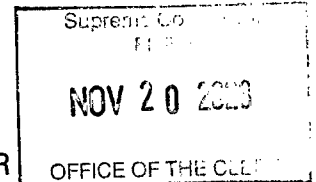


No. 23-6552

IN THE
SUPREME COURT OF THE UNITED STATES



STEVEN J. MCGAULEY — PETITIONER
(Your Name)

vs.

STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS, FIFTH JUDICIAL DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEVEN J. MCGAULEY 436929
(Your Name)

PO BOX 1000
(Address)

MENARD, IL 62259
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED: (1 OF 2)

STEVEN MCGAULEY WAS CHARGED WITH THE MISDEMEANOR DOMESTIC BATTERY OF HIS WIFE, MARY MCGAULEY - WHERE MARY NEVER REPORTED A DOMESTIC BATTERY NOR CLAIMED TO BE THE VICTIM OF A DOMESTIC BATTERY, AND THE FIRST DEGREE MURDER OF STEVEN FLACK FOLLOWING AN INCIDENT AT THE MCGAULEY HOME ON SEPT. 3, 2017. AT TRIAL, MCGAULEY'S TESTIMONY THAT HE SHOT FLACK IN SELF DEFENSE WAS CONTRADICTED BY THE STATES ONLY EYE-WITNESS TO THE SHOOTING, JOHN KIBBONS, WHO WAS ROMANTICALLY INVOLVED WITH FLACKS WIFE AT THE TIME OF TRIAL. THE JURY CONCLUDED MCGAULEY WAS GUILTY OF BOTH CHARGED OFFENSES AND HE WAS SENTENCED TO 60 YEARS IMPRISONMENT. QUESTIONS PRESENTED ARE AS FOLLOWS:

1.) DID REVERSIBLE ERROR OCCUR WHERE THE TRIAL COURT DENIED MCGAULEY'S SEVERANCE MOTION WITHOUT WEIGHING THE POTENTIAL FOR PRESUDICE BY JOINING THE MISDEMEANOR DOMESTIC BATTERY AND FIRST DEGREE MURDER CHARGES, WHICH GAVE THE STATE THE OPPORTUNITY TO ADMIT DAMAGING PROPENSITY EVIDENCE AS TO THE DOMESTIC BATTERY CHARGE, BUT WHICH WAS NOT ADMISSIBLE TO THE MURDER CHARGE, THEN, FAILED TO INSTRUCT THE JURY AT THE CLOSE OF EVIDENCE THAT THE PROPENSITY EVIDENCE AS TO THE DOMESTIC BATTERY CHARGE COULD NOT BE CONSIDERED AS TO THE MURDER CHARGE AND, WAS MCGAULEY'S TRIAL COUNSEL INEFFECTIVE FOR NOT INSURING THE JURY WAS PROPERLY INSTRUCTED AT THE CLOSE OF EVIDENCE BY FAILING TO REQUEST A LIMITING INSTRUCTION BE GIVEN?

2.) DID REVERSIBLE ERROR OCCUR WHERE THE TRIAL COURT DENIED MCGAULEY'S MOTION FOR A MISTRIAL BASED ON POSSIBLE JURY BIAS AFTER JURORS SAW THE ONLY EYEWITNESS TO THE SHOOTING HAVE A

QUESTIONS PRESENTED: (2 of 2)

VIOLENT SEIZURE, FALL OFF THE STAND AND STRIKE HIS HEAD ON A DESK AND THE CONCRETE FLOOR IN FRONT OF THEM, THEN, THE TRIAL COURT SUMMARILY DENIES THE MOTION WITHOUT QUESTIONING THE JURORS ABOUT THE BASIS FOR THE ALLEGED BIAS AND FAILS TO TAKE ANY REMEDIAL MEASURES, SUCH AS ISSUING A CURATIVE INSTRUCTION THAT THE JURY SHOULD NOT BE INFLUENCED BY SYMPATHY OR PREJUDICE, BEFORE RESUMING TRIAL.

3.) DID REVERSIBLE ERROR OCCUR WHEN A CONSTRUCTIVE DENIAL OF MCGAULEY'S ASSISTANCE OF COUNSEL OCCURED WHERE THE PROSECUTOR ENGAGED IN MULTIPLE EX PARTE CONVERSATIONS WITH THE STATES ONLY EYEWITNESS TO THE SHOOTING, JOHN KIBBENS, DURING A DAYS LONG BREAK IN THE MIDDLE OF THE DEFENSES CROSS EXAMINATION OF HIM? THESE EX PARTE MEETINGS WERE AT THE BEHEST OF THE TRIAL COURT JUDGE.

4.) WAS MCGAULEY DENIED HIS STATE CREATED LIBERTY INTEREST IN REGARDS TO A CONSTITUTIONALLY ADEQUATE FIRST APPEAL WHERE THE APPELLATE COURT MISSTATED AND OMITTED FACTS OF MCGAULEY'S CASE AND ARBITRARILY FAILED TO RECALL CRUTIAL DEFENSE EVIDENCE FROM THE RECORDS IN ITS FINDINGS WHEN AFFIRMING HIS CONVICTION AND SENTENCE? AND, DID ERROR OCCUR WHERE THE APPELLATE COURT UPHELD MCGAULEY'S CONVICTION THROUGH A STARK AND UNJUSTIFIED DEPARTURE FROM STARE DECISIS, WELL SETTLED LAW, AND ILLINOIS COMPILED STATUTES?

LIST OF PARTIES

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

RELATED CASES

- 1.) PEOPLE V. MCGAULEY, 2023 IL App (5TH) 190372-U
APPELLATE COURT OF ILLINOIS, FIFTH JUDICIAL DISTRICT
JUDGEMENT ENTERED APRIL 6, 2023

 - 2.) PEOPLE OF THE STATE OF ILLINOIS V. STEVEN MCGAULEY,
PETITION FOR LEAVE TO APPEAL FROM THE APPELLATE COURT
OF ILLINOIS, FIFTH JUDICIAL DISTRICT, 129558,
SUPREME COURT OF ILLINOIS
JUDGEMENT ENTERED SEPT. 27, 2023
-

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U.S. CONST. AMEND. SIX,

U.S. CONST. AMEND. FOURTEEN, SECTION 1,

U.S. CONSTITUTION - PASSIM

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725 ILCS 5/115-7.4 (2018) ALSO KNOWN HEREIN AS 115-7.4; 725
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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 A to the petition and is

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

The opinion of the _____ 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 MAR. 6, 2023. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: SEPT. 27, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 (10F2)

THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES, IN RELEVANT PART: NO PERSON SHALL BE ..., NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW...

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES, IN RELEVANT PART: IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ... HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.

THE FOURTEENTH AMENDMENT, SECTION 1, TO THE UNITED STATES CONSTITUTION PROVIDES, IN RELEVANT PART: NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

ILLINOIS CONSTITUTION 1970, ARTICLE 1, SECTION 2 PROVIDES IN RELEVANT PART: NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW NOR BE DENIED THE EQUAL PROTECTION OF THE LAWS.

ILLINOIS CONSTITUTION 1970, ARTICLE 1, SECTION 8 PROVIDES IN RELEVANT PART: IN CRIMINAL PROSECUTIONS, THE ACCUSED SHALL HAVE THE RIGHT TO APPEAR AND DEFEND IN PERSON AND BY COUNSEL ... AND TO HAVE A SPEEDY PUBLIC TRIAL BY AN IMPARTIAL JURY OF THE COUNTY IN WHICH THE OFFENSE IS ALLEGED TO HAVE BEEN COMMITTED.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (20F2)
ILLINOIS COMPILED STATUTE, 725 ILCS 5/114-8(a)(2018), STATES
IN RELEVANT PART: IF IT APPEARS THAT A DEFENDANT... IS
PRESUDICED... BY JOINER OF SEPERATE CHARGES... THE COURT MAY
ORDER SEPERATE TRIALS... OR PROVIDE ANY OTHER RELIEF AS JUSTICE
MAY REQUIRE.

ILLINOIS S. CT. RULE 451(c)(2018) STATES IN RELEVANT PART: THE
COURT SHALL INSTRUCT THE JURY AFTER THE ARGUMENTS ARE
COMPLETED, OR, IN ITS DISCRETION, AT THE CLOSE OF ALL EVIDENCE.

ILLINOIS REVISED STATUTES, CHAPTER 110A, PAR. 61(c) STATES IN
RELEVANT PART: (4) AVOIDANCE OF IMPROPRIETY... A JUDGES OFFICIAL
CONDUCT SHOULD BE FREE FROM IMPROPRIETY AND THE APPEARANCE OF
IMPROPRIETY...

ILLINOIS RULE OF EVIDENCE 403 STATES IN RELEVANT PART: ALTHOUGH
RELEVANT, EVIDENCE MAY BE EXCLUDED IF ITS PROZATIVE VALUE IS
SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE...

ILLINOIS RULE OF EVIDENCE 404 STATES IN RELEVANT PART:
EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS IS NOT ADMISSIBLE
TO PROVE THE CHARACTER OF A PERSON IN ORDER TO SHOW ACTION IN
CONFORMITY THEREWITH...

STATEMENT OF THE CASE

INTRODUCTION: QUESTIONS 1, 2, 3 (1 OF 3)

PRETRIAL ADMISSION OF PROPENSITY EVIDENCE: STEVEN MCGAULEY WAS CHARGED WITH THE MISDEMEANOR DOMESTIC BATTERY OF HIS WIFE MARY, MCGAULEY, AND THE FIRST DEGREE MURDER OF STEVEN FLACK. PRIOR TO TRIAL, THE STATE SOUGHT TO JOIN THE CHARGES AND MOVED TO ADMIT TWO PRIOR UNCHARGED INCIDENTS OF DOMESTIC VIOLENCE BETWEEN MARY AND MCGAULEY AS PROPENSITY EVIDENCE UNDER 725 ILCS 5/115-7.4 (2018).

DEFENSE COUNSEL RESPONDED BY FILING A MOTION TO SEVER THE CHARGES, CONTENDING THAT THE ADMISSION OF THE PROPENSITY EVIDENCE WOULD BE UNDULY PRESUDICIAL AND IMPOSSIBLE FOR THE JURY TO SEPERATE FROM THE MURDER CHARGE. AT A HEARING ON THE MOTIONS, COUNSEL ARGUED THAT THE UNCHARGED ACTS, WHICH INCLUDED ALLEGATIONS THAT MCGAULEY BEAT AND ATTEMPTED TO "SMOTHER" OR "STRANGLE" MARY, WOULD RESULT IN SUBSTANTIAL PRESUDICE. THE TRIAL COURT DISAGREED, ADMITTED BOTH UNCHARGED INCIDENTS UNDER 115-7.4 AND THEN DENIED THE SEVERANCE MOTION.

STATES WITNESS JOHN PAUL KIBBONS (INITIAL TESTIMONY): THE STATES ONLY EYEWITNESS TO THE SHOOTING, JOHN KIBBONS, WHO WAS ROMANTICALLY INVOLVED WITH FLACKS WIFE AT THE TIME OF TRIAL, TESTIFIED THAT HE WAS AT THE MCGAULEY HOME AND STARTED DRINKING AROUND 4:00 A.M. ON SEPT. 3, 2017. THE MCGAULEY'S AND FLACK LEFT THE HOUSE IN THE AFTERNOON, AND AROUND 4:00 P.M., KIBBONS WENT TO THE BASEMENT FOR A NAP. SEVERAL HOURS LATER, FLACK WOKE UP KIBBONS. AS KIBBONS STARTED WALKING UPSTAIRS, HE HEARD A "SOLID THUD." THEN, HE LOOKED IN THE LIVING ROOM AND SAW MCGAULEY PUSHING MARY TO THE FLOOR WITH HIS HANDS IN HER

STATEMENT OF THE CASE

INTRODUCTION: QUESTIONS 1, 2, 3 (20F3)

HAIR. KIBBONS FURTHER TESTIFIED THAT MCGAULEY AND MARY "SEPERATED" AND THEN HE AND FLACK WENT OUTSIDE AND SAT ON THE PATIO. HE THOUGHT THE SITUATION WAS DEFUSED. KIBBONS ADMITTED THAT HE INITIALLY TOLD THE POLICE THAT HE THOUGHT EVERYONE WAS JOKING AROUND IN THE HOUSE AND THAT HE DID NOT WITNESS ANY VIOLENCE. KIBBONS ADMITTED THAT HE DRANK FROM 4:00 A.M. UNTIL ABOUT 7:00 P.M. ON THAT DAY AND ONLY TOOK A BREAK FOR A 3 HOUR NAP. HE COULD NOT REMEMBER EXACTLY WHAT HE DRANK AND SAID HIS MEMORY WAS "REALLY BAD... REAL BAD... I HAVE BRAIN DAMAGE, AND IT'S HARD FOR ME TO RECALL LOTS OF THINGS."

KIBBONS ALSO SAID HE WAS IN A SERIOUS CAR ACCIDENT IN 2002, WHERE HE "DIED TWICE" DUE TO A LACK OF OXYGEN TO HIS BRAIN. YET, HE DENIED THAT HIS MEMORY ABOUT THE SHOOTING WAS AFFECTED BY HIS PRIOR BRAIN INJURIES. FURTHER, KIBBONS ADMITTED THAT HE TOLD POLICE IMMEDIATELY AFTER THE SHOOTING THAT FLACK "LAID IN" TO MCGAULEY, "WHIPPED HIS ASS" AND HIT HIM TEN TIMES DURING THE FIGHT. AS DEFENSE COUNSEL AGGRESSIVELY IMPEACHED KIBBONS WITH HIS PRIOR INCONSISTENT STATEMENTS TO THE POLICE, KIBBONS SUFFERED A VIOLENT SEIZURE AND FELL OFF THE WITNESS STAND, STRIKING HIS HEAD ON A DESK AND THEN ON THE CONCRETE FLOOR ADJACENT TO THE JURY BOX, IN FULL VIEW OF THE JURY. THE JURY WAS REMOVED FROM THE COURTROOM, AND THE COURT CALLED RECESS FOR THE REMAINDER OF THE DAY AS PARAMEDICS TOOK KIBBONS TO THE HOSPITAL.

MOTION OF A MISTRIAL: THE NEXT DAY, DEFENSE COUNSEL MOVED FOR A MISTRIAL, ARGUING THAT THE JURORS WOULD BE SYMPATHETIC TOWARDS KIBBONS, WHO THEY SAW GASP FOR AIR, TWITCH, GURGLE

STATEMENT OF THE CASE

INTRODUCTION: QUESTIONS 1, 2, 3 (3 of 3)

AND SPASM IN THE MIDDLE OF AN AGGRESSIVE CROSS EXAMINATION, AND THAT IT COULD UNFAIRLY BOLSTER HIS TESTIMONY. TO DETERMINE POSSIBLE PREJUDICE, DEFENSE COUNSEL ASKED THE COURT TO QUESTION THE JURORS AS TO WHETHER THEY WERE AFFECTED BY SEEING KIBBONS HAVE A VIOLENT SEIZURE AND FALL. THE STATE RESPONDED THAT KIBBONS COULD PROBABLY CONCLUDE HIS TESTIMONY THE FOLLOWING WEEK, AND THAT ANY EFFECT ON THE JURY WAS "PURE SPECULATION." IT ALSO ARGUED THAT "NO ACTUAL PREJUDICE... HAS BEEN CLAIMED." THAT WOULD NECESSITATE A MISTRIAL. THE STATE SUGGESTED, THOUGH, THAT THE COURT GIVE A CURATIVE INSTRUCTION TO REMIND THE JURY TO NOT LET SYMPATHY OR PREJUDICE INFLUENCE THEM. THE COURT THEN DENIED THE MOTION FOR MISTRIAL, STATING ONLY, "WE'VE SPENT TOO MUCH TIME ON THIS ALREADY, ALRIGHT?" IT WAS AT THIS SAME HEARING THE COURT DECIDED THE TRIAL WOULD RESUME. SEVERAL DAYS LATER AT A HEARING TO STRIKE THE TESTIMONY OF KIBBONS, IT WAS REVEALED TO DEFENSE COUNSEL THAT THE PROSECUTOR HAD MULTIPLE EX PARTE VISITS WITH KIBBONS DURING HIS DAYS LONG STAY IN THE HOSPITAL, IN THE MIDDLE OF THE DEFENDANT'S CROSS EXAMINATION, AT THE BEHEST OF THE TRIAL COURT JUDGE.

STATEMENT OF THE CASE

QUESTION 1: IMPROPER JOINDER (1 OF 6)

THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER REVERSIBLE ERROR OCCURRED WHERE THE TRIAL COURT DENIED STEVEN MCGAULEY'S SEVERANCE MOTION WITHOUT WEIGHING THE POTENTIAL FOR PREJUDICE BY JOINING THE MISDEMEANOR DOMESTIC BATTERY AND FIRST DEGREE MURDER CHARGES, WHICH GAVE THE STATE THE OPPORTUNITY TO ADMIT DAMAGING PROPENSITY EVIDENCE AS TO THE DOMESTIC BATTERY CHARGE, BUT WHICH WAS NOT ADMISSIBLE AS TO THE MURDER CHARGE. SPECIFICALLY, PRIOR TO TRIAL, THE STATE NOTIFIED THE DEFENSE THAT IN ADDITION TO JOINING THE CHARGES, IT WOULD SEEK TO INTRODUCE EVIDENCE THAT MCGAULEY COMMITTED UNCHARGED ACTS OF DOMESTIC VIOLENCE AGAINST HIS WIFE, MARY, TO BE CONSIDERED AS TO THE DOMESTIC BATTERY CHARGE AS ALLOWED BY SECTION 115-7.4(a). 725 ILCS 115-7.4(a)(2018) (PRIOR ACTS OF DOMESTIC VIOLENCE ARE ADMISSIBLE IN CRIMINAL PROSECUTIONS IN WHICH THE DEFENDANT IS ACCUSED OF AN OFFENSE OF DOMESTIC VIOLENCE OR INVOLVING DOMESTIC VIOLENCE). DEFENSE COUNSEL RESPONDED BY FILING A SEVERANCE MOTION, ARGUING THAT THE ADMISSION OF THE PROPENSITY EVIDENCE WOULD CAUSE SUBSTANTIAL PREJUDICE TO MCGAULEY WHERE THE JURY WOULD ALSO BE CONSIDERING THE MURDER CHARGE. AT A HEARING ON THE SECTION 115-7.4(a) AND SEVERANCE MOTIONS, DEFENSE COUNSEL ARGUED THAT SECTION 115-7.4(a) WAS NOT INTENDED TO "PROVIDE PROSECUTORS WITH A BACKDOOR METHOD BY WHICH THEY CAN SUBVERT THE PURPOSE OF... ILLINOIS RULE OF EVIDENCE 404(b), WHICH PROHIBITS THE INTRODUCTION OF EVIDENCE OF OTHER CRIMES..." HE ALSO POINTED OUT THAT THERE WOULD BE "NO QUESTION REGARDING THE INADMISSIBILITY" OF THE PROPENSITY EVIDENCE AS TO THE MURDER CHARGE ALONE. NOT -

STATEMENT OF THE CASE

QUESTION 1: IMPROPER JOINER (2 OF 6)

WITHSTANDING COUNSEL'S ARGUMENT, THE COURT RULED THAT EVIDENCE OF TWO PRIOR UNCHARGED INCIDENTS WERE ADMISSIBLE UNDER SECTION 115-7.4 (a) - THAT ON APRIL 7, 2017, MCGAULEY PUSHED MARY INTO A CLOSET, CAUSING HER TO SEEK MEDICAL TREATMENT FOR A SHOULDER INJURY, AND THAT ON MAY 13, 2017, MCGAULEY ATTEMPTED TO "SMOTHER" AND "STRANGLE" MARY WITH HIS HANDS AND A PAIR OF SHORTS, AND THAT HE STRUCK HER THREE TIMES IN THE FACE WITH AN OPEN HAND, INJURING HER LEFT EYE. COUNSEL MAINTAINED AGAIN THAT SEVERANCE WAS NECESSARY BECAUSE "THE CHARGES BEAR NO RELATIONSHIP TO ONE ANOTHER AND WOULD RESULT IN EXTREME PREJUDICE" TO MCGAULEY. THE COURT DENIED THE SEVERANCE MOTION, FINDING THAT "IT WOULD BE MORE CONFUSING TO THE JURY IF WE DID SEVER THESE CASES" AND THE JURORS WOULD BE ABLE TO "SEPERATE THOSE CHARGES OUT. I". THE EVIDENCE WAS SUBSEQUENTLY ADMITTED INTO EVIDENCE DURING MARY'S TRIAL TESTIMONY WITH A LIMITING INSTRUCTION, BUT NO SIMILAR INSTRUCTION LIMITING ITS USE TO THE DOMESTIC BATTERY CHARGE WAS GIVEN WHEN THE JURY WAS FULLY INSTRUCTED ON THE CASE MORE THAN A WEEK LATER. IN HIS STATE APPEAL, MCGAULEY ARGUED THAT THE TRIAL COURT ERRED BECAUSE IT DID NOT CONSIDER THE POTENTIAL FOR PREJUDICE WHEN IT DENIED HIS MOTION FOR SEVERANCE. IN REJECTING HIS CLAIM, THE APPELLATE COURT COMMITTED THE SAME ERROR AS THE TRIAL COURT, NAMELY, IT NEVER CONSIDERED THAT "[I]F IT APPEARS THAT A DEFENDANT... IS PREJUDICED BY A JOINER OF RELATED PROSECUTIONS..." SEVERANCE SHOULD BE GRANTED." 725 ILCS 5/114-8(a)(2018); PEOPLE V. MCGAULEY, 2023 IL App (5TH) 190372-U PAR. 55. INSTEAD, THE APPELLATE COURT

STATEMENT OF THE CASE

QUESTION 1: IMPROPER JOINDER (3 OF 6)

REPEATED THE TRIAL COURT'S MISPLACED BELIEF THAT THE JURY WOULD BE "CONFUSED" IF THE CHARGES WERE SEVERED AND NEVER CONSIDERED THE PREJUDICE CAUSED BY THE ADMISSION OF THE PROPENSITY EVIDENCE WHICH WOULD BE INADMISSIBLE AT A SEPARATE TRIAL ON THE MURDER CHARGE. ID. PARS 56-57. OBVIOUS PREJUDICE OCCURRED HERE WHERE, BY VIRTUE OF JOINING THE MISDEMEANOR DOMESTIC BATTERY AND FIRST DEGREE MURDER CHARGES, THE JURY HEARD MARY TESTIFY THAT JUST A FEW MONTHS BEFORE THE INSTANT OFFENSE, MCGAULEY VIOLENTLY STRUCK AND TRIED TO CHOKER HER. THIS TYPE OF PROPENSITY EVIDENCE IS GENERALLY INADMISSIBLE BECAUSE IT "OVERPERSUADES THE JURY, WHICH MIGHT CONVICT THE DEFENDANT ONLY BECAUSE IT FEELS HE OR SHE IS A BAD PERSON DESERVING OF PUNISHMENT." PEOPLE V. LINDGREN, 79 ILL. 2D 129, 137 (1980).

"EVIDENCE IS UNDULY PREJUDICIAL ONLY IF IT 'CASTS A NEGATIVE LIGHT UPON THE DEFENDANT FOR REASONS THAT HAVE NOTHING TO DO WITH THE CASE ON TRIAL' [CITATION OMITTED], OR INVITES THE JURY TO DECIDE THE CASE 'ON AN IMPROPER BASIS, COMMONLY AN EMOTIONAL ONE, SUCH AS SYMPATHY, HATRED, CONTEMPT, OR HORROR' [CITATION OMITTED]." PEOPLE V. ROMANOWSKI, 2016 IL APP (1ST) 142360, PAR 30 (EMPHASES IN ORIGINAL).

HERE, THE PROPENSITY EVIDENCE WAS INHERENTLY PREJUDICIAL WHERE MCGAULEY INDICATED PRIOR TO TRIAL THAT HE PLANNED TO RAISE THE AFFIRMATIVE DEFENSE OF SELF DEFENSE, AND EVIDENCE THAT HE BEAT HIS WIFE MULTIPLE TIMES COULD CAUSE THE JURY TO DOUBT HIS CREDIBILITY WHEN HE TESTIFIED THAT HE SHOT FLACK IN SELF DEFENSE. THE JURY WOULD ALSO BE MORE LIKELY TO BELIEVE THAT A MAN WHO BEAT HIS WIFE COULD REACT WITH LETHAL VIOLENCE AGAINST HIS FRIEND. THIS

STATEMENT OF THE CASE

QUESTION 1: IMPROPER JOINER (4 OF 6)

SIGNIFICANT POTENTIAL FOR HARM COULD HAVE EASILY BEEN CURED BY GRANTING SEVERANCE, SUCH THAT ONLY THE TRIER OF FACT IN THE MISDEMEANOR DOMESTIC BATTERY CASE HEARD THE PROPENSITY EVIDENCE. WHILE "[T]HE TRIAL COURT IS ENTITLED TO SUBSTANTIAL DISCRETION WHEN DECIDING WHETHER TO SEVER CHARGES... THAT DISCRETION IS TO BE EXERCISED SO AS TO PREVENT INJUSTICE." *PEOPLE V. PATTERSON*, 245 ILL. 586, 588 (5TH DIST. 1993). ACCORDINGLY, THIS HONORABLE COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER SEVERANCE WAS NECESSARY TO PREVENT INJUSTICE AND TO ENSURE MCGAULEY RECEIVED A FAIR TRIAL. U.S. CONST. AMEND. XIV. REVIEW IS ALSO REQUIRED BECAUSE THE APPELLATE COURT ERRED WHEN IT REFUSED TO FIND ERROR WHERE THE JURY DID NOT RECEIVE AN INSTRUCTION AT THE CLOSE OF EVIDENCE LIMITING ITS USE OF THE PROPENSITY EVIDENCE TO THE DOMESTIC BATTERY CHARGE ALONE, AND NOT TO THE MURDER CHARGE. *PEOPLE V. MCGAULEY*, 2023 IL APP (5TH) 190372-4 PAR'S 59-63. WHEN THE EVIDENCE WAS ADMITTED, THE COURT GAVE A CONTEMPORANEOUS LIMITING INSTRUCTION, TELLING THE JURY, "[T]HE EVIDENCE THAT YOU ARE GOING TO HEAR AT THIS POINT IS ONLY TO BE CONSIDERED BY YOU AS TO THE DOMESTIC BATTERY CHARGE." YET THE COURT DID NOT PROVIDE THE SAME LIMITING INSTRUCTION WHEN IT FULLY INSTRUCTED THE JURY SEVEN DAYS LATER, AND AS SUCH, IT CANNOT BE ASSUMED THAT THE JURY DID NOT MISUSE THE EVIDENCE AS TO THE MURDER CHARGE. SEE *BRITON V. U.S.* 391 U.S. 123, 135 (1968). ("THERE ARE SOME CONTEXT IN WHICH THE RISK THAT THE JURY WILL NOT, OR CANNOT, FOLLOW INSTRUCTIONS IS SO GREAT, AND THE CONSEQUENCES OF FAILURE SO VITAL TO THE DEFENDANT, THAT THE PRACTICAL AND HUMAN

STATEMENT OF THE CASE

QUESTION 1: IMPROPER JOINDER (5 of 6)

LIMITATIONS OF THE JURY SYSTEM CANNOT BE IGNORED. [CITATIONS OMITTED.]"). INSTEAD, THE COURT TENDERED A MODIFIED VERSION OF ILLINOIS JURY PATTERN INSTRUCTIONS, CRIMINAL, NO. 3.14 (4TH ED. 2000), WHICH DID NOT PLACE ANY LIMITATIONS ON THE USE OF THE PROPENSITY EVIDENCE. THE FAULTY INSTRUCTION CREATED A SERIOUS RISK THAT THE JURY INCORRECTLY CONVICTED MCGAULEY BECAUSE THEY DID NOT UNDERSTAND THE APPLICABLE LAW, SO AS TO THREATEN THE FAIRNESS OF THE TRIAL. THE FAILURE TO PROVIDE A TAILORED LIMITING INSTRUCTION AT THE CLOSE OF EVIDENCE WAS PLAIN ERROR, AND DEFENSE COUNSEL WAS INEFFECTIVE FOR NOT ENSURING THE JURY WAS PROPERLY INSTRUCTED. U.S. CONST. AMENDS. VI, XIV; ILL. CONST. 1970, ART. I, § 8; ILL. S. CT. RULE 451(c) (2018); PEOPLE V. JOHNSON, 2013 IL App (2d) 110535, PAR. 76; STRICKLAND V. WASHINGTON, 466 U.S. 668, 685-87 (1984); PEOPLE V. PARK, 245 ILL. APP. 3d 994, 1002-03 (2d DIST. 1993) (COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST LIMITING INSTRUCTION AFTER INTRODUCTION OF OTHER-CRIMES EVIDENCE); PEOPLE V. HOOKER, 253 ILL. APP. 3d 1075, 1085 (2d DIST. 1993) (COUNSEL'S FAILURE TO REQUEST APPLICABLE LIMITING INSTRUCTION "IS NOT A MATTER OF DISCRETION OR TRIAL STRATEGY"). ACCORDINGLY, IN THIS EXCEPTIONALLY CLOSE CASE, WHICH AMOUNTED TO A CREDIBILITY CONTEST BETWEEN MCGAULEY AND THE STATE'S ONLY EYEWITNESS TO THE SHOOTING, KIBBONS, THE APPELLATE COURT ERRORED BY NOT FINDING AN ABUSE OF DISCRETION WHERE THE TRIAL COURT DENIED MCGAULEY'S SEVERANCE MOTION WITHOUT ANY CONSIDERATION OF PREJUDICE BY JOINING THE CHARGES. ^{PEOPLE V.} MCGAULEY, 2023 IL App (5TH) 190372-U, PAR'S 48-58. ADDITIONAL ERROR OCCURRED WHERE THE TRIAL COURT AND DEFENSE COUNSEL DID NOT ENSURE

STATEMENT OF THE CASE

QUESTION 1: IMPROPER JOINER (60F6)

THE JURY WAS PROPERLY INSTRUCTED THAT THE PROPENSITY EVIDENCE COULD ONLY BE USED AS TO THE DOMESTIC BATTERY CHARGE, PROMPTING REQUEST OF REVIEW BY THIS COURT.

STATEMENT OF THE CASE

QUESTION 2: MISTRIAL (1 OF 3)

THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER REVERSIBLE ERROR OCCURS WHEN A CRIMINAL DEFENDANT MOVES FOR A MISTRIAL BASED ON POSSIBLE JURY BIAS AND THE TRIAL COURT SUMMARILY DENIES THE MOTION WITHOUT QUESTIONING THE JURORS ABOUT THE BASIS FOR THE ALLEGED BIAS AND FAILS TO TAKE ANY REMEDIAL MEASURES, SUCH AS ISSUING A CURATIVE INSTRUCTION THAT THE JURY SHOULD NOT BE INFLUENCED BY SYMPATHY OR PREJUDICE, BEFORE RESUMING THE TRIAL. SPECIFICALLY, IN THE MIDDLE OF AN AGGRESSIVE CROSS-EXAMINATION, THE STATE'S ONLY EYE-WITNESS TO THE SHOOTING, JOHN PAUL KIBBONS, SUFFERED A VIOLENT SEIZURE AND FELL OFF THE WITNESS STAND STRIKING HIS HEAD ON A DESK AND THEN ON THE CONCRETE FLOOR IN FULL VIEW OF THE JURY. THE COURTROOM WAS CLEARED AND KIBBONS WAS TAKEN TO THE HOSPITAL. THE NEXT DAY, COUNSEL MOVED FOR A MISTRIAL, ARGUING THAT THE DRAMATIC INCIDENT UNDERMINED MCGAULEY'S RIGHT TO BE TRIED BY A JURY FREE OF SYMPATHY AND BIAS. HE ALSO REQUESTED THAT THE TRIAL COURT ASK THE JURORS WHAT EFFECT, IF ANY, SEEING THE SEIZURE HAD ON THEM. YET, THE COURT CHOSE TO DO NOTHING AND DENIED THE MOTION, STATING, "WE'VE SPENT TOO MUCH TIME ON THIS ALREADY, ALRIGHT?" THE TRIAL COURT'S FAILURE TO GRANT THE MOTION FOR MISTRIAL, OR AT A MINIMUM, TO TAKE REMEDIAL ACTION BY QUESTIONING THE JURY ABOUT THE INCIDENT AND GIVING A CURATIVE INSTRUCTION WHEN KIBBONS RESUMED TESTIFYING SIX DAYS AFTER THE SEIZURE WAS AN ABUSE OF DISCRETION WHICH THE APPELLATE COURT FAILED TO RECOGNIZE AND WARRANTS REVIEW BY THIS HONORABLE COURT. ^{PEOPLE V.} MCGAULEY, 2023 IL APP (5TH) 190372-U, PAR'S 73-76.

STATEMENT OF THE CASE

QUESTION 2: MISTRIAL (2 OF 3)

"A CRIMINAL DEFENDANT, WHETHER GUILTY OR INNOCENT, IS ENTITLED TO A FAIR, ORDERLY, AND IMPARTIAL TRIAL... CONDUCTED ACCORDING TO LAW." PEOPLE V. BULL, 185 ILL. 2D 179, 214 (1998); U.S. CONST. AMEND. XIV; ILL. CONST. 1970, ART. I, § 2. A TRIAL BEFORE A BIASED JURY DEPRIVES A DEFENDANT OF A SUBSTANTIAL RIGHT AND IS STRUCTURAL ERROR REQUIRING REVERSAL. PEOPLE V. RUNGE, 234 ILL. 2D 68, 102 (2009). MOREOVER, THIS COURT HAS EXPLAINED THAT WHETHER A JURY HAS BEEN IRREVOCABLY COMPROMISED GENERALLY "REST[ES] IN SOUND JUDICIAL DISCRETION" AND A COURT'S DISCRETION EXTENDS TO AN INITIAL DECISION ABOUT WHETHER AND HOW TO ASK JURORS ABOUT POSSIBLE BIAS. *Id.*, @104-105. THE APPELLATE COURT HELD THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT FAILED TO ENSURE THAT MCGAULEY'S JURY WAS NOT NEGATIVELY IMPACTED AFTER WITNESSING KIBBONS' GASP, SEIZE, TWITCH, GURGLE AND SPASM FOR A NUMBER OF MINUTES [] AND FALL OFF THE WITNESS STAND AND HIT HIS HEAD ON THE DESK AND CONCRETE FLOOR WHILE BEING IMPEACHED BY DEFENSE COUNSEL. PEOPLE V. MCGAULEY, 2023 IL APP (5TH) 190372-U, MR. 76. YET, ILLINOIS COURTS OF REVIEW HAVE CONSISTENTLY FOUND THAT IT IS INCUMBENT UPON THE TRIAL COURT TO EMPLOY SOME REMEDIAL MEASURES WHEN A QUESTION ARISES ABOUT POSSIBLE JURY BIAS. ^{SEE} PEOPLE V. THOMAS, 296 ILL. APP. 3D 498 (5TH DIST. 1998) (COURT QUESTIONED INDIVIDUALLY A JUROR WHO READ A POTENTIALLY PREJUDICIAL NEWSPAPER ARTICLE); PEOPLE V. MALMENATO, 14 ILL. 2D 52, 63 (1958) (COURT QUESTIONED EVERY JUROR WHO MAY HAVE READ A NEWSPAPER ARTICLE WHICH DETAILED THAT THE DEFENDANT HAD BEEN PREVIOUSLY ARRESTED FORTY-THREE TIMES);

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QUESTION 2: MISTRIAL (3 OF 3)

PEOPLE V. STATEN, 143 ILL. APP. 3D 1039 (2D DIST. 1996) (TO DETERMINE WHETHER OR NOT TO GRANT COUNSEL'S MOTION FOR MISTRIAL, THE COURT IS REQUIRED TO CONSIDER "ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE JURY'S EXPOSURE TO THE ALLEGED PREJUDICIAL MATTER"). "AN ABUSE OF DISCRETION OCCURS WHERE [THE TRIAL COURT] 'FAILS TO UNDERSTAND IT HAS DISCRETION TO ACT OR WHOLLY FAILS TO EXERCISE ITS DISCRETION.'" PEOPLE V. LUELLEN, 2019 IL APP (1ST) 172019, PAR 38, QUOTING PEOPLE V. LOVELACE, 2018 IL APP (4TH) 170401, PAR 33. THUS, MCGAULEY PRAYS THIS HONORABLE COURT WILL GRANT REVIEW TO PROVIDE GUIDANCE TO THE LOWER STATE COURTS ON WHAT CONSTITUTES A SOUND EXERCISE OF DISCRETION WHEN DETERMINING WHETHER TO GRANT A MISTRIAL BASED ON POSSIBLE JUROR BIAS.

STATEMENT OF THE CASE

QUESTION 3: CRITICAL STAGE EX PARTE (1 OF 3)

THIS COURT SHOULD GRANT REVIEW TO DETERMINE IF STEVEN MCGAULEY WAS DENIED A FAIR TRIAL, DENIED HIS RIGHT TO CONFRONT WITNESS AGAINST HIM, AND IF A CONSTRUCTIVE DENIAL OF HIS ASSISTANCE OF COUNSEL OCCURRED WHEN PROSECUTOR ENGAGED IN MULTIPLE EX PARTE CONVERSATIONS WITH THE STATE'S ONLY EYEWITNESS TO THE SHOOTING DURING A DAYS LONG BREAK IN THE MIDDLE OF DEFENDANT'S CROSS EXAMINATION. PROSECUTOR'S EX PARTE MEETINGS WITH STATE'S WITNESS, JOHN KIBBONS, WAS AT THE BEHEST OF THE TRIAL COURT. DURING AN AGGRESSIVE CROSS EXAMINATION BY THE DEFENSE, KIBBONS SUFFERED A VIOLENT SEIZURE AND FELL OFF THE WITNESS STAND STRIKING HIS HEAD ON A DESK AND THEN ON THE CONCRETE FLOOR IN FULL VIEW OF THE JURY. THE COURT ROOM WAS CLEARED AND KIBBONS WAS TAKEN TO THE HOSPITAL FOR A DAYS LONG STAY. DAYS AFTER MCGAULEY'S MOTION FOR A MISTRIAL, A HEARING WAS HELD TO STRIKE KIBBONS TESTIMONY WHERE- PROSECUTOR REVEALED THAT THE TRIAL COURT INSTRUCTED HER TO "CHECK" ON KIBBONS DURING HIS HOSPITAL STAY. ILLINOIS REVISED STATUTES, CHAPTER 110A, MAR. 61(C) STATES: "(4) AVOIDANCE OF IMPROPRIETY... A JUDGES OFFICIAL CONDUCT SHOULD BE FREE FROM IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY..." THE TRIAL COURT SHOULD HAVE GIVEN NO INSTRUCTION TO THE PROSECUTOR CONCERNING KIBBONS. "A TRIAL JUDGE FURTHER HAS AN OBLIGATION OF ASSURING THE PUBLIC THAT JUSTICE IS ADMINISTERED FAIRLY, BECAUSE THE APPEARANCE OF BIAS OR PREJUDICE CAN BE AS DAMAGING TO PUBLIC CONFIDENCE AS WOULD BE THE ACTUAL PRESENCE OF BIAS OR PREJUDICE." PEOPLE V. BRANSHAW 171 ILL. APP. 3D 971 (1988). THE DEFENDANT IN THE PRESENT CASE WHOLLY ADOPTS THE SAME VIEW AS THE BRANSHAW

STATEMENT OF THE CASE

QUESTION 3: CRITICAL STAGE EX PARTE (20F3)

COURT WHEN IT STATES: "WE DO NOT IMPLY THAT ANY IMPROPER MOTIVE EXISTED ON THE PART OF THE TRIAL JUDGE. WHAT WE DO RECOGNIZE, HOWEVER, IS THAT IT IS BOTH THE RIGHT OF A DEFENDANT TO HAVE A TRIAL BEFORE AN IMPARTIAL TRIBUNAL AS WELL AS THE DUTY OF A COURT TO AVOID ANY APPEARANCE OF IMPROPRIETY." MORE OVER, AS NOTED IN THE DEFENDANT'S POST TRIAL MOTION, UPON KIBBON'S RESUMING HIS TESTIMONY, IT IS EVIDENT FROM THE TRIAL RECORD THAT KIBBON'S WAS COACHED BY THE PROSECUTION DURING HER EX PARTE MEETINGS WITH HIM. "IT IS AN EMPIRICAL PREDICATE OF OUR SYSTEM OF JUSTICE THAT, QUITE APART FROM ANY QUESTION OF UNETHICAL 'COACHING', CROSS EXAMINATION OF AN UNCOUNSELED WITNESS, WHETHER THE DEFENDANT OR A NON DEFENDANT, FOLLOWING DIRECT EXAMINATION IS MORE LIKELY TO LEAD TO THE DISCOVERY OF THE TRUTH THAN IS CROSS-EXAMINATION OF A WITNESS GIVEN TIME TO PAUSE AND CONSULT WITH HIS LAWYER." PERRY V. LEEKE, 488 U.S. 272 (1989) HELD: 2, H2. THE MAJOR FACET OF THIS CLAIM IS THE FACT THE DEFENDANT'S TRIAL COUNSEL WAS ABSENT DURING THE PROSECUTION'S EX PARTE VISITS TO THE HOSPITAL TO "CHECK" ON KIBBON'S. DENIAL OF DEFENDANT'S COUNSEL AT THIS CRIMINAL PROCEEDINGS MOST CRITICAL STAGE, CROSS EXAMINATION OF THE STATE'S ONLY EYEWITNESS IS "PER SE SIXTH AMENDMENT VIOLATION WARRANTING REVERSAL OF CONVICTION, OR SENTENCE, WITHOUT ANALYSIS FOR PREJUDICE OR HARMLESS ERROR." VAN V. JONES 475 F.3d 292 (2007) H2. A DEFENDANT'S ASSISTANCE OF COUNSEL, TO BE FULLY EFFECTIVE, MUST BE EFFECTIVE FROM THE TIME PROSECUTION BEGINS AND CONTINUE THROUGHOUT THE ENTIRETY OF THE PROCEEDINGS. YOUNG

STATEMENT OF THE CASE

QUESTION 3: CRITICAL STAGE EX PARTE (3 OF 3)

V. DUCKWORTH 733 F.2d 482 (1984) HN 4,5,6. DEFENSE COUNSELS INCLUSION AT THE HOSPITAL WOULD HAVE BEEN VITAL IN THIS REGARD. IT HAS ALSO BEEN WELL SETTLED THAT "ONCE A DEFENDANT'S RIGHT TO COUNSEL HAS ATTACHED, THE STATE MUST HONOR IT AT EVERY STAGE" MAINE V. MOULTON, 474 U.S. 159 (1985) HN 2. THE STATE FAILED TO HONOR THIS COMMITMENT AND, THUS, COMMITTED SIXTH AND FOURTEENTH AMENDMENT VIOLATIONS MCGAWLEY COULD NEVER RECOVER FROM. ADDITIONALLY, ONCE THE PROSECUTOR MADE KNOWN HER EX PARTE CONVERSATIONS WERE AT THE BEHEST OF THE TRIAL COURT, TRIAL COUNSEL SHOULD HAVE REQUESTED A MISTRIAL BASED ON THE EX PARTE ISSUE AS WELL AS THE MOTION TO STRIKE THE TESTIMONY OF JOHN KIBBON'S THAT WAS BEING HEARD AT THE PRESENT HEARING OR, AT THE MINIMUM, DEFENSE COUNSEL SHOULD HAVE REQUESTED THAT THE TRIAL COURT JUDGE RECUSE HIMSELF IN ORDER TO PROTECT THE RIGHT OF THE ACCUSED TO A FAIR AND IMPARTIAL TRIAL - INSTEAD, TRIAL COUNSEL DID NEITHER. "A CRIMINAL DEFENDANT, WHETHER GUILTY OR INNOCENT, IS ENTITLED TO A FAIR, ORDERLY, AND IMPARTIAL TRIAL... CONDUCTED ACCORDING TO LAW." PEOPLE V. BULL, 185 ILL.2d 179 (1988); U.S. CONST. AMEND. XIV; ILL. CONST. 1970, ART 1 § 2; STRICKLAND V. WASHINGTON, 466 U.S. 688 (1984).

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QUESTION 4: CONSTITUTIONALLY INADEQUATE FIRST APPEAL (10F4)

THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER STEVEN MCGAULEY'S 14TH AMENDMENT RIGHT TO DUE PROCESS WAS VIOLATED WHERE HE WAS DENIED HIS RIGHT TO A CONSTITUTIONALLY FAIR AND ADEQUATE DIRECT APPEAL WHEN THE APPELLATE COURT MISSTATED AND OMITTED FACTS OF MCGAULEY'S CASE WHEN AFFIRMING HIS CONVICTION AND 60 YEAR SENTENCE WHERE THE RECORD AFFIRMATIVELY SHOWS THE APPELLATE COURT ARBITRARILY FAILED TO RECALL CRUCIAL DEFENSE EVIDENCE IN ITS FINDINGS, THIS CREATED "AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED AT THE STATE COURT PROCEEDINGS.", PURSUANT TO HARRINGTON V. RICHTER 1315 S. CT. 770, 178 L. ED 624 (2011). MCGAULEY ARGUED IN HIS DIRECT APPEAL, AMONG OTHER THINGS, THAT THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING JOINDER OF HIS FIRST DEGREE MURDER AND MISDEMEANOR DOMESTIC BATTERY CHARGES. IN MCGAULEY'S MOTION TO SEVER, TRIAL COUNSEL ARGUED SEVERANCE WAS NECESSARY BECAUSE MCGAULEY'S CHARGES WERE SEPERATED BY TIME, LOCATION, NAMED VICTIMS, AND THERE WAS NO COMMON METHOD OR SCHEME TO THE OFFENSES CHARGED. MOST IMPORTANTLY, TRIAL COUNSEL ARGUED THE HIGHLY PRESUDICIAL NATURE OF THE PROSECUTION BEING ALLOWED TO ENTER INTO THE MURDER TRIAL- EVIDENCE OF UNCHARGED INCIDENTS OF DOMESTIC VIOLENCE USING A PROVISION IN THE DOMESTIC VIOLENCE CODE. TRIAL COUNSEL ARGUED THAT SECTION 115-7.4(a) WAS NOT INTENDED TO "PROVIDE PROSECUTORS WITH A BACKDOOR METHOD BY WHICH THEY CAN SUBVERT THE PURPOSE OF... ILLINOIS RULES OF EVIDENCE 404 (b), WHICH PROHIBITS THE INTRODUCTION OF EVIDENCE OF OTHER CRIMES..."

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QUESTION 4: CONSTITUTIONALLY INADEQUATE FIRST APPEAL (20F4)

HE ALSO POINTED OUT THAT THERE WOULD BE "NO QUESTION REGARDING THE INADMISSIBILITY OF THE PROPENSITY EVIDENCE AS TO THE MURDER CHARGE ALONE. NOTWITHSTANDING TRIAL COUNSEL'S ARGUMENTS, THE TRIAL COURT ALLOWED JOINER AND PROCEEDED TO TRIAL. ADDRESSING THE PREJUDICE ASPECT OF MCGAULEY'S MOTION TO SEVER, THE APPELLATE COURT STATES: "A DEFENDANT'S PRETRIAL MOTION FOR SEVERANCE MUST DEMONSTRATE SPECIFICALLY THE PREJUDICE COMPLAINED OF; MERE APPREHENSIONS OF PREJUDICE ARE INSUFFICIENT." CITING PEOPLE V. PAIK, 257 ILL. APP. 3d 620, 685 (1993). THEN THE APPELLATE COURT DETERMINED, "THE DEFENDANT'S MOTION TO SEVER MENTIONS HIS APPREHENSIONS ABOUT PREJUDICE BUT DID NOT SPECIALLY [SIC] ALLEGE HOW HE WOULD BE PREJUDICED." PEOPLE V. MCGAULEY 2023 IL APP (5TH) 190372-4 PAR. 53-54. AN UNREASONABLE DETERMINATION WAS MADE WHERE ITEM #4 OF MCGAULEY'S PRETRIAL MOTION FOR SEVERANCE STATES: "AS IT IS APPARENTLY THE STATES INTENTION TO CONVINCE A JURY THAT DEFENDANT IS GUILTY OF FIRST DEGREE MURDER BY PRESUDICING THEM WITH PAST ALLEGATIONS OF DOMESTIC STRIFE, DEFENDANT MOVES THIS COURT TO SEVER THE TWO CHARGES OF FIRST DEGREE MURDER (CLASS M) AND DOMESTIC BATTERY (A CLASS A MISDEMEANOR) PURSUANT TO 725 ILCS 5/114-8." THIS FACT IS ACKNOWLEDGED IN THE APPELLATE COURT'S OWN ORDER. ID @ PAR. 53. THE APPELLATE COURT FURTHER ERRORED BY ARBITRARILY OMITTING ITEM #12 OF MCGAULEY'S PRETRIAL MOTION TO SEVER WHEN MAKING THEIR RULING. ITEM #12 SPECIFICALLY STATES: "TAKEN IN CONJUNCTION, RULES 403 AND 404 ARE DESIGNED TO PROTECT DEFENDANTS FROM EXACTLY THE TYPE OF PROSECUTION

STATEMENT OF THE CASE

QUESTION 4: CONSTITUTIONALLY INADEQUATE FIRST APPEAL (3 OF 4)

THAT THE STATE IS TRYING TO CONDUCT IN THE PRESENT CASE

ALTHOUGH THE DEFENSE ACKNOWLEDGES THE PROBATIVE NATURE OF THE INFORMATION THE STATE IS ATTEMPTING TO INTRODUCE, THE EXTREMELY

PREJUDICIAL NATURE OF SUCH EVIDENCE CREATES AN UNACCEPTABLE

LEVEL OF DANGER THAT THE DEFENDANT WILL BE CONVICTED OF FIRST

DEGREE MURDER BASED UPON PRIOR ACCUSATIONS OF DOMESTIC VIOLENCE.

AS THE COURT STATES IN PEOPLE V. HALE 2012 IL APP. (1ST) 103537, MR.

35. THE TEST TO DETERMINE WHETHER 'THE EVIDENCE WILL SOME HOW

CAST A NEGATIVE LIGHT UPON THE DEFENDANT, FOR REASONS THAT HAVE

NOTHING TO DO WITH THE CASE ON TRIAL; IN OTHER WORDS, THE JURY WOULD

BE DECIDING THE CASE ON AN IMPROPER BASIS, SUCH AS SYMPATHY, HATRED,

CONTEMPT, OR HORROR." A THOROUGH REVIEW OF THE RECORD WAS NOT

REQUIRED BY THE APPELLATE COURT IN ORDER TO INCLUDE ITEM # 12

IN THEIR DECISION MAKING PROCESS. THE APPELLATE COURT'S PROPOSITION

THAT THE DEFENDANT DID NOT SPECIFICALLY ALLEGE HOW HE WOULD BE

PREJUDICED BY JOINDER "RESTS ON FACT FINDING THAT IGNORES CLEAR

AND CONVINCING WEIGHT OF THE EVIDENCE." PURSUANT TO MCMAHUS

V. NEIL 779 F.3d 634, 649 (7TH CIR. 2015). ADDITIONALLY, ANOTHER

CRUCIAL PIECE OF DEFENSE EVIDENCE THE APPELLATE COURT OMITTED IN

THE DECISION MAKING PROCESS WAS TRIAL COUNSEL'S ARGUMENT AT

THE VOIR DIRE PORTION OF THE PROCEEDINGS WHERE HE INDICATES TO

THE COURT: "AS WE HAVE HEARD OVER THE LAST EIGHT HOURS OR SO OF

THE JURY TESTIMONY, A CONSIDERABLE AMOUNT OF THAT TESTIMONY HAS

BEEN IN REGARDS TO THE ISSUE OF DOMESTIC VIOLENCE, AND IF THAT IS

THE ESSENTIAL FEATURE OR FACET OF THIS CASE WE BELIEVE THAT

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QUESTION 4: CONSTITUTIONALLY INADEQUATE FIRST APPEAL (4 OF 4)

THAT'S THE EVIDENCE OF PREJUDICE THAT WE WERE CONCERNED ABOUT WHEN WE SUBMITTED OUR MOTION TO SEVER, SO WE'RE JUST, FOR THE RECORD, WANTING TO RESTATE OUR BELIEF THAT THESE CAUSES OF ACTION BE SEVERED. "A PLAIN ENGLISH READING OF MCGAULEY'S VOIR DIRE PORTION OF HIS TRIAL TRANSCRIPTS CLEARLY SHOWS THE STATE PROSECUTOR'S INDOCTRINATION OF THE VENIRE IN THE AREA OF DOMESTIC VIOLENCE.

"THE TRIAL COURT HAS A CONTINUING DUTY AT ALL STAGES OF TRIAL TO GRANT SEVERANCE IF PREJUDICE APPEARS." STATE V. FERNANE, 185 ARIZ. 222, 914 2d 1314 (APP. 1995). THE APPELLATE COURT FAILING TO RECALL PRETRIAL EVIDENCE FAVORABLE TO THE DEFENDANT WHEN MAKING THEIR DECISION WAS REVERSIBLE ERROR. PEOPLE V. WILLIAMS 2013 IL APP. (1ST) 111116. FAILING TO RECALL CRUCIAL DEFENSE EVIDENCE DIRECTLY RESULTED IN THE AFFIRMATION OF MCGAULEY'S CONVICTION AND SENTENCE, AND DENIED HIM HIS STATE CREATED LIBERTY INTEREST IN REGARDS TO A CONSTITUTIONALLY ADEQUATE FIRST APPEAL. THE 7TH CIRCUIT COURT HAS HELD THAT HABEAS RELIEF IS TO BE GRANTED WHEN A COURTS DECISION IS "SO INADEQUATELY SUPPORTED BY THE RECORD, OR, SO ARBITRARY AS TO BE UNREASONABLE." OR "LIES WELL OUTSIDE THE BOUNDRIES OF PERMISSIBLE DIFFERENCES OF OPINION." HALL V. WASHINGTON, 106 F. 3d 742, 749 (7TH CIR. 1997). THE APPELLATE COURTS DETERMINATION OF FACTS AND THE METHODS EMPLOYED TO ARRIVE AT ITS FACTUAL CONCLUSION SHOULD MAKE THIS CLAIM SUBJECT TO REVIEW.

REASONS FOR GRANTING THE PETITION

GRANTING 1: IMPROPER JOINDER (10F3)

MISSJOINDER OF MISDEMEANOR DOMESTIC BATTERY AND FIRST DEGREE MURDER CHARGES CREATES AN UNACCEPTABLE LEVEL OF DANGER TO ANY CRIMINAL DEFENDANT PROCEEDING TO TRIAL. ACTUAL PREJUDICE OCCURS WHERE EVIDENCE OF UNCHARGED ALLEGATIONS OF DOMESTIC VIOLENCE ARE ALLOWED ENTRY INTO THE MURDER TRIAL. IN ORDER TO FACILITATE PROSECUTION OF DOMESTIC BATTERY CASES, A PROVISION IN THE ILLINOIS DOMESTIC VIOLENCE CODE SEVERLY RELAXES THE RULES FOR THE PROSECUTION OF ONLY DOMESTIC BATTERY CHARGES. 7.05 ILCS 115-7.4(a) (2018) (PRIOR ACTS OF DOMESTIC VIOLENCE ARE ADMISSIBLE IN CRIMINAL PROSECUTIONS IN WHICH THE DEFENDANT IS ACCUSED OF AN OFFENSE OF DOMESTIC VIOLENCE OR INVOLVING DOMESTIC VIOLENCE). WHEN JOINING THESE CHARGES WITHOUT CONSIDERING PREJUDICE TO THE DEFENDANT, THE JURY HEARING THE MURDER CHARGE ALSO HEARS ABOUT UNCHARGED INCIDENTS OF DOMESTIC STRIFE THAT OCCURRED MONTHS OR EVEN YEARS BEFORE THE CHARGED OFFENSE. EVIDENCE THAT WOULD NEVER BE ADMISSIBLE AS TO THE MURDER CHARGE ALONE. A GLARING OVERSIGHT IN MCGAULEY'S CASE WAS THE FACT THAT THE ALLEGED TO THE DOMESTIC BATTERY CHARGE, MARY MCGAULEY, NEVER REPORTED A DOMESTIC BATTERY INCIDENT TO POLICE NOR DID SHE CLAIM TO BE THE VICTIM OF A DOMESTIC BATTERY. IN FACT, MARY'S TRIAL TESTIMONY AND EVERY VIDEO RECORDED STATEMENT MARY GAVE TO POLICE, SHE EMPHATICALLY DENIED ANY DOMESTIC INCIDENT BETWEEN SHE AND MCGAULEY OCCURRED ON THE NIGHT OF THE SHOOTING. THE STATE DISCREDITED MARY'S TESTIMONY AND VIDEO RECORDED STATEMENTS WITH THE TRIAL TESTIMONY OF MADISON COUNTY SHERIFFS SERGEANT MIKE COLES. SGT. COLES TESTIFIED THAT HE TALKED TO MARY "OFF CAMERA" AND MARY TOLD HIM THAT SHE LIED ON CAMERA, IN ORDER TO PROTECT

REASONS FOR GRANTING THE PETITION

GRANTING 1: IMPROPER JOINDER (2 OF 3)

HER HUSBAND. THE STATE WAS ALLOWED TO IMPEACH MARY WITH SGT. COLES HEARSAY TESTIMONY FOR TRUTH AND VERACITY, NOT BECAUSE MARY MADE ANY INCONSISTENT STATEMENTS, EVEN THOUGH THERE WAS NO INDICIES OF RELIABILITY TO SGT. COLES HEARSAY STATEMENT. THE STATE WAS ALLOWED TO IMPEACH ITS OWN WITNESS WITHOUT INSTRUCTING THE JURY THAT SGT. COLES HEARSAY STATEMENTS COULD NOT BE USED AS SUBSTANTIVE EVIDENCE. MCGAULEY FURTHER CONTENTS THIS HONORABLE COURT SHOULD GRANT REVIEW BASED ON THE MERITS OF HIS COUNSEL'S PRETRIAL CONCERNING THE SEVERANCE WHERE COUNSEL TELLS THE COURT, THAT SECTION 115-7.4(a) [OF THE DOMESTIC VIOLENCE STATUTE 725 ILCS 115-7.4] WAS NOT INTENDED TO "PROVIDE PROSECUTORS WITH A BACKDOOR METHOD BY WHICH THEY CAN SUBVERT THE PURPOSE OF... ILLINOIS RULES OF EVIDENCE 404(b), WHICH PROHIBITS THE INTRODUCTION OF EVIDENCE OF OTHER CRIMES..." ILLINOIS RULE OF EVIDENCE 404 STATES, "EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS IS NOT ADMISSIBLE TO PROVE THE CHARACTER OF A PERSON IN ORDER TO SHOW ACTION IN CONFORMITY THEREWITH..." COUNSEL ALSO POINTED OUT THAT THERE WOULD BE "NO QUESTION REGARDING THE INADMISSIBILITY" OF THE PROPENSITY EVIDENCE AS TO THE MURDER CHARGE ALONE. ILLINOIS RULE OF EVIDENCE 403 STATES, "ALTHOUGH RELEVANT, EVIDENCE MAY BE EXCLUDED IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, OR MISLEADING THE JURY, OR BY CONSIDERATIONS OF UNDUE DELAY, WASTE OF TIME, OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE." ALSO, "IF JOINDER WILL CAUSE CLEAR, UNDUE PREJUDICE TO THE DEFENDANT'S SUBSTANTIAL RIGHTS, NO AMOUNT OF JUDICIAL ECONOMY CAN JUSTIFY REQUIRING

REASONS FOR GRANTING THE PETITION

GRANTING 1: IMPROPER JOINDER (3 of 3)

A DEFENDANT TO ENDURE AN UNFAIR TRIAL." STATE V. BLUFORD, 188 W.N. 2d 298, 393 P.3d 1219 (2017). THUS, MCGAULEY PRAYS THIS HONORABLE COURT WILL GRANT REVIEW TO PROVIDE GUIDANCE TO THE LOWER COURTS NATIONWIDE ON WHAT CONSTITUTES A SOUND EXERCISE OF JUDICIAL DISCRETION WHEN DETERMINING WHETHER TO SEVER A MISDEMEANOR DOMESTIC BATTERY AND FIRST DEGREE MURDER CHARGE BASED ON POSSIBLE PRESUDICE SO FUTURE CRIMINAL DEFENDANTS WILL BE PROTECTED AND NOT SUFFER UNNECESSARY LOSS OF LIBERTY.

REASONS FOR GRANTING THE PETITION GRANTING 2: MISTRIAL (1 OF 5)

STEVEN MCGAULEY'S 6TH AND 14TH AMENDMENTS WERE VIOLATED WHERE THE TRIAL COURT DENIED MCGAULEY'S MOTION FOR A MISTRIAL, FAILED TO QUESTION JURORS ABOUT THEIR ABILITY TO REMAIN FAIR AND IMPARTIAL, AND FAILED TO PROVIDE A CURATIVE INSTRUCTION AFTER JURORS SAW THE ONLY EYEWITNESS TO THE SHOOTING, JOHN KIBBONS, HAVE A VIOLENT SEIZURE, FALL OFF THE WITNESS STAND AND STRIKE HIS HEAD ON A DESK THEN ON THE CONCRETE FLOOR IN FRONT OF THEM. THE NATIONAL IMPORTANCE OF REVIEWING MCGAULEY'S CASE IS TO ADMONISH DISTRICT LEVEL STATE APPELLATE COURTS THAT IF THEY REFUSE TO ABIDE BY U.S. SUPREME AND ILLINOIS SUPREME COURT RULINGS, THE FEDERAL GOVERNMENT WILL TAKE SWIFT AND DECISIVE ACTION AGAINST THEM BY GRANTING RELIEF WHERE IT IS DUE. EVERY CASE MCGAULEY CITES HERE, MINUS ONE, IS A U.S. SUPREME COURT OR ILLINOIS SUPREME COURT CASE GRANTING PETITIONERS RELIEF FOR THE VERY SAME ISSUES MCGAULEY RAISED IN HIS STATE DIRECT APPEAL. "EVEN A SINGLE PARTIAL JUROR VIOLATES A DEFENDANT'S CONSTITUTIONAL RIGHT TO FAIR TRIAL." DAVIS V. WOODFORD, 384 F.3d 628, 652 (9TH CIR. 2004), AND A TRIAL BEFORE A BIASED JURY DEPRIVES A DEFENDANT OF A SUBSTANTIAL RIGHT AND IS STRUCTURAL ERROR. THE GUARANTEE TO A FAIR TRIAL IS DENIED WHEN THE PROSECUTION'S PRESENTATION OF EVIDENCE RESULTS IN THE JURORS BEING ASKED TO DECIDE THE CASE ON "CONSIDERATIONS OTHER THAN THE EVIDENCE ALONE." SEE PEOPLE V. WHEELER, 226 ILL. 2d 92, 128 (2007); PEOPLE V. JOHNSON, 208 ILL. 2d 53, 87 (2003); PEOPLE V. BLUE, 189 ILL. 2d 99, 140 (2000). WHEN DEFENSE COUNSEL MAKES A MOTION FOR A MISTRIAL BASED ON A POTENTIALLY PREJUDICED JUROR OR JURORS - OR IT COMES TO THE COURT'S ATTENTION THAT A JUROR OR

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GRANTING 2: MISTRIAL (2015)

JURORS MAY NOT BE FAIR OR IMPARTIAL - IT IS INCUMBENT ON THE TRIAL COURT TO INQUIRE INDIVIDUALLY WITH THE SUSPECTED PREJUDICED JUROR OR JURORS BEFORE RULING ON DEFENSE COUNSEL'S MOTION. SEE PEOPLE V. MALMENATO, 14 ILL. 2d 52, 63 (1958) (COURTS QUESTIONED EVERY JUROR WHO MAY HAVE READ A NEWSPAPER ARTICLE WHICH DETAILED THAT THE DEFENDANT HAD BEEN PREVIOUSLY ARRESTED FORTY-THREE TIMES). DESPITE THE VARIOUS OPTIONS FOR ALLEVIATING THE POTENTIAL FOR PREJUDICE AND UNDUCE SYMPATHY TOWARDS KIBBONS, THE TRIAL COURT DID NOTHING - IT DID NOT GRANT A MISTRIAL, IT DID NOT QUESTION THE JURORS ON THE ISSUE, AND IT DID NOT PROVIDE A CURATIVE INSTRUCTION WHEN KIBBONS RETURNED TO THE WITNESS STAND SIX DAYS LATER. RATHER, THE COURT DENIED THE MOTION, STATING, "WE'VE SPENT TOO MUCH TIME ON THIS ALREADY, ALRIGHT?" THE FAILURE TO GRANT A MISTRIAL WAS AN ABUSE OF DISCRETION WHERE ACTUAL PREJUDICE OCCURRED. THE RECORD SHOWS THAT KIBBONS WAS STRUCK BY THE SEIZURE WHILE DEFENSE WAS AGGRESSIVELY IMPEACHING KIBBONS WITH PRIOR INCONSISTENT STATEMENTS. KIBBONS CLAIMED FLACK [DECEASED] DID NOT PUNCH OR HIT MCGAULEY DURING THEIR INITIAL FIGHT, WHICH UNDERMINED MCGAULEY'S DEFENSE THAT HE SHOT FLACK IN FEAR AFTER FLACK SERIOUSLY BEAT HIM, YET, RIGHT AS DEFENSE COUNSEL CHALLENGED KIBBONS WITH HIS PRIOR STATEMENTS THAT FLACK HAD PUNCHED MCGAULEY TEN TIMES, KIBBONS SUFFERED THE SEIZURE. THIS SUDDEN INTERRUPTION OF THE TRIAL - DURING THE MIDDLE OF CROSS EXAMINATION, WHEN KIBBONS'S CREDIBILITY WAS BEING REPEATEDLY AND DRASTICALLY UNDERCUT WITH HIS INCONSISTENT AND INCREDIBLE STATEMENTS - PROVIDED KIBBONS WITH AN OPPORTUNITY TO

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GRANTING 2: MISTRIAL (30F5)

COMPOSE HIMSELF, KNOWING WHAT COUNSEL INTENDED TO QUESTION HIM ABOUT WHEN HE RESUMED TESTIFYING. THE SEQUENCE OF EVENTS WAS HIGHLY PRESUDICIAL, AND MCGAULEY SUFFERED ACTUAL PRESUDICE AS A RESULT OF IT. SEE E.G. PEOPLE V. RAYBON, 336 N.W. 2d 782 (MICH. APP. CT. 1983) (HOLDING THAT MISTRIAL WAS APPROPRIATE AFTER EYEWITNESS SUFFERED HEART ATTACK ON THE STAND, DELAYING TRIAL, WAS MANIFEST NECESSITY.). THE TRIAL COURT FURTHER ERRORED BY NOT TAKING REMEDIAL MEASURES BY QUESTIONING JURORS TO DETERMINE IF THEY COULD REMAIN FAIR AND IMPARTIAL AND WERE NOT PERSONALLY AFFECTED BY THE EVENT. THE ILLINOIS SUPREME COURT HAS ADDRESSED THE REQUISITE LEVEL OF INQUIRY A TRIAL COURT SHOULD CONDUCT FOLLOWING A MOTION FOR A MISTRIAL. IN PEOPLE V. FLORES, 128 ILL. 2d 66, 98 (1989) THE TRIAL COURT ASKED THE JURY IF IT HAD ANY OTHER PROBLEMS ABOUT SECURITY, AND NONE OF THE JURORS VOICED CONCERNS. ID. ON APPEAL, THE DEFENDANT ARGUED THAT THE COURT SHOULD HAVE QUESTIONED THE JURY FURTHER, BUT THE COURT FOUND THAT INQUIRY MADE BY THE TRIAL COURT WAS SUFFICIENT. ID @ 98-99. SIMILARLY, IN PEOPLE V. RUNGE, 234 ILL. 2d 68, 126-28 (2009), THE ILLINOIS SUPREME COURT AFFIRMED THE TRIAL COURT'S HANDLING OF POTENTIAL JUROR BIAS WHERE IT INDIVIDUALLY QUESTIONED THE TWO JURORS THOUGHT TO BE INFLUENCED, ULTIMATELY EXCUSING ONE OF THEM PRIOR TO SENTENCING. AS SUCH, THE COURT FOUND NO ERROR, CONCLUDING THE TRIAL COURT "TOOK STEPS APPROPRIATE TO THE CIRCUMSTANCES TO ENSURE THAT NO BIASED JUROR SAT ON DEFENDANT'S JURY." ID @ 126. UNLIKE FLORES AND RUNGE, THE COURT IN MCGAULEY'S CASE TOOK NO ACTION DURING TRIAL

REASONS FOR GRANTING THE PETITION GRANTING 2: MISTRIAL (4 OF 5)

AND DID NOT QUESTION ANY OF THE JURORS ABOUT THE EFFECT OF SEEING KIBBONS HAVE A VIOLENT SEIZURE AND FALL IN FRONT OF THEM. THE TRIAL COURT IGNORED COUNSEL'S REQUEST THAT THE JURY BE QUESTIONED ABOUT THE INCIDENT IN ORDER TO ASCERTAIN WHETHER IT CAUSED POSSIBLE COURT PREJUDICE. WITHOUT MAKING THIS NECESSARY INQUIRY, THE TRIAL COURT COULD NOT POSSIBLY HAVE HAD THE REQUISITE INFORMATION TO FAIRLY RULE ON DEFENSE COUNSEL'S MOTION FOR A MISTRIAL. THE COURT'S INACTION FRUSTRATED MCGAULEY'S EFFORT TO FIND OUT IF HE HAD SUFFERED ACTUAL PREJUDICE, PROVING THE NECESSITY FOR A MISTRIAL. THE COURT'S ERROR ALSO DEPRIVED MCGAULEY (AND THE COURT) OF FINDING OUT IF THE JURORS WERE MOVED IN SUCH A WAY THAT THEY NEEDED TO BE REMINDED SYMPATHY SHOULD NOT INFLUENCE THEM, PER THE STATE'S SUGGESTION. THE COURT ABUSED IT'S DISCRETION BY NOT TAKING THE MOST BASIC STEP OF REMINDING THE JURY WHEN THE TRIAL RESUMED THAT, AS PROVIDED UNDER ILLINOIS PATTERN INSTRUCTION - CRIMINAL 1.01, "NEITHER SYMPATHY OR PREJUDICE SHOULD INFLUENCE YOU." THE STATE, IN FACT, SUGGESTED THIS SIMPLE REMEDIAL MEASURE DURING THE HEARING ON MCGAULEY'S MOTION FOR MISTRIAL. THEN, WHEN THE TRIAL RESUMED, THE COURT NEVER ADDRESSED THE JURY ABOUT THE ISSUE AT ALL. THIS FURTHER COMPROMISED MCGAULEY'S RIGHT TO A TRIAL WITH A FAIR AND IMPARTIAL JURY, AND DEMONSTRATED WHY THE TRIAL COURT HAD A DUTY TO TAKE REMEDIAL MEASURES BY QUESTIONING THE JURORS AND/OR ISSUING A CURATIVE INSTRUCTION WHEN THE TRIAL COURT RESUMED FINALLY, THE TRIAL COURT'S ERROR IN DENYING DEFENSE COUNSEL'S MOTION FOR A MISTRIAL IS NOT HARMLESS BEYOND A REASONABLE DOUBT. SEE PEOPLE V. JONES, 105 ILL. 2D 342, 353-54 (1985) (MISTRIAL SHOULD HAVE BEEN ORDERED

REASONS FOR GRANTING THE PETITION GRANTING 2: MISTRIAL (5 OF 5)

WHERE THE TRIAL COURT FAILED TO PURSUE FURTHER INQUIRY INTO THE PRESENCE IN THE JURY ROOM OF A NON JUROR, AND THAT FAILURE MEANT THAT THE COURT COULD NOT CONCLUDE THAT THE DEFENDANT RECEIVED A FAIR TRIAL.) THE RECORD IN MCGAULEY'S CASE CLEARLY ESTABLISHED THAT SYMPATHY AND BIAS TOWARDS THE STATES KEY WITNESS, KIBBONS, MAY HAVE IMPACTED THE DELIBERATIONS, THUS, UNDERMINING CONFIDENCE IN THE JURY'S VERDICT. MCGAULEY REITERATES THESE FACTS TO SHOW THAT THE APPELLATE COURT ORDER AFFIRMING HIS CONVICTION AND 60 YEAR SENTENCE WAS PERFUNCTORY, POORLY DRAFTED AND WRONGLY DECIDED. MCGAULEY PRAYS THIS COURT WILL STOP THIS BEHAVIOR IN ITS TRACKS AND HOLD THE STATE APPELLATE COURT ACCOUNTABLE WHEN THESE SITUATIONS ARISE.

REASONS FOR GRANTING THE PETITION

GRANTING 3: CRITICAL STAGE EX PARTE (10F2)

MCGAULEY WAS DENIED HIS 6TH AND 14TH AMENDMENT RIGHTS WHERE THE PROSECUTOR ENGAGED IN MULTIPLE EX PARTE CONVERSATIONS WITH THE STATES ONLY EYEWITNESS TO THE SHOOTING, JOHN KIBBONS, DURING A DAYS LONG BREAK IN THE MIDDLE OF DEFENSES CROSS EXAMINATION OF HIM - AT THE BEHEST OF THE TRIAL COURT JUDGE. NATIONAL IMPORTANCE OF REVIEW RESTS HANDIDLY ON CORRECTING THE IMPROPER AND IMMORAL BEHAVIOR OF PROSECUTORS WHO ENGAGE IN MISCONDUCT SIMPLY TO OBTAIN CONVICTIONS, WHETHER AT THE BEHEST OF THE TRIAL COURT JUDGE OR NOT. IT HAS BEEN WELL ESTABLISHED THAT EVEN A "DEFENDANT WHO BECOMES WITNESS HAS NO CONSTITUTIONAL RIGHT TO CONSULT WITH HIS LAWYER WHILE HE IS TESTIFYING..." PERRY V. LEEKE, 488 U.S. 272 (1989). KIBBONS, A NON DEFENDANT, WHO HAD ABSOLUTELY NO STAKE IN THE OUTCOME OF THE TRIAL AND WHOSE ONLY CONCERN WAS HIS OWN TESTIMONY, WOULD SURELY HAVE NO CONSTITUTIONAL RIGHT TO CONSULT WITH THE PROSECUTOR IN THE MIDDLE OF HIS CROSS EXAMINATION BY THE DEFENSE. FURTHERMORE, PROSECUTOR ADMITTED SHE WAS COMMUNICATING WITH LEAH FLACK, KIBBONS GIRLFRIEND AND STATES WITNESS, AS TO THE STATUS OF KIBBONS HEALTH FROM THE VERY DAY KIBBONS WAS ADMITTED TO THE HOSPITAL. THERE SIMPLY WAS NO LEGITIMATE NEED FOR PROSECUTOR TO VISIT KIBBONS MULTIPLE TIMES SANS DEFENSE COUNSEL. THE TRIAL COURT JUDGE INITIATED THIS PROBLEM BY NOT ORDERING THAT KIBBONS BE SEQUESTERED WHILE ADMITTED IN THE HOSPITAL. INSTEAD, HE DID THE OPPOSITE AND ORDERED PROSECUTOR TO GO TO THE HOSPITAL TO "CHECK" ON KIBBONS,

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GRANTING 3: CRITICAL STAGE EX PARTE (20F2)

CASTING MCGAULEY'S CONSTITUTIONAL RIGHTS ASIDE. ACTUAL PREJUDICE NEED NOT BE PROVEN HERE BECAUSE "THE APPEARANCE OF BIAS OR PREJUDICE CAN BE AS DAMAGING TO PUBLIC CONFIDENCE AS WOULD BE THE ACTUAL PRESENCE OF BIAS OR PREJUDICE." PEOPLE V. BRADSHAW, 171 ILL. APP. 3d 971 (1988). THE STATE IS NOT CONSTITUTIONALLY GUARANTEED A FAIR TRIAL, HOWEVER, CRIMINAL DEFENDANTS CERTAINLY ARE. WITHOUT KNOWING WHAT OCCURRED DURING THE PROSECUTOR'S MULTIPLE EX PARTE VISITS, MCGAULEY COULD NOT HAVE BEEN GUARANTEED A CONSTITUTIONALLY ADEQUATE TRIAL - AND FOR THIS REASON REVIEW IS SOUGHT.

REASONS FOR GRANTING THE PETITION

GRANTING 4: CONSTITUTIONALLY INADEQUATE FIRST APPEAL (1062)

THE U.S. SUPREME COURT IS NEEDED TO FIRMLY GUIDE ILLINOIS DISTRICT APPELLATE COURTS, IN PROPERLY ADJUDICATING DIRECT APPEALS FROM THE CIRCUIT COURTS, WHEN THE ILLINOIS SUPREME COURT FAILS TO INTERVENE.

IN THE PRESENT CASE, MCGAULEY FIRST ASSERTS A CLAIM OF VIOLATION OF HIS 14TH AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION

WHERE THE APPELLATE COURT UPHELD HIS FIRST DEGREE MURDER AND

MISDEMEANOR DOMESTIC BATTERY CONVICTIONS THROUGH A STARK AND

UNJUSTIFIED DEPARTURE FROM STARE DECISIS, WELL SETTLED LAW, AND

ILLINOIS COMPILED STATUTES. THE FIFTH DISTRICT APPELLATE COURT'S

[ILLINOIS] ARBITRARY DECISION IS CONTRARY TO THE HOLDINGS OF THE

U.S. SUPREME COURT IN ARIZONA V. RUMSEY 467 U.S. 203, 213, 104 S. CT.

2303, 81 L. Ed. 2d 164 (1984) WHERE "DEPARTURE FROM STARE DECISIS

'DEMANDS' SPECIAL JUSTIFICATION." AND THE ILLINOIS SUPREME COURT

HOLDS, "ANY DEPARTURE FROM STARE DECISIS MUST BE SPECIALLY

JUSTIFIED AND PRIOR DECISIONS SHOULD NOT BE OVERRULED ABSENT

GOOD CAUSE, OR COMPELLING REASONS." PEOPLE V. SHARPE 216 IL. 2d 481

(2005). THE UNJUSTIFIED DEPARTURE VIOLATED MCGAULEY'S DUE PROCESS

INASMUCH AS IT DEPRIVED HIM THE ABILITY TO RELY UPON THE DECISIONS

OF THE U.S. SUPREME COURT AND THE ILLINOIS SUPREME COURT IN

DEVELOPING HIS LEGAL DEFENSE. "STARE DECISIS ENABLES BOTH, THE

PEOPLE AND THE BAR OF THIS STATE TO RELY ON THIS COURT'S DECISION

WITH ASSURANCE THAT THEY WILL NOT BE LIGHTLY OVERRULED." SHARPE 216

IL. 2d 481, 519, 839 (2005). MCGAULEY ALSO ASSERTS THE APPELLATE COURT'S

UNJUSTIFIED DEPARTURE FROM STARE DECISIS CONSTITUTED AN EQUAL

PROTECTION VIOLATION WHERE HE WAS TREATED IN A DISPARATE MANNER

REASONS FOR GRANTING THE PETITION

GRANTING 4: CONSTITUTIONALLY INADEQUATE FIRST APPEAL (20F2)

THAN OTHER ILLINOIS CRIMINAL DEFENDANTS WHO WERE PROTECTED BY HIGHER COURT DECISIONS FOR REVERSAL OF CONVICTION AND SENTENCES ON EACH OF THE CLAIMS HE MADE IN HIS DIRECT APPEAL. "UNDER RATIONAL BASIS REVIEW, THE GOVERNMENT VIOLATES THE EQUAL PROTECTION CLAUSE WHEN IT TREATS SOMEONE DIFFERENT THAN ANOTHER SIMILARLY SITUATED, WITHOUT RATIONAL BASIS FOR THIS DISPARATE TREATMENT." *KT 36 CORP. V. ATTORNEY GENERAL OF STATE OF OKLA.* 535 F.3d 1114, 1137-38 (10TH CIR. 2008). MCGAULEY BELIEVES THE MOST DETREMENTAL FACTOR, WHICH HAS NO DOUBT OCCURED TO OTHERS SIMILARLY SITUATED, IS WHEN THE APPELLATE COURT ARBITRARILY OMITTED CRUTIAL DEFENSE EVIDENCE CONTAINED IN THE RECORDS WHEN MAKING THEIR DECISION AGAINST HIM. FAILURE TO RECALL THIS CRUTIAL EVIDENCE IN MCGAULEY'S CASE CREATED "AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED AT THE STATE COURT PROCEEDINGS." PURSUANT TO *HARRINGTON V. RICHTER* 1315 S. CT. 770, 178 L. ED. 624 (2011). THE 7TH CIRCUIT FEDERAL COURT OF APPEALS HAS HELD THAT HABEAS RELIEF IS TO BE GRANTED WHEN A COURTS DECISION IS "SO INADEQUATELY SUPPORTED BY THE RECORD, OR, SO ARBITRARY AS TO BE UNREASONABLE." OR, "LIES WELL OUTSIDE THE BOUNDRIES OF PERMISSIBLE DIFFERENCES OF OPINION." *HALL V. WASHINGTON*, 106 F.3d 742, 749 (7TH CIR. 1997). THE ILLINOIS FIFTH DISTRICT APPELLATE COURT'S DETERMINATION OF THE FACTS IN MCGAULEY'S CASE, AND THE METHODS EMPLOYED TO ARRIVE AT ITS IMPROPER FACTUAL CONCLUSION SHOULD MAKE THIS CLAIM RIFE FOR REVIEW.

CONCLUSION:

STEVEN MCGAULEY, PETITIONER, RESPECTFULLY REQUESTS THAT
THIS HONORABLE COURT GRANT THIS PETITION FOR A WRIT OF
CERTIORARI.

RESPECTFULLY SUBMITTED
AND SEMPER FIDELIS,

STEVEN J. MCGAULEY

St J McGauley

12/26/23