 649 n.5 (2012). To obtain a CoA, petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Here, it is not debatable that petitioner’s habeas claim is meritless.

CONCLUSION

This Court should deny the petition and decline to issue a certificate of appealability.

January 10, 2018

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Antonio M. Bogan,
Petitioner

RECEIVED

JAN 26 2018

Case No. 17-C-7294

v.

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

Judge Jorge L. Alonso

Jacqueline Lashbrook, Warden,
Menard Correctional Center,
Respondent.

PETITIONER'S RESPONSE TO RESPONDENT'S ANSWER

PETITIONER, Antonio M. Bogan, Pro Se, pursuant to Rule 5(c) Governing 28 U.S.C. § 2254, hereby responds to Respondent's answer to his petition for writ writ of habeas corpus. (Doc. 14).

RELEVANT STATE COURT RECORDS

Pursuant to Rule 4 Governing 28 U.S.C. § 2254, Respondent with her answer, was obligated to file the State Court Records relevant to this action. Petitioner is not sure if Respondent complied because the copy of her answer, served upon him, did not include copies of said records.

Based, however, on the referenced exhibits in Respondent's answer, Petitioner assumes the relevant records were provided to the Court. Thus, this response will reference said records as "R" for the State Trial Record, "C" for the State Common Law Record, "CO" for the State Appellate Court Opinion (previously submitted with Petitioner's Section 2254 petition as Exhibit B) and "RA" for the Respondent's Answer.

RELEVANT FACTS

State Trial Proceedings

On July 27, 2013, City of Joliet officers received information to be on the look-out for Petitioner, possibly driving a white Impala. (R. 150; CO at 4). Upon observing Petitioner's Impala pull into the parking lot of an apartment complex, an officer commenced a traffic stop of the vehicle. (R. 150; CO at 4). The Impala was occupied by three people - Petitioner's god-brother, Anton Spencer, and two of Petitioner's friends. (R. 153, 350, 354-55; CO at 4 and 15). The officer who stopped the Impala observed Petitioner sitting on the patio of one of the apartment buildings as he pulled into the parking lot behind the Impala. (R. 150-51; CO at 4). The stopping officer observed Petitioner enter the building for a moment. (R. 151-52). When Petitioner exited the building, he was immediately arrested. (R. 157-58). In the parking lot of the apartment complex was a parked, locked 1997 Oldsmobile Cutlass Supreme. (R. 152; CO at 4). The officer who stopped the Impala kept

watch over the Cutlass until other officers returned with a search warrant. (R. 152; CO at 4).

During the search of the Cutlass, on the backseat, officers discovered a black garment bag, concealing a black rifle bag, containing an AR-15 rifle. (R. 204-06; CO at 5 and 8). There were also items piled up on the rear driver's side floorboard: on top was a red plastic bag containing an expired health card with Petitioner's name on it, amongst other miscellaneous items. (R. 207-09; CO at 8); beneath the red plastic bag was a black sweatshirt containing a .22 caliber handgun and a defaced .40 caliber handgun (R. 210-15; CO at 5 and 8); and underneath the sweatshirt and handguns was a black canvas bag containing .32 caliber ammunition, .223 caliber rifle ammunition and five empty rifle magazines. (R. 215-17; CO at 5 and 8). In the front seat of the vehicle was a tax receipt and a Walmart / MoneyGram receipts bearing Petitioner's name and signature, dated more than four months prior to the search. (R. 219-20; CO at 9).

Petitioner was subsequently indicted under 2013-CF-1631 of being an armed habitual criminal (720 ILCS 5/24-1.7(a)(1) (West 2012)), ~~and~~ defacing identification marks of a firearm (720 ILCS 5/24-5(b) (West 2012)) and other alleged criminal acts. (R. 14; C. 16-23).

On October 7, 2014, Petitioner proceed to a bench trial. (R. 123). The State chose only to prosecute the armed habit-

ual criminal and defacing identification marks of a firearm charges based solely on the alleged possession of the defaced High Point .40 caliber handgun. (R. 144; C. 16 and 21; CO at 3). During trial, the State's evidenced showed that (1) the Cutlass was registered in Petitioner's name and it contained his fingerprint and articles in his name (R. 201, 207-09, 219-20; CO at 4-5, 8-11); (2) Petitioner was arrested as he exited a building, not the Cutlass, and at no time had he been observed entering, exiting or an occupant of the vehicle (R. 150-52, 157-58); (3) in order for officers to search the Cutlass, they had to forcibly enter it by use of a Slim-jim because they never found the key to the vehicle, although they thoroughly searched for it (R. 227-28; CO at 10); (4) officers discovered in Petitioner's possession, his iPhone which held two photos of the AR-15 rifle, dated 12 days before the search of the Cutlass (R. 197, 300; CO at 6 and 12); (5) a fingerprint matching Petitioner's was found on the box of .223 caliber rifle ammunition (R. 182-84, 247-62; CO at 11); and (6) the defaced .40 caliber handgun was fingerprinted, but Petitioner's fingerprints were not found on it. (C. 195).

Petitioner testified on his own behalf that the Cutlass was registered in his name but only as a favor for his god-brother, Spencer, and Spencer's girlfriend, Micah Smith, because Spencer's license was suspended and Smith never had a license. (R. 350-52; CO at 14). Petitioner further testified that Spencer was in sole possession of the Cutlass and its key on July 27, 2013, as he was the person who drove it to the apartment

Complex's parking lot, where he left it as he rode to Auto Zone with two of Petitioner's friends, in Petitioner's Impala. (R. 355-60, 381-82; CO at 13).

Based on the Cutlass being registered in Petitioner's name and "other indicators of ownership", the trial court found Petitioner guilty on both counts. (R. 433-35). The court subsequently sentenced Petitioner to 30 years for the armed habitual criminal conviction and 5 years for the defacing identification marks of a fire-arm conviction. (R. 501; CO at 20).

~~Petitioner~~

State Appeal Proceedings

Petitioner timely appealed to the Illinois appellate court, contending only that the evidence was insufficient to prove beyond a reasonable doubt his immediate and exclusive control of the Cutlass wherein the defaced .40 caliber handgun was situated and his knowledge of the weapon being in the vehicle. *People v. Bogan*, 2017 IL App (3d) 150156 (No. 3-15-0156, April 3, 2017).

The Third District appellate court affirmed Petitioner's convictions in a published opinion. (CO at 50). The court held that the evidence of the Cutlass being registered in Petitioner's name, along with the other evidence tying him to the vehicle, creates a reasonable inference of him being a "regular driver" of the vehicle, thus establishing immediate and exclusive "control"

of the vehicle. (CO at 31-42). The court further concluded that Petitioner's "regular, ongoing control" of the vehicle creates a reasonable inference of knowledge of the defaced handgun. (CO at 44-48).

Insisting that the appellate court's decision to affirm his convictions was erroneous, Petitioner filed a timely petition for rehearing, which the court promptly denied.

Going more in-depth with his argument made to the appellate court, Petitioner filed a timely petition for leave to appeal with the Illinois Supreme Court. The court denied the petition.

LEGAL ARGUMENT

Standard of Review

In a challenge to a state conviction brought under 28 U.S.C. § 2254 - if the settled procedural prerequisites for such a claim have otherwise been satisfied - the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 324 (1979). In a habeas corpus challenge to a state conviction, "all the evidence is to be considered in the light most favorable to the prosecution." *Id.* at 319.

Facts and Conclusions of Law

It is undisputed that Petitioner exhausted all state remedies, to no avail, before timely filing his petition for writ of habeas corpus. (RA at 2-6). Under 28 U.S.C. § 2254 (d), Petitioner is entitled to relief on a claim adjudicated on the merits in state court if the state court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," § 2254(d)(1), or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding," § 2254(d)(2).

Having said that, it is well established that under Illinois and federal law, "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged." *People v. Wright*, 2013 IL App (1st) 111803 at 23; *In re Winship*, 397 U.S. 358 (1970). Therefore, if after a careful examination of the evidence, the Court conclude that there was insufficient evidence of defendant's guilt beyond a reasonable doubt, the conviction must be reversed. *Wright*, 2013 IL App (1st) 111803 at 23 citing *People v. Hernandez*, 312 Ill. App.3d 1032, 1036 (2000) ("That is, a criminal conviction cannot stand on appeal if the prosecution's evidence is so weak as to create a reasonable doubt as to defendant's guilt."). Although the State appellate court knew this, it condoned the

tyrannical and unconscionable decision of the trial court and, seemingly, as punishment for proceeding Pro Se, refused to perform its duty to reverse Petitioner's unconstitutional convictions. This was a blatant miscarriage of justice on behalf of both the trial and appellate courts, with no consideration for the time and resources of the federal court, who is now being petitioned to redress a constitutional violation, which should not have occurred in the first place.

The gist of Petitioner's contention clearly lies in the basis of his convictions of armed habitual criminal and defacing identification marks of a firearm being based on his alleged possession of a defaced .40 caliber handgun, recovered from a parked, locked vehicle, registered in Petitioner's name, but not in his possession on or about the day the gun was discovered.

Pursuant to Illinois jurisprudence.:

"Possession may be actual or constructive. A person has ACTUAL POSSESSION when he has IMMEDIATE AND EXCLUSIVE CONTROL over a thing. A person has CONSTRUCTIVE POSSESSION when he lacks actual possession of a thing but has BOTH the POWER AND INTENTION TO EXERCISE CONTROL over a thing." Illinois Pattern Jury Instruction, Criminal 4.16 (West 2012) (emphasis added).

As Petitioner was clearly not found in actual possession of the defaced .40 caliber handgun, the State was burdened with

proving constructive possession of the weapon. To do so, pursuant to established Illinois law, the State was obligated to prove beyond a reasonable doubt that Petitioner had "(1) Knowledge of the presence of the weapon and (2) IMMEDIATE AND EXCLUSIVE CONTROL over the area where the weapon was found." *People v. Nampton*, 358 Ill.App.3d 1029, 1031 (2005) (CO at 27) (emphasis added). Comparing the immediate and exclusive control requisite of establishing constructive possession with Illinois Pattern Jury Instruction, Criminal 4.16, it is undeniable that ACTUAL POSSESSION of the Cutlass by Petitioner was the State's burden to carry, not the trial court's theory of ownership (R. 433-35) nor the appellate court's theories of ownership, being a regular driver and/or "any sort of control". (CO at 32, 36 and 45). Alternatively, absent a showing of actual possession of the premises containing contraband, Illinois law allows the State to prove constructive possession without personal, present dominion over the contraband, but through "an intent and capability to maintain control and dominion." *People v. Scott*, 367 Ill.App.3d 283, 285 (2006). Unequivocally, the evidence thoroughly failed to establish beyond a reasonable doubt either Petitioner's immediate and exclusive control (i.e., actual possession) or his intent and capability to exercise said control (i.e., constructive possession) of the vehicle and/or gun and his knowledge of the gun being in the vehicle.

I. The Evidence Failed To Prove Petitioner's Actual Possession of The Cutlass.

The undisputed facts at Petitioner's trial revealed that at no

time prior to Petitioner's arrest and the subsequent discovery of the defaced handgun did any of the State's witnesses observe Petitioner in actual possession of the Cutlass - he was never observed entering, exiting or an occupant of the vehicle. (R. 150-51, 157-58; CO at 4-10). In fact, Petitioner was arrested immediately upon exiting an apartment building. (R. 157-58) (It should be noted that this extremely pertinent fact is surprisingly omitted from the appellate court's opinion). Furthermore, although officers thoroughly searched Petitioner, his Impala and an apartment believed to be his, the key needed to access the Cutlass was never found, requiring officers to forcibly enter it - by use of a Slim-jim - to commence the search. (R. 227-28; CO at 10). Under these circumstances, it is completely unreasonable to believe any rational trier of fact could conclude beyond a reasonable doubt that Petitioner had immediate and exclusive control (i.e., actual possession) of the Cutlass.

In support of his contention, Petitioner cites to two Illinois authorities - *People v. Elders*, 63 Ill. App. 3d 554 (1978) and *People v. Zentz*, 26 Ill. App. 3d 265 (1975).

In *Elders*, the defendant was arrested outside his residence after threatening his wife with a rifle. *Elders*, 63 Ill. App. 3d at 555. When an officer entered the defendant's home to check on an infant child, the officer observed a rifle in plain view, which he seized. *Id.* When asking the wife if the defendant had any more weapons, the wife replied that it might be one in the defendant's car, which was parked near the residence. *Id.* Upon

receiving the wife's consent to search the car, an officer discovered a pistol in the vehicle. *Id.* The trial court granted the defendant's motion to suppress the weapons. *Id.* at 556. In affirming the court's decision to suppress the gun found in the car, and rejecting the State's contention of the defendant having constructive possession of said gun, the appellate court held:

"While we are aware that criminal possession can be either actual or constructive, and that constructive possession may be established by the ACTUAL POSSESSION of the locus in or on which the pistol is found, there was no showing in the instant cause that the defendant actually owned the automobile, had recently driven it, possessed the key to the vehicle at the time of his arrest or was in close proximity to the vehicle at the time of his arrest such that it could be said that he was in actual possession of the automobile wherein the weapon was found, and thus also in possession of the pistol." *Id.* at 559 (emphasis added).

In *Zentz*, the defendant was arrested outside a tavern. *Zentz*, 26 Ill.App.3d at 266. In the vicinity of the defendant's arrest was an Opel automobile believed to belong to the defendant. *Id.* Deputies had the vehicle towed and, pursuant to a warrant, searched it. *Id.* To get in the trunk of the vehicle, officers had to forcibly enter it by use of a pry bar because they did not find the vehicle's key on the defendant or in his belongings. *Id.* From the trunk, deputies removed a sawed-off .410 shotgun, tax forms and credit cards in the defendant's name. *Id.* At

Trial, in addition to presenting the evidence from the trunk, the State called a witness that, at times prior to the day of the vehicle's seizure and the subsequent discovery of the shotgun, placed the weapon in the defendant's hands. *Id.* at 267. In reversing the defendant's conviction due to insufficient evidence to support constructive possession of the shotgun, the appellate court concluded:

"The recital of these facts to the effect that defendant on some indefinite occasion in the past carried a sawed-off shotgun with him and that there were credit cards and tax forms in the trunk bearing defendant's name hardly suffice to establish the possession by defendant of a sawed-off shotgun contained in the trunk of a vehicle found near the scene of defendant's arrest. No evidence was presented by the State indicating defendant owned the vehicle in question, that he was in possession of the car on the day it was seized, that he ~~was~~ drove the car to the place where it was seized or that he had any control or possession of the car at or about the time of the seizure. Furthermore, when the defendant's personal effects were inventoried as a consequence of his arrest, no key to the car was discovered in defendant's possession, resulting in the . . . forcible entry into the car by the police officers." *Id.*

Although Petitioner did not cite to *Elders* in his original

brief and argument to the State appellate court, he did cite to Zentz. Petitioner's failure to cite to Elders is of no consequence since the United States Supreme Court has recognized that the "ultimate question for disposition" before the State and federal courts may be the same "despite variations in the legal theory or factual allegations urged in its support." *Picard v. O'Connor*, 404 U.S. 270, 271 (1971). Only the "Substance" of the federal claim must be presented to State Court. *Id.* at 278; *Chacon v. Wood*, 36 F.3d 1459, 1467 (9th Cir. 1994) (petitioner may "reformulate" claims made to State court). As for Zentz, one of the interesting things about that case is that it was argued and reversed before the same court Petitioner appealed to - the Third District Appellate Court of Illinois. More interesting, the State nor the appellate court presented a precedent or a logical analysis to distinguish or negate this authority. But most interesting, in the appellate court's opinion, the court briefly mentioned Zentz, but did so without analyzing it in detail and, seemingly, without fairly considering its similarity to the facts in Petitioner's case. (Co at 41). Petitioner believes this was due to the court's indifference to his decision to represent himself in this relatively simple case.

Insofar as Elders and Zentz presented facts analogous to Petitioner's case, noted in both cases are the court's observations of the State failing to present evidence of the defendants owning the vehicles wherein the weapons were found, something that the State in Petitioner's case accomplished.

Ownership of a vehicle, however, is not dispositive, and thus of no value. Pursuant to Illinois law, "it is [immediate] control of a vehicle where [contraband] is found, rather than ownership, which is PERTINENT to proving exclusive control of the area." *People v. Robinson*, 233 Ill. App. 3d 278, 287 (1992); *People v. Sesmas*, 227 Ill. App. 3d 1040, 1049 (1992); *People v. Whalen*, 145 Ill. App. 3d 125, 130-31 (1986); and *People v. Chavez*, 327 Ill. App. 3d 18, 26 (2001) (CO at 32) (emphasis added). Furthermore, under federal law, ownership alone is insufficient to establish actual or constructive possession. See *United States v. Barrera*, 547 F.2d 1250, 1255-56 (5th Cir. 1977) and *United States v. Norton*, 488 F.2d 374, 381-82 (5th Cir. 1973). Nevertheless, contrary to these authorities, Petitioner's convictions are based on his legal ownership of the Cutlass. (R. 433-35; CO at 31-32, 36).

Therefore, in light of Illinois and federal case-laws, contrary to Respondent's answer, Petitioner has made a substantial and meritorious showing that the State court's reliance on the Cutlass being registered to him as sufficient evidence to infer immediate and exclusive control (i.e., actual possession) of the vehicle is unreasonable. Further unreasonable is the appellate court's belief that Petitioner's fingerprint anywhere in the vehicle, his ~~and~~ expired ~~identification~~ ^{health card} and four month old receipts bearing his name being found in the vehicle constitutes immediate and exclusive control of the vehicle. (CO at 33-36). Logic and everyday circumstances shows that if a person is a legal owner of a vehicle, their fingerprints and items in their name can reasonably be ex-

pected to be found in the vehicle, whether or not they're in actual possession of the vehicle at the time. Thus, evidence of that nature simply goes toward ownership, nothing more. Besides, if the witness in Zentz, who placed the shotgun in the defendant's hands, and the evidence of the credit cards and tax forms in the defendant's name being found in the trunk with the shotgun, was too weak to sustain a conviction based on constructive possession, it is only reasonable to conclude that the evidence in Petitioner's case was just as weak, maybe weaker.

Furthermore, to infer IMMEDIATE AND EXCLUSIVE CONTROL of a vehicle based on a person allegedly being a "regular driver" (CO at 36) or some other hypothetical form of control, and not on ACTUAL POSSESSION of the vehicle, is erroneous and egregious, opposing clearly established Illinois and federal law. It also defies logic when everyday there are countless people who lend and/or borrow vehicles, thus relinquishing and/or obtaining actual possession of the vehicle. The appellate court even agreed to such logic. (CO at 32). Therefore, if "owner" are known to sometimes give up "complete control" of their vehicles, making actual possession non-continuous, it's only reasonable to conclude the same applies to "regular driver".

Wherefore, based on the facts, logic and supporting authorities, there can be no denying the evidence failed to establish Petitioner's immediate and exclusive control (i.e., actual possession) of the Cutlass wherein the defaced .40 caliber handgun was situated.

II. The Evidence Failed To Prove Petitioner's Constructive Possession Of The Cutlass and The Defaced Handgun

As stated earlier, pursuant to Illinois law, constructive possession can be established absent the actual possession of the premises containing contraband but through the power and intention to exercise immediate and exclusive control. Illinois Pattern Jury Instruction, Criminal 4.16 (West 2012); Scott, 367 Ill. App. 3d at 285. To be more concise, "the essence of constructive possession is not direct, physical control, but the ability to reduce an object to actual possession; otherwise, constructive possession would have no meaning at all." United States v. Quintanar, 902, 905 (8th Cir. 1998); See ~~also~~^{eg.} People v. Ortiz, 91 Ill. App. 3d 466 (1980) (affirming conviction for possession of heroin where drugs were found in a locked storage cabinet and defendant, when asked by police to open it, removed the cabinet key from his key ring and handed it to the police).

That being said, the evidence at Petitioner's trial showed that although officers thoroughly searched him, his Impala and an apartment thought to be his, they never recovered the key needed to access the Cutlass, requiring them to forcibly enter it - as officers did in Zeitz - to commence the search. (R. 227-28; CO at 10). Under these circumstances, it is completely unreasonable to believe any rational trier of fact could conclude beyond a reasonable doubt that Petitioner had both the intent and capability to reduce the vehicle and/or the defaced handgun to his actual possession.

To support his contention, Petitioner cites to an Illinois authority and a federal authority - Scott, 367 Ill. App. 3d 283 (2006) and United States v. Medrano, 5 F.3d 1214 (9th Cir. 1993).

In Scott, the arresting officer observed Scott and a codefendant, Watson, remove a golfball-sized bag of cocaine from a mailbox. Scott, 367 Ill. App. 3d at 284. Watson removed the cocaine each time and handed it to Scott, but remained in possession of the mailbox key at all times. *Id.* Upon arresting Scott and Watson, officers searched the mailbox and discovered, in addition to the golf-ball-sized bag of cocaine, a base-ball-sized bag of cocaine. *Id.* Scott was convicted of possessing both bags of cocaine. *Id.* at 285. The appellate court reversed Scott's conviction as to the larger bag of cocaine, holding:

"The State failed to establish that defendant had the capability to maintain control and dominion over the larger bag of cocaine found in the mailbox. The evidence at trial revealed that defendant never possessed or had access to the key needed to open the mailbox where the larger bag of cocaine was later found... Without the key, the mailbox containing the larger bag of cocaine was not accessible to the defendant. Defendant could not control that which he could not access." *Id.* at 286.

It should be noted that the appellate court in Petitioner's case held that the "decision in Scott is sound", but in a unconscionable decision not to apply it to Petitioner's case, it un-

reasonably distinguished it due to "the key in question was not simply missing. It was specifically in the possession of another person." (CD at 39-40). But that matters not; the relevant issue is whether the accused possessed or had access to the key at the time. Petitioner clearly did not.

Petitioner's lack of intent and capability to exercise control over the Outlass and/or defaced handgun is further supported by Medrano. There, the defendant appealed counts five and six of a multiple count conviction. Medrano, 5 F.3d at 1215-16. His appeal pertained to the possession and distribution of ephedrine, which occurred on July 12, 1990 and August 3, 1990. *Id.* On the 12th of July, the defendant met two undercover officers at a restaurant to arrange the purchase of ephedrine. *Id.* at 1216. The defendant gave one of the officers the key to his car and went into the restaurant with the other officer. *Id.* The officer with the key to the car drove it to a place where he loaded the trunk with ephedrine from a DEA stockpile. *Id.* The officer then drove the car back to the restaurant. *Id.* Upon the officers' return, the officer in the restaurant with the defendant went out to the car and retrieved the car keys. *Id.* The officer went back into the restaurant and handed the keys to the defendant. *Id.* On the 3rd of August, the same events occurred except there was no evidence of the keys being returned to the defendant. *Id.* at 1217. In reversing the defendant's conviction as to count six, the court held:

"In that final transaction, Medrano never retrieved the keys to the car and without the keys to the car he did

not have access to the ephedrine in the trunk... We conclude that the evidence... is insufficient for a trier of fact to find beyond a reasonable doubt that Medrano ever had actual or constructive possession of the ephedrine the DEA agents put in the trunk of his car during the August 3, 1990 transaction." *Id.* at 1218.

Wherefore, based on the fact that the vehicle's key in Petitioner's case is outright missing, reasonable doubt more than what the Scott and Medrano courts dealt with existed. Contrary to the appellate court's conjectured statement, there was absolutely no evidence, whatsoever, that Petitioner ever had possession or access to the vehicle's key. (CO at 37-40). Therefore, if neither Scott nor Medrano, ~~without~~ ^{without} the key, had the capability to exercise control over the contraband in their respective cases, it was impossible for Petitioner, without the key, to reduce the vehicle and/or the defaced gun to his actual possession. Petitioner simply could not control that which he could not access.

III. The Evidence Failed To Prove Petitioner's Knowledge Of The Defaced Handgun Being In The Cutlass

Lastly, Petitioner contends that the evidence presented at his State trial and before the appellate court failed to prove beyond a reasonable doubt that he was aware of the defaced handgun being in the Cutlass. Relying on Petitioner's legal ownership of the vehicle and the evidence tying him to it - Speci-

fically an expired health card, 4-month old receipts and a fingerprint on a box of ammunition correlating to the AR-15 rifle, not the defaced .40 caliber - the appellate court wrongfully inferred differently. (Co at 46-47). None of this evidence suffices to establish Petitioner having been inside the vehicle on July 27, 2013, and as such, "the mere presence of a weapon is not sufficient to prove [Petitioner] had knowledge of the weapon." Wright, 2013 IL App (1st) 111803 at 26.

To infer Petitioner's knowledge of the weapon being in the vehicle, it is well established under Illinois law that the weapon had to be discovered in an area under Petitioner's immediate and exclusive control (i.e., actual possession). See e.g., Chavez, 327 Ill. App. 3d at 26 (The presence of contraband on premises under the control of the defendant give rise to an inference of knowledge). Having already established that the evidence fails to prove Petitioner's actual possession of the Cutlass wherein the defaced handgun was situated, the knowledge inference of constructive possession summarily fails also.

However, to support their erroneous inference of Petitioner's knowledge of the defaced handgun being in the vehicle, the appellate court, relying on non-dispositive legal ownership of the vehicle, cited to Hampton, 358 Ill. App. 3d at 1032, where the court stated:

"... in order for the inference to arise of defendant's

knowledge of the handgun within the vehicle's glove compartment, the State had to demonstrate that defendant had regular, ongoing control over the vehicle that he was driving, similar to the regular and ongoing control that one has over his own living quarters. Regular and ongoing control over a vehicle might be established through proof that the defendant owns or regularly drives the vehicle."

The appellate court's reliance on Hampton, however, is vastly misapplied. Hampton - unlike Petitioner's case - clearly concerned a defendant who was actually driving the car in which the gun was concealed, thus making him, undoubtably, in immediate and exclusive control of the vehicle. *Id.* at 1030. This fact alone distinguishes Hampton from Petitioner's case, and thus adds no value to the appellate court's reasoning.

Knowledge of the defaced handgun being in the vehicle is further undermined by the fact that the key to the vehicle was in someone's - other than Petitioner's - possession, making it possible for the weapon to have been placed in the vehicle absent Petitioner's awareness. This is made more logical by the stipulated fact that the gun was fingerprinted and Petitioner's fingerprints were not found on it. (C. 195). In addition, there was absolutely no evidence, whatsoever, of Petitioner's actual possession of the vehicle nor his presence inside the vehicle on or about the day it was searched. By the key not being in Petitioner's possession, who knows, maybe

an angry associate or a scorned, spiteful girlfriend placed the gun in the vehicle and notified the police to get Petitioner charged with it. Such scenarios creates reasonable doubt.

To make Petitioner's knowledge of the defaced handgun being in the vehicle even more unlikely, Petitioner testified that his god-brother, Anton Spencer, was the actual possessor of the Cutlass on July 27, 2013. As there was no evidence to refute Petitioner's testimony, especially since the testimony of the officer who detained Spencer when he stopped Petitioner's Impala is void of any indication of him searching Spencer for the Cutlass's key and not finding it on him, reasonable doubt of Petitioner's knowledge is further bolstered. (R. 148-55; CO at 4). The appellate court, in inferring otherwise, relied on unsupported speculation and mere conjecture. (CO at 40).

Although not binding but hopefully persuasive, the federal case of *United States v. Salas*, 56 F.Supp.3d 902 (N.D. Ill. July 14, 2014) supports Petitioner's contention. There, the defendant was the sole lease-holder of a two bedroom condominium. *Id.* at 904. The defendant stayed in the master bedroom at least occasionally, while his friend, Sergio, stayed in the second bedroom regularly. *Id.* During a search of the condominium, officers discovered in the master bedroom, a defaced handgun in a nightstand and a rifle in the closet. *Id.* at 906. From the nightstand, officers recovered several bank receipts, one of which was from the defendant's account. *Id.* From the closet, officers recovered a pair of shoes and various clothing

belonging to the defendant. *Id.* In finding the defendant not guilty of knowingly possessing the guns, the court held:

"In light of the evidence regarding his connection to Unit 107, the fact that the guns were not in plain view and the lack of any evidence indicating who placed the firearms in Unit 107, and when that occurred cast doubt upon Salas's knowledge that the guns were present. Salas suggest that someone else - a guest of Sergio's, perhaps David Ayala Martinez - visited the apartment and left his firearms in the master bedroom... Because no evidence was presented as to when the firearms were placed in the master bedroom or how recently Salas stayed in the bedroom, the Court cannot find a sufficient basis to draw the inference the Government suggests, which is that Salas constructively possessed the luger and the rifle." *Id.* at 907, 910.

Salas is analogous to Petitioner's case in that the defaced handgun was not in plain view, there was no evidence as to when it was placed in the vehicle, there was no evidence as to who placed it into the vehicle and there was no evidence of Petitioner having actual possession of or having been inside the vehicle on or about July 27, 2013.

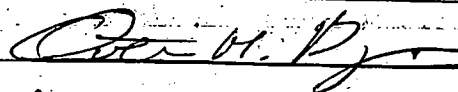
Wherefore, based on the evidence (or lack thereof) it is obvious that the inference of Petitioner's knowledge of the defaced handgun being in the vehicle is unreasonable for any trier of

Sact to conclude.

CONCLUSION

It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty. Winslip, 397 U.S. at 364. Therefore, Petitioner respectfully asks the Court to grant his petition for writ of habeas corpus, reverse his unconstitutional convictions and remand back to the ^{twelfth} ~~fourteenth~~ Judicial Circuit Court for a judgment of acquittal.

Respectfully Submitted,



Antonio M. Bogan

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P.O. Box 1000

Menard, IL 62259

Pro Se

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTONIO M. BOGAN,)	
)	
Petitioner,	)	Case No. 17-cv-7294
)	
v.	)	Hon. Jorge L. Alonso
)	
JACQUELINE LASHBROOK,)	
Warden,)	
)	
Respondent.)	

ORDER

Petitioner's motions [42, 44] to supplement his Rule 59(e) motion are granted. Petitioner's Rule 59(e) motion [40] is denied. The Court declines to issue a certificate of appealability or to change its prior decision not to issue such a certificate.

STATEMENT

On January 14, 2019, the Court denied the habeas petition filed by petitioner Antonio M. Bogan ("Bogan"). (Familiarity with that decision is assumed.) Bogan has since filed, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, a motion to alter or amend the judgment. Bogan also filed with this Court two motions to supplement his motion to alter or amend the judgment.

In the meantime, Bogan filed with the Seventh Circuit Court of Appeals a petition for writ of mandamus. Although the filing of a notice of appeal divests a district court of jurisdiction, the filing of a petition for writ of mandamus does not. *Bates v. Sullivan*, 6 Fed.Appx. 425, 427 n. 1 (7th Cir. 2001) ("a petition for a writ of mandamus does not deprive a district court of jurisdiction over the underlying case"); *Ellis v. United States Dist. Ct. for the W.D. Wash.*, 360 F.3d 1022, 1023 (9th Cir. 2004) ("The district court does not lose jurisdiction over a case merely because a litigant files an interlocutory petition for an extraordinary writ [of mandamus]."); *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1416 (5th Cir. 1995) (rule that "a perfected appeal from a final judgment . . . terminates the jurisdiction of the district court . . . does not apply to petitions for writ of mandamus"). Thus, the Court can consider the motions Bogan filed in this Court, notwithstanding his filing of a petition for writ of mandamus with the Court of Appeals.

The Court first considers Bogan's motions to supplement. Essentially, Bogan wants to add legal argument to his motion to alter or amend the judgment. The motions to supplement are granted.

Next, the Court considers Bogan's motion to alter or amend the judgment denying his habeas petition. To obtain relief under Rule 59(e), a party must "demonstrate a manifest error of law or fact or present newly discovered evidence." *Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014). Such a motion is not, however, a second bite at the apple. A Rule 59(e) motion is "not to be used to 'rehash' previously rejected arguments," *Vesely*, 762 F.3d at 666, and "it certainly does not allow a party to . . . advance arguments that could and should have been presented to the district court prior to the judgment." *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996).

Petitioner argues that the Court made a manifest error of law when it considered only one of two possible grounds for granting habeas relief. Specifically, petitioner points out that, under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), an application for writ of habeas corpus filed on behalf of a person in state custody can be granted only if the state court's adjudication:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). The statute goes on to say "a determination of a factual issue made by a State court shall be presumed to be correct" and that the applicant "shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1).

Bogan is correct that the Court did not consider whether the adjudication of Bogan's case was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," beyond noting that the state court's findings of fact were "presumed to be correct" because "Bogan neither disputes them nor presents clear and convincing evidence to rebut the presumption of correctness." [Docket 38 at 1-2]. Bogan is incorrect that that was a manifest error. Nowhere in Bogan's petition for habeas relief or in his reply in support thereof did Bogan argue that the State court made an "unreasonable determination of the facts in light of the evidence" under § 2254(d)(2).

Instead, in support of his habeas petition, Bogan made a § 2254(d)(1) argument that the decision was an unreasonable application of established federal law. *See, e.g., Goudy v. Basinger*, 604 F.3d 394, 399 (7th Cir. 2010) ("A state court unreasonably applies federal law if it identifies the correct legal principle but unreasonably applies it to the facts of the case."). Specifically, Bogan argued that the state court's decision violated the Due Process Clause, which protects against conviction except upon proof beyond a reasonable doubt of the necessary facts. Bogan was, in essence, arguing about the way the state court applied the law to the facts of his case. Bogan went on to argue the various ways in which he believed the evidence was not sufficient for any rational trier of fact to have found the essential elements of the alleged crime

beyond a reasonable doubt. The question of whether the state court unreasonably applied the sufficiency-of-the-evidence test to the facts of Bogan's case is a question under § 2254(d)(1). *See, e.g., Woodland v. Lemke*, Case No. 12 C 0015, 2014 WL 37785 at *4-6 (N.D. Ill. Jan. 6, 2014) (“[A]ffording the state court’s decision the deference required by § 2254(d), in addition to the deferential review already afforded to the state court under the *Jackson* standard, the Court is compelled to deny habeas relief on this claim under § 2254(d)(1).”) (internal citation omitted); *Brown v. Superintendent*, Case No. 06-cv-685, 2006 WL 2990427 at *3 (S.D. Ind. Oct. 19, 2006) (“[T]he Indiana Court of Appeals’ evaluation of this claim provided both [petitioner] and the State of Indiana with fair process and constituted reasoned, good-faith decision-making when applying *Jackson*’s ‘no rational trier of fact’ test. The determination by the Indiana Court of Appeals that the evidence was sufficient did not run afoul of the AEDPA standard as expressed in 28 U.S.C. § 2254(d)(1), and hence [petitioner] is not entitled to relief as to his first claim.”).

Bogan did not argue in his habeas petition or in his reply that the state court got the actual facts wrong. *See, e.g., Morgan v. Hardy*, 662 F.3d 790, 798 (7th Cir. 2011) (“A petitioner’s challenge to a state court decision based on a factual determination under § 2254(d)(2) will not succeed unless the state court committed an ‘unreasonable error,’ and § 2254(e)(1) provides the mechanism for proving unreasonableness. If a petitioner shows that the state court determined an underlying factual issue against the clear and convincing weight of the evidence, the petitioner has ‘gone a long way towards proving that it committed unreasonable error.’”) (citing *Ward v. Sternes*, 334 F.3d 696, 703-704 (7th Cir. 2003)). Because Bogan did not make that argument, it was not manifest error for the Court not to have considered it.

The closest Bogan comes to arguing the state made an unreasonable error as to the facts is in his Rule 59(e) motion (and this is a generous reading thereof), when he argues the state failed to meet its burden of proof, because no witnesses testified to seeing Bogan drive the vehicle. Bogan then argues that the arresting officer testified that Bogan was arrested “as he exited the apartment building” and that the state court left out this fact. [Docket 40 at 4]. This argument suffers from a number of problems. First, the best reading of this argument is that it is a rehashing of the § 2254(d)(1) due process/sufficiency-of-the-evidence argument Bogan already made (and that this Court already rejected). *Vesely*, 762 F.3d at 666 (a Rule 59(e) motion is “not to be used to ‘rehash’ previously rejected arguments”). Second, arguments raised for the first time in a Rule 59(e) motion are waived. *Moro*, 91 F.3d at 876 (a Rule 59(e) motion “certainly does not allow a party to . . . advance arguments that could and should have been presented to the district court prior to the judgment.” Finally, even if the argument could be interpreted as an argument under § 2254(d)(2) and even if Bogan had made the argument in his original petition, the Court still would have rejected it. The Court does not agree that the state court ignored the fact that Bogan was away from the vehicle when he was arrested. The state court specifically recognized as much and noted that Bogan was arrested while sitting on the porch. [Docket 1 at 27, 38]. For purposes of control of the vehicle, there is no difference between Bogan’s being arrested while sitting on the porch and his being arrested while exiting the building to which the porch was attached. Either way, he was away from the vehicle, which is the fact the state court acknowledged. That does not constitute an unreasonable determination of the facts.

Bogan also asks that the Court reconsider its decision not to issue a certificate of appealability. Bogan has not made a substantial showing of a denial of a constitutional right, so

the Court will not reconsider that decision. The remainder of Bogan's Rule 59(e) motion is a rehashing of the sufficiency-of-the-evidence argument he already made and this Court already rejected.

In short, Bogan has not demonstrated a manifest error of law or fact or presented newly-discovered evidence. Accordingly, his Rule 59(e) motion to alter or amend the judgment is denied. For the same reasons as before [Docket 38 at 11], the Court will not issue a certificate of appealability as to this decision.

SO ORDERED.....

ENTERED: April 4, 2019.....

A handwritten signature in black ink, consisting of a large, stylized 'J' and 'A' intertwined, with a horizontal line extending from the 'J'.

JORGE L. ALONSO
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTONIO M. BOGAN, (R29595),

Petitioner,

v.

JACQUELYN LASHBROOK,
Warden

Respondent.

Case No. 17 CV 7294

Judge Jorge L. Alonso

MEMORANDUM OPINION AND ORDER

Following a bench trial in the Circuit Court of Will County, Petitioner Antonio M. Bogan was convicted in 2014 of being an armed habitual criminal (720 ILCS § 5/24-1.7(a)(1) (West 2012)), and of defacing the identification marks of a firearm (720 ILCS § 5/24-5(b) (West 2012)). [Dkt 15-3 at 2.] Bogan brings this *pro se* habeas corpus petition pursuant to 28 U.S.C. § 2254. [Dkt 1.] For the reasons stated below, the Court denies the petition and declines to issue a certificate of appealability.

BACKGROUND

The following facts are taken from the state court record [dkt 15] and the Illinois Appellate Court's decision on direct appeal, *People v. Bogan*, 2017 Ill. App. (3d) 150156 [dkt 15-3].¹ The state court's factual findings are presumed to be correct for purposes of habeas review because

¹ Although Bogan notes in his reply that he did not receive a courtesy copy of the record Respondent filed with her Answer, he nevertheless is aware of them given that he accurately refers to them throughout his submission. [See dkt 17.]

Bogan neither disputes them nor presents clear and convincing evidence to rebut the presumption of correctness. *See* 28 U.S.C. § 2254(e)(1); *Schriro v. Landrigan*, 550 U.S. 465, 473-74 (2007); *McManus v. Neal*, 779 F.3d 634, 649 (7th Cir. 2015).

The evidence at trial established that on July 27, 2013, Joliet police officer John Byrne received information to be on the lookout for Bogan, possibly driving a white Chevrolet Impala. [Dkt 15-3 at 2.] Officer Byrne testified that upon observing the Impala, he stopped the vehicle but Bogan was not one of the three people found inside. [*Id.* at 2.] Byrne then saw Bogan on the porch of an apartment complex next to where the vehicle stop was initiated. [*Id.* at 2.] Byrne observed a green Oldsmobile Cutlass parked in the same complex, and after learning that Bogan was the registered owner of the Cutlass, he watched the vehicle until a search warrant could be obtained. The State submitted evidence of the vehicle registration for the Cutlass showing that it was registered to Bogan with an address of 1911 Moore Street, Apartment No. 103. [*Id.* at 3.]

Officer Chris Delaney, an evidence technician for the Joliet Police Department, testified that he was directed to search the Cutlass parked at 1911 Moore Street. Delaney and Detective Jeffrey German conducted the search. [*Id.*] Delaney testified that they discovered the following items in its back seat: a .22-caliber Ruger handgun, a “black .40 caliber semi-automatic handgun Hi-Point,” an “AR-15 style rifle,” a black canvas bag containing five 30-round magazines for the rifle, a box of .32-caliber ammunition, and a box of .223-caliber ammunition for the rifle. [*Id.* at 2.] He testified that the rifle was found in its own bag, while the two handguns were found wrapped in a sweatshirt. [*Id.*] Delaney also found latent fingerprints on the box of rifle ammunition, which were submitted for examination. [*Id.*] Two were suitable for comparison. [*Id.*] Michael Murphy, an expert in the field of fingerprint examination, testified that one print from the box matched Bogan. [*Id.* at 3.] He did not testify as to the other. [*Id.*]

Detective German also testified at the trial. [*Id.* at 2-3.] According to German, when he first arrived at 1911 Moore Street, Bogan had been handcuffed in the back of a squad car, holding an iPhone. [*Id.* at 2.] German testified that he collected the iPhone for evidence. [*Id.*]

As to the search of the Cutlass, German testified that across the back seat was a black garment bag containing a rifle case with a rifle inside. [*Id.* at 3.] On the top of a pile of things found on the driver's side floor board, officers found a red plastic bag containing numerous items including a health insurance card bearing Bogan's name. [*Id.*] Under the bag was a black sweatshirt wrapped around two handguns: a .40-caliber semiautomatic, and a .22-caliber Ruger revolver. [*Id.*] German testified that the serial number on the .40-caliber semiautomatic handgun had been defaced. [*Id.*] He added that beneath the handguns was a zipped bag, containing five empty rifle magazines, and two boxes of ammunition. [*Id.*] Officers found a number of papers in the front seat of the Cutlass, including a March 3, 2013 towing receipt signed by Bogan for the vehicle, and a March 18, 2013 Walmart receipt bearing Bogan's name. [*Id.*] In addition, German testified, they found a crossbow and arrows in the trunk. [*Id.*]

German testified that he obtained Bogan's consent to search his apartment, and participated in the search. [*Id.* at 2-3.] The State submitted a form documenting Bogan's consent, and identifying his address as 1911 Moore Street, Apartment No. 103. [*Id.*] German testified that he entered Bogan's apartment using keys Bogan had provided. [*Id.* at 3.] In the apartment, German found a handmade cardboard target that contained five holes he believed had been made by arrows. [*Id.* at 2.] Although both Bogan and his apartment were searched, officers never found the keys to the Cutlass. [*Id.* at 3.]

Joliet Police Officer Chris Botzum testified as to the evidence extraction he performed on Bogan's phone. [*Id.*] Four photographs were extracted and submitted into evidence by the State.

[*Id.*] Two were pictures of the rifle found in the backseat of the Cutlass, dated July 15, 2013, and two were of Bogan, dated March 31, 2013 and June 22, 2013. [*Id.*] Following Botzum's testimony, the State submitted into evidence two certified convictions showing that Bogan had previously been convicted twice of armed robbery. [*Id.*]

Upon the conclusion of the State's case, Bogan testified that the Cutlass belonged to Anton Spencer, his close friend of approximately 25 years. [*Id.*] Bogan testified that Spencer had driven the Cutlass to Bogan's apartment, and that Spencer had left from there in Bogan's vehicle, the white Impala, with Bogan's mechanic Timothy Potter and Potter's girlfriend. [*Id.*] According to Bogan, they were taking the Impala to a garage to have its brakes replaced when the vehicle was stopped by police. [*Id.*] Bogan explained that although he purchased the Cutlass in his own name in March 2013, he did so with money belonging to Spencer and as a favor to him because neither Spencer nor his girlfriend Micah Smith had a valid driver's license. [*Id.*]

Bogan testified that he had not been in the Cutlass since March 2013. [*Id.*] As to his expired insurance card and other papers found in the Cutlass, Bogan surmised that they had gotten into the vehicle through Spencer who also had access to Bogan's apartment. [*Id.* at 3-4.] As to the other items, Bogan explained that Spencer had taken him to Walmart in the Cutlass once, and that Bogan had retrieved the vehicle for Spencer when it was impounded because the vehicle was registered in Bogan's name. [*Id.* at 4.] Bogan further testified that the AR-15 rifle belonged to Spencer, and that Spencer had both sent him pictures of it and brought it that day to show it to him. [*Id.*] He admitted that he had touched a box of ammunition, but he denied ever putting any weapons into the Cutlass. [*Id.*]

On cross-examination, Bogan denied originally telling German that he had bought the Cutlass from "Michael Smith." [*Id.*] He explained that he had actually said "Micah Smith," the

name of Spencer's girlfriend. [*Id.*] On rebuttal, German testified that Bogan had initially denied ever being in the Cutlass before, and that Bogan had claimed he had never even seen it. [*Id.*] According to German, it was only when Bogan was confronted with the registration in his own name that he said that he had previously owned the vehicle but that he had sold it two weeks prior to a "Mike Smith" for whom he had no contact information. [*Id.*] German testified that he was certain Bogan used the name Mike Smith not Micah, and that he used the pronoun "he" when referring to Smith. [*Id.*]

The Circuit Court found Bogan guilty of both charged offenses. [*Id.*] He was sentenced to 30 years' imprisonment for being an armed habitual criminal, and five years' imprisonment for defacing the identification marks of a firearm, with the time to run concurrently. [*Id.*] Thereafter, Bogan filed a direct appeal in which he argued that the evidence at trial was insufficient to support his conviction. [*Id.* at 2, 4.] The Illinois Appellate Court considered and rejected Bogan's arguments, and affirmed his conviction. Bogan petitioned for leave to appeal to the Illinois Supreme Court on the same basis, but his petition was denied. [Dkt 15-8, 15-9.] It is undisputed that Bogan has exhausted all state court remedies.²

Standard of Review

A writ of habeas corpus cannot be issued unless the petitioner demonstrates that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a federal court may only grant habeas relief if the state court's decision on the merits "resulted in a decision that was

² Bogan also unsuccessfully brought a Section 1983 action challenging the reasonableness of the searches of the Cutlass and his apartment that resulted in his arrest, *Bogan v. German*, No. 14 CV 7849, 2017 WL 4339797 (N.D. Ill. Sept. 29, 2017), which is currently on appeal. [See *Bogan v. German*, 7th Cir. Case No. 18-2927.]

contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or the state court decision was “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(1) and (2). The standard under Section 2254(d) is “difficult to meet,” and “highly deferential.” *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (quotations omitted).

“A federal habeas court may issue the writ under the ‘contrary to’ clause if the state court applies a rule different from the governing law set forth in [the Supreme Court’s] cases, or if it decides a case differently than [the Supreme Court has] done on a set of materially indistinguishable facts.” *Bell v. Cone*, 535 U.S. 685, 694 (2002)). “An ‘unreasonable application’ occurs when a state court identifies the correct legal principle from [the Supreme Court’s] decisions but unreasonably applies that principle to the facts of Petitioner’s case.” *Rompilla v. Beard*, 545 U.S. 374, 380 (2005) (internal quotation omitted).

“As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011). This “‘highly deferential standard [] demands that state-court decisions be given the benefit of the doubt.’” *Cullen*, 563 U.S. at 181 (quoting *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (per curiam)).

DISCUSSION

According to Bogan, there is insufficient evidence to support his convictions because the State failed to establish he possessed a defaced firearm. [Dkt 1.] Specifically, he says, the State could not have proven possession because the defaced gun was taken from a parked, locked vehicle for which no key was ever found, and he had testified at trial that Spencer had control of the vehicle's key on the day of his arrest. The State Court erred, he says, in concluding that the vehicle's registration in his name and evidence placing him in the vehicle at various times in the past was sufficient to establish constructive possession of either the vehicle or the subject gun. Without the vehicle's key, Bogan argues, he lacked the power to constructively possess the vehicle or the defaced handgun, and it conflicts with federal law and is unreasonable for any rational trier of fact to have concluded otherwise.³ [Dkt 1, 17.]

Under Illinois law, a person commits the offense of being an armed habitual criminal "if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of" certain enumerated offenses. 720 ILCS § 5/24-1.7(a) (West 2012). A person commits the offense of defacing the identification marks of a firearm if he "possesses any firearm upon which any such importer's or manufacturer's serial number has been changed, altered, removed or obliterated." 720 ILCS 5/24-5(b) (West 2012). Because the State presented no evidence that Bogan received, sold, or transferred a firearm, it was required to prove beyond a reasonable doubt that he possessed one.

³ Bogan also argues that the State failed to establish his actual possession of the subject handgun. [Dkt 17.] The Illinois Appellate Court considered whether Bogan was guilty of constructive, rather than actual, possession. [Dkt 15-3 at 5.] In its decision, the Illinois Appellate Court observed that Bogan's pro se brief was "cogent and extremely well-argued." [Dkt 15-3 at 7.] This Court makes the same observation as to his submissions here.

This Court focuses on the state court of appeals decision as the last reasoned state court decision on the merits. *Wilson v. Sellers*, ___ U.S. ___, 138 S.Ct 1188, 1192 (2018). On appeal, the Illinois Appellate Court correctly identified and properly stated the standard of its review. [Dkt 15-3 at 5 (reviewing the evidence in the light most favorable to the prosecution and asking “whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt”).] Accordingly, its decision was not “contrary to” clearly established federal law as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d)(1); *Bell*, 535 U.S. at 694.

Because Bogan was not found in actual possession of the gun, the Court observed the State had to establish constructive possession by showing that Bogan had control over the Cutlass and that he knew that the defaced handgun was in the vehicle. [Dkt 15-3 at 5.] It then reviewed the State’s evidence, including: (1) Bogan’s ownership of the vehicle, (2) the presence of his insurance card and receipts with his signature, (3) his fingerprints on the box of ammunition found in the backseat floorboard, (4) the fact that the rifle found in the backseat matched the picture of a rifle found on Bogan’s phone and dated 12 days before the search, (5) the fact that Bogan’s insurance card and the box of ammunition bearing his fingerprint were found in a “stack of evidence” directly above and below the defaced handgun, and (6) the fact that a crossbow and target was found in the trunk, while a homemade target with apparent arrow holes was found in Bogan’s apartment. [*Id.* at 6-9.] It considered and rejected Bogan’s argument that he did not have a vehicle key. [*Id.* at 8 (“Insofar as the lack of a key militates against an inference of control, it certainly does not serve to fully negate the evidence presented by the State that does tend to demonstrate control.”)] It reviewed the trial court’s finding of Bogan’s regular, ongoing control of the Cutlass and inference of knowledge based on his numerous connections to the Cutlass and the precise

location of the evidence found within it, observing that his health insurance card and the ammunition box with his fingerprint were found directly above and below the subject .40 caliber handgun. [*Id.* at 9.] It concluded that the inference deriving from control of the vehicle combined with the inference arising from the sheer unlikelihood of Bogan's lack of knowledge of the item in the middle of a stack of items that were directly linked to him allowed the trial court properly to conclude beyond a reasonable doubt that Bogan had knowledge of the .40-caliber handgun. [*Id.*]

The Supreme Court's decision in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), which asks if "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" governs Bogan's sufficiency of the evidence claim. Sufficiency of the evidence claims under *Jackson* "face a high bar in federal habeas proceedings because they are subject to two layers of judicial deference." *Coleman v. Johnson*, 566 U.S. 650, 651 (2012) (per curiam). This is because on direct appeal, "[a] reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury." *Id.* (Internal quotations omitted). "[O]n habeas review, a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was 'objectively unreasonable.'" *Id.*

According to Bogan, it was unreasonable for the state court to infer his control of the Cutlass and knowledge of the .40-caliber handgun because he was not observed in the vehicle, there was no evidence of his ability to exercise control over the gun because the key was never found on him or in his home, and he testified that another person, Spencer, had possession of it. He further argues that it was unreasonable to infer his knowledge of the .40-caliber handgun's presence in the Cutlass despite the evidence linking him to the vehicle because none of it

established he had been in the vehicle the day it was stopped, or showed his immediate, exclusive control of it.

As the Illinois Appellate Court observed, however, “[c]onstructive possession is frequently proven through circumstantial evidence,” and knowledge of the presence of contraband can be inferred from control over the area where the contraband was found. [Dkt 15-3 at 5.] Here, the court found highly probative of control Bogan’s ownership of the Cutlass, and the numerous pieces of evidence tying him to it: the receipts bearing his name, his health insurance card, his fingerprint on the box of ammunition, the rifle found in the backseat matching a photo on his phone, and the crossbow and arrows found in the trunk corresponding with the homemade target with apparent arrow holes found in his apartment. [*Id.* at 6.] It expressly considered and rejected Bogan’s emphasis on his testimony that Spencer had the key to the Cutlass, reasoning that this merely militated against an inference of control, as opposed to negating the other evidence. [*Id.* at 8.]

When viewed in the light most favorable to the State, a rational factfinder could have easily inferred beyond a reasonable doubt from the evidence presented that Bogan had control over the vehicle and constructive possession of the gun. *See Jackson*, 435 U.S. at 319. Bogan thus cannot establish that the state court’s application of the rule of *Jackson* falls “well outside the boundaries of permissible differences of opinion.” *See Kamlager v. Pollard*, 715 F.3d 1010, 1016 (7th Cir. 2013) (internal quotations omitted). Controlling Supreme Court precedent holds that habeas relief is not available if the evidence, when viewed in the light most favorable to the prosecution, would allow a “rational trier of fact . . . [to find] the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. at 319. Because the evidence presented at Bogan’s trial readily satisfies this standard, the state court’s rejection of his sufficiency of the evidence claim

was not “an unreasonable application of the clearly established law announced in *Jackson*. Accordingly, the petition is denied.

The Court declines to issue a certificate of appealability under Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts. A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). An applicant has made a “substantial showing” where “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *See Resendez v. Knight*, 653 F.3d 445, 446-47 (7th Cir. 2011) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Because Bogan has not made such a showing, the Court declines to issue a certificate of appealability.

Bogan is advised that this is a final decision ending his case in this Court. If Bogan wishes to appeal, he must file a notice of appeal with this Court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). Bogan need not bring a motion to reconsider this Court’s ruling to preserve his appellate rights. However, if Bogan wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. *See* Fed. R. Civ. P. 59(e). The time to file a motion pursuant to Rule 59(e) cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A Rule 60(b) motion suspends the

deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi).

CONCLUSION

For all of the reasons discussed above, Bogan's habeas corpus petition [1] is denied on the merits. The Clerk is instructed to enter a judgment in favor of Respondent and against Petitioner. The Court declines to issue a certificate of appealability. Any pending motions are terminated as moot.

Date: 1/14/2019



Jorge L. Alonso
United States District Judge

PC SCAN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

4/12/2019

RC

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

Antonio M. Bogan,
Petitioner,

v.

Jacqueline Lashbrook, Warden,
Menard Correctional Center,
Respondent.

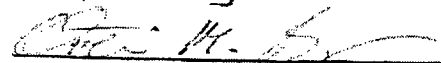
Case No. 17-C-7294

Judge Jorge L. Alonso

NOTICE OF APPEAL

NOTICE is hereby given that Antonio M. Bogan, Petitioner, in the a-
bove-captioned case appeals to the United States Court of Appeals
for the Seventh Circuit from the United States District Court for the
Northern District of Illinois, Eastern Division, for the denial of his 28
U.S.C. § 2254 petition for writ of habeas corpus, entered on the 14th
day of January, 2019.


Respectfully Submitted,



Antonio M. Bogan R29595
10930 Lawrence Road
Sumner, IL 62406

DECLARATION

Pursuant to 28 U.S.C. § 1746, the undersigned declares under penalty
of perjury that he is a named party in the above action, that he has
read the above document and that the information contained therein is
true and correct to the best of his knowledge.


Antonio M. Bogan

4-12-19

Date

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Antonio M. Bogan,
Petitioner - Appellant.

v.

Deanna M. Brookhart,
Respondent- Appellee.,

Appeal from the U.S. District Court
for the Northern District of Illinois

No. 17-C-7294

Honorable Jorge L. Alonso,
Judge Presiding

MOTION FOR CERTIFICATE OF APPEALABILITY

PETITIONER, Antonio M. Bogan, pro se, moves the Court for a Certificate of appealability, and in support states :

Legal Standard for the Issuance of a Certificate of Appealability

Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), a habeas petitioner cannot appeal from a district court judgment unless he obtains a certificate of appealability ("COA"). 28 U.S.C. § 2253. A petitioner is entitled to a COA if he makes "a substantial showing of a denial of a constitutional right." § 2253(A)(2).

To make a Substantial Showing, "Obviously the petitioner need not show that he would prevail on the merits. He has already failed in that endeavor." Barefoot v. Estelle, 463 U.S. 880, 893 (1983). Rather, the petitioner need only show that the petition contains an issue (1) that is "debatable among jurist of reason"; (2) "that a court could resolve in a different manner"; or (3) that is "adequate to deserve encouragement to proceed further." *Id.*; See also Slack v. McDaniel, 529 U.S. 473, 484 (2000). Therefore, doubts as to whether to issue a COA should be resolved in favor of the petitioner. Quire v. McAdory, 322 F.3d 980 (7th Cir. 2003).

Applying these principles to Petitioner's motion, a COA should be issued for the following grounds :

1. The District Court Denied Petitioner a Full, Fair and Impartial Hearing When It Failed (and Later Refused) To Review His Habeas Petition Under 28 U.S.C. § 2254(d)(2) Also.

On April 24, 1996, the AEDPA came into effect with the stroke of the Presidential pen. Among other changes, the new law amended 28 U.S.C. § 2254(d), the habeas corpus statute under which Petitioner sought relief. Specifically, the new § 2254(d) established two standards of review in which habeas relief may be granted - (1) if the State court decision was "Contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or (2) if the State court decision was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings." Thus, as controlling authority, review of a habeas petition should be pursuant to not just one standard of review, but both - especially if the petition is premised on both. In opposition to this, the District Court violated Petitioner's Fifth Amendment rights to due process and equal protection of the laws when it adjudicated Petitioner's habeas claim under § 2254(d)(1) only, and completely disregarded review under (d)(2), although Petitioner sought review under both standards.

Petitioner believes the District Court's decision to adjudicate his habeas petition under only one standard of review was arbitrary and retaliatory. This is based on the fact that, in considering the petition, the District Court exercised inordinate delay in adjudicating the petition - far more than 14 months - which caused Petitioner to file with this Court a petition for writ of mandamus seeking to compel the District Court to forthwith and justly decide his habeas petition. See In re Antonio Bogan, 18-3680 (Doc. 35). It is also a fact that, before this Court ruled on Petitioner's mandamus petition, the District Court rendered a decision on the habeas petition that consisted of only one standard of review - § 2254(d)(1). (see Doc. 38 at pg. 7-11). Noticing that the District Court failed to give his habeas petition the full, fair and impartial hearing it was entitled to, Petitioner - pursuant to Civil Rule 59(e) - asked the District Court to alter or amend its judgment. (see Doc. 40 and 44-45). After more than 60 days had elapsed with no ruling on his Civil Rule 59(e) motion, Petitioner felt like the District Court

was, again, exercising inordinate delay, which prompted him to file with this Court another petition for writ of mandamus. see In re Antonio Bogan, 19-1566 (Doc. 46). Once again, before this Court ruled upon Petitioner's mandamus petition, the District Court decided the Civil Rule 59(e) motion. (Doc. 47).

In its order denying Petitioner's Civil Rule 59(e) motion, the District Court admitted that it did not review the habeas petition under § 2254(d)(2). (see Doc. 47 at pg. 2, para. 6). The District Court reasoned that "[n]owhere in [Petitioner's] petition for habeas relief or in his reply in support thereof did [he] argue that the State Court made an 'unreasonable determination of the facts in light of the evidence' under § 2254(d)(2)." *Id.* According to the District Court, "[Petitioner] did not argue in his habeas petition or in his reply that the State Court got the actual facts wrong... The closest [he] comes to arguing the State made an unreasonable error as to the facts is in his Rule 59(e) motion... when he argues the State failed to meet its burden of proof, because no witness testified to seeing [him] drive the vehicle. *Id.* at pg. 3, para. 2-3. The District Court's conclusions, however, opposes the pleadings that ~~was~~ were before it.

In viewing Petitioner's habeas petition and reply in support thereof, it is axiomatic that liberal construction is to be accorded material drawn pro se, including petitions for habeas corpus and other forms of post-conviction relief. Erickson v. Pardus, 551 U.S. 89, 94 (2007); United States ex rel. Jones v. Franzen, 676 F.2d 261, 266 (7th Cir. 1982). Thus, pro se pleadings are to be held to less stringent standards than formal pleadings drafted by lawyers due to the lack of legal expertise that accompanies their preparation. Hughes v. Rowe, 449 U.S. 5, 9-10 (1980); Jones, 676 F.2d at 266. As such, although Petitioner did not argue that the State Court made an "unreasonable determination of the facts in light of the evidence" in those exact words, had the District Court held his pleadings to a less stringent standard than an attorney and liberally construed them, it would have noticed that they implied such an argument.

This is clearly observed in Petitioner's contention of the State Courts' erroneous conclusion (fact) of him having immediate and exclusive control (i.e., actual possession) of a locked, parked vehicle containing a defaced handgun. Petitioner supported this by arguing facts in the State Court

record that showed at or about the time of his arrest, he was not in possession of the vehicle or its key; neither did any of the State's witnesses observe him entering, exiting, an occupant of or in close proximity to the vehicle at any time. (Doc. 1 at pg. 5, 10; and Doc. 17 at pg. 8, 10, 14-15). This was also the gist of Petitioner's argument in his Civil Rule 12(c) motion for judgment on the pleadings. (Doc. 18). Thus, the District Court deliberately misstated the facts when it held that Petitioner did not argue review under § 2254(d)(2), especially in light of it acknowledging Petitioner's argument. (see Doc. 38 at pg. 9, para. 3). Consequently, reasonable jurists could differ on the contention that Petitioner - in addition to review under § 2254(d)(1) - was not seeking review of his habeas claim under § 2254(d)(2) also.

Therefore, Petitioner respectfully asks the Court to grant him a COA due to him making a substantial showing of the District Court denying him a full, fair and impartial hearing in violation of his Fifth Amendment rights to due process and equal protection of the laws.

2. The State Court Failed To Prove Every Element of the Charges (Argument Under § 2254(d)(2)) Which Equates To a Violation of Petitioner's Fourteenth Amendment Rights (Argument Under § 2254(d)(1)).

The gist of Petitioner's habeas claim lies in the basis of his convictions of armed habitual Criminal (720 ILCS 5/24-1.7(a)(1) (West 2012)) and defacing identification marks of a firearm (720 ILCS 5/24-5(b) (West 2012)) being based on his alleged constructive possession of a defaced High Point .40 caliber handgun, recovered from a locked, parked vehicle registered in his name, but in which he did not have the key to or actual possession of on or about the day the weapon was found. Petitioner contended that his convictions are erroneous in that the State Courts concluded that he had "immediate and exclusive control" of the vehicle containing the defaced handgun, when the evidence presented clearly established otherwise.

Petitioner's argument is premised on the fact that, had he taken a jury trial as opposed to a bench trial, the jury would have been instructed as follows:

"Possession may be actual or constructive. A person has ACTUAL POSSESSION when he has IMMEDIATE AND EXCLUSIVE CONTROL

over a thing. A person has constructive possession when he lacks actual possession of a thing but has both the power and intention to exercise control over a thing." see Illinois Pattern Jury Instruction, Criminal ("IPI") 4.16 (West 2012) (emphasis added).

As such, this instruction was binding on the trial judge as it would have been on the jury. It should not be inapplicable simply because Petitioner opted to trust the trial judge to be fair and impartial, the same way the jury would have been expected to be.

That being said, it is well established under both Illinois and Federal law that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged." People v. Carpenter, 228 Ill. 2d 250, 264 (2008); In re Winship, 397 U.S. 358, 364 (1970). Consequently, the State is strictly obligated to prove all the elements of the offense. Ford v. Ahitow, 104 F.3d 926, 938 (7th Cir. 1997).


In his petition for habeas relief, Petitioner contended that the State of Illinois has him incarcerated in violation of his Fourth Amendment right to due process as a result of their failure to prove every element of his alleged constructive possession of the defaced handgun. In support, Petitioner cited to Illinois case-law that mandates constructive possession of the defaced weapon to be established by Petitioner's "(1) knowledge of the presence of the weapon and (2) immediate and exclusive control of the area where the weapon was found." (Doc. 17 at pg. 9, para. 1) (It should be noted that Petitioner's habeas petition also argues insufficient evidence to establish the "knowledge" requisite of constructive possession, and constructive possession of the vehicle itself, but for purposes of this request for a COA, he is only arguing the "immediate and exclusive control" requisite of establishing constructive possession.) Petitioner further contended that, comparing the "immediate and exclusive control" requisite of establishing constructive possession of the defaced handgun with the IPI 4.16, it is undeniable that the State was obligated to prove Petitioner's "actual possession" of the vehicle in which the weapon was situated. See e.g., People v. Elders, 63 Ill. App. 3d 554, 559 (1978) (constructive possession may be established by the actual possession of the locus in or on which the pistol is found);

People v. Billings, 367 N.E.2d 337, 344 (1977) (same); People v. White, 338 N.E.2d 81, 89 (1975) (same); People v. Zentz, 26 Ill. App.3d 265 (1975); see also People v. Schmalz, 251 Ill. Dec. 489, 493 (2003) (Actual possession exists when the defendant exercises "immediate and exclusive control" over an object.) Petitioner, then, pointed to facts that clearly showed that the State failed to meet its burden of proving his "immediate and exclusive control" (i.e., actual possession) of the vehicle containing the defaced handgun by citing to the State Court record where not one of the State's witnesses observed him entering, existing, an occupant of or in close proximity to the vehicle at any time prior to his arrest. (Doc. 17 at pg. 9-10).

Petitioner went on to contend that he is convicted solely on his legal ownership of the vehicle and the evidence found therein, which placed him in the vehicle months prior to the defaced handgun being found. (Doc. 17 at pg. 13-15). Petitioner argued that this is illegal because it opposes Illinois law that holds when contraband is found in a vehicle, it is immediate control (i.e., actual possession) of the vehicle, rather than ownership, which is pertinent to proving exclusive control of the area containing the contraband. (Doc. 17 at pg. 13-14). Even this Court has held similarly. For example, in United States v. Garrett, 903 F.2d 1105, 1112 (7th Cir. 1990), this Court held in footnote 8: "The evidence viewed in a light most favorable to the government may have supported the Conclusion that Mr. Garrett owned the Car in which the drugs were found... However, ownership of the property in which contraband is found is not essential to a finding of possession of the contraband." This Court supported its holding with multiple case-law, including United States v. Rush, 890 F.2d 45, 51 (7th Cir. 1989) (alleged prejudicial testimony concerning defendant's ownership of the car in which gun was found was "marginal relevance" because "actual control" rather than "legal ownership" was key factor.) Consequently, in light of IPI 4.16 as well as Illinois and Federal case-law, reasonable jurists could differ on the State and District Courts' determination of Petitioner's legal ownership of the vehicle containing the defaced handgun, only, being objectively reasonable under both § 2254(d)(1) and (2) to sustain his convictions.

Therefore, Petitioner respectfully asks the Court to grant him a COA due to him making a Substantial Showing of him being incarcerated in violation of his Fourteenth Amendment rights to due process and equal protection of the laws.

Respectfully Submitted,


Antonio M. Bogan R29595
10930 Lawrence Road
Sumner, IL 62466

No. 19-1690

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Antonio M. Bogan,
Petitioner - Appellant,

v.

Deanna M. Brookhart,
Respondent - Appellee.

Appeal from the U.S. District Court
for the Northern District of Illinois

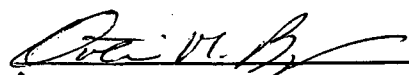
No. 17-C-7294

Honorable Jorge L. Alonso,
Judge Presiding.

NOTICE OF FILING

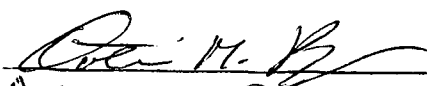
To : Office of the Illinois Attorney General
Attn: Mr. Eldad Z. Malamuth
100 West Randolph Street, 12th Floor
Chicago, IL 60601

You are hereby notified that on April 23, 2019, the undersigned submitted for filing the original and three copies of the attached Motion for Certificate of Appealability with the Court of Appeals for the Seventh Circuit, 219 South Dearborn Street, Room 2722, Chicago, IL 60604, and a courtesy copy with the above-named opposing Counsel by depositing in the U.S. mail, proper postage prepaid, at Lawrence Correctional Center.


Antonio M. Bogan R29595
10930 Lawrence Road
Sumner, IL 62466

CERTIFICATE OF SERVICE

Under penalty of perjury as provided by law pursuant to 28 U.S.C. § 1746, the undersigned certifies that the above-stated information is true and correct to the best of his knowledge.


Antonio M. Bogan

April 23, 2019
Date

No. 19-1690

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Antonio M. Bogan,
Appellant-Movant,

v.

Appeal from the U.S. District Court
for the Northern District of Illinois

No. 17-C-7294

Deanna M. Brookhart,
Appellee-Respondent,

Honorable Jorge L. Alonso,
Judge Presiding.

SUPPLEMENT TO MOTION FOR CERTIFICATE OF APPEALABILITY

APPELLANT, Antonio M. Bogan, Supplements his motion for appealability, filed with this Court on April 29, 2019, to add an additional ground warranting the grant of a COA.

3. The District Court denied Bogan a full and fair habeas hearing when it failed - and subsequently refused - to review his challenge to the sufficiency of the evidence in accordance with all the provisions of Jackson v. Virginia, 443 U.S. 307 (1979).

In Bogan's habeas petition, one claim was brought - a challenge to the sufficiency of the evidence. (Doc. 1). In Jackson v. Virginia, the Supreme Court established a standard of review for such claims brought under the federal habeas corpus statute. In so doing, the Court concluded that "in a challenge to a state criminal conviction brought under 28 U.S.C. § 2254 - if the settled procedural prerequisites for such a claim have otherwise been satisfied - the applicant is entitled to habeas relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of

guilt beyond a reasonable doubt." Jackson, 443 U.S. at 324. Relevant to any rational trier of fact determining guilt is whether the essential elements of the offense is established beyond a reasonable doubt. Id. at 319. Thus, the Court mandated that this "Standard must be applied with explicit reference to the Substantive elements of the Criminal offense as defined by State law." Id. at 324 n.16.

In Jackson, before concluding that the petitioner was not entitled to habeas relief, the Court put into practice the Standard of review it was establishing. First, the Court referenced the Substantive elements - under Virginia law - needed to prove the offense petitioner was convicted of. Id. at 309. Next, the Court recounted the facts and evidence adduced at the petitioner trial. Id. at 309-11. Then, the Court analyzed the facts and evidence under Virginia law to ensure that the Substantive elements of the offense was proven beyond a reasonable doubt. Id. at 324-26.

In Bogan's case, a thorough review of his Jackson claim was not performed. Specifically, a review of the District Court's memorandum opinion shows that the only steps the Court performed - consist with Jackson - was recounting the facts and evidence adduced at Bogan's trial (Doc. 38 at pg. 1-5) and referencing possession of a firearm as being an essential element for proving the offenses of armed habitual criminal and defacing identification marks of a firearm. (Doc. 38 at pg. 7). Nonetheless, the Court failed - and later refused (Doc. 58, 60) - to explicitly reference the Substantive elements for proving possession of the defaced handgun - as defined by Illinois law - which is mandated by the Jackson Court. see Jackson, 443 U.S. at

The District Court (like all federal courts) was bound to follow the decision of the Supreme Court unless it was powerfully convinced that the Court would overrule it at the first opportunity. See Colby v. J. C. Penny Co., 811 F.2d 1119, 1123 (7th Cir. 1987). Instead of following Jackson - or explaining why it was departing from this well-established, long-standing standard of review - the Court denied Bogan's petition without independently assessing whether Bogan's convictions are in compliance with Illinois authorities defining the substantive elements of the offenses. In so doing, the Court did not render full and fair consideration of the gist of Bogan's argument - that the State failed to meet its burden of proving Bogan's (1) immediate and exclusive control (i.e., actual possession) of the vehicle containing the defaced handgun and (2) knowledge of the weapon being in the vehicle, as required by Illinois law. see Argument 2 in Bogan's Motion for Certificate of Appealability.

A thorough review under the Jackson standard is essential to according Bogan a full and fair hearing pursuant to § 2254(d)(1), which "requires federal courts to take into account the care with which the state court considered the subject." Lindh v. Murphy, 96 F.3d 856, 871 (7th Cir. 1996). Therefore, by Bogan's convictions being based on his alleged constructive possession of a defaced handgun, to be in compliance with Jackson and § 2254(d)(1), the District Court was obligated to explicitly reference Illinois authorities defining the substantive elements of constructive possession and ensuring that Bogan's convictions comply with them. see e.g., Lavin v. Red-nour, 457 Fed. Appx. 568, 571-72 (7th Cir. 2012) (analyzing the

Jackson Claim with references to Illinois case-law defining the substantive elements of the offense); United States ex rel Conde v. Scott, 224 F.Supp. 2d 1203, 1206-08 (N.D. Ill. Sept. 3, 2002)(same); Ford v. Ahitow, 104 F.3d 926, 939 (7th Cir. 1997)(same); and Gamez v. Acevedo, 106 F.3d 192, 198 (7th Cir. 1997)(same). In the absence of doing so, the Court failed to take into account the care with which the State appellate court considered Bogan's Challenge to the sufficiency of the evidence. In other words, the Court neglected to ascertain whether "the State Court provided fair process and engaged in **REASONED, GOOD-FAITH DECISION-MAKING** when applying Jackson's 'no rational trier of fact' test." Gamez, 106 F.3d at 198 (emphasis added). Consequently, Bogan was deprived of a full and fair habeas hearing under Jackson and § 2254(d)(1).

Based on the foregoing (and the reasons in his Motion for Certificate of Appealability), Bogan prays the Court to issue a COA to accord him a full and fair habeas hearing.

Respectfully Submitted,



Antonio M. Bogan
Register No. R29595
110930 Lawrence Road
Sumner, IL 62466

No. 19-1690

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Antonio M. Bogan,
Appellant-Movant,

v.

Deanna M. Brookhart,
Appellee-Respondent,

Appeal from the U.S. District Court
for the Northern District of Illinois

No. 17-C-7294

Honorable Jorge L. Alonso,
Judge Presiding.

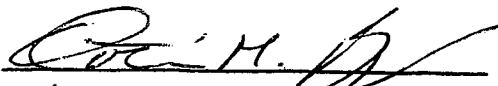
NOTICE OF FILING

To: Office of the Illinois Attorney General
Attn: Mr. Eldad Z. Malamuth
100 West Randolph Street, 12th Floor
Chicago, IL 60601

You are hereby notified that on August 21, 2019, the undersigned submitted for filing the original and three copies of the attached Motion for Leave to Supplement Motion for Certificate of Appealability and Supplement to Motion for Certificate of Appealability with the Court of Appeals, 219 South Dearborn Street, Room 2722, Chicago, IL 60604, and a courtesy copy with the above-named opposing counsel by depositing in the U.S. mail, proper postage prepaid, at Lawrence Correctional Center.

CERTIFICATE OF SERVICE

Under penalty of perjury, the undersigned declares that the above-stated information is true and correct to the best of his knowledge.



Antonio M. Bogan
Register No. R29595
10930 Lawrence Road
Sumner, IL 62466

8-21-19

Date

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTONIO M. BOGAN,)	
)	
Petitioner,	)	Case No. 17-cv-7294
)	
v.	)	Hon. Jorge L. Alonso
)	
JACQUELINE LASHBROOK,)	
Warden,)	
)	
Respondent.)	

ORDER

Petitioner's second Rule 60(b) motion [61] for relief from judgment is denied.
Petitioner's request [62] for preliminary ruling on his Rule 60(b) motion is denied as moot.

STATEMENT

On January 14, 2019, the Court denied the habeas petition filed by petitioner Antonio M. Bogan ("Bogan"). (Familiarity with that decision is assumed.) On April 4, 2019, the Court denied Bogan's Rule 59(e) motion to alter or amend the judgment. Bogan timely filed a notice of appeal. On August 13, the Court denied Bogan's first Rule 60(b) motion. Bogan has now filed a second Rule 60(b) motion.

Ordinarily, the filing of a notice of appeal divests a district court of jurisdiction. *Ameritech Corp. v. International Bhd. of Elec. Workers, Local 21*, 543 F.3d 414, 418 (7th Cir. 2008). Nonetheless, "[d]istrict courts possess limited authority to deny Rule 60(b) motions while an appeal is still pending." *Ameritech*, 543 F.3d at 418-19; *see also Brown v. United States*, 976 F.2d 1104, 1110-11 (7th Cir. 1992).

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, a district court may relieve a party of a judgment "for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud . . . misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied . . . ; or
- (6) any other reason that justifies relief.

Fed.R.Civ.P. 60(b).

Petitioner has not shown that relief under Rule 60(b) is appropriate. Bogan argues that the Court erred by not applying Illinois law for the “substantive elements of the criminal offense, as is required by *Jackson v. Virginia*, 443 U.S. 307, 324 n. 16 (1979). The Court disagrees. To begin with, although this Court is required to apply the substantive criminal law of Illinois (which it did), it is not required to cite Illinois cases when applying that law. Courts routinely, when applying Illinois law, cite federal caselaw, because federal courts are as capable as state courts of laying out the elements of Illinois law on any given issue. In any case, this Court cited Illinois law [Docket 38 at 7] and applied Illinois law [Docket 38 at 7-10] when considering Bogan’s habeas petition.

Bogan also argues that the Court erred in not granting a certificate of appealability, because the failure to apply Illinois law constituted a mistake. Again, the Court disagrees.

Bogan’s second Rule 60(b) motion is denied.

Date: 12/12/2019



Jorge L. Alonso
United States District Judge

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted December 9, 2019

Decided December 26, 2019

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 19-1690

ANTONIO BOGAN,
Petitioner-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 17 C 7294

DEANNA BROOKHART,
Respondent-Appellee.

Jorge L. Alonso,
Judge.

ORDER

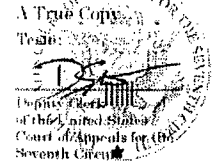
Antonio Bogan has filed a notice of appeal from the dismissal as untimely of his petition under 28 U.S.C. § 2254, and an application for a certificate of appealability. Having reviewed the final order of the district court and the record on appeal, we find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is denied. Bogan's motions to proceed in forma pauperis, for appointment of counsel, and to supplement his application for a certificate of appealability also are denied.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

January 15, 2020

CERTIFIED COPY



Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 19-1690

ANTONIO BOGAN,
Petitioner-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 17 C 7294

DEANNA BROOKHART,
Respondent-Appellee.

Jorge L. Alonso,
Judge.

ORDER

On consideration of the petition for rehearing, the judges on the original panel have voted to deny rehearing. It is, therefore, ORDERED that the petition for rehearing is DENIED.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 27, 2020

Mr. Antonio M. Bogan
Prisoner ID #R29595
10930 Lawrence Road
Sumner, IL 62466


Re: Antonio Bogan
v. Deanna Brookhart, Warden
No. 19-8109

Dear Mr. Bogan:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris".

Scott S. Harris, Clerk