

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 13, 2021

Decided January 22, 2021

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 20-3126

MARCELLUS THOMAS,
Petitioner-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 19 C 5847

SONJA NICKLAUS,
Respondent-Appellee.

John Z. Lee,
Judge.

ORDER

Marcellus Thomas has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254. We construe the notice as an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal and find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, Thomas's request for a certificate of appealability, his request to proceed in forma pauperis, and his request for counsel are denied.

Appendix B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MARCELLUS THOMAS,

Petitioner,

v.

JOHN VARGA, Warden,

Defendants.

)
)
)
)
)
)
)
)
)

19 C 5847

Judge John Z. Lee

ORDER

Eight years ago, Marcellus Thomas was convicted of state crimes before an Illinois court and sentenced to a term of imprisonment that he is still serving today. Alleging prosecutorial misconduct and errors at trial, Thomas now moves to set aside his conviction pursuant to 28 U.S.C. § 2254 [1]. He also moves for attorney representation [10]. For the following reasons, the motions are denied.

I. Background

In 2012, Thomas was convicted in state court of armed violence, aggravated battery with a deadly weapon, and aggravated battery resulting in great bodily harm. 2254 Pet. at 1, ECF No. 1. He was sentenced to eleven years in prison. *Id.* The state appellate court affirmed petitioner's conviction, and on May 28, 2014, the state supreme court denied his petition for leave to appeal. *Id.* at 2. Thomas did not petition the United States Supreme Court for a writ of certiorari. *Id.*

While Thomas's direct appeal was pending, he filed a state habeas petition. *Id.* at 13. The trial court dismissed Thomas's petition on procedural grounds in July

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2013, and then denied his motion to reconsider in December 2013. *Id.*; see Docket, *People v. Thomas*, No. 12 MR 115 (Lee Cnty. Cir. Ct.), ECF No. 9-3.

Thomas filed his first federal habeas petition in June 2014. Initial § 2254 Pet., *Thomas v. Chandler* at ECF No. 1, No. 14 C 4815 (N.D. Ill.). The Court dismissed the petition without prejudice in January 2015 because Thomas had not exhausted his state court remedies. 1/30/2015 Minute Entry, *Thomas v. Chandler* at ECF No. 12, No. 14 C 4815 (N.D. Ill.). The Court advised Thomas that, under state law, he had “until 2/26/15 to file a post-conviction petition in state court raising the claims he asserts here.” *Id.*

Thomas did not subsequently file a habeas petition in state court. Instead, in September 2016—twenty months after this Court denied Thomas’s initial federal habeas petition—he filed a petition for relief from judgment under 735 Ill. Comp. Stat. 5/2 1401. Summary Order ¶ 1, *People v. Thomas*, No. 2-170096 (Ill. App. Ct. Feb. 5, 2019)), ECF No. 9-5. The trial court dismissed the petition, *id.*; the state appellate court affirmed, *id.* ¶ 6; and the state supreme court denied leave to appeal, Order Denying § 2-1401 Pet., ECF No. 9-6.

This Court received Thomas’s current habeas petition on August 27, 2019. In it, Thomas argues, *inter alia*, that his indictment was invalid due to prosecutorial misconduct and that the trial court erred in permitting certain witnesses to testify. 2254 Pet. at 3–13. He also seeks appointment of counsel. Mot. for Att’y Representation, ECF No. 10. Respondent contends that Thomas’s petition should be dismissed as untimely. Resp. to 2254 Pet., ECF No. 9.

II. Analysis

Section 2254 petitions are subject to a one-year limitation period. 28 U.S.C. § 2244(d)(1). That period begins to run from the latest of four events, with the only relevant event in this case being “the date on which the judgment of conviction becomes final.” *Id.* § 2244(d)(1)(A); *De Jesus v. Acevedo*, 567 F.3d 941, 943 (7th Cir. 2009).

Because Thomas did not petition for a writ of certiorari following the state supreme court’s May 24, 2014 denial of his petition for leave to appeal, his judgment of conviction became final on August 23, 2014, when the 90-day period to file a certiorari petition expired. *See Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009); S. Ct. R. 13(1). Thomas thus filed the instant § 2254 petition nearly five years after his judgment of conviction became final.

Thomas’s state and federal filings over the past several years do not entitle him to statutory tolling of the one-year limitation period under § 2244(d)(2). His state habeas proceeding concluded in 2013, before his judgment was final and thus before the limitation period began running. His initial § 2254 petition does not merit tolling either. *See Duncan v. Walker*, 533 U.S. 167, 172 (2001) (“A properly filed federal habeas petition does not toll the limitation period.”). And proceedings on Thomas’s September 2016 state petition for relief from the judgment did not toll the limitation period because that petition was filed well after the § 2254 deadline had passed. *See De Jesus*, 567 F.3d at 943 (“A state proceeding that does not begin until the federal year has expired is irrelevant.”).

As for equitable tolling, Thomas's instant petition and subsequent filings do not argue, and otherwise contain no indication, that some "extraordinary circumstance" stood in his way to prevent timely filing. *Boulb v. United States*, 818 F.3d 334, 339–40 (7th Cir. 2016). Nor does Thomas contend or suggest that new evidence establishes that he was actually innocent of his crimes of conviction. See *McQuiggin v. Perkins*, 569 U.S. 383, 394–95 (7th Cir. 2013). As a result, equitable tolling is not appropriate here.

Because Thomas's § 2254 petition was filed four years after the limitation period had lapsed, the petition is dismissed as untimely. Moreover, Thomas's motion for appointment of counsel also is denied. The Court typically provides a defendant with counsel in a habeas proceeding when an evidentiary hearing is needed or if the interests of justice so require. See 18 U.S.C. 3006A(a)(2)(B); *Martel v. Clair*, 565 U.S. 648, 659 (2012). Because Thomas's petition was filed five years after his judgment of conviction became final, and statutory and equitable tolling are not applicable, appointment of counsel is not warranted in this case. See *Wilson v. Duckworth*, 716 F.2d 415, 418 (7th Cir. 1983); *Brown v. Melvin*, No. 18C1440, 2019 WL 978470, at *3 (N.D. Ill. Feb. 28, 2019).

III. Conclusion

For the foregoing reasons, Thomas's § 2254 petition and motion for attorney representation are denied. Furthermore, because the timeliness of Thomas's petition is not debatable, a certificate of appealability under 28 U.S.C. § 2253(c) also

is denied. *See Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000); *Lavin v. Rednour*, 641 F.3d 830, 832 (7th Cir. 2011).

ENTERED: 9/23/20

A handwritten signature in black ink, appearing to read "John Z. Lee", written over a horizontal line.

John Z. Lee

United States District Court Judge



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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Marcellus Thomas
Reg. No. M-29118
Dixon Correctional Center
2600 North Brinton Street
Dixon IL 61021

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
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May 22, 2019

In re: People State of Illinois, respondent, v. Marcellus D. Thomas,
petitioner. Leave to appeal, Appellate Court, Second District.
124602

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 06/26/2019.

Very truly yours,

Carolyn Taft Gosboll

Clerk of the Supreme Court

No. 2-17-0096
Summary Order filed February 5, 2019

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee, RA)	
)	
v.)	No. 11-CF-2531
)	
MARCELLUS D. THOMAS,)	Honorable
)	Linda Abrahamson,
Defendant-Appellant. PA)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

SUMMARY ORDER

¶ 1 Following a jury trial in the circuit court of Kane County, defendant, Marcellus D. Thomas, was convicted of armed violence (720 ILCS 5/33A-2(a) (West 2010)). The conviction was based on evidence that defendant attempted to rob Juan Carlos Prado while armed with a knife. On May 31, 2012, the trial court sentenced defendant to an 11-year prison term. Defendant appealed and we affirmed his conviction. *People v. Thomas*, 2013 IL App (2d) 120798-U. On September 29, 2016, defendant filed a petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West (2016))) for relief from his conviction. The State

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moved to dismiss the petition, and the trial court granted the motion, concluding that the petition was untimely. Defendant appeals from the dismissal of the petition.

¶ 2 The Office of the State Appellate Defender has been appointed to represent defendant in this appeal. In accordance with *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and *People v. Lee*, 251 Ill. App. 3d 63 (1993), counsel has filed a motion for leave to withdraw, in which he states that he has reviewed the record and has concluded that this appeal presents no arguably meritorious issue. Counsel served a copy of the motion on defendant. The clerk of this court notified defendant of the motion and informed him that he would be afforded an opportunity to present, within 30 days, any additional matters to this court. We granted defendant's motion to extend that time, and defendant filed a response to counsel's motion.

¶ 3 Defendant's section 2-1401 petition asserted that: (1) because the victim was a felon, there was no probable cause for defendant's arrest; (2) the indictment had been obtained through fraud and perjury and was therefore void; (3) defendant had acted in self-defense and in defense of his family; (4) the prosecutor amended one of the charges against defendant without "going back" to the grand jury, and the indictment was therefore void; (5) because of the timing of the amendment, defendant lacked sufficient time to prepare a defense; (6) it was error to try defendant on multiple charges composed of the same elements; (7) the State failed to prove that defendant had a knife or, if he did, the size of the knife; (8) the State failed to prove defendant's guilt beyond a reasonable doubt; (9) defendant should not have been found guilty of "intent crimes"; (10) defendant was not permitted to impeach Prado with evidence of certain criminal convictions; (11) defendant was improperly impeached with evidence of a misdemeanor conviction; (12) during defendant's trial, Prado was in the custody of a law enforcement officer pursuant to a falsified writ of *habeas corpus*; (13) a witness who was not excluded from the courtroom testified after defendant's testimony; (14) the prosecutor's closing argument was

appears before it.” *People v. Raczkowski*, 359 Ill. App. 3d 494, 497 (2005). Whether defendant was guilty of armed violence was a justiciable matter, so the trial court had subject matter jurisdiction. Because defendant appeared before the trial court, it also had personal jurisdiction. Accordingly, the judgment was not void. Defendant’s remaining claims are based on trial error rather than voidness. Those claims are subject to, and barred by, the two-year limitations period for section 2-1401 petitions.

¶ 6 In his response, defendant essentially reiterates his claims. He insists that, because his indictment was void, the trial court lacked subject matter and personal jurisdiction. However, as noted, the trial court’s jurisdiction simply did not require a valid indictment. Because the trial court did not lack jurisdiction, its judgment was not void. And defendant’s remaining claims, which do not assert a lack of jurisdiction (and thus do not assert voidness), are time-barred.

¶ 7 Dissatisfied with counsel’s representation here, defendant asks that we allow counsel to withdraw and that we appoint a different attorney to represent defendant. However, defendant is not entitled to appointed counsel of his choice. See *People v. DeRossett*, 262 Ill. App. 3d 541, 544 (1994).

¶ 8 Because defendant’s claims are either meritless or time-barred, there is no arguably meritorious issue to raise in this appeal. We therefore grant counsel’s motion to withdraw and we affirm the judgment of the circuit court of Kane County.

¶ 9 Affirmed.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

March 1, 2021

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 20-3126

MARCELLUS THOMAS,
Petitioner-Appellant,

v.

SONJA NICKLAUS,
Respondent-Appellee.

} Appeal from the United States
District Court for the Northern
District of Illinois, Eastern
Division.

} No. 19 C 5847
John Z. Lee, *Judge.*

Order

Petitioner-Appellant filed a petition for rehearing on February 11, 2021. Both of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

June 27, 2019

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FIRST DISTRICT OFFICE
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Mr. Marcellus Thomas
Reg. No. M-29118
Dixon Correctional Center
2600 North Brinton Avenue
Dixon, IL 61021

Re: No. 124602 - People State of Illinois, respondent, v. Marcellus D. Thomas, petitioner.

Dear Mr. Thomas:

On June 24, 2019, the Clerk's office received your *pro se* "Motion/Reconsideration", which was addressed to Justice Lloyd A. Karmeier and forwarded to this office for response. Please be advised that Judges in the State of Illinois are precluded by the Code of Judicial Conduct from initiating, permitting, or considering *ex parte* communications or considering other communications made to the judge outside the presence of the parties concerning a pending or impending court proceeding.

The Clerk's office is returning your unfiled reconsideration document as it is not fully compliant for filing. If it is your intention to seek reconsideration of the Court's May 22, 2019 denial of your petition for leave to appeal, you must provide our office and opposing counsels with the following documents:

- A "Motion for Leave to file Motion for Reconsideration of the Denial of Petition for Leave to Appeal", asking the Court to allow your Motion for Reconsideration to be filed and giving your reasons why reconsideration is warranted;
- A proper Proof of Service/Notice of Filing for the "Motion for Leave", serving all opposing counsels;
- A proposed draft order for the "Motion for Leave", phrased in the alternative;
- A "Motion for Reconsideration of the Denial of Petition for Leave to Appeal", (which you could recaption and use your enclosed "Motion/Reconsideration" document to serve as this motion);
- A proper Proof of Service/Notice of Filing for the "Motion for Reconsideration", serving all opposing counsels; and
- A proposed draft order for the "Motion for Reconsideration", phrased in the alternative.

Service upon your opposing counsels should be mailed to:

- Hon. Kwame Raoul, Attorney General of Illinois, Criminal Appeals Division, 100 West Randolph Street, 12th Floor, Chicago, IL 60601;
- State's Attorney of Kane County, 37W777 Route 38, Suite 300, Kane County Judicial Center, St. Charles, IL 60175; and
- State's Attorneys Appellate Prosecutor, Second Judicial District, 2032 Larkin Avenue, Elgin, IL 60123.

Enclosed with this letter are samples of a Proof of Service/Notice of Filing and proposed draft order for your assistance with recreating those documents.

You are advised that the Supreme Court's mandate issued to the Appellate Court, Second District, on June 26, 2019; therefore, please prepare and submit the above-referenced compliant documents as soon as possible.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

CTG/jak

Enclosures

cc: AG Criminal
SA Kane
SAAP Elgin

Appendix F

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
 Case Number: DS 09102 Count # 1 Attorney for the State _____
 Judicial District: _____ Judicial Division 9 Counsel for Defendant: Michele Lynn
 State of Tennessee _____
 vs. _____
 Defendant: Marcellus Thomas Alias: _____
 Date of Birth: 11-8-80 Sex: M Race: B SSN: 408-37-5335 R&I#: 290591
 Indictment Filing Date: _____ TDOC # _____ TBI Document Control # _____

JUDGMENT

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment.
 On the 26 day of Jan, 2006, the defendant:

<input checked="" type="checkbox"/> Pled Guilty <input type="checkbox"/> Nolo Contendere <input type="checkbox"/> Guilty Plea - Pursuant to 40-35-313 Is found: <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Not Guilty by Reason of Insanity <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Bench Trial	<input type="checkbox"/> Dismissed/Nolle Prosequi <input type="checkbox"/> Retired/Unapprehended Defendant Indictment: Class(circle one) 1 st <u>A</u> B C D <u>E</u> <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd Offense: <u>WPCS w/Int</u> Amended Charge: _____ Offense Date: <u>7-8-05</u> County: <u>Shelby</u> Conviction Offense: <u>WPCS</u> Is this conviction offense methamphetamine related? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No TCA #: <u>39-17-418</u> Sentence Imposed Date: <u>1-26-06</u> Conviction: Class(circle one) 1 st <u>A</u> B C D E <input type="checkbox"/> Felony <input checked="" type="checkbox"/> Misd
--	---

After considering the evidence, the entire record, & all factors in T.C.A. Title 40 Chapter 35, all of which are incorporated by reference herein, the Court's findings & rulings are:

Sentence Reform Act of 1989 Offender Status(Check One) Release eligibility(Check One)			Concurrent with: _____ Consecutive to: _____	Pretrial Jail Credit Period(s): From _____ to _____ From _____ to _____ From _____ to _____ From _____ to _____
<input type="checkbox"/> Mitigated <input type="checkbox"/> Standard <input type="checkbox"/> Multiple <input type="checkbox"/> Persistent <input type="checkbox"/> Career <input type="checkbox"/> Repeat Violent	<input type="checkbox"/> Mitigated 20% <input type="checkbox"/> Mitigated 30% <input type="checkbox"/> Standard 30% <input type="checkbox"/> Multiple 35% <input type="checkbox"/> Persistent 45% <input type="checkbox"/> Career 60% <input type="checkbox"/> Violent 100%	<input type="checkbox"/> Multiple Rapist 100% <input type="checkbox"/> Child Rapist 100% <input type="checkbox"/> Repeat Violent 100% <input type="checkbox"/> 1 st Degree Murder <input type="checkbox"/> School Zone <input type="checkbox"/> Gang Related		
Sentenced To: <input type="checkbox"/> TDOC <input type="checkbox"/> County Jail <input checked="" type="checkbox"/> Workhouse Sentence Length: _____ Years _____ Months <u>1</u> Days _____ Hours _____ Weekends <input type="checkbox"/> Life <input type="checkbox"/> Life w/out Parole <input type="checkbox"/> Death Mandatory Minimum Sentence Length: <u>39-17-417, 39-13-513, 39-13-514</u> in School Zone or <u>55-10-401</u> DUI 4 th Offense Period of incarceration to be served prior to release on probation: _____ Months _____ Days _____ Hours _____ Weekends Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: _____ % (Misdemeanor only) Alternative Sentence: <input type="checkbox"/> Probation <input type="checkbox"/> Diversion <input type="checkbox"/> Community Based Alternative-Specify _____ _____ Years _____ Months _____ Days Effective: _____				
Court Ordered Fees and Fines: \$ _____ Criminal Injuries Compensation Fund \$ _____ Sex Offender Tax \$ _____ Court Costs Cost to be Paid by _____ \$ <u>750.00</u> Fine Assessed <input type="checkbox"/> Defendant <input type="checkbox"/> State \$ _____ Other _____			Restitution: Victim Name _____ Address _____ Total Amount \$ _____ Per Month \$ _____ <input type="checkbox"/> Unpaid Community Service: _____ Hours _____ Days _____ Weeks _____ Months	

☐ The Defendant having been found guilty is rendered infamous and ordered to provide a biological specimen for the purpose of DNA analysis.
 Special Conditions ☐ Pursuant to 39-13-524 the defendant is sentenced to community supervision for life following sentence expiration.

time served
Count 2 is NPNC
 W. Mark Ward
 Judge's Name _____ Judge's Signature _____
 Attorney for State/Signature (optional) _____ Defendant's Attorney/Signature (optional) _____
 Date of Entry of Judgment 1-26-06
 Defendant's Signature _____





A-2

OFFICE OF THE STATE APPELLATE DEFENDER
SECOND JUDICIAL DISTRICT

One Douglas Avenue, Second Floor
Elgin, Illinois 60120
Telephone: 847/695-8822 • Fax: 847/695-8959
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MICHAEL J. PELLETIER
STATE APPELLATE DEFENDER

February 11, 2013

THOMAS A. LILIEN
DEPUTY DEFENDER

PAUL J. GLASER
ASSISTANT DEPUTY DEFENDER

STEVEN E. WILTGEN
ASSISTANT APPELLATE DEFENDER

Mr. Marcellus Thomas
Register No. M29118
Dixon Correctional Center
2600 North Brinton Avenue
Dixon, IL 61021

Re: App. Ct. No. 2-12-0798

Dear Mr. Thomas:

I should begin working on your case this spring. At that time, I will look at the record with an eye towards investigating your complaints.

Please be patient. While I am not pre-judging the matter, in honesty, I can tell you that I have been practicing criminal law for almost thirty years and the chances that a person will obtain relief based on some misconduct in obtaining an indictment are very small.

Sincerely,

Steven E. Wiltgen
Assistant Appellate Defender

Another letter turn



A-2

OFFICE OF THE STATE APPELLATE DEFENDER
SECOND JUDICIAL DISTRICT

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MICHAEL J. PELLETIER
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THOMAS A. LILIEN
DEPUTY DEFENDER

PAUL J. GLASER
ASSISTANT DEPUTY DEFENDER

STEVEN E. WILTGEN
ASSISTANT APPELLATE DEFENDER

March 20, 2014

Mr. Marcellus Thomas
Register No. M29118
Dixon Correctional Center
100 Hillcrest Road
Dixon, IL 61021

Dear Mr. Thomas:

I am responding to a letter which you sent to Ms. Kerby.

If you filed a state habeas case, you would have 30 days in which to appeal an adverse decision. The notice of appeal would look just like the one in your criminal case, with the exception that it would identify the judgment appealed from as a habeas matter.

There is no time limit for a challenge to a void judgment. To be candid, in my professional opinion, there is no way the indictment in your case is void, but you are free to disagree.

I hope that this helps you out.

Sincerely,

Steven E. Wiltgen
Assistant Appellate Defender

1 subjects, one ultimately identified as Marcellus
2 Thomas. Marcellus asked him if they wanted to drink
3 together He did. They go to Marcellus's apartment
4 at 132 South State Street.

5 After they were drinking, he said that he
6 went to go leave and that is when Thomas had started
7 to fight with him. The fight spilled out in the
8 hallway for that building and he had stabbed him with
9 a kitchen-type knife.

10 Q. Through your investigation do you come
11 across an individual by the name Rolando Romero?

12 A. Yes.

13 Q. And does Rolando Romero eventually tell you
14 that he was inside of the apartment where Juan Carlos
15 Prado and Marcellus Thomas were?

16 A. Yes.

17 Q. Does Rolando Romero then relate to you that
18 he, in fact, saw the defendant Marcellus Thomas with
19 a knife, at some point sees an altercation between
20 Mr. Prado and Marcellus Thomas and he then sees
21 Marcellus Thomas stab Mr. Prado with that knife?

22 A. Yes.

23 Q. And all of this occurred in Kane County,
24 Illinois?

1 A. Yes.

2 Q. And subsequently through your investigation
3 did you find out that the altercation between
4 Mr. Prado and Marcellus Thomas, was it over the
5 alleged sale of a cellular telephone?

6 A. Yes.

7 Q. And that cellular telephone, was it ever
8 determined that it was taken from Juan Carlos Prado?

9 A. It was not actually taken.

10 Q. He had that on him; correct?

11 A. Yes.

12 Q. And the injuries that you saw to Juan
13 Carlos Prado, were those sustained through your
14 investigation and to your knowledge by a single knife
15 stab wound to the chest?

16 A. Yes.

17 Q. And what was the extent, as far as you
18 know, of those injuries to Juan Carlos Prado?

19 A. He had to be rushed to St. Joseph Hospital
20 and then once at St. Joseph Hospital, he was in the
21 emergency room. He had to be attended to by numerous
22 medical personnel. He was rushed to surgery for
23 life-saving surgery.

24 MR. BEDERKA: Does anyone have any questions of

1 Detective Gorcowski or myself?

2 A GRAND JUROR: Upon your interview with Romero,
3 did he at any time state that it was like a
4 self-defense that Thomas stabbed Prado? Was it
5 like -- was there an altercation between the
6 defendant and the victim? *didn't answer bout self de*

7 THE WITNESS: Just so I understand your
8 question, are you asking me to describe what
9 Mr. Prado -- or what Mr. Romero witnessed?

10 A GRAND JUROR: Correct.

11 THE WITNESS: What he stated he witnessed was
12 Mr. Prado trying to leave the apartment, the victim,
13 and as he was leaving the apartment, he is holding
14 onto a knife. He is backing out of there. He gets
15 in the hallway. That's when Thomas confronts him,
16 grabs the knife out of his hand, holds the knife on
17 him and then pokes him once in the chest. *He had a knife on*

18 MR. BEDERKA: Yes, ma'am? *Said checked the door*

19 A GRAND JUROR: Real quick. I didn't hear this
20 in the beginning. When he was walking, did they have
21 a prior acquaintance? Were they friends, just met on
22 the street?

23 THE WITNESS: Just met on the street.

24 A GRAND JUROR: Okay.

1 MR. BEDERKA: Based on any of those two
2 questions by the members of the grand jury, does
3 anyone have any questions of myself or Detective
4 Gorcowski?

5 A GRAND JUROR: Yes, I have got a question. One
6 of the charges is that he attempted to rob Prado with
7 the knife. I didn't hear anything -- he didn't take
8 the phone. Doesn't sound like there was any attempt
9 to rob. I haven't heard any comments about attempt
10 to rob.

11 MR. BEDERKA: I think there was some questions
12 asked if this altercation was regarding the sale of a
13 cellular telephone.

14 A GRAND JUROR: Sale of a phone, I mean --

15 A GRAND JUROR: Nothing about robbery.

16 A GRAND JUROR: -- where is the robbery?

17 MR. BEDERKA: I can go into that.

18 BY MR. BEDERKA:

19 Q. Detective Gorcowski, at some point while
20 speaking with Juan Carlos Prado and this attempted
21 sale of a telephone, were you able -- were you able
22 to determine anything regarding a conversation that
23 occurred in the hallway between Mr. Prado and
24 Marcellus Thomas?

1 A. Yes.

2 Q. And what was the substance of that
3 conversation that you were told by Mr. Prado?

4 ➔ A. Mr. Prado never admits to a sale of a
5 phone. That's Mr. Thomas' or Mr. Romero's
6 statements.

7 ➔ Mr. Prado, the victim, states that the
8 phone was tried to take from him at force with -- at
9 knife-point and when he wouldn't give up the phone is
10 when he was stabbed. That is Mr. Prado's statement
11 reference the incident.

12 MR. BEDERKA: Does anyone have any questions
13 based on that?

14 A GRAND JUROR: So Mr. Prado was the one who
15 initially grabbed a knife and had the knife?

16 THE WITNESS: According to Mr. Thomas and
17 Mr. Romero. Mr. Prado does not admit to that -- yes,
18 correct. Got my names confused. Mr. Prado does not
19 admit to that.

20 Mr. Romero and Mr. Thomas, you know, that
21 is their statement about him grabbing the knife.

22 MR. BEDERKA: Does anyone have any questions
23 based on that?

24 Seeing no hands raised, we will let you

1 (Whereupon Mr. Juan Carlos Prado entered
2 the courtroom and resumed the stand.)

3 THE BAILIFF: All rise for the jury.

4 (Whereupon the jury entered the
5 courtroom.)

6 THE BAILIFF: Please be seated, come to order.

7 (The following further proceedings
8 were had in open court in the
9 presence and hearing of the Jury,
10 to-wit:)

11 THE COURT: Ladies and Gentlemen of the Jury
12 and parties, Juror No. 153 has been excused and Juror
13 No. 3 is assigned to replace her from alternate status.

14 And Mr. Nave.

15 MR. NAVE: Judge, as we discussed, I withdraw
16 my previous question.

17 THE COURT: All right. You may continue to
18 inquire.

19 CROSS-EXAMINATION (Resumed)

20 By: Mr. Nave

21 Q Is it true that you testified yesterday on direct
22 examination as follows:

23 I kept insisting that he get more, and I
24 continued to say, "I don't have money, but I have the phone;

1 then he gave me some and grabbed the phone"?

2 A Yes.

3 Q This is yet a third way that the defendant got the
4 phone from you, is that correct?

5 A Yes.

6 Q And isn't it true that the defendant paid you for
7 the phone and told you to go next door and get whatever drugs
8 you want?

9 A No, it's not true.

10 Q Now, one of the things I had forgotten in terms of
11 your staying at your mom's house; other than the day that you
12 -- that this incident happened, November 6, is it true that
13 you had not been there for one to two weeks?

14 MS. BREE: Judge, I'm going to object to relevance,
15 anything that happened one to two weeks with this victim as
16 far as where he's been living.

17 THE COURT: How would this be relevant?

18 MR. NAVE: Credibility, Judge, just in terms
19 of him testifying he's living there.

20 MS. BREE: It would be a collateral issue if
21 anything, Judge.

22 THE COURT: I'll allow the question. The
23 objection is overruled.

24 THE WITNESS: Could you repeat the question again?

1 so we're clear on it.

2 MS. BREE: Thank you.

3 BY MR. NAVE:

4 Q Both you and the defendant fell when you
5 tripped backward -- when you tripped backwards on the
6 stairs, correct?

7 A Yes.

8 Q You fell backwards and the defendant fell onto you?

9 A Yes.

10 Q And at that point you believe is when you were --
11 when the wound was created in your shoulder, correct?

12 A Yes.

13 Q And neither you nor the defendant realized that you
14 had been stabbed until you saw the blood, is that correct?

15 MS. BREE: Objection; speculation, how he would
16 know what the defendant thought.

17 THE COURT: Sustained.

18 BY MR. NAVE:

19 Q You indicated you didn't realize that that had
20 even happened, correct?

21 A Yes. When I fell back, I let go of him and I put
22 my hands like, like on the stairs so that I would not hit my
23 head. (Indicating)

24 Q And the first sign that you had been wounded was

1 phone after making that telephone call, why did you feel you
2 could leave with the phone and not return it to the
3 defendant?

4 MR. NAVE: Objection. I'll withdraw the
5 objection, Judge.

6 THE COURT: Witness may answer.

7 THE WITNESS: Well, I did not want to leave
8 the phone there because the phone was not mine.

9 BY MS. BREE:

10 Q Was it ever your intention to leave the phone with
11 the defendant?

12 A No.

13 Q Once you entered into that apartment that night,
14 did you ever leave the apartment other than at the time that
15 you were attacked?

16 A I don't remember having left it.

17 Q So is it your testimony that you did not leave the
18 apartment?

19 MR. NAVE: Judge, I'm going to object. His
20 answer is he doesn't remember.

21 THE COURT: That's what his answer was. The
22 objection is sustained.

23 BY MS. BREE:

24 Q Do you remember going anyplace else?

Elgin Police Department

11-11-0282/Roland Romero

Page 9 of 14

345
346 BG And it's a real small apartment, right?
347
348 RR Yeah, it's real small.
349
350 BG Um, when you walked out of the, uh, or when when this male Spanish or the
351 male Mexican guy walked out of the, uh, apartment door, he's backing up out in
352 the hallway and you said Wayne, you know,
353
354 RR Wayne.
355
356 BG confronts him and they go after each other.
357
358 RR Some tussling.
359
360 BG At some point, Wayne grabs on to him, right?
361
362 RR Yes. Cause, because the guy's
363
364 BG Pulling the knife?
365
366 RR Yeah, and it looked like he was tryin' to stab Wayne.
367
368 BG Okay. And as he's holding this knife, you said that Wayne was able to grab him,
369 get the knife away from him,
370
371 RR And yeah
372
373 BG and then
374
375 RR He panicked.
376
377 BG And then he poked him.
378
379 RR And then he poked him, I don't know if it was the left or right top shoulder, like
380 right
381
382 BG Okay.
383
384 RR But he poked him with the knife and then
385
386 BG Once.
387

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CRIMINAL DIVISION

A-25

GENERAL NO 11CF2531

PEOPLE OF THE STATE OF ILLINOIS

US IMMIGRATION & CUSTOMS ENFORCEMENT
ATTN SDDO RONALD EASTERDAY
101 WEST CONGRESS PARKWAY
CHICAGO, IL 60605

ex rel, JOSEPH H MCMAHON

Deborah Seyller
Clerk of the Circuit Court
Kane County, IL

Petitioner,

Respondent

MAR 9 2012

Assistant State's Attorney
ALEX BEDERKA

Defendant

JUAN CARLOS PRADO-MENDOZA
ALIEN REGISTRATION # (A#) 077 656
034

30

WRIT OF HABEAS CORPUS
"By the Habeas Corpus Act"

PEOPLE OF THE STATE OF ILLINOIS TO

US IMMIGRATION & CUSTOMS ENFORCEMENT
ATTN SDDO RONALD EASTERDAY
101 WEST CONGRESS PARKWAY
CHICAGO, IL 60605

GREETINGS

You are hereby commanded to have the body of JUAN CARLOS PRADO-MENDOZA, ALIEN REGISTRATION # (A#) 077 656 034, incarcerated and detained by you according to the Petition filed herein, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before this Court at the KANE COUNTY JUDICIAL CENTER, 37W777 ROUTE 38, ST. CHARLES, ILLINOIS in Courtroom 305 at the hour of 9:00 AM, on 3/12/12, after being served with this Writ, to be dealt with according to law at such time you shall return this Writ to the within Court as required by law

WITNESS, the Clerk of this Court and the seal thereof on

March 9, 2012

Deborah Seyller

CLERK



JOSEPH H MCMAHON
State's Attorney of Kane County
37W777 Route 38
St. Charles, Illinois, 60175
630 232 3500

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IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CRIMINAL DIVISION

GENERAL NO. 11CF2531

PEOPLE OF THE STATE OF ILLINOIS

US IMMIGRATION & CUSTOMS ENFORCEMENT
ATTN SDDO RONALD EASTERDAY
101 WEST CONGRESS PARKWAY
CHICAGO, IL 60605

ex rel, JOSEPH H MCMAHON

Petitioner,

Respondent

Assistant State's Attorney
ALEX BEDERKA

Defendant
JUAN CARLOS PRADO-MENDOZA
ALIEN REGISTRATION # (A#) 077 656 034
DOB 06/12/1973

DEBORAH SEYED
CIRCUIT COURT
KANE COUNTY
ILLINOIS

2012 MAR - 9

FILED

PETITION FOR WRIT OF HABEAS CORPUS TO PROSECUTE

The undersigned Petitioner states as follows:

1. That JUAN CARLOS PRADO-MENDOZA, has been charged with MURDER in this Court

2. That he is presently in the lawful custody of respondent herein, and in order to prosecute him in this Court, it is necessary to obtain a Writ of Habeas Corpus to bring him before this Court for status

WHEREFORE, Petitioner prays that the Clerk of this Court issue a Writ of Habeas Corpus directing the respondent named herein or his lawful agent to bring the body of JUAN CARLOS PRADO-MENDOZA, ALIEN REGISTRATION # (A#) 077 656 034, before this Court at such time as the Court directs.

Alex Bederka
Petitioner

STATE OF ILLINOIS)
COUNTY OF KANE)

The undersigned, under oath, says that the contents of the foregoing are true.

Alex Bederka
Petitioner

Subscribed and sworn to before
me on March 9, 2012.

Notary Public
NOTARY PUBLIC KLIMOWSKI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 08/07/13

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IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CRIMINAL DIVISION

A-27

GENERAL NO. 11CF2531

PEOPLE OF THE STATE OF ILLINOIS

US IMMIGRATION & CUSTOMS ENFORCEMENT
ATTN SDDO RONALD EASTERDAY
101 WEST CONGRESS PARKWAY
CHICAGO, IL 60605

ex rel, JOSEPH H. MCMAHON

Petitioner,

Respondent.

Assistant State's Attorney
ALEX BEDERKA

Defendant
JUAN CARLOS PRADO-MENDOZA
ALIEN REGISTRATION # (A#) 077 656
034

RECEIVED
MAR - 9 A 9 33
GENERAL SEYLER
JUDICIAL COURT CLERK
KANE COUNTY IL

ORDER

IT IS ORDERED that the Clerk of this Court forthwith issue a Writ of Habeas Corpus directing the above-named Respondent herein or his lawful agent to have the body of JUAN CARLOS PRADO-MENDOZA, ALIEN REGISTRATION # (A#) 077 656 034 before the Honorable Judge AKEMANN or presiding judge in Courtroom 305 on 3/12/12, at the hour of 9:00 AM, Kane County Judicial Center, St. Charles, Illinois, in the order that he may be prosecuted

ENTER: March 9, 2012.

JUDGE

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