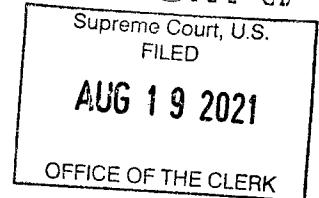


No. 23-5356

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

BRET DAVIS - PETITIONER

vs.

APPELLATE COURT OF ILLINOIS,
FOURTH JUDICIAL DISTRICT, et al., -- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS, FOURTH JUDICIAL DISTRICT

PETITION FOR WRIT OF CERTIORARI

Bret Davis

10930 Lawrence Road

Sumner, IL 62466

618-936-2064

QUESTION(S) PRESENTED

Were my Fifth, Sixth and Fourteenth Amendment rights to a fair trial by an unbiased jury and due process of the law violated by the Prosecuting State's Attorney's tactics of inflaming the passions of the jury, along with biased Media coverage favoring the alleged victim?

What does our Justice System view in establishing a proper foundation? Is a proper foundation testimony from a witness that has been proven by the court to be not credible, or is it the lack of intrinsic evidence, or is it testimony from a medical or forensic expert? Please consider the numerous violations of the Motions in Limine, and determine whether my right to a fair and unbiased trial had been violated.

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose judgement is the subject of this petition is as follows;

Hon. Carla Bender, Clerk of the Appellate Court, Fourth District, 201 West Monroe, P.O. Box 19206, Springfield, IL. 62794-9206

Mr. David J. Robinson, Deputy Director, State's Attorney Appellate Prosecutor, 725 South Second St, Springfield, IL. 62704.

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL. 60601.

Mr. Greg Minger, Woodford County, State's Attorney, 115 N Main St., Room 305, Eureka, IL. 61530.

RELATED CASES

People of the State of Illinois v. Bret Davis, No. 16-CF-163, Circuit Court of the Eleventh Judicial Circuit, Woodford County, IL. Judgment entered March 23, 2016.

People of the State of Illinois v. Bret Davis, No. 4-18-0337, Appellate Court of Illinois, Fourth Judicial District. Judgment entered November 13, 2020.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

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

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

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

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

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 8 to the petition and is

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

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

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

JURISDICTION

For cases from **federal courts**:

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

No petition for rehearing was timely filed in my case.

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

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

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

For cases from **state courts**:

The date on which the highest state court decided my case was 9/28/2020. A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: 3/24/2021, and a copy of the order denying rehearing appears at Appendix A.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5TH AMENDMENT

6TH AMENDMENT

14TH AMENDMENT

FEDERAL RULES OF EVIDENCE RULE 103 (d)

FEDERAL RULES OF EVIDENCE RULE 104 (b)

FEDERAL RULES OF EVIDENCE RULE 401 (a) (b)

Statement of the Case

Volume II within the trial transcripts is the area in which the Motions in Limine are argued and guidelines ultimately set. Accordingly, in the **Federal Rules of Evidence, Rule 103 (d)**,

“Preventing the jury from hearing inadmissible evidence.” “To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means. “

The Illinois Rule 103 (d) applies the same rule. **Federal Rule 104 (b)** : Relevance that depends on a fact. “When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist.”

The following are comments and decisions that were made concerning the pre-trial Motions in Limine.

The Prosecuting Attorney responds to the motion “I am not contesting the motion to suppress unless a proper foundation would be laid for any of that information that was in the medical records. I believe it kind of dovetails into defendant's Motion in Limine paragraph one. We don't have a – there's not a physician that's identified in the records that I saw going through it several times that 100 percent says these are self-inflicted wounds. So I have not disclosed an expert in the area. I have not disclosed a witness that – I have not disclosed all the doctors that are contained therein. But I do not believe that we will be introducing that evidence. So I think that makes it a little bit easier.” (R175).

Prosecuting Attorney again “... Anything to do with the self-inflicted wound, unless I can provide a proper foundation for, which I would address outside the presence of the jury beforehand, I don't see coming in at this point in time.” (R176).

Prosecuting Attorney also says “... it assumed self-inflicted wound. I don't have someone lined up or someone that saw the wounds that could say these were self-inflicted.” (R194).

Prosecuting Attorney once more on the self-inflicted Motion in Limine. “... have to lay a

proper foundation for that type of testimony to even be elicited, and I am not planning on going there unless proper foundation could be established." (R195). The Judge then responds "... with regards to self-inflicted that is going to be granted at this point in time. Mr. Minger has indicated he doesn't have a witness that indicates the wounds were self-inflicted . If the door is opened by the defendant's case in chief, the court will revisit the issue with regard to that. But unless there's a proper foundation – from what I hear the state saying there is no foundation at this point in time to say self-inflicted, so paragraph 1 will be granted." (R207).

Keeping all this in mind, that the guidelines are now in place for self-inflicted Motion in Limine. Now I want to refer to the question I have asked this court as to "what does our Justice System view as the laying out of a proper foundation"?

The Prosecutor does not have a proper foundation through expert testimony because they could not provide one. Next, the testimony from Kristen is not credible and her credibility issues are commented on not only by my Attorney, but the Prosecuting Attorney, and the Judge as well. Here are some examples: My Attorney "... There's wide variance over what we believe she's going to tell you what happened that day and what the evidence is that actually happened that day." (R554).

Attorney questioning Kristen showing she has trouble with the truth. "You lied about that? I did not – He would ask and I would say no. So yes I lied to him about that." (R77). The Prosecuting Attorney asks Kristen in (R754) if she described the detail that she just described to the jury to the officers and her response was "no sir". In (R802-4) my Attorney talks about how info is missing and doesn't match from testimony to testimony. My Attorney once again catches her not being credible (R857). October 18, 2016 testimony is different from the trial testimony (R847). States Attorney in his closing arguments points out that she is not credible "... the times she lied to the police". (R149). Then the Judge even touches on Kristen's credibility issues when he says "Some conflict in terms of cross examination that took place of the alleged victim in this case". (R871).

With all these credibility issues there is not a proper foundation laid for the Prosecution to be able to disregard the Motion in Limine; yet the Prosecuting Attorney raises the issue prohibited by the Motion in Limine of self-inflicted wounds during cross examination of me three times without providing a proper foundation. Kristen is not credible and no expert testimony presented. The questions to me from the Prosecuting Attorney “You didn't take the knife and put it in your own neck?” (R1313). “So after - - you didn't cut yourself … “ (R1315). Then same question as the first question, “You didn't take the knife and put it in your neck?” (R1315). These are violations to the Motion in Limine. You see the same question asked twice, same exact wording asked each time of “You didn't take the knife and put it in your own neck?” This becomes a statement from the Prosecutor to the jury, especially on the second question because I had already explained my injuries and then answered the first question with a “no”. The Prosecutor was trying to establish this self-inflicted narrative and should not have been able to do so because, as it was decided in *People v. Eghan*, 344 Ill. App.3d at 313, it was a violation of the Motion in Limine. Which the Appellate Court determined that coupled with other prosecutorial misconduct deprived the defendant of a fair trial. *Here as in People v. Eghan*, 344 Ill. App.3d at 314, was an ongoing pattern of misconduct.

Next, looking at the Motion in Limine about suicide. The Prosecutor says “ … I'm not going to put the phrase suicide in there … abstain from that particular language”. (R195). The Judge rules “ … with regard to the use of the word suicide, Court is not going to allow witnesses to speculate in terms of whether this was a suicide. The Court will allow the witnesses to testify factually as to what they observed, and the jury can make their own conclusion in terms of what they perceive that to be”. (R207). The Judge also says “Mr. Minger if you are going to start using that word, I would like for it to be called to the Courts' attention beforehand so Mr. Brown can raise any issues with it. But in terms of a witness drawing a conclusion that I perceived it to be a suicide or I thought he was trying to commit suicide, that will be granted on that issue”. (R208).

Detective Gillson testifies to No Vehicle Reconstruction regarding the accident on the bridge. (R656-58). That was part of his job and that was not done. No proper foundation established, yet the Prosecutor says "Where you drove into the wall of the bridge". (R1310). Then the Prosecutor says "Isn't it true you were desperate, you tried ramming your car into the bridge. No. To end it". (R1318). Then he says "You jumped off the bridge at the McCluggage, is that correct?" (R1286). "And also you jumped into the river correct?" (R1311). "You didn't jump off the bridge to try to end it?" (R1319). The answer to all these questions/statements was no. The Prosecutor did not follow the Motion in Limine guidelines because a proper foundation was never established. What happened to the Prosecutor doing what he said when addressing the Judge on the Motion in Limine when he said pertaining to suicide "abstaining from that particular language" (R195). When the Prosecutor says "to end it" that is not "abstaining from that particular language".

No expert testimony for the "self-inflicted" wounds, no vehicle reconstruction for the accident on the bridge and no eye witness for "jumping off the bridge". There has to be a proper foundation and it was never established. Refer back to what the Judge says because there is no expert to testify the State has "no foundation" (R207). Therefore, since no foundation has been established this is a violation to the Motion in Limine set in place for my trial.

In regard to the defensive wounds, the Prosecutor says "... the victim's going to say she put her arms up, she was trying – in a defensive posture, and that's where a lot – some of these wounds came from based on her motions. So I believe that a jury can draw that, and I'm going to be arguing that at closing arguments" (R196).

The Judge says "... with regards to the defensive wounds, the Court heard the State say that they don't have an expert to go ahead and specifically say these are wounds one way or – defensive wounds ... And the jury can draw their own conclusion in terms of whether wounds were defensive and how the wounds occurred. But unless we have the proper foundation to go ahead and say these

wounds were of a defensive nature, the Court will grant the Motion. Mr. Minger, if the State does intend to use the word defensive, the Court will need to go ahead and hear from that witness prior to that witness testifying. But at this point in time the witnesses should not comment or give an opinion without first addressing it with the Court that the wounds were of a defensive nature" (R208).

In the Prosecutor's opening statement he says "she was trying to defend herself" (R549). Then in trial transcript closing arguments "Why do we take pictures of hands? No wounds. No defensive wounds" (R1497). The Motion in Limine prohibits this and this is a direct violation to that order.

Please refer to what I have laid out for the Illinois Supreme Court on the Violations to the Motion in Limine which were set in place. These points are in the Appendix. Every Motion in Limine referring to the No Contact and the violations that occurred there as well.

These violations cause Improper Impeachment toward me. The Appellate Court uses People v. Lewis, 2019 Il. App(1st) 160705, 137 N.E. 3D 848 (Page 15 of the Appellate Courts response) to justify the prosecutor using extrinsic questions when asking if defendant's wounds were self-inflicted; if defendant drove into the side of the bridge to kill himself; and if defendant jumped into the river to kill himself. The problem with this comparison of Lewis to my trial is that my trial had a Motion in Limine set in place by the Judge to prevent these type of questions, thereby creating guidelines and boundaries. Yet, the prosecutor violates the Motion in Limine by asking these questions. Therefore, Lewis should not be a factor that can support the justification to violate the Motion in Limine set in place by the trial Judge. The Appellate Court wants to stand on the statement "What occurred in this case demonstrates the proper use of vigorous cross-examination, asking questions based on reasonable inferences drawn from the evidence, and asserting ones theory of the case, all cornerstones of our system of advocacy." My stance is that there was no evidence presented to be able to "ask questions based on reasonable inferences drawn from the evidence..." **There was no expert testimony, no accident reconstruction, no eye witness, and only a testimony from the "victim", who was**

proved during the trial, to be not credible!

The Prosecutor also argued that Bret jumped into the river because he was guilty. In his closing argument recorded in (R 1561), he stated, “Was there a reconstruction? No. But you did hear from Detective Gillson. He said hit one side, hit the other side, it stopped. And there was a blood trail from the truck to the wall, and at the wall there is a pool of blood, and then the defendant jumped in . Now, he didn't see him jump in, but you can reasonably infer that. How else does he get in the river? Because he's fleeing the situation . A guilty person flees. A person who didn't do anything wrong seeks help.” In other words, the prosecutor' s argument in closing was that I had inflicted my own wounds and attempted to kill myself out of guilt. It made these arguments despite the fact that there was no evidence supporting any of these claims, other than the State's imperfected impeachments. In fact, what was lacking was the fact that I was taking the shortest route to the nearest hospital which was St. Francis, to seek immediate medical attention for wounds inflicted by Kristen.

The State may not impeach a defense witness on cross-examination unless the State can prove the statement with extrinsic evidence. *People v. Williams*, 204 Ill.2d 191, 211 (2003); see also *People v. Olinger*, 112 Ill. 2D 324, 341 (1986) (“It is improper for the prosecutor to ask questions for purposes of impeachment unless the prosecutor is prepared to offer proof of the impeaching information”); *People v. Enis*, 139 Ill. 2D 264, 297 (1990) (“It is error for the State to ask a defense witness questions presuming facts not in evidence, unless the State has admissible evidence to substantiate the inquiry”). The asking of the leading question and the denial carry a harmful innuendo when it is unsupported by the evidence. *People v. Rivera*, 145 Ill. App. 3D 609, 621 (1st Dist. 1986). Accordingly, the State must have a good faith basis to ask the cross-examination questions, as well as the intent and the ability to complete its impeachment. *Williams*, 204 Ill. 2D at 212, citing M. Graham, Cleary & Graham's Hand book of Illinois Evidence Sec.607.3, 613.3 (7th ed. 1999).

In *People v. Robertson*, 198 Ill. App. 3D 98, 103 (2d Dist. 1990), the Appellate Court

concluded that the State's unperfected impeachment denied defendant a fair trial. In *Robertson*, the defendant's mother testified that she was with defendant the night of the robbery. *Robertson*, 198 Ill. App. 3D at 103. The State cross-examined defendant's mother concerning certain discrepancies between her testimony and what she allegedly told an investigator on a prior occasion. *Robertson*, 198 Ill. App. 3D at 104. Defendant's mother denied telling the investigator the contradictory statements. *Robertson*, 198 Ill. App. 3D at 104-105. However, the State failed to call the investigator in rebuttal to perfect the impeachment. *Robertson*, 198 Ill. App. 3d at 105. In finding defendant guilty, the trial court stated that defendant's alibi witnesses were lacking in credibility. *Robertson*, 198 Ill. App. 3d at 105.

In remanding the cause for a new trial, the *Robertson* court reiterated the rule that it is improper for a prosecutor to ask a question for purposes of impeachment unless the prosecutor is prepared to offer proof of the impeaching information. *Robertson*, 198 Ill. App. 3d at 107. The Appellate Court found that where the defendant's guilt hinged largely upon the credibility of the witnesses and coupled with the imperfected impeachment the defendant did not receive a fair trial. *Robertson*, 198 Ill. App. 3d at 108.

Likewise, in *People v. Rivera*, 145 Ill. App. 3D 609, 616 (1st Dist. 1986), the reviewing court found that the State's unsubstantiated impeachment of the defense's key witness denied defendant a fair trial. In *Rivera*, the State cross-examined the defendant's lone eye witness. *Rivera*, 145 Ill. App. 3d at 616. The State asked the witness whether her husband "hung around" with members of the Latin King gang. *Id.* The State continued its impeachment by asking the witness whether her husband was a senior member of the Latin Kings and whether her husband supplied the gang with drugs. *Id.* In rebuttal, the State attempted to perfect the impeachment through testimony that the witness's husband "associated" with senior Latin Kings. *Id.* In remanding for a new trial, the Appellate Court observed that the harm of the insinuations contained in the State's interrogation was patent. *Id.* At 621. The

Appellate Court emphasized that the State failed to perfect the impeachment of the defense's key witness in a case where the verdict revolved around credibility. *Id.* It stressed that these "foul blows" are inconsistent with the State's duty to assure a fair trial. *Id.* At 622.

The instant case is more egregious than *Rivera*. In *Rivera*, the State attempted to perfect its impeachment of the defense's key witness. Here, the State knew in advance that it could not perfect the impeachment because the trial court had explicitly barred the introduction of any evidence that my wounds were self-inflicted or that I had attempted suicide. (C318-19 R264-65). Moreover, like *Robertson*, my credibility played a major role in the determination of my guilt. The key issue at trial was whether I attacked Kristen, or whether I merely acted in self-defense. As such, the main determination left to the jury was whether to believe me or Kristen. As my guilt or innocence relied heavily on my own credibility, the State's misconduct prejudiced me and this Court should remand for a mistrial. See *People v. Vinson*, 90 Ill. App. 3D 6, 11 (3d Dist. 1980) where the nature of the State's "unsupported and improper" insinuations were directly related to a principal issue in the case, it cannot be said that such an error did not contribute to the jury's verdict and a mistrial must be ordered.

This case is also worse than *Rivera* because in my case, the State based its closing argument on its improper impeachments, despite the fact that no evidence at trial supported its arguments. The State even conceded pretrial that there was not a doctor who could lay a foundation for my wounds being self-inflicted, and said it would not be going down that road. (R232). Yet, that is the road it went down with its incomplete impeachment of me, and its baseless closing argument.

People v. McCoy, 2016 IL. App. (1st) 130988, Paragraph 58-61 is instructive. In *McCoy*, 2016 IL. App. (1st) 130988, Paragraph 4-5. The defendant testified that, when he found the victim, the victim had already been injured, and that he tried to drive the victim to get medical help. *Id.* At Paragraph 36 -

37. However, on his way back to get help, the defendant said he got into a car accident, and then

because he did not want to get caught up in the situation, he ran away when the police were called to the accident. *Id.* At Paragraph 37-38. On cross-examination, the State asked the defendant, "You actually told (the victim) that if he said anything you would kill his family." *Id.* At Paragraph 40. The Appellate Court determined that this question had the effect of implying that the defendant had made such a threat. *Id.* At Paragraph 59-61. Finding that this sort of accusation would color the entire trial, the Appellate Court remanded for a new trial. *Id.* At Paragraph 61. Here, the Prosecutor's allegations during my testimony and its closing arguments indicate that there is some outside evidence that I tried to commit suicide, and that my wounds were self-inflicted.

The following are statements and objections made that apply to the Prosecutor's tactic of inflaming the jury of which combined with the media coverage that was distributed throughout the area, caused the jury to develop a sense of bias toward me.

The following example reference numbers are based on the trial transcript.

(Volume/page/line)

Here are examples of objections made:

- (19/39/1) "It's overwhelmingly his blood" -No evidence to support this. (sustained)
- (19/39/6-9) "Because he used it last and put it to his own neck and cut himself" -No evidence to support this, also violates the Motion in Limine (sustained)
- (19/98/19) "its his knife" -No evidence to support ownership. (overruled)
- (19/26/13) "I believe that part of it was a struggle." Personal opinion.(sustained)
- (19/108/7-8) "the passion that was used to stab her, that is brutal and heinous." -False, misstatement of the law. (sustained)
- (19/24/22) "she is nervous...." -on line 5 of the same page the prosecutor says she is scared. Why is this said? To inflame the passions of the jury. (overruled)
- (19/31/11) -"Scene from the movie 'Carrie'" -(sustained).

(19/100/6) "Why do we take picture of hands? No wounds, no defensive wounds." Motion violation. No one, not once, ever testified to the lack of wounds to my hands. (The judge never says sustained or overruled). The Judge denies request to clarify to the jury. Instead Judge comments that the jury will be instructed that closing arguments are not evidence....

The following are examples of objections missed:

(18/84/21-24)" Isn't it true you were desperate, you tried ramming your car into the bridge? No. To end it?"

(18/85/2) "You didn't jump off the bridge to try to end it?"

(19/14/4) "Vicious wound back there" - Dr Dwyer's testimony contradicts this.

(19/14/7-8) "pounds her time and time again in the head" -No evidence of this.

19/26/2-4) "could have easily cleared those steps and landed towards the bottom" -
Where is the crime scene investigation showing the physics of it such as, force, fall, gravity, weight, angles, length, widths, etc.?

Something that is interesting to note is that (19/26/13) is objected to and sustained because it is the personal opinion of the prosecutor. There are many opinions presented by the prosecutor throughout the trial and especially during closing arguments.

Here are a few examples:

(19/23/18) "He intended on killing Kristen Davis because that morning he asked for time off from work."

(19/103/16) " Mad at his wife"

19/104/23-24) "It infuriated him to the point Chris Dowell had to...."

(19/38/8-9) "This is as good a spot as any. Rams into the bridge."

These are just a few examples. So basically, I should not be punished for errors not being preserved when it is a clear violation to boundaries set in place by the the Motion in Limine.

Addressing the question of the Prosecutor's tactics of inflaming the jury as the basis that created a bias jury. His violations of the Motions in Limine, as well as using extrinsic evidence, and the total lack of intrinsic evidence, and making the comment linking the alleged victim to the character in the movie "Carrie" and making a statement in his closing arguments " But this happened a year and -a-half ago and defendant has had time to make something look - - fit with these photographs." This line of questioning and consistent tactics violated my 6th Amendment right to a fair trial by an impartial jury due to the additional fact that the jury which had been exposed to a barrage of bias media publicity which made it appear that the defendant was the aggressor and the alleged victim was indeed the victim. All of this actually ties to the question of what establishes a proper foundation, but more importantly, the violation of my 6th Amendment right to an impartial jury and according to the 14th amendment "shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." is paramount.

During the trial voir dire, the potential jurors responded to questions asked about what type of media they were exposed to. The jurors gave an account of the type of news media they were privy to. They gave an account of a vast range of outlets. This was documented in the trial transcript (R-79) through (R-85).

Due to my attorney's failure to request a change in venue greatly affected my right to a jury that was impartial. This was a key element that should have been brought to the attention of the Illinois Appellate Court, but was not submitted by my Public Appellate Defender.

The various channels of the media that covered the September 26, 2016 incident included main TV news channels in several of the surrounding counties, Newspaper publications in the surrounding counties, streaming services and social media outlets such as, Facebook, Twitter, etc.

The fact that the jurors were not sequestered, and they were exposed to bias media coverage that

portrayed Kristen as the victim and the tactics of the prosecutor fueled the possibility of the jury becoming bias against me, the defendant.

Examples of creating that bias is exhibited in Articles and Opinions in the area's local newspaper outlets dated on September 26, 27 and October 3, 2016. The article dated September 26, 2016 states, "Witnesses said he then got out of his vehicle and jumped in between the two spans". Take in mind that there were no witnesses to this occurrence at the trial.

The person actually interviewed by the publication was the Prosecutor, States Attorney, Greg Minger.

The local news news agencies also printed an article on September 27, 2016 that quoted the Sheriff's Office as saying "He then got out of the truck and jumped off the bridge".

Another statement was made to the media by the Prosecutor, States Attorney, Greg Minger while being interviewed on September 27, 2016 as follows: "He sped through a construction zone, acted like he didn't care about anyone else and tried to kill himself."

The article published on October 3, 2016 suggests that Kristen was denied an order of protection and made it appear that it was unjustified. The article further creates an aura that Kristen is the victim by interviewing an individual from the Center for Prevention of Abuse.

Those unsubstantiated accusations, bias media articles and news agency photos most likely brought back to the memory of each juror the bias media coverage when the prosecutor began to violate the Motions in Limine and his tactic of inflaming their passion.

In the Illinois 3rd district Appellate Court, People v. Clark, 3-01-0669 Rel (Ill. App. Ct. 2002), The district ruled that the prosecution inflamed the passion of the jury with multiple errors. The Appellate court also agreed with People v Fletcher, 156 Ill. App. 3d at 411. decision to reverse and remand based on the prosecutors prejudicial and inflammatory closing arguments. In addition, like

Fletcher, 156 Ill. App. 3d at 411., the Prosecutor in my trial also used a minor's testimony to inflame the

passions of the jury. Further violations of my right to a fair trial and an obvious violation of the **Federal Rules of Evidence, Rule 401.** Test for relevant evidence, is when the Prosecutor used my 14 year old son's testimony that was taken out of context and time frame, to further inflame the passions of the jury. This is recorded in Trial Transcript Volume 16 pages 126 thru 136 on March 21, 2018.

In conclusion, this colored my entire trial. As such, a mistrial is required.

REASONS FOR GRANTING THE PETITION

To summarize, I have been denied a fair trial upon conviction of a felony by methods that were strictly forbidden by our most treasured Constitution according to its Fifth, Sixth, and Fourteenth Amendments. My rights as an American according to these Amendments were violated starting with a series of events that took place beginning September 26, 2016 and continuing through my current incarceration. I am focusing my Appeal on the procedures that took place during my trial beginning March 19 through March 23, 2018. My trial had begun with approved Motions in Limine by the presiding Judge. These Motions, which upon the Judge's approval now became *Orders* preventing certain information from being presented to the jury.

Per the Fifth, Sixth, and Fourteenth Amendments, my due process of the law and my right to an impartial jury were violated.

Focusing on the Prosecutor's questioning of me, these Orders in Limine were violated and objected to a great number of times. I recorded many of these objections in my statement of the case. The Prosecutor began to inject these forbidden, unproven allegations during his questioning of me. He continued to violate these Orders during his two closing argument presentations to the jury. In addition, he made inappropriate comments such as comparing the "alleged" victim's appearance to the movie character "Carrie". He also made reference to my being silent leading up to the trial by saying I had plenty of time to come up with a story. These comments in combination with the violations of the Orders in Limine and the tactic of putting my 14 year old son on the witness stand; asking questions of him that were taken out of context and the time frame of the assumed conversation that took place between my son and I, all contributed to inflaming the passions of the jury. The jury was already subjected to news coverage that was clearly bias against me by the various TV stations and publications in several surrounding county areas.

The Prosecution's entire case was built on unproven evidence, individual opinions, no expert testimony, and testimony from the alleged victim that was proven to be not credible and using statements that were forbidden by the Order in Limine.

I became the victim of all these violations and have suffered the consequence of a guilty verdict by a jury that had been exposed to a barrage of illegal questions, intrinsic evidence, and unfounded opinions of the Prosecutor, news media inaccuracies, etc. This exposure effected the jury impartiality.

Then my Appeal to the Appellate Court was judged in favor of the State; which is inconsistent with other judgments by the Appellate Courts in the same State such as in the Cases of *People v. Williams*, 204 Ill.2d 191 (2003), *People v. Sydney Miller*, 1-96-0071, app 1 (1998), *People v Eghan*, 344 Ill. App. 3D 3001 (2003). To add further frustration, my Appeal to the 4th District Appellate Court

was affirmed primarily based on a case, *People v. Lewis*, 2019 Ill. App(1st) 160705, 137 N.E. 3D 848 that could not be compared to my situation because *Lewis* lacked Orders in Limine.

Finally, I ask how was my right to a fair trial violated Constitutionally? When the process that was put in place to uphold my rights was not adhered to from the beginning, then I would ask – What would be the effect on the individual right of all Americans if trial procedures were violated in the manner that mine have been?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bret Davis
Pro SE

Date: 8-19-2021