ORIGINAL

No. 20-5519

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD E. WANKE - PETITIONER

vs.

STATE OF ILLINOIS – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

ILLINOIS APPELLATE COURT

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QUESTIONS PRESENTED

APPELLATE DISTRICT COURTS IN ILLINOIS ARE SPLIT ON HOW AN ARREST INITIATES PROSECUTION OR WHETHER IT DOES AT ALL. ARE THERE CIRCUMSTANCES WHERE A PERSON'S ARREST AND ACCUSATION FOR AN OFFENSE, WITH DELAYS, CAN INITIATE HIS PROSECUTION FOR PURPOSES OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.

IN ILLINOIS, INDIGIGENT DEFENDANTS WHO ARE REPRESENTED BY PUBLIC DEFENDERS' OFFICES' ARE UNDER A DIFFERENT STANDARD REGARDING CONFLICTS OF INTEREST AS THOSE REPRESENTED BY A PRIVATE LAW FIRM. ARE THERE ANY CONCEIVABLE CIRCUMSTANCES THAT COULD CREATE AN OFFICE-WIDE CONFLICT OF INTEREST IN A PUBLIC DEFENDER'S OFFICE. ILLINOIS SAYS NO.

LIST OF PARTIES

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RICHARD WANKE, PETITIONER, HEREBY PETITIONS THIS COURT BY MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* AND PETITION FOR WRIT OF CERTIORARI.

THE ACCUSED WAS ARRESTED ON FEBRUARY 6, 2008 AND MORE FORMALLY ON FEBRUARY 7, 2008 WHEN BOOKED INTO WINNEBAGO COUNTY JAIL. THERE IS A DISPUTE UPON WHETHER HE WAS CHARGED AT THAT TIME. A GRAND JURY WAS IMPANELED ON FEBRUARY 13, 2008, BUT FAILED TO INDICT. THE ACCUSED REMAINED INCARCERATED AND WAS RE-ARRESTED ON APRIL 6, 2014 AND ARRAIGNED ON MAY 2, 2014. JURY TRIAL PROCEEDED NEARLY THREE-YEARS LATER ON FEBRUARY 27, 2017, NINE YEARS AFTER THE SHOOTING, THE DEFENDANT WAS CONVICTED MARCH 8, 2017. HE WAS SENTENCED TO LIFE IMPRISONMENT ON MAY 23, 2017 AND IMMEDIATELY APPEALED.

BRIEF AND ARGUMENT FOR DEFENDANT **(APPENDIX I)**; ORAL ARGUMENT **(APPENDIX II)**; ORDER AFFIRMING CONVICTION ON NOVEMBER 26, 2019 **(APPENDIX III)**. A PETITION FOR LEAVE TO APPEAL TO THE ILLINOIS SUPREME COURT WAS DENIED ON MARCH 25, 2020.

DUE TO THE PANDEMIC THIS COURT ISSUED ORDER 589 ON MARCH 19, 2020 EXTENDING DEADLINES. DEFENDANT'S DEADLINE IS AUGUST 24, 2020.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C § 1257(a).

THE DEFEDANT HAS COMPLIED WITH ALL SUPREME COURT RULES TO THE BEST OF HIS ABILITY GIVEN THE CIRCUMSTANCES.

CONSTITUTIONAL AND STATUTORY ISSUES

IN ILLINOIS, THE 5TH AND 2ND APPELLATE DISTRICT COURTS HAVE DIFFERING VIEWS CONSTITUTE AN ARREST AND DELAY FOR PURPOSES OF EVALUATING THE SPEEDY TRIAL CLAUSE OF THE SIXTH AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

LIKEWISE, IN ILLINOIS, THE RIGHT TO CONFLICT-FREE COUNSEL IS A CHALLENGE UNDER THE SIXTH AMENDMENT WHEN IT COMES TO A CONFLICTED PUBLIC DEFENDER'S OFFICE COMPARED TO A PRIVATE FIRM.

THE COUNTY OF WINNEBAGO, ILLINOIS ALSO HAS DIFFICULTY IN PROVIDING, PRESERVING OR KNOWING WHAT TO DO WITH PUBLIC RECORDS OR WHO SHOULD HAVE ACCESS AND WHO IS EXEMPT.

STATEMENT OF THE CASE

THE PRESENT CASE INVOLVES THE DEATH OF A GENERAL PRACTICE ATTORNEY. ON FEBRUARY 6, 2008, AT AROUND 2 P.M., GREGORY CLARK WAS SHOT AND KILLED DURING A BLIZZARD OUTSIDE HIS EAST-SIDE HOME, IN ROCKFORD, ILLINOIS. AT AROUND 5 P.M., LATER THAT SAME DAY, POLICE OFFICERS SURROUNDED AND ARRESTED THE DEFENDANT AT GUNPOINT OUTSIDE HIS WEST-SIDE HOME NINE MILES AWAY. A VARIETY OF OPPOSING REASONS WERE GIVEN AT THE TIME, BUT THE ONLY RATIONALIZATION GIVEN YEARS LATER FOR THE ARREST WAS THAT OFFICERS HAD PROBABLE CAUSE TO BELIEVE THE ACCUSED HAD MURDERED CLARK.

AT THE TIME OF THE ARREST AND WIDE-SPREAD ACCUSATIONS, THE DEFENDANT WAS OUT ON BOND, HE WAS MONITERED BY THE COUNTY'S PRETRIAL SERVICES AND WAS AWAITING RESOLUTION ON HIS PRO SE POST-TRIAL MOTIONS AND POSSIBLE SENTENCING FOR A 2006 BURGLARY IN WINNEBAGO COUNTY CASE NUMBER 06-CF-405. THE DEFENDANT HAD PLEAD NOT GUILT TO THE CRIME, BEEN FOUND GUILTY AT JURY TRIAL AND THE CASE WAS CONTINUED MULTIPLE TIMES DUE TO INCLEMENT WEATHER AND OTHER ISSUES SINCE SEPTEMBER 2007. CLARK WAS HIS COURT APPOINTED CONFLICT COUNSEL ON THAT CASE.

AT AROUND 11 P.M., LATER THAT SAME EVENING, THEN DEPUTY STATE'S ATTORNEY MARGIE O'CONNOR AND OTHERS WENT TO THE HOME OF THEN JUDGE TRUITT WHO OVERSAW CASE # 06-CF-405 AND PRESENTED UNKNOWN EVIDENCE AND A ORDER REVOKING THE ACCUSED'S BOND. THERE WAS NO RECORD MADE OF THE EX PARTE COMMUNICATIONS. DUE TO THE SNOW EMERGENCY AND SEVERE WEATHER CONDITIONS THE COURTS, MANY BUSINESSES, MOST PUBLIC AND PRIVATE OFFICES, AND SCHOOLS WERE CLOSED ON THE DAYS SURROUNDING 02.06.08. JUDGE TRUITT SIGNED THE ORDER LATE THAT NIGHT, THOUGH IT IS IN QUESTION WHEN THAT ORDER WAS FILED. HEARINGS PROCEEDED, ATTORNEYS WERE APPOINTED AND WITHDREW, THE TRIAL JUDGE AND PUBLIC DEFENDER'S OFFICE WERE CONFLICTED OFF CASE # 06-CF-405.

ULTIMATELY, AFTER MUCH DELAY, THE DEFENDANT WAS SENTENCED IN AUGUST '08 TO A DISPUTED 14-YEAR EXTENDED-TERM INPRISONMENT IN THAT CASE FOR THEFT OF A LAPTOP AND WAS SENT TO THE ILLINOIS DEPARTMENT OF CORRECTIONS WITH A PROJECTED RELEASE DATE IN 2014. NO INQUIRY WAS MADE AT THE TIME REGARDING THE ARRESTS.

THE LAST ACTION BY POLICE REFLECTED IN THE RECORD WAS DECEMBER 10, '08, WHEN THE ILLINOIS STATE POLICE CRIME LAB ISSUED A REPORT FINDING NO GUN-SHOT RESIDUE, NO FINGERPRINTS OR UNEXPLAINED DNA ON NUMEROUS SAMPLES COLLECTED FROM A VEHICLE AND SUBMITTED CLOTHING ITEMS SENT TO IT BACK ON FEBRUARY 15, 2008. AFTER THAT TIME THE INVESTIGATION BECAME ALL BUT A UNSOLVED "COLD CASE".

DURING THE TIME BETWEEN THE DEFENDANTS ARRESTS AND THE CASE RUNNING COLD POLICE OFFICERS CONDUCTED NUMEROUS WITNESS INTERVIEWS, EXECUTED SEARCH WARRANTS AND SEARCHED SEVERAL HOMES. THE STATEMENT OF FACTS IN THE APPENDIXES (DEFENDANT'S APPEALS BRIEF AND ILLINOIS 2ND DISTRICT APPELLATE COURT ORDER) DESCRIBE THESE INVESTIGATIONS. SAMPLES WERE SENT TO LABS AND ROCKFORD DETECTIVE TORREY REGEZ CONDUCTED TWO "TRAVEL STUDIES" WHERE ADMITTEDLY CONDITIONS DID NOT EQUAL OR RECREATE THE BLIZZARD CONDITIONS ON THE DAY OF THE SHOOTING. BULLETS AND SHELL CASINGS WERE RECOVERED, VIDEO FROM A NEIGHBORHOOD BANK ATM AND OTHER LOCATIONS WERE GATHERED. A YOUNG GIRL WHO MAY OR MAY NOT HAVE BEEN A WITNESS WAS INTERVIEWED AND RECORDED AT A LOCAL CHILDREN'S HOME. NUMEROUS NEWS ARTICLES AND REPORTING WERE DEVOTED TO THIS SENSATIONAL DAYTIME SHOOTING.

A GRAND JURY WAS CONVENED AND ON FEBRUARY 13, 2008 DEPUTY SA O'CONNOR PRESENTED TESTIMONY FROM SAM CORNN, KIM KLIEN AND CHARLES SMITH. THE JURY DID NOT BRING FORTH AN INDICTMENT. INVESTIGATORS MOVED ON. THE RECORD DOES NOT INDICATE THAT ANY FURTHER ACTION WAS TAKEN IN THIS CASE BY THE STATE'S ATTORNEY OR ANY POLICE AGENCY UNTIL APRIL 16, 2014, JUST BEFORE THE ACCUSED WAS TO BE RELEASED FROM PRISON. THE STATE FILED AN INDICTMENT CHARGING THE ACCUSED WITH 30 COUNTS OF FIRST DEGREE MURDER. DUE TO SEVERAL PRO SE FILINGS, THE RECORD DOES INDICATE THAT PRIOR TO BEING INDICTED THE ACCUSED SOUGHT FROM THE STATE DOCUMENTS CONCERNING HIS ARREST WHICH DENIED OR IGNORED; HE MADE VALID FREEDOM OF INFORMATION REQUESTS WHERE DOCUMENTS WERE WITHHELD; AND THE STATE INSTRUCTED OTHER PUBLIC AGENCIES NOT UNDER THEIR AUTHORITY TO NOT COOPERATE AND WITHHOLD PUBLIC RECORDS FROM HIM AND HIS FRIENDS.

IN 2008, THE STATE'S ATTORNEY'S OFFICE CONDUCTED BUSINESS IN A MODERATE FASHION WHILE APPROACHING AN ELECTION YEAR. REGIME CHANGE BROUGHT A MORE LIBERAL OCCUPANT TO THE TOP POSITION. SA JOSEPH BRUSCATO WAS IN HIS SECOND-TERM APPROACHING A THIRD WHEN THE DEFENDANT WAS INDICTED. DURING HIS POLITICAL CAMPAIGN BRUSCATO JOUSTED WITH HIS OPPONENT ON WHO WOULD BEST BRING THE DEFENDANT TO JUSTICE, BEFORE A PACKED

BAR ASSOCIATION DEBATE EVENT. THE ACCUSED BROUGHT FORTH A CIVIL ACTION, FROM PRISON, AGAINST THE PARTICIPANTS OF THAT DEBATE AS WELL AS SEVERAL POLICE OFFICERS INVOLVED IN WHAT WAS TERMED HIS "FALSE ARREST" BACK IN 2008. THE "COLD CASE" HEATED UP AND MONTHS LATER HE WAS INDICTED.

THE DEFENDANT WAS APPOINTED COUNSEL FROM THE PUBLIC DEFENDER'S OFFICE DESPITE HIS PLEAS FOR A SPEEDY TRIAL AND REQUESTS FOR CONFLICT-FREE REPRESENTATION. SINCE 2008, THE BURGLARY CASE 06-CF-405 HAD PROCEEDED FROM APPEAL TO APPEAL AND NOW WAS BACK ON A POST-CONVICTION IN A ADJACENT COURTROOM; SEEKING COLLATERAL RELIEF. THE CHIEF JUDGE OF THE CIRCUIT HAD AT FIRST APPOINTED CONFLICT COUNSEL WHO WITHDREW, THIS CYCLE REPEATED ITSELF FOR MONTHS UNTIL ALL THE ATTORNEYS UNDER CONTRACT WITH THE COUNTY HAD WITHDRAWN. THE COURT THEN APPOINTED THE PUBLIC DEFENDER'S OFFICE WHO THE COURT DEEMED CONFLICTED, FINALLY SETTLING ON OUTSIDE COUNSEL, NATE NIEMAN, FROM ROCK ISLAND, ILLINOIS. THIS ALL TRANSPIRED IN PARALLEL TO THE PRESENT CASE, YET THE TWO COURTS REACHED OPPOSITE OPINIONS ON THE SAME INFORMATION. THE DEFENDANT PRESENTED TRANSCRIPTS, COURT RECORDS AND DOCKET ENTRIES PRO SE TO SHOW THE LENGTHY PROCESS THE OTHER JUDGE HAD FOLLOWED TO ENSURE CONFLICT-FREE REPRESENTATION. THE DEFENDANT INFORMED THE TRIAL COURT IN THE PRESENT CASE HE WISHED TO AVOID REPEATING THE PROCESS A SECOND TIME, REPEATING HE SOUGHT A SPEEDY TRIAL AND COUNSEL WHO WEREN'T CONFLICTED.

OVER THE COURSE OF PRE-TRIAL PROCEEDINGS, FOUR DIFFERENT ASSISTANT PUBLIC DEFENDANT'S FILED FOUR SEPERATE MOTIONS TO WITHDRAW DUE TO CONFLICTS OF INTEREST. SOMETIMES THEY ADOPTED THE DEFENDANT'S OWN PRO SE REASONINGS, WORDING AND FILINGS.

THE FIRST AND THIRD MOTIONS, FILED BY DEPUTY PD DAVID DOLL AND ASSISTANT PD DERRICK SCHMIDT RESPECTIVELY, ALLEGED OFFICE-WIDE CONFLICTS OF INTEREST IN THE PUBLIC DEFENDERS OFFICE AGAINST THE ACCUSED AND DUE TO THE OFFICES RELATIONSHIP WITH THE VICTIM, HIS FAMILY AND THE INVOLVEMENT BY THE OFFICE IN THE INVESTIGATION.

SOME OF THE SPECIFICS WERE, CLARK BEING A PART-TIME CONTRACT EMPLOYEE OF THE OFFICE. CLARK HANDLED CONFLICT CASES THAT THE OFFICE COULD NOT TAKE, ALONG WITH SEVERAL OTHER LOCAL GENERAL PRACTITIONERS. CLARK SOCIALIZED WITH OTHER OFFICE MEMBERS, ASSUMED THEIR CASELOADS, INTERACTING WITH THEM IN COURT.

. CLARK'S SON-IN-LAW AND LAW PARTNER, BARTON HENBEST, WHO WAS A STATE WITNESS AND VOCAL OPPENENT AGAINST THE ACCUSED, CONTINUED TO SOCIALIZE WITH OFFICE MEMBERS AFTER CLARKS DEATH AND POLITICALLY LOBBIED FOR THE DEFENDANT'S PROSECUTION IN THE OFFICE, THROUGH THE MEDIA AND AMOUNGST HIS COLLEAGUES.

O'CONNOR, WHO HAD THE DEFENDANT'S BOND REVOKED IN AN EX PARTE HEARING AT THE JUDGES HOME AND CONDUCTED THE GRAND JURY BACK IN 2008, HAD SINCE BEEN BEEN FIRED BY THE SAO AND BECOME A PUBLIC DEFENDER, BRINGING WITH HER CONFLICTS OF INTEREST. OTHER STAFF IN THE OFFICE, KNOWN AND UNKNOWN, HAD GIVEN POLICE INFORMATION IN THE HOURS AFTER THE SHOOTING, AND SINCE WHICH, CEMENTED SUSPICIONS UPON THE ACCUSED, AND SOME WORKED PRE-TRIAL TO CULTIVATE JAILHOUSE INFORMANTS AGAINST THE DEFENDANT.

SCHMIDT COMPLAINED THAT ANY ASSISTANT ASSIGNED TO THE CASE COULD NOT CONSULT WITH OTHERS IN THE OFFICE, LOSING ACCESS TO VALUABLE OFFICE EXPERTISE AND SUPERVISORS WHO WERE OFTEN IRREPLACEABLE RESOURCES. HE HAD SUSPICIONS THAT SOME COULD OR HAD BEEN ACTIVELY ASSISTING IN THE DEFENDANT'S PROSECUTION AND THAT SOME FELT MORE LOYALTY TO CLARK AND HIS FAMILY THAN THEY HAD FOR COMPLIANCE WITH THE PROFESSIONAL RULES OF CONDUCT AND THEIR OATH. HE ARGUED, "[a] PER SE CONFLICT EXISTS WITH THE ENTIRE OFFICE OF THE PUBLIC DEFENDER BECAUSE THE OFFICE MIGHT BENEFIT FROM THE SATISFACTION THAT THEY CONTRIBUTED TO THE INVESTIGATION INTO THE MURDER OF A FELLOW DEFENSE ATTORNEY, AT THE EXPENSE OF THEIR CURRENT CLIENT."

FRANK PERRI THE FIRST ASSISTANT ASSIGNED TO THE CASE BY THE CONFLICTED SUPERVISORS OF THE OFFICE WENT EVEN FURTHER AND ALLEGED A PERSONAL CONFLICT OF INTEREST AND CONFIDED TO HIS CLIENT THAT THE ENTIRE OFFICE WAS OUT TO GET HIM. PERRI ALLEGED THAT HE WAS CLOSE FRIENDS WITH THE VICTIM AND OPENLY QUESTIONED HIS ASSIGNMENT TO THE CASE AFTER INFORMING HIS SUPERIORS OF HIS CONFLICTS, RESERVATIONS, ATTITUDES AND BELIEFS OF THE ACCUSEDS GUILT. HE THOUGHT HE SHOULD BE ASSIGNED OR BE THE LAST PERSON TO REPRESENT THE ACCUSED.

PERRI ALLEGED THAT HE WAS CLOSE FRIENDS WITH CLARK AND SAW HIM AS A MENTOR. HE WAS ALSO CLOSE FRIENDS WITH CLARK'S LAW PARTNER HENBEST AS WERE MANY IN THE OFFICE. PERRI TOLD THE

DEFENDANT HE THOUGHT HIM GUILTY AND DID NOT BELIEVE HE COULD ZEALOUSLY DEFEND HIM AS HE HAD TOLD HIS SUPERVISORS, BUT THEY REQUIRED HIM TO FILE THE SECOND MOTION TO WITHDRAW. LIKEWISE, THE DEFENDANT INFORMED THE COURT OF WHAT PERRI AND OTHERS CONFIDED TO HIM IN PRIVATE, THAT NO ONE IN THE OFFICE WANTED TO DEFEND HIM AND THAT MANY HAD SUSPICIONS, HELD A GRUDGE, BELIEVED HIM GUILTY, AND WANTED HIM CONVICTED.

THE FOURTH MOTION TO WITHDRAW WAS FILED BY ASSISTANT PUBLIC DEFENDERS NICK ZIMMERMAN AND ROBERT SIMMONS, WHO ULTIMATELY REPRESENTED THE DEFENDANT AT TRIAL. GONE WERE THE PRETENSES OF FINDING ATTORNEYS FROM THE OFFICE WHO DID NOT KNOW CLARK AND HIS FAMILY OR WERE NOT EMPLOYED IN THE OFFICE IN 2008, WHEN THE CRIME OCCURED. SIMMONS STATED ON THE RECORD HE WAS EMPLOYED AT THE OFFICE IN 2008, SOMETHING THE COURT HAD FIRST CLAIMED SHOULD BE AVOIDED. ZIMMERMAN WAS FACEBOOK FRIENDS WITH HENBEST, A FACT AVOIDED BY ZIMMERMAN IN HIS FILING AND WHEN MADE PART OF THE RECORD BY THE DEFENDANT IN PRO SE POST-TRIAL MOTIONS.

THE FOURTH MOTION WAS FILED IN ANTICIPATION OF A HEARING ON A MOTION TO QUASH THE DEFENDANT'S ARREST. IN THEIR MOTION TO WITHDRAW, ZIMMERMAN AND SIMMONS AVOIDED DECLARING THEIR CONNECTIONS TO THE CLARK FAMILY FOCUSING RATHER ON HOW O'CONNOR HAD ACTED UNETHICALLY IN OBTAINING THE EX PARTE ORDER REVOKING THE ACCUSEDS BOND IN CASE # 06-CF-405. THEY STATED THEY COULD NOT ZEALOUSLY ARGUE AGAINST A COLLEAGUE - O'CONNOR WHO WAS NOW PART OF THE OFFICE. IT WAS NOT ARGUED THAT THE ACCUSED WAS AGAIN ARRESTED MORE FORMALLY THE FOLLOWING DAY, ON FEBRUARY 7, 2008, WHEN BOOKED INTO WINNEBAGO COUNTY JAIL, NOR WAS THE DEFENDANT CALLED TO TESTIFY ABOUT THE ARRESTS AND ARRAIGNMENT AT THE HEARING DESPITE HIS VOCAL WISHES TO DO SO.

DURING THE PROCEEDINGS ON THE FOUR MOTIONS TO WITHDRAW, THE DEFENDANT SUPPLEMENTED THE RECORD AND MADE IN-COURT REMARKS THAT HE HAD NO CONFIDENCE IN ANY ASSISTANT'S ABILITY TO ZEALOUSLY REPRESENT HIS INTERESTS OVER THEIR OWN INTERESTS IN CONCEALING THEIR VARIOUS CONFLICTS AND HIDDEN RANCOR.

AMOUNG OTHER THINGS, THE DEFENDANT PUT FORTH THAT PUBLIC DEFENDER SENIOR INVESTIGATOR ROBERT FAULKNER, WAS APPOINTED BY PD KAREN SORENSON, A CLOSE FRIEND OF CLARK'S. FAULKNER REFUSED TO CONTACT DEFENDANT'S WITNESSES OR SEEK AVAILABLE EXCULPATORY EVIDENCE. HE TOLD THE DEFENDANT HE SHARED PERRI'S BELIEF IN THE ACCUSED'S GUILT AND BEING THE PRIMARY CONDUIT IN REVIEWING DISCOVERY WITH THE DEFENDANT, HE DELAYED AND WITHHELD DOCUMENTS, MANIPULATING AND DISTORTING THE OVERALL OUTCOME AND STRATEGY OF THE CASE TO THE DETRIMENT OF THE ACCUSED. NO INQUIRY INTO THIS ASSERTION WAS MADE BY THE PRE-TRIAL COURT.

THE DEFENDANT ALSO ALLEGED THAT, OTHER THAN PERRI, ALL OF THE ASSISTANTS AND THEIR STAFF WHO REPRESENTED HIM HAD REFUSED TO OUTLINE OR EVEN DISCUSS THE PRECISE NATURE OF THEIR RELATIONSHIPS WITH CLARK, HIS FAMILY, HIS LEGAL ASSOCIATES, OTHER STATE WITNESSES IN THE LEGAL PROFESSION OR POTENTIAL WITNESSES IN THE CASE. EVEN WHEN INFORMATION, DOCUMENTS OR COURTROOM BANTER REVEALED SUCH ASSOCIATIONS HIS COUNSEL AND STAFF REFUSED TO ELABORATE FURTHER OR MAKE A RECORD AS THE PROFESSIONAL RULES OF CONDUCT AND THEIR OATH REQUIRE.

THE TRIAL JUDGE GRANTED PERRI'S PERSONAL MOTION TO WITHDRAW, BUT DENIED THE THREE MOTIONS SEEKING TO DISQUALIFY THE OFFICE. INQUIRY INTO THE ALLEGATIONS WAS LIMITED OR NEGLECTED. WITH RESPECT TO THOSE MOTIONS CONCERNING THE OFFICE, THE JUDGE FOUND THAT NO OFFICE-WIDE CONFLICT COULD EVER EXIST NO MATTER THE EXTENT OF THE INDIVIDUAL CONFLICTS BECAUSE ASSISTANTS WERE ALL "INDEPENDANT CONTRACTORS" WHO COULD NOT SHARE CONFLICTS. THE COURT REASONED THAT AS LONG AS THE ASSISTANTS ASSIGNED TO THE CASE DID NOT KNOW CLARK PERSONALLY OR HAVE DIRECT INVOLVEMENT IN THE INVESTIGATION, OTHER ASSISTANT'S CONFLICTS COULD NOT AFFECT HIM OR HER. REGARDING ZIMMERMAN'S AND SIMMON'S ARGUMENT THAT THEY COULD NOT ZEALOUSLY ATTACK THE PROPRIETY OF FELLOW ASSISTANT O'CONNOR'S ACTIONS, THE JUDGE FOUND THAT O'CONNOR'S ACTIONS WERE NOT RELEVANT TO THE DEFENDANT'S MOTION TO QUASH ARREST. THERE WAS NO RULING OR PROBE INTO TRIAL COUNSELS OWN CONFLICTS POST-TRIAL WHEN THEY WERE REVEALED.

ZIMMERMAN FILED A MOTION TO DISMISS THE INDICTMENT DUE TO DELAY BETWEEN THE DEFENDANT'S ARREST IN 2008 AND INDICTMENT IN 2014. THE MOTION ALLEGED THAT AFTER THE INDICTMENT WAS FILED, AND AFTER VARIOUS APPOINTMENTS AND WITHDRAWALS, THE DEFENSE INTERVIEWED TWO WITNESSES,

. LIZANDRA DIAZ-JOHNSON AND HER TWIN LINDSAY DIAZ-JOHNSON. IT WAS CONTENDED THAT IN 2008, THOSE WITNESSES WOULD HAVE SUPPORTED THE DEFENDANT'S ALIBI DEFENSE. HOWEVER, BY THE TIME HE WAS ARRESTED AGAIN IN 2014, INDICTED, APPOINTED COUNSEL AND THE DEFENSE WAS ABLE TO INTERVIEW THEM, THEY HAD NO RECOLLECTIONS OF THE NARROW ONE-HOUR INTERVAL OF TIME ON FEBRUARY 6, 2008, AND COULD PROVIDE NO RELEVANT INFORMATION. THE MOTION ARGUED THAT THE LOSS OF TWO ALIBI WITNESSES AND THE TIME DELAY BETWEEN ARRESTS PREJUDICED THE ACCUSED. ON THE SAME DAY, ZIMMERMAN FILED AN ANSWER TO DISCOVERY, WHICH PLED AN ALIBI DEFENSE.

FOLLOWING A HEARING, THE TRIAL JUDGE DENIED THE MOTION TO DISMISS ON GROUNDS THAT THE DEFENSE FAILED TO ESTABLISH HE WAS PREJUDICED BY THE SIX-YEAR DELAY, FROM 2008-2014, BEFORE HE WAS REARRESTED AND INDICTED. PRIOR TO TRIAL, THE STATE FILED MORE THAN 35 MOTIONS IN LIMINE, WITH EXTENSIVE HEARINGS TAKING NEARLY TWO-YEARS TO CONDUCT. THE DEFENSE FILED 9 MOTIONS, INCLUDING A MOTION TO ADMIT EVIDENCE OF CLARK'S CLIENTS WHO WERE DISSATISFIED WITH HIS REPRESENTATION. ON OBJECTION BY THE STATE AND LITTLE ELSE, THE JUDGE DENIED THE MOTION.

THE STATE'S EVIDENCE AT TRIAL ESTABLISHED THAT ON FEBRUARY 6, 2008, AT AROUND 2 P.M., CLARK WAS SHOT THREE TIMES WHILE SNOWBLOWING THE SIDEWALK OUTSIDE HIS HOME. SEVERAL WITNESSES HEARD SHOTS, SAW A VEHICLE AND MAN. NONE OF THOSE WITNESSES DESCRIBED THE MAN OR IDENTIFIED THE MAN AS THE DEFENDANT. FIVE WITNESSES SAW A VAN, THE MAKE, MODEL AND YEAR AS WELL AS COLOR VARIED. NO WITNESS SAW A LICENSE PLATE NUMBER, A STATE EMBLEM OR DESCRIBE A DISTINCTIVE FEATURE OF THE VEHICLE. BUT AFTER ONE WITNESS CALLED AROUND THE NEIGHBORHOOD SEEKING WITNESSES TO SPEAK WITH POLICE AND RELAYING WHAT HE SAW, THE DESCRIPTIONS NARROWED TO A BLUE OR PURPLE VAN WITH GOLD "HUBCAPS" DRIVING TOWARD OR AWAY FROM THE SCENE. ALL OF THOSE WITNESSES AT TRIAL TESTIFIED THAT PEOPLE'S EXHIBIT #4, A PICTURE OF A VAN REGISTERED TO THE DEFENDANT'S LANDLORD DIANE CHAVEZ, DEPICTED A VAN LIKE WHAT THEY SAW.

NO WITNESS IDENTIFIED THE DEFENDANT IN OPEN COURT AS THE DRIVER OF THE VAN, THE SHOOTER, OR AS SOMEONE WHO WAS IN THE VICINITY OF THE SHOOTING OR SEEN IN THE NEIGHBORHOOD. ON THE DAY OF THE SHOOTING, JUST HOURS AFTER WITNESSING MATTERS AT THE SCENE, POLICE

SHOWED FOUR OF THE WITNESSES A SUGGESTIVE PHOTOGRAPHIC ARRAY OF SIX 3"x5" PICTURES THAT INCLUDED THE PICTURE OF THE ACCUSED. NONE OF THE WITNESSES IDENTIFIED ANYONE DEPICTED IN THE ARRAY.

HOWEVER, THREE OF THE WITNESSES TESTIFIED THAT THEY WERE CONTACTED BY POLICE NEARLY A WEEK LATER AND ASKED TO RETURN TO THE POLICE STATION TO BE INTERVIEWED. AT THE TIME, POLICE HAD "LEAKED" TO THE LOCAL PRESS THE NAME OF THEIR SUSPECT THEY "BELIEVED" TO HAVE DONE THE SHOOTING, A SUGGESTIVE PHOTO WHICH THE LOCAL NEWSPAPER REDUCED TO THUMBNAIL-SIZE, POLICE CLAIMED THE SUSPECT WAS UNDER ARREST, AND A DESCRIPTION OF THE SEIZED VEHICLE POLICE CLAIMED WAS INVOLVED IN THE CRIME. THE WITNESSES NOW CLAIMED AFTER VIEWING THE ARTICLE THEY RECOGNIZED THE ACCUSED'S PICTURE AS DEPICTING THE DRIVER OF THE VAN IN QUESTION.

THE STATE PRESENTED EVIDENCE INDICATING THAT A LANDLINE PHONE AT THE APARTMENT HOUSE WHERE THE ACCUSED LIVED CALLED CHAVEZ'S WORK PHONE AT 2:15 P.M. THEY ALSO PRESENTED "TRAVEL STUDIES" DONE BY POLICE ON DAYS THAT DID NOT COMPARE TO BLIZZARD CONDITIONS ON THE DAY OF THE SHOOTING. THEY PRESENTED, THAT ON A LIGHTLY SNOWY DAY, DRIVING A PRE-DETERMINED ROUTE THAT NO WITNESS TESTIFIED TO SEEING A SUSPECT TRAVEL, FROM CLARK'S HOME TO THE DEFENDANT'S APARTMENT ACROSS TOWN, TOOK BETWEEN 15 AND 25 MINUTES, DEPENDING ON TRAFFIC LIGHTS. ON FEBRUARY 6, 2008, ROCKFORD EXPERIENCED AN HISTORIC SNOWSTORM THAT RESULTED IN THE BLIZZARD DROPPING THREE FEET OF SNOW ACCUMULATION. SEVERAL STATE WITNESSES, TESTIFIED THAT FOLLOWING ROUGHLY THE SAME ROUTE BUT IN THE OPPOSITE DIRECTION, COMING FROM DOWNTOWN ROCKFORD INSTEAD OF GOING TO, TRAVELING TO THEIR EAST-SIDE HOMES, BLOCKS FROM THE CLARK HOUSE, IT TOOK THEM A "UNUSUALLY LONG TIME" OF ABOUT AN HOUR TO MAKE THE SAME TRIP. ALL POLICE WHO TESTIFIED, WHEN QUESTIONED ON WEATHER CONDITIONS AND THE AMOUNT OF TIME IT TOOK THEM TO TRAVEL TO THE CRIME SCENE FROM VARIOUS POINTS AROUND THE CITY COULD "NOT RECALL" HOW LONG IT TOOK THEM TO TRAVEL A SIMILIAR DISTANCE.

A FORMER NEIGHBOR OF CLARK'S TESTIFIED ON SEEING A VAN. BUT, TERRI MISNER, COULD NOT RECALL MUCH, NOT EVEN HER OWN FORMER ADDRESS. DEFENSE COUNSEL DID NOT CROSS-EXAMINE THIS WITNESS.

A WITNESS AND FORMER NEIGHBOR OF THE ACCUSED, BARBARA WELCH, TESTIFIED SHE SAW A VAN OUTSIDE THE DEFENDANT'S APARTMENT IN THE "EARLY

MORNING" ON THE DAY OF THE BIG SNOW STORM. BUT, DUE TO HER ADVANCING MEDICAL CONDITION IN RECENT YEARS, PRESCRIBED MEDICATION AND THE LONG DELAYS BETWEEN ARRESTS AND TRIAL SHE WAS UNCLEAR ABOUT WHAT SHE WITNESSED. DUE TO HER ILLHEALTH A VIDEO DEPOSITION WAS SHOWN TO THE JURY. SHE WAS UNDER DOCTOR'S ORDERS NOT TO TRAVEL.

ANOTHER FORMER NEIGHBOR OF CLARK'S, PETER KRUTCHEN, WHO LIVED "FIVE HOUSES DOWN" FROM THE CRIME SCENE IDENTIFIED A PIECE OF CLOTHING BELIEVED TO BE WORN BY THE SUSPECT. KRUTCHEN "SAW A CUFF OF A DENIM JACKET" WHICH HE TESTIFIED HE IDENTIFIED ON THE NIGHT OF THE "BLIZZARD," THE ONLY NIGHT HE WAS TAKEN TO THE POLICE STATION. HE CLAIMED HE VIEWED CLOTHING ITEMS AT 8 P.M. ON THE NIGHT OF FEBRUARY 6, 2008. HE ALSO TESTIFIED THAT TWO NEIGHBORS CALLED HIM GIVING HIM DETAILS AND COMPARING NOTES ON WHAT THEY SAW. PROBLEMATICALLY, FOR THE STATE, POLICE TESTIFIED THEY LOCATED THE CLOTHING IDENTIFIED BY KRUTCHEN THE FOLLOWING DAY AT 1 A.M. DEFENSE COUNSEL DID NOT QUESTION OR ADVERSARIALY TEST KRUTCHEN OR THE POLICE ON THESE DETAILS OR DESCREPANCIES.

CLARA ARCO, A CHILD AT THE TIME OF THE SHOOTING, TESTIFIED THAT SHE LIED TO THE POLICE. HER DESCRIPTIONS OF THE VAN, IT'S LOCATION, THE MAN SHE CLAIMED TO HAVE SEEN RUNNING AND HOW HE WAS DRESSED WERE ALL FABRICATIONS OR OVERHEARING ADULTS SPECULATE. YET, HER QUESTIONING ON VIDEO AT A LOCAL CHILDREN'S HOME, PLAYED FOR THE JURY, WITH LEADING QUESTIONS BY THE POLICE WAS HEAVILY RELIED UPON BY THE STATE IN CLOSING. NOT HER TESTIMONY OF LYING AT TRIAL. DEFENSE COUNSEL REPEATEDLY FAILED TO OBJECT TO THE FALSE CLAIMS OR COMMENTS MADE BY PROSECUTORS DURING CLOSING ARGUMENTS REGARDING THIS WITNESS'S TESTIMONY AND FAILED TO PROVIDE HOW THIS "STRATEGY" WAS VALID POST-TRIAL.

CHRIS PRO, ANOTHER NEIGHBOR, WAS ONE OF THE WITNESSES WHO CALLED AROUND SHARING WHAT HE SAW WITH OTHER WITNESSES. HE IS THE WITNESS THAT SAW GOLD WHEEL COVERS ON A VAN. HE DID NOT EXPLAIN HOW HE SAW ONLY THIS SINGULAR FEATURE IN THREE FEET OF SNOW ON A UNPLOWED ROAD OR HOW HE DIFFERENTIATED ORIGINAL WHEEL COVERINGS FROM THIRD-PARTY AFTER MARKET RIMS. THE DEFENDANT IN HIS POST-TRIAL FILINGS SOUGHT THE ANSWER FROM TRIAL COUNSEL ON THIS POINT, BUT COUNSEL CONCLUDED A VEHICLE EXPERT WAS NOT NEEDED.

FACED WITH INCONSISTENT WITNESS TESTIMONY, THE STATE PIVOTED AND OPENLY COMMENTED THAT THE LACK OF INCULPATORY EVIDENCE WAS NOW IN FACT EVIDENCE ITSELF, BECAUSE THE DEFENDANT WAS SMART, DISPOSED OF IT OR PLANNED WELL.

WITNESSES TESTIFIED THAT THEY SAW THE ACCUSED AT CHARLES SMITH'S HOME AROUND 2:30 P.M. UNTIL AROUND 4:30 P.M. SMITH TESTIFIED TO THE 2008 GRAND JURY THAT THE DEFENDANT HAD SOME LAUNDRY IN THE BASEMENT. AT TRIAL, SMITH DID NOT RECALL THE EXACT WORDS. HE TESTIFIED THAT HIS FRIEND AND CO-WORKER DIANE CHAVEZ REGULARLY DID HER LAUNDRY AT HIS HOUSE, SOMETIMES BRINGING THE DEFENDANT'S. SMITH WENT ON TO SAY THAT HE HAD LEFT HIS OWN LAUNDRY IN THE WASHER TO SOAK THAT DAY BEFORE HEADING OFF TO WORK AND DID NOT SEE ANY CLOTHING UNTIL THE POLICE SEARCHING HIS HOME WITH HIS PERMISSION, BUT OUTSIDE HIS PRESENSE, QUESTIONED HIM ABOUT SOME CLOTHING ITEMS. POLICE ALLEGED THEY FOUND THE CLOTHES, WASHCLOTHS AND DISH TOWELS IN THE DOWNSTAIRS LAUNDRY ROOM. TESTING REVEALED NOTHING SIGNIFICANT ON ANY OF THE ITEMS AND NO WITNESS IDENTIFIED THE ITEMS AS BEING WORN BY THE SUSPECT, OTHER THAN THE ILL-FATED I.D. BY KRUTCHEN. THOUGH, THIS DID NOT STOP PROSECUTORS IN FALSE CLAIMS THAT CLARA ARCO AND OTHERS IDENTIFIED ITEMS.

POLICE COLLECTED SEVERAL COMPUTERS FROM THE DEFENDANT'S APARTMENT AND ONE COMPUTER FROM SMITH'S HOUSE. SOFTWARE ANALYSIS OF THOSE COMPUTERS INDICATED THAT NONE OF THE ACCUSED'S COMPUTER'S SHOWED HARD DRIVE ACTIVITY BETWEEN 3:15 A.M. AND 2:46 P.M. ON FEBRUARY 6, 2008. SMITH'S COMPUTER SHOWED NO FILES CREATED BETWEEN 12:59 P.M. AND 2:12 P.M; NO FILES MODIFIED BETWEEN 11:09 A.M. AND 12:54 P.M; AND NO FILES ACCESSED BETWEEN 10:48 A.M. AND 3:15 P.M. SMITH TESTIFIED HE HAD MADE AN APPOINTMENT WITH THE ACCUSED FOR THAT DAY TO INSTALL A NEW WEBCAM AND SOFTWARE FOR HIS COMPUTER WHILE HE WAS AT WORK.

IN AN ATTEMPT TO SHOW THAT THE DEFENDANT HAD DISAGREEMENTS WITH CLARK, THE STATE INTRODUCED TRANSCRIPTS OF COURT HEARINGS FROM CASE # 06-CF-405; A RECORDED CONVERSATION BETWEEN THE THE DEFENDANT, CHAVEZ, AND CLARK; TAPED PHONE MESSAGES OF A 3-YEAR PLEA OFFER FROM CLARK; PRO SE FILINGS THE ACCUSED HAD SUBMITTED UPON DIRECT APPEAL IN THAT CASE; AND TESTIMONY FROM THE PROSECUTOR IN THAT CASE. THAT EVIDENCE SHOWED THE DEFENDANT AND CLARK'S OPINIONS DIFFERED ON SEVERAL ISSUES, CLARK OFFERED A PLEA DEAL, CLARK DISCOUNTING EXCULPATORY EVIDENCE

THE DEFENDANT WISHED PRESENTED AT TRIAL (WHICH CLARK EVENTUALLY CONCEEDED TO AND DID PRESENT), CLARK SEEKING TO WITHDRAW FROM THE CASE WHICH WAS DENIED, THE DEFENDANT REPEATING CLAIMS OF NEGLECT MADE BY APPELLATE COUNSEL OFFERED IN HIS DIRECT APPEAL AND ILLUSTRATED IN HIS WRIT OF CERTIORARI PREVIOUSLY BEFORE THIS COURT.

HOWEVER, IN NONE OF THE TRANSCRIPTS, FILINGS OR TESTIMONY DID EVIDENCE SHOW THAT THE DEFENDANT SOUGHT TO FIRE CLARK, THREATEN CLARK, ASK THE JUDGE TO REMOVE CLARK FROM THE CASE, BADMOUTH, VERBALLY ABUSE OR YELL AT CLARK. NO VIOLENCE WAS DESCRIBED. JUST THE OPPOSITE, THE DEFENDANT ASKED THE COURT TO HAVE CLARK ZEALOUSLY DEFEND HIM.

FINALLY, THE STATE INTRODUCED EVIDENCE INDICATING THAT SOMEONE ON ANOTHER OCCASION FIRED GUNSHOTS NEAR CLARK ON NOVEMBER 4, 2007, AS CLARK WAS TAKING OUT THE GARBAGE. A BULLET WAS RECOVERED AFTER CLARK WAS SHOT AND FOUND TO HAVE BEEN FIRED BY A SIMILIAR GUN THAT FIRED THE BULLETS INTO CLARK ON 02.06.08. TECHICIANS WERE CALLED AS WITNESSES AND TESTIFIED THAT NO GUNSHOT RESIDUE WAS FOUND ON THE ACCUSEDS CLOTHING OR IN THE SEIZED VAN. NO WEAPON WAS FOUND NOR WAS ANY WEAPON OR AMMUNITION LINKED TO THE ACCUSED. NO MAPS, THREATENING LETTERS, EMAILS OR OTHER MALICIOUS COMMUNICATIONS WERE FOUND ON THE DEFENDANTS OR IN HIS HOME. NO DNA, FINGERPRINTS, HAIR OR FIBER LINKED THE ACCUSED TO THIS CRIME.

DURING CLOSING ARGUMENTS, THE PROSECUTORS MADE NUMEROUS FALSE STATEMENTS, FACTUAL ERRORS AND MISLEADING COMMENTS UNSUPPORTED BY EVIDENCE WITHOUT DEFENSE COUNSEL OBJECTING: FIVE SEPERATE COMMENTS CLAIMING THAT THE ACCUSED KILLED CLARK BECAUSE HE PERSONALLY WANTED TO REMOVE CLARK FROM HIS CASE; A CLAIM THAT THE KNEW CLARK WOULD BE HOME ON FEBRUARY 6TH; TWO SEPERATE COMMENTS THAT THERE WERE EYEWITNESSES WHO IDENTIFIED THE DEFENDANT AS THE PERSON THEY SAW "RUNNING TO THE VAN" IN THE AFTERMATH OF THE SHOOTING; A CLAIM THAT ALL OF THE WITNESSES UPON SEEING THE ACCUSEDS PICTURE IN THE NEWSPAPER IMMEDIATELY CALLED THE POLICE TO REPORT HE WAS THE PERSON THEY HAD SEEN; A CLAIM THAT FOUR OF THE WITNESSES WHO VIEWED A PHOTO ARRAY AND DID NOT IDENTIFY THE ACCUSEDS PICTURE NEVERTHELESS "SAID" THAT HIS HAIR AND BEARD MATCHED THOSE OF THE

DRIVER OF THE VAN; A CLAIM THAT THE DEFENDANT'S CASE WAS THE ONLY CASE CLARK WAS SCHEDULED TO APPEAR DURING THE DAYS FOLLOWING FEBRUARY 6, 2008; A FALSE CLAIM THAT WITNESS CHRISTOPHER PRO DESCRIBED THE DRIVER OF THE VAN HE SAW NEAR THE SCENE OF THE SHOOTING; A CLAIM THAT ALL OF THE COMPUTERS ASSOCIATED WITH THE ACCUSED "WENT DARK" DURING THE HOURS SURROUNDING THE CRIME; A CLAIM THAT CHARLES SMITH DISCOVERED A BAG OF LAUNDRY IN HIS BASEMENT AND IMMEDIATELY CALLED THE POLICE. MUCH OF THESE FALSE CLAIMS WERE MADE DURING SUR REBUTTAL OFFERING THE DEFENSE NO ABILITY TO RESPOND, THOUGH ZIMMERMAN SAT SILENT NOT OBJECTING.

THE JURY FOUND THE DEFENDANT GUILTY OF FIRST DEGREE MURDER. IT FURTHER FOUND THAT: THE DEFENDANT PERSONALLY DISCHARGED A FIREARM AND CAUSED CLARK'S DEATH; CLARK WAS OVER THE AGE OF 60; THE MURDER WAS COLD, CALCULATED AND PREMEDITATED; AND THE MURDER WAS EXCEPTIONALLY BRUTAL AND HEINOUS.

ZIMMERMAN FILED A MOTION FOR A NEW TRIAL, WHICH ALLEGED, AMOUNG OTHER CLAIMS, THAT THE JUDGE ERRED WHEN SHE DENIED THE PUBLIC DEFENDER' OFFICE' NUMEROUS CLAIMS TO WITHDRAW AS COUNSEL AND WHEN SHE DENIED THE DEFENDANT'S MOTION TO DISMISS THE CHARGES DUE TO PRE-INDICTMENT DELAY. THE DEFENDANT FILED HIS OWN SUPPLEMENTAL MOTION CONCERNING THE COURT RULINGS AND HIS COUNSEL'S INACTIONS LISTING NUMEROUS EXAMPLES OF EXCULPATORY EVIDENCE IGNORED, LACK OF INTO ALTERNATIVE SUSPECTS, FAILURE TO HIRE EXPERT WITNESSES, FAILURE TO OBJECT TO BLATANT FALSE STATEMENTS AND COMMENTS MADE BY THE PROSECUTORS, CONFLICTS OF INTEREST AND OTHER FORMS OF INNEFFECTIVENESS BY COUNSEL. THE COURT BRIEFLY ENTERTAINED THESE PRO SE POST-TRIAL MOTIONS GIVING COUNSEL 30 MINUTES TO READ AND DIGEST "250 PAGES" OF NARRATIVE AND EXHIBITS. TRIAL COUNSEL RESPONDED ASKING THE COURT TO QUESTION HIM AND STATED IN SIMPLE MONOTONOUS ANSWERS REPEATEDLY CITING HIS UNSTATED "STRATEGY" WHILE AVOIDING THE ISSUES OF CONFLICT, ALLEGED INEFFECTIVENESS AND NUMEROUS UNFORCED ERRORS ON HIS PART. THE JUDGE ACCEPTED THIS, DISALLOWING FOLLOW-UP BY THE DEFENDANT AND DENIED THE MOTIONS WITH LITTLE COMMENT, ULTIMATELY SENTENCING THE DEFENDANT TO LIFE IMPRISONMENT.

THE DEFENDANT APPEALED, ARGUING THAT THE JUDGE ERRED IN DENYING HIS MOTION TO DISMISS THE INDICTMENT DUE TO A SIX-YEAR DELAY BETWEEN ARRESTS AND INDICTMENT, WHERE THE DELAY RENDERED TWO POTENTIAL ALIBI WITNESSES UNAVAILABLE AND DEGRADED HIS ABILITY TO DEFEND HIMSELF.

THIS VIOLATED THE ACCUSED' CONSTITUTIONAL RIGHTS TO A SPEEDY TRIAL OR HIS RIGHT OF DUE PROCESS. THE JUDGE ERRED IN DENYING THE MANY MOTIONS TO WITHDRAW BY THE PUBLIC DEFENDER' OFFICE' WHERE UNDER UNIQUE CIRCUMSTANCES BOTH SUPERVISORS WERE THE VICTIM'S CLOSE FRIENDS, OTHER STAFF AND ASSISTANTS VOICED THEIR BELIEFS OF OF THE ACCUSED' GUILT AND WOULD NOT HELP HIM AND HAD BEEN ACTIVELY INVOLVED IN THE PROSECUTION OR WERE POTENTIAL STATE WITNESSES. THE TRIAL JUDGE ABUSED HER DISCRETION IN DENYING TO DISQUALIFY THE OFFICE ON THREE OCCASIONS DUE TO NUMEROUS CITED CONFLICTS OF INTEREST.

THE APPEAL ALSO ARGUED THE COURT ABUSED HER DISCRETION WHEN SHE ALLOWED THE STATE TO REPEATEDLY PRESENT WITNESSES WHO BOLSTERED THE LIMITED AND PREJUDICIAL EYEWITNESS TESTIMONY CONCERNING PRIOR CONSISTENT STATEMENTS AND LOOKED PAST PROSECUTORS WHO COMMITTED MISCONDUCT WHICH DEPRIVED THE ACCUSED OF A FAIR TRIAL BY REPEATING FALSEHOODS, INNUENDO, SPECULATION COMPOUNDED ON SPECULATION, MISSTATEMENTS ON THE EVIDENCE AND ALLOWING DEFENSE COUNSEL TO STAND IDLE DURING CLOSING ARGUMENTS LAYING BARE THEIR CONFLICTS OF INTEREST.

THE FULL APPELLATE ARGUMENTS AND UNPUBLISHED ORDER BY THE COURT ARE DETAILED IN **APPENDIX I** AND **APPENDIX III** RESPECTIVELY. APPENDIX II ARE THE ORAL ARGUMENTS BEFORE THE COURT.

ULTIMATELY, THE APPELLATE COURT AFFIRMED THE CONVICTION AND SENTENCE DEEMING THE TRIAL COURTS INQUIRES INTO CONFLICTS OF INTEREST "ADEQUATE" AND DETERMING THE STATE NEED NOT EXPLAIN A SIX-YEAR DELAY BETWEEN ARRESTS AND INDICTMENT. THE 2ND DISTRICT APPELLATE COURT OF ILLINOIS ALSO MUSED THAT IT WOULD LIKE TO EXCIZE THE USE OF THE WORD "ARREST" FROM THE "INDICTMENT-ARREST-OFFICIAL-ACCUSATION TROIKA" AS FOUND AND CITED IN CASES FOR SPEEDY TRIAL DETERMINATION, i.e. **MACDONALD**, **MARION**, **BARKER**, AND IN ILLINOIS, **LAWSON**, **BAZZELL**, **COLE**, ETC. AND FURTHER STATED THAT "AN ARREST, WITHOUT THE SUBSEQUENT COMMENCEMENT OF A PROSECUTION, WILL NOT TRIGGER THE CONSTITUTIONAL SPEEDY TRIAL PROTECTIONS" EVEN IF "THE LENGTH OF THE DELAY BETWEEN ARREST AND INDICTMENT IS EXTREMELY LENGTHY."

THE DEFENDANT APPEALED THE COURT'S UNPUBLISHED ORDER WITH A PETITION FOR LEAVE TO APPEAL TO THE ILLINOIS SUPREME COURT, WHICH

- REJECTED THE OPPORTUNITY TO RESOLVE THE DISPARATE RULINGS IN THE 2ND AND 5TH APPELLATE DISTRICTS CONCERNING SPEEDY TRIAL OR TO DECIDE IF THERE COULD BE UNDER THESE UNIQUE CIRCUMSTANCES EVER AN OFFICE-WIDE CONFLICT IN A PUBLIC DEFENDER' OFFICE' WITH A CLIENT.

THE CONTENTS OF THIS PETITION ARE CONDITIONAL DUE TO INTERVENING RESTRICTIONS BROUGHT ON BY THE COVID-19 PANDEMIC. RESOURCES TO FULLY IMPLIMENT A LEGAL FILING OF THIS BREADTH ARE UNAVAILABLE. U.S. MAIL DELIVERY IN THIS RURAL SETTING HAS GREATLY SLOWED. MENARD C.C. AND MOST OF IDOC IS ON LOCKDOWN. ALL LEGAL SERVICES AND LAW LIBRARY RESOURCES ARE RESTRICTED OR SEVERELY LIMITED. LEGAL COPIES, NOTARY SERVICES, KEYCITING, SHEPHARDIZING AND STATIONARY SUPPLIES ARE LIMITED OR UNAVAILABLE.

RULE 15.8 OF THE RULES OF THE SUPREME COURT ALLOW FOR THE FILING A SUPPLEMENTAL BRIEF FOR FILING MATERIALS NOT AVAILABLE AT THE TIME OF FILING DUE TO INTERVENING MATTERS. PETITIONER REGRETS THAT **APPENDIX IV** OF THIS FILING IS INCOMPLETE AND WILL UTILIZE RULE 15.8 TO PROVIDE A MORE COMPLETE FILING IN THE FUTURE. THE COURT WILL NOTE THAT SOME OF THE EXHIBITS DO NOT HAVE THE APPELLATE RECORD NUMBERING I.D. IN THE LOWER RIGHT-HAND CORNER OF THE PAGE. THE PETITIONER HAS SUPPLEMENTED THE FILING WITH HIS OWN COPIES AND WILL WORK TO PERFECT THIS IN FUTURE SUBMISSIONS. THIS MATERIAL IS ESSENTIAL TO UNDERSTAND THE PETITION.

IT MUST BE NOTED, THAT COMMUNICATION IS ALSO DIFFICULT FOR THE PETITIONER. HE IS DEAF OR HEARING IMPAIRED. HIS DISABILITY ADDS AN EXTRA LAYER OF DIFFICULTY IN OBTAINING LEGAL SERVICES IN A TIMELY MANNER.

ARGUMENT I

THE U.S. SUPREME COURT SHOULD GRANT REVIEW TO CLARIFY THE LAW WITH RESPECT TO THE CIRCUMSTANCES UNDER WHICH A PERSON'S ARREST, PUBLIC ACCUSATION FOR AN OFFENSE, DETENTION AND EXCEPTIONAL DELAYS CAN INITIATE HIS PROSECUTION FOR THAT OFFENSE FOR PURPOSES OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.

THE SHOOTING, ARREST AT GUNPOINT AND PUBLIC ACCUSATIONS AT ISSUE IN THE PRESENT CASE OCCURED ON FEBRUARY 6, 2008. THE ACCUSED WAS HELD, NOT ALLOWED TO LEAVE, STRIPSEARCHED AND HIS POSSESSIONS TAKEN, QUESTIONED UNTIL THE NEXT MORNING, YET NO VIDEO OF THE INTERROGATION EXISTS AS IS REQUIRED BY LAW. HE WAS SUGGESTIVELY PHOTOGRHED, THE ONLY SUSPECT IN THE PHOTO ARRAY WEARING A DARK WINTER COAT TURNED IN THREE-QUARTER PROFILE FACING THE CAMERA, YET NO POTENTIAL WITNESS SHOWN PHOTOS IDENTIFIED HIM THAT EVENING. THE FOLLOWING MORNING THE ACCUSED WAS AGAIN ARRESTED MORE FORMALLY PRIOR TO BEING BOOKED INTO WINNEBAGO COUNTY JAIL (C 851) PENDING ARRAIGNMENT (C 852). LATER, ON FEBRUARY 7, 2008, HE WAS TAKEN TO COURT, ROOM 467 AT 4 P.M. (C 857), TO ALLEGEDLY HEAR CHARGES, YET COURT RECORDS (C 858) DIFFER FROM JAIL RECORDS. THE RECORD DOES NOT CONTAIN A TRANSCRIPT OF THAT, BUT THE ACCUSED CONTENDS HE WAS TOLD HE WAS BEING CHARGED.

THIS CALLS INTO QUESTION THE BASIC PREMISE OF HOW CASE NUMBER 06-CF-406 AFFECTS THE PRESENT CASE. THE 2ND DISTRICT APPELLATE COURT OPINION STATES "ON THE SAME DAY AS THE ARREST, DEFENDANTS BOND WAS REVOKED AND HE WAS HELD IN CUSTODY TO THE BOND REVOCATION." THERE IS A DISPUTE ON WHEN THE BOND ORDER TOOK AFFECT AND WAS FILED. THERE IS NO DOUBT THE ORDER WAS SIGNED THE EVENING OF FEBRUARY 6, 2008 AROUND 11 P.M., IN A EX PARTE MEETING BETWEEN DEPUTY SA O'CONNOR AND JUDGE TRUITT. THE COURT HOUSE WAS CLOSED THAT DAY AND AT THAT LATE HOUR DUE TO BLIZZARD CONDITIONS THE UNFILED ORDER WAS USED TO HOLD THE PRISONER THE FOLLOWING MORNING (C 854). THOUGH THE PROPRIETY OF HIS ARRESTS WERE NOT LOOKED AT THEN, BUT WERE DELAYED AND RULED UPON IN 2016 WHERE THE COURT DETERMINED THERE WAS PROBABLE

CAUSE FOR THE INITIAL ARREST IN 2008. THESE ISSUES REGARDING LENGTHY INTERROGATIONS, SUGGESTIVE PHOTOS, THE SECOND ARREST, UNFILED ORDERS AND A PHANTOM COURT HEARING ON 02.07.08 WERE IGNORED. NONETHELESS, THE DEFENDANT SUPPLEMENTED THE RECORD WITH THESE FOIA DERIVED DOCUMENTS. ALSO IGNORED WERE REQUESTS TO PRESERVE DOCUMENTS SURROUNDING THE ARRESTS.

ILLINOIS STATUTE'S **725 ILCS 185/17, 23** AND **31** CONCERN THE KEEPING OF RECORDS REGARDING BY PRETRIAL SERVICES. THE ACCUSED WAS OUT ON BOND. MONITORED BY THE COUNTY OFFICE OF PRETRIAL SERVICES. ANY INFRACTION REGARDING THE CONDITIONS WHILE ON BOND WOULD BE RECORDED IN THEIR RECORDS. AN ILLINOIS JUDGE DETERMINING WHETHER TO VIOLATE SOMEONE'S BOND WOULD BE AIDED BY THESE RECORDS. THEY WOULD DETAIL COMPLIANCE, VIOLATIONS, RESTRICTIONS OR ANY NEW CHARGES WHILE OUT ON BOND. DEFENDANT SOUGHT TO "PRESERVE" THESE RECORDS AND TO RECEIVE COPIES, AS THE STATUTE ALLOWS **(SEE EXHIBIT 3 APPENDIX IV)**, BUT THEY WERE WITHHELD ON ADVICE BY THE STATE'S ATTORNEYS OFFICE, WHICH HAS NO AUTHORITY OVER PRETRIAL SERVICES. ULTIMATELY, THE RECORDS WERE DESTROYED PRIOR TO THE MOTION TO QUASH ARREST HEARING. THE DEFENDANT ALLEGED THE RECORDS WOULD SHOW HE COMPLIED WITH CONDITIONS OF HIS BOND.

THE DEFENDANT SUPPLEMENT THE RECORD WITH NUMEROUS DOCUMENTS SHOWING INTERFERENCE WITH HIS INCARCERATION AND HIS ATTEMPTS TO DEFEND HIMSELF FROM 2008-2014. NEVERTHELESS, AND FOR REASONS IGNORED AND WHOLLY UNEXPLAINED IN THE RECORD, THE STATE WAITED UNTIL APRIL 16, 2014, THE SECOND-TERM OF PROGRESSIVE SA JOSEPH BRUSCATO'S TENURE, TO SEEK AN INDICTMENT AGAINST THE DEFENDANT. AT ISSUE IN THIS CASE IS THE SIX-YEAR DELAY BETWEEN THE ACCUSED'S ARRESTS AND THE INDICTMENT, AND WHETHER THOSE UNEXPLAINED DELAYS VIOLATED THE DEFENDANTS CONSTITUTIONAL RIGHT TO EITHER A SPEEDY TRIAL OR DUE PROCESS. **PEOPLE v. WANKE, 2019 IL APP. (2ND) 170373-U, ¶¶ 89, 99.**

THE DEFENSE, STATE AND 2ND DISTRICT APPELLATE COURT FOCUSED ON THE TWO AMENDMENTS TO THE UNITED STATES CONSTITUTION WHICH PROTECT THE ACCUSED FROM UNREASONABLE DELAY IN HIS PROSECUTION. **BARKER v. WINGO, 407 U.S. 514, 533 (1972); UNITED STATES v. MARION, 404 U.S. 307, 324 (1971).** THE SPEEDY TRIAL CLAUSE OF THE SIXTH AMENDMENT PROTECTS THE DEFENDANT FROM UNREASONABLE DELAY BETWEEN EITHER ARREST OR INDICTMENT, THE INITIATION OF THE PROSECUTION,

AND THE COMMENCEMENT OF TRIAL. **BARKER**, 407 U.S. AT 533. THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT PROTECTS THE DEFENDANT FROM UNREASONABLE DELAY BETWEEN THE COMMISSION OF THE OFFENSE AND THE INITIATION OF THE PROSECUTION. **MARION**, 404 U.S. AT 324. THESE TWO PROTECTIONS ARE SUBJECT TO SIGNIFICANTLY DIFFERENT ANALYSES AND BOTH PROTECTIONS FAILED THE ACCUSED JUST AS SIGNIFICANTLY.

THE SPEEDY TRIAL CLAUSE GOVERNS DELAYS BETWEEN THE INITIATION OF THE PROSECUTION AGAINST THE ACCUSED AND HIS TRIAL. **MARION**, 404 U.S. AT 320-21. IT PROTECTS THE ACCUSED' ABILITY TO DEFEND HIMSELF AND LIMITS EXPOSURE TO THE STIGMA OF UNPROVEN ACCUSATIONS, CHARGES, AND FURTHERS SOCIETY'S INTEREST IN THE TIMELY RESOLUTION OF CRIMINAL MATTERS. 407 U.S. AT 520.

IN **MARION**, MR. JUSTICE WHITE PROVIDES A UNIQUE PROSPECTIVE. THE COURT DISAGREED WITH THE DEFENSE AND PREVIOUS COURT DECISIONS CONCLUDING THAT NEITHER DEFENDANT BECAME "ACCUSED" FOR PURPOSES OF APPLICATION OF SIXTH AMENDMENT HAVING NOT BEEN ARRESTED OR OTHERWISE CHARGED BEFORE THEIR INDICTMENT. APPELLEES CLAIMED THE VIOLATION WAS THE PERIOD OF THREE YEARS AFTER THEY ENDED THEIR CRIMINAL SCHEME AND THE RETURN OF AN INDICTMENT. IN THE COURT'S VIEW, "THE SIXTH AMENDMENT SPEEDY TRIAL PROVISION HAS NO APPLICATION UNTIL THE PUTATIVE DEFENDANT IN SOME WAY BECOMES AN 'ACCUSED'..." **MARION**, 404 U.S. AT 113.

THE COURT THEN PROVIDES A BIT OF HISTORICAL CONTEXT "... AT THE TIME OF THE ADOPTION OF THE [SIXTH] AMENDMENT, THE PREVAILING RULE WAS THAT PROSECUTIONS WOULD NOT BE PERMITTED IF THERE HAD BEEN LONG DELAY IN PRESENTING A CHARGE." 404 U.S. AT 115. ARREST IS DESCRIBED AS A "PUBLIC ACT."

IN THE PRESENT CASE, SEVERAL WITNESSES ARE MOTIVATED BY THE CLAIMS MADE BY POLICE IN THE LOCAL NEWSPAPER (C1978) THAT THEY "BELIEVE" THEY HAVE THE PERSON RESPONSIBLE FOR THE SHOOTING AND THE VEHICLE USED. BEFORE THAT "LEAKED" REPORT ONLINE, IN PRINT AND TO THE TV NEWS, THESE WITNESSES WERE UNABLE TO MAKE ANY IDENTIFICATION.

THE RECORD SHOWS THAT THE ACCUSED CONTINUED WITH HIS DOCUMENT COLLECTION CONCERNING HIS ARRESTS IN 2008. HE MADE REPEATED **FOIA** REQUESTS AFTER INDICTMENT, WANTING TO PREPARE, BECAUSE DISCOVERY WAS LONG IN COMING DUE TO THE MANY MOTIONS

TO WITHDRAW MADE BY THE PUBLIC DEFENDER'S OFFICE. OFTEN HIS EFFORTS WERE STYMIED. PUBLIC DOCUMENTS WERE WITHHELD OR HE WAS BURIED IN USELESS DOCUMENT DUMPS. ON OTHER OCCASIONS, HE WAS TOLD THAT THE DOCUMENTS HAD BEEN "DESTROYED" AS WITH HIS FORMER ATTORNEY'S CASE FILE FOR CASE # 06-CF-405 **(C1958)**. BUT, THERE WERE GEMS. HE FOUND THE DESCRIPTIVE "OFFENSE: MURDER" WITH HIS NAME LISTED AS "SUSPECT" **(SEE EXHIBIT 9, APPENDIX IV)** IN A 02.21.08 ISP LAB REPORT AND A EMAIL WHERE A ROCKFORD DETECTIVE IS TELLING THE LAB TO SLOW THEIR EFFORTS BECAUSE HE WOULDN'T "CALL THIS A RUSH CASE" REFERRING TO THE TESTING BEING DONE FOR THE PRESENT CASE, "BECAUSE IT WAS A MEMBER OF THE COURT WHO WAS GUNNED DOWN." **(SEE EX. 10 APP. IV)**.

MARION CONTINUES, STATING THAT THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT WOULD REQUIRE DISMISSAL IF IT WERE SHOWN THAT THE PRE-INDICTMENT DELAY IN A CASE CAUSED SUBSTANTIAL PREJUDICE IN RECEIVING A FAIR TRIAL AND THAT THE DELAY WAS AN "INTENTIONAL DEVICE TO GAIN TACTICAL ADVANTAGE OVER THE ACCUSED." **BRADY v. MARYLAND, 373 U.S. 83, 83 S.CT. 1194 (1963)**. TRIAL COUNSEL FAILED TO UTILIZE THESE DOCUMENTS AT HEARING OR AT TRIAL AND EQUALLY FAILED TO ELUCIDATE HOW THIS WAS A VIABLE "STRATEGY" IN HIS POST-TRIAL EXPLAINATIONS.

MR. JUSTICE POWELL SET FORTH THE OPINION FOR THE UNITED STATES SUPREME COURT IN **BARKER** NOTING A FOUR-FACTOR BALANCING TEST AS "SOME OF THE FACTORS" IN DETERMING WHETHER POST-INITIATION DELAY VIOLATED THE SPEEDY TRIAL CLAUSE OF THE SIXTH AMENDMENT. **BARKER, 407 U.S. AT 530.** UNDER THE BARKER TEST, COURTS SHOULD CONSIDER: (1) THE LENGTH OF THE DELAY; (2) THE STATE'S JUSTIFICATION FOR THE DELAY; (3) WHETHER THE ACCUSED DEMANDED A SPEEDY TRIAL; AND (4) PREJUDICE SUFFERED BY THE ACCUSED. **BARKER, 407 U.S. AT 528, 533.**

THE ALSO HELD THAT NONE OF THE FOUR FACTORS SHOULD BE SEEN AS HOLDING "TALISMATIC QUALITIES" AND THEY UNDERSTOOD THEY SHOULD "BE CONSIDERED TOGETHER WITH SUCH OTHER CIRCUMSTANCES AS MAY BE RELEVANT." **BARKER, 407 U.S. AT 533.** THE COURT WENT ON TO SAY THAT "BECAUSE WE ARE DEALING WITH A FUNDAMENTAL RIGHT OF THE ACCUSED, THIS PROCESS MUST BE CARRIED OUT WITH FULL RECOGNITION THAT THE ACCUSED'S INTEST IN A SPEEDY TRIAL IS SPECIFICALLY AFFIRMED IN THE CONSTITUTION."

IN **BARKER**, THE BALANCING TEST IS ILLUSTRATED BRIEFLY AND CONSIDERED "CLOSE". THE LENGTH OF DELAY BETWEEN ARREST AND TRIAL WAS DESCRIBED AS "WELL OVER FIVE YEARS." IT APPEARED "PERMISSIBLE" THAT SOME DELAY SHOULD BE AFFORDED TO SECURE A WITNESS, "BUT MORE THAN FOUR YEARS WAS TOO LONG A PERIOD." **BARKER, U.S. AT 534.**

MOREOVER, **BARKER** WAS RELEASED ON BOND FOR YEARS, HE DID NOT WANT A SPEEDY TRIAL, THE COMPETENCY OF COUNSEL WAS NOT RAISED AND TRIAL TRANSCRIPTS INDICATE ONLY TWO MINOR LAPSES OF MEMORY OF A PROSECUTION WITNESS WERE NOTED.

IN THE PRESENT CASE IT IS JUST THE OPPOSITE, THE ACCUSED QUESTIONED HIS ARREST AND BOND REVOCATION, DISPUTED THE FACTS, AND SOUGHT TO GATHER DOCUMENTS, ALONG WITH HIS FRIENDS. **(SEE EXHIBITS 4-6 APPENDIX IV)**. THE DELAYS BETWEEN ARRESTS, INDICTMENT AND TRIAL TOTALED OVER 9-YEARS (OVER 6-YEARS PRE-INDICTMENT AND NEARLY 3-YEARS BEFORE HIS TRIAL STARTED). THE ACCUSED FREQUENTLY DEMANDED A SPEEDY TRIAL AND DAYS ACCRUED. **(SEE C60 & C547)**. WITNESSES DIED BEFORE TRIAL; SOME GREW OLD AND LOST THEIR MEMORY DUE TO MEDICATION; OTHER WITNESSES WERE GIVEN TIME TO GIVE BIRTH SO AS TO TRAVEL; OTHERS MOVED OUT OF STATE AFTER RETIRING; SOME HAD ENOUGH TIME TO GROW UP AND GRADUATE FROM HIGH SCHOOL OR GO AWAY FOR COLLEGE. THE DEFENDANT'S TWO YOUNG ALIBI WITNESSES WERE NEVER INTERVIEWED OR THIER ACCOUNTS "LOCKED IN" AS THE STATE'S YOUNG WITNESS WAS. IT WAS FREQUENTLY ALLEGED THAT HIS APPOINTED COUNSEL AND EVEN THE OFFICE WAS CONFLICTED AND NOT COMPETENT. MEMORIES OF STATE EXPERTS, STATE WITNESSES AND POLICE OFFICERS HAD TO BE "REFRESHED" WITH REPORTS THEY WROTE OR PRIOR STATEMENTS THEY GAVE.

IN **DOGGETT v. UNITED STATES, 505 U.S. 647, 651 (1992)**, THE UNITED STATES SUPREME COURT CHARACTERIZED THE FIRST BARKER FACTOR AS A TWO-PART INQUIRY. FIRST, A COURT MUST MAKE A BINARY INQUIRY CONCERNING WHETHER THE DELAY IS MORE THAN ONE-YEAR, MAKING IT "PRESUMPTIVELY PREJUDICIAL" AND SUBJECT TO EVALUATION TO EVALUATION WITH RESPECT TO THE OTHER THREE FACTORS. **DOGGETT, 505 U.S. AT 652**. SECOND, THE COURT MUST EVALUATE THE EXTENT TO WHICH THE DELAY EXCEEDS THAT BARE MINIMUM AND WEIGH WHETHER THAT FAVORS A SPEEDY TRIAL VIOLATION. **505 U.S. AT 652.**

THE DUE PROCESS CLAUSE GOVERN DELAYS BETWEEN THE COMMISSION OF THE OFFENSE AND INITIATION OF PROSECUTION. **MARION, 404 U.S. AT 323; UNITED STATES v. LOVASCO, 437 U.S. 783, 789 (1977).** BECAUSE THE RELEVANT STATUTE OF LIMITATION ALSO PROTECTS THE FROM THE MERE POSSIBILITY THAT PRE-INITIATION DELAY WOULD CAUSE HIM PREJUDICE, THE DUE PROCESS CLAUSE ONLY APPLIES TO SITUATIONS WHERE AN UNREASONABLE DELAY CAUSES THE DEFENDANT ACTUAL PREJUDICE. **MARION, 404 U.S. AT 323.**

THE ILLINOIS COURTS HAVE PROSCRIBED A THREE-STEP ANALYSIS WHETHER DELAY VIOLATED DUE PROCESS CLAUSE IN A GIVEN CASE. **PEOPLE v. LAWSON, 67 Ill. 2d AT 459; PEOPLE v. DELGADO, 368 Ill. App. 3d 661, 663 (1ST DIST. 2006).** FIRST, THE DEFENDANT MUST ESTABLISH THAT THE DELAY CAUSED HIM SUBSTANTIAL PREJUDICE IN THAT IT HARMED HIS ABILITY TO DEFEND HIMSELF. **LAWSON, 67 Ill 2d AT 459.** IF THE DEFENDANT ESTABLISHES THAT PREJUDICE, BURDEN SHIFTS TO THE STATE TO ESTABLISH THAT THE DELAY WAS REASONABLE. **67 Ill. 2d AT 459.** THUS-FAR, IN THE PRESENT CASE, THE STATE HAS NOT EXPLAINED THE DELAY BETWEEN ARREST AND INDICTMENT. THEY DID SUGGEST IN ORAL ARGUMENTS **(APPENDIX II)** THAT THE DEFENDANT HIMSELF OR HIS FRIENDS COULD HAVE PRESERVED EVIDENCE, PLAYED DETECTIVE AND SUPPLIED HIS TWO YOUNG ALIBI WITNESSES WHEN ARREST. BUT, THAT PRESUPPOSES THE DEFENDANT'S GUILT, THAT HE HAD KNOWLEDGE OF THE EVENTS THAT AFTERNOON, KNEW THE TIME OF THE SHOOTING, WAS ABLE TO SUPPLY INFORMATION HE DID NOT HAVE OR KNOW HE NEEDED TO HAVE. FAR HARDER TO ACCOMPLISH MANY YEARS LATER. IN 2008, THE ACCUSED WAS ARRESTED, BUT WITHOUT COUNSEL, NO RIGHT TO DISCOVERY AND WISELY REMAINED SILENT. IN 2016, THE TRIAL COURT FAILED TO PROPERLY WEIGH THE INTERESTS OF THE ACCUSED AND THE PUBLIC NOT DISMISSING THE CHARGES NOR SHIFTING THE BURDEN TO HAVE THE STATE PROVIDE A REASONABLE EXPLANATION. **(ADDITIONAL ARGUMENT - APPENDIXES I, II AND III)**

THE ILLINOIS COURTS HAVE ADOPTED THE BARKER ANALYSIS FOR SPEEDY TRIAL CLAIMS IN **PEOPLE v. BAZZELL, 68 Ill. 2d 177, 182 (1977),** AND SET FORTH THE ANALYSIS FOR DUE PROCESS IN **LAWSON.** HOWEVER, THE ILLINOIS SUPREME COURT HAS NOT HAD THE OPPORTUNITY TO DELINEATE PRECISELY WHICH TYPES OF DELAYS FALL UNDER WHICH ANALYSIS, AND THE COURT CHOSE TO NOT HEAR THE DEFENDANT'S PETITION FOR LEAVE TO APPEAL TO DO SO WITH THE PRESENT CASE.

GIVEN THE DIFFERENCES BETWEEN **BARKER'** FOUR-FACTOR BALANCING TEST AS ONLY "SOME OF THE FACTORS" IN DETERMINING WHETHER POST-INITIATION DELAY VIOLATED THE SPEEDY TRIAL CLAUSE AND **LAWSON'S** STRICT REQUIREMENT THAT A DEFENDANT SHOW ACTUAL AND SUBSTANTIAL PREJUDICE BEFORE ANY OTHER FACTOR CAN BE CONSIDERED, PASSING ON THE QUESTION OF WHICH IS THE APPROPRIATE ANALYSIS CAN BE THE MOST IMPORTANT QUESTION IN A CASE.

DESPITE THE COURT'S HOLDING IN **BARKER** THAT THE FOUR-FACTORS WERE NOT TO BECOME "TALISMATIC" OR THE ONLY FACTORS TO CONSIDER, IN THE PRESENT CASE THERE IS AN OVER-RELIANCE TO THE EXCLUSION OF OTHER FACTORS. THE RECORD IS REPLETE WITH OTHER EXAMPLES OR "FACTORS" TO CONSIDER: THE DEFENDANT SOUGHT TO PRESERVE EXCULPATORY EVIDENCE, BUT CLARK'S LAW PARTNER, BARTON HENBEST, ALLEGED HE HAD "DESTROYED" THE DEFENDANT'S CASE FILE, IN CASE # 06-CF-405, IN THE MIDST OF A MURDER INVESTIGATION **(C1957-1959)**; AS STATED PREVIOUSLY THE ACCUSED SOUGHT PUBLICLY AVAILABLE PRE-TRIAL SERVICE RECORDS IN 2012 **(725 ILCS 185/17, 23, AND 31)** TO SHOW HIS COMPLIANCE WITH BOND CONDITIONS AND TO SHOW HE WAS OFFICIALLY ACCUSED IN 2008, BUT THEY WERE ALSO "DESTROYED" **(SEE EXHIBIT 3 APPENDIX IV)**; OR THE DEFENDANT'S FRIEND, DIANE CHAVEZ, ATTEMPTS TO ALSO OBTAIN COPIES OF PUBLIC RECORD'S IN 2013 **(SEE EX. 4-5 APP. IV)** FROM THE SAME OFFICE AND FROM HENBEST **(SEE EX. 12 APP. IV)** AND FROM THE STATE'S ATTORNEY OFFICE **(SEE EX. 6 APP. IV)**, BUT WAS REBUFFED OR TOLD THAT THEY WERE "NOT SUBJECT TO FOIA;" THESE HINDERANCES AND DELAYS ONLY ALLOWED MORE EVIDENCE TO BE DESTROYED.

THERE WERE ENDLESS DELAYS ONCE THE ACCUSED WAS INDICTED ALSO. SOME REASONABLE AND SOME NOT. TRIAL WAS SCHEDULED, DELAYED AND RE-SCHEDULED. EACH TIME LOCAL NEWS REPORTED AN ACCOUNT. EACH TIME ONLINE SOURCES AND TV NEWS SHOWED THE SAME CLIP OF THE ACCUSED, IN PRISON GARB, HANDCUFFED, SHACKLED AND SURROUNDED BY COURT OFFICERS. **(C1977)**. WHEN THE DEFENDANT COMPLAINED, OBJECTING TO FREQUENT DELAYS WHICH WERE BE PLAYED-OUT EACH TIME IN THE MEDIA, AND ALLEGED THE EFFECT WAS TO "TAINT THE JURY POOL" BEFORE, THE STATE DENIED IT WAS ORCHESTRATED. THE COURT DISPUTED THE FACT, NOT BEING ABLE TO FIND THE ARTICLE ONLINE. SHE DISALLOWED IT TO BE PART OF THE RECORD

OR TO MAKE A FINDING, THE DEFENDANT ENTERED THE ARTICLE (C 1977) POST-TRIAL, BUT HIS ALLEGATIONS WERE AGAIN IGNORED.

POLITICS PLAYED IT'S PART IN MOTIVATING AND DELAYING THE DEFENDANT'S INDICTMENT ALSO. WHILE CLARK'S SON-IN-LAW AND LAW PARTNER, BARTON HENBEST, WAS COURTING HIS LEGAL COLLEAGUES OR DESTROYING DOCUMENTS; INCUMBENT STATE'S ATTORNEY JOE BRUSCATO WAS READY TO "SQUARE OFF" AGAINST HIS CHALLENGER BEFORE A BAR ASSOCIATION CROWD IN THIS DEMOCRATIC DEBATE (C 1962). PROVACATIVELY, GLEN WEBER "MADE THE DEATH OF A COLLEAGUE THE CENTERPIECE" OF HIS CAMPAIGN, CLAIMING "EACH AND EVERYONE OF YOU KNOW I WILL GIVE MY HEART AND SOUL TO MAKE SURE THAT KILLER IS BROUGHT TO JUSTICE." BRUSCATO, WHEN ASKED WHAT HE WOULD DO ABOUT CHARGING THE ACCUSED AND WHETHER THERE WAS "SUFFICIENT EVIDENCE TO PROSECUTE THE CASE" ANSWERED "THAT IS A PERSONNEL DECISION." IT WAS MORE THAN 18 MONTHS AFTER THIS 2012 DEBATE AND BRUSCATO'S RE-ELECTION BEFORE THE DEFENDANT WAS AGAIN ARRESTED/INDICTED. THIS FACT RUNS CONTRARY TO THE SPECULATION OF THE APPELLATE COURT. IN ORAL ARGUMENTS (**APPENDIX II**), JUDGE BIRKETT POSITS THAT "WE CAN ASSUME OR INFER THAT [BRUSCATO] CALLED THE SHOTS WITH REGARD TO CHARGING... HE LOOKED AT THE COLD CASES AND SAID WE'RE GOING TO INDICT THIS CASE..." UNFORTUNATELY, THE MATH DOESN'T FIT REGARDING THAT THEORIZING, BUT PREJUDICE DOES.

THE UNITED STATES SUPREME COURT HAS REPEATEDLY HELD THAT A PROSECUTION IS INITIATED FOR PURPOSES OF THE CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL WHEN A DEFENDANT IS "INDICTED, ARRESTED, OR OTHERWISE OFFICIALLY ACCUSED." **UNITED STATES V. MACDONALD, 456 U.S. 1, 6-7 (1982)**, QUOTING **MARION, 404 U.S. AT 320.** IN **MARION**, MR. JUSTICE WHITE DELIVERED THE OPINION EXPLAINING THAT AN ARREST CONSTITUTES A PUBLIC ASSERTION BY THE PROBABLE CAUSE EXISTS TO BELIEVE THE ONE ARRESTED COMMITED AN OFFENSE, WHICH "MAY DISRUPT HIS EMPLOYMENT, DRAIN HIS FINANCIAL RESOURCES, CURTAIL HIS ASSOCIATIONS, [AND] HIM TO PUBLIC OBLOQUY," AND MAY "CAUSE ANXIETY IN HIM, HIS FAMILY, AND FRIENDS." **404 U.S. AT 320**. THE COURT CONTINUED, "INORDINATE DELAY BETWEEN ARREST, INDICTMENT AND TRIAL MAY IMPAIR A DEFENDANT'S ABILITY TO PRESENT AN EFFECTIVE DEFENSE." FURTHER, IT WAS UNDERSTOOD THAT "EITHER A FORMAL INDICTMENT OR INFORMATION OR ELSE ACTUAL RESTRAINTS IMPOSED BY ARREST" CAN BRING ABOUT THE SPEEDY TRIAL PROVISIONS

OF THE SIXTH AMENDMENT. THOUGH, THE COURT IN **MARION** CHOSE TO "DECLINE TO EXTEND THAT REACH OF THE AMENDMENT TO THE PERIOD PRIOR TO ARREST" AS THEY WERE REQUESTED TO DO THE COURT DID DEFINE AREAS WHICH WERE COVERED.

IN THE PRESENT CASE, ALL PARTIES CONCEED THE DEFENDANT WAS ARRESTED, FREQUENTLY ACCUSED, HIS BOND REVOKED DUE TO THE SHOOTING AND HELD FOR A LONG PERIOD OF TIME. ALL THOSE HINDERANCES MENTIONED ABOVE AFFECTED THE ACCUSED. ALTHOUGH THERE IS NO RECORD OF WHAT WAS SAID THE NIGHT OF FEBRUARY 6, 2008 IN THE EX PARTE MEETING TO HAVE THE JUDGE REVOKE BOND OF THE ACCUSED, INFORMATION CHANGED HANDS, ACCUSATIONS MADE FOR ACTION. JUDGE TRUITT IS QUOTED THAT HE KNEW "OF CERTAIN INFORMATION INTO THE INVESTIGATION OF THE MURDER OF GREG CLARK," **(C1978)**. THE JUXTAPOSITION OF HIS QUOTE BESIDE THE THUMB-SIZE PHOTO OF THE ACCUSED ON THE FRONT PAGE OF THE LOCAL PAPER WAS NOT LOST ON THOSE READING THE STORY OR ON WITNESSES WHO COULDN'T IDENTIFY A SUSPECT.

THE APPELLATE COURT MADE OTHER ASSUMPTIONS WHICH WERE NOT ACCURATE, GROUNDED IN FACT OR IN THE RECORD. AT ORAL ARGUMENTS **(APPENDIX II)**, JUDGE BIRKETT STATES, "MR. LOGLI WAS STATE'S ATTORNEY..." SPEAKING OF THE FORMER OFFICE HOLDER BEFORE BRUSCATO. THIS IS INACCURATE AND NOT CONTAINED IN THE RECORD. MR. NICOLOSI WAS STATE'S ATTORNEY AND LOGLI WAS A CIRCUIT COURT JUDGE IN 2008. BIRKETT ALSO MISSTATES INFORMATION CONCERNING DIANE CHAVEZ IN SAYING, "THERE WAS A HUNG JURY AND THEN SHE APPEALED?" INFERRING SHE WAS A "SUSPECT" IN THE CLARK SHOOTING. THIS TOO WAS WRONG AND NOT IN THE RECORD. DIANE CHAVEZ WAS FOUND NOT GUILT OF OBSTRUCTING JUSTICE WHEN SHE WAS FALSELY ACCUSED OF LYING TO POLICE. JUDGE BIRKETT DURING ORAL ARGUMENTS APPEARS TO HAVE EXCEPTIONAL KNOWLEDGE OF THIS CASE OUTSIDE THE RECORD, NOTABLY MUCH OF IT IS INCORRECT.

IN **MacDONALD**, THE COURT CLARIFIED THAT IF AN ARRESTEE IS SUBSEQUENTLY RELEASED WITHOUT FORMAL CHARGES, THE TIME THAT PASSES BETWEEN HIS RELEASE AND INDICTMENT DOES NOT INTO SPEEDY TRIAL ANALYSIS, BUT EVEN IN THAT CASE, THE COURT MAINTAINED: "IN ADDITION TO THE PERIOD AFTER INDICTMENT, THE PERIOD BETWEEN ARREST AND INDICTMENT MUST BE CON-

SIDERED IN EVALUATING A SPEEDY TRIAL CLAUSE CLAIM." **MACDONALD**, 456 U.S. AT 7, CITING **DILLINGHAM v. UNITED STATES**, 423 U.S. 64, 64-65 (1975). IN THE PRESENT CASE, THE TRIAL COURT LACKED THIS CONSIDERATION.

IN ILLINOIS, THE CIRCUITS ARE SPLIT AND ARE CONFLICTED ON THIS CONSIDERATION. THE ILLINOIS 5TH APPELLATE COURT ADDRESSED THE QUESTION IN **PEOPLE v. KILCAUSKI**, 2016 IL APP. (5TH) 140526. FURTHER ARGUMENT CAN BE SEEN IN (APPENDIXES I, II AND III). THE DEFENDANT IN **KILCAUSKI** WAS ARRESTED AND CHARGED BY INFORMATION, 2016 IL APP (5TH) 140526, ¶ 3. HOWEVER, THE SHERIFF'S OFFICE TURNED THE DEFENDANT OVER TO MISSOURI AUTHORITIES TO FACE CHARGES IN THAT STATE, AND THE JUDGE DISMISSED THE INFORMATION FOR LACK OF A PRELIMINARY HEARING. 2016 IL APP. (5TH) 140526, ¶ 6. THIRTEEN MONTHS AFTER THE DEFENDANT'S ARREST, THE STATE OBTAINED AN INDICTMENT CHARGING THE DEFENDANT WITH THE SAME OFFENSES AS HAD BEEN CHARGED IN THE INFORMATION. 2016 IL APP. (5TH) 140526, ¶ 9. THE 5TH APPELLATE COURT HELD THAT THE DELAY BETWEEN THE DEFENDANT'S ARREST AND HIS INDICTMENT WAS PROPERLY ANALYZED UNDER THE SPEEDY TRIAL CLAUSE. 2016 IL. APP. (5TH) 140526, ¶ 29. THE COURT EXPLAINED THAT ONCE THE ACCUSED WAS ARRESTED AND HIS INDICTMENT MADE, THE TIME HE WAS HELD IN CUSTODY, WITHOUT AN ORDER RELEASING HIM, COUNTED DESPITE HIS BEING HELD ON UNRELATED CHARGES IN MISSOURI. 2016 IL APP. (5TH) 140526, ¶ 28-29. THE COURT RECENTLY CLARIFIED IT'S DECISION IN THE **KILCAUSKI CASE**, IN **PEOPLE v. TUCKER**, 2019 WL 5867489, WHERE **TUCKER** FOLLOWS THE **MACDONALD** EXAMPLE OF ARREST, RELEASE AND RE-ARREST FOR TRIAL.

THE DEFENDANT IN THE PRESENT CASE WAS ARRESTED ON 2.6.08 AT GUNPOINT. HE TAKEN TO THE POLICE STATION AND NOT ALLOWED TO LEAVE. HE WAS AGAIN ARRESTED THE FOLLOWING DAY UPON BEING BOOKED. THE ONLY JUSTIFICATION OFFERED FOR THOSE ARRESTS WERE PROBABLE CAUSE THAT THE ACCUSED MURDERED GREG CLARK. THE BOND REVOCATION WAS APPARENTLY BASED UPON THE ARREST. NO COURT EVER ISSUED AN ORDER RELEASING THE DEFENDANT FROM FROM CUSTODY. THE ACCUSED HAS BEEN JAILED SINCE 2008. UNDER THE ABOVE UNITED STATES SUPREME COURT PRECEDENT AND THE 5TH CIRCUIT RULINGS IN **KILCAUSKI**, THE SIX-YEAR DELAY BETWEEN ARRESTS AND INDICTMENT IN THIS CASE MUST BE EVALUATED UNDER THE SPEEDY TRIAL CLAUSE, AND NOT THE DUE PROCESS CLAUSE.

DESPITE THE ABOVE PRECEDENT FROM THE U.S. SUPREME COURT

AND THAT OF **KILCAUSKI**, THE ILLINOIS 2ND CIRCUIT APPELLATE COURT FOR THIS CASE INSISTED THAT THE DELAY BETWEEN THE DEFENDANT'S ARRESTS AND INDICTMENT SHOULD BE EVALUATED UNDER THE DUE PROCESS CLAUSE. **WANKE, IL APP. (2d) 170373-U, ¶ 90, 99. (SEE APPENDIX III)**. THE COURT WENT SO FAR AS TO CLAIM, "[IT] IS WELL ESTABLISHED THAT CASES INVOLVING PREINDICTMENT DELAYS, i.e. DELAYS BETWEEN ARREST AND INDICTMENT, ARE ANAYZED UNDER THE LAWSON FRAMEWORK." **2019 IL APP. (2ND) 170373-U, ¶ 99,** CITING **PEOPLE v. SILVER, 376 Ill. App. 3d 780, 783 (2ND DIST, 2007)**. NOT ONLY DID THIS HOLDING DIRECTLY CONTRADICT THE ABOVE U.S. SUPREME COURT AUTHORITY, IT WAS NOT REMOTELY SUPPORTED BY THE AUTHORITY IT CITED. **SILVER** INVOLVED A DEFENDANT WHO WAS INDICTED BUT NOT ARRESTED FOR THREE YEARS. **376 Ill. App. 3d AT 782.** THE APPELLATE COURT HELD THAT DELAY SHOULD BE REVIEWED UNDER THE SPEEDY TRIAL CLAUSE. **376 Ill. App. 3d AT 783.** NOTHING IN **SILVER** SUPPORTED THE APPELLATE COURT'S ASSERTION IN THIS CASE THAT POST-ARREST, PRE-INDICTMENT DELAY SHOULD BE REVIEWED UNDER THE DUE PROCESS CLAUSE.

THE APPELLATE COURT WENT ONTO CITE ILLINOIS' STATUTORY DEFINITION OF "LEGAL PROCEEDINGS" AND TWO CASES INTERPRETING THAT STATUTE'S WORDING WITH RESPECT TO CONSECUTIVE SENTENCING AS SUPPORT OF IT'S THEORY. **720 ILCS 5/2-16 (2008); PEOPLE v. PANKEY, 94 Ill. 2d 12, 16 (1983); PEOPLE v. TOWNSEL, 2018 IL APP. (2ND) 160612.** AGAIN, THAT AUTHORITY WAS NOT RELATED TO OR ON POINT WITH THE SPEEDY TRIAL CLAUSE OR THE DUE PROCESS CLAUSE.

THE QUESTION OF WHICH CONSTITUTIONAL AMENDMENT GOVERNS POST-ARREST, PRE-INDICTMENT DELAY IN A PROSECUTION WAS NOT ANSWERED BY THE ILLINOIS SUPREME COURT. THEREFORE, AN ANSWER SHOULD BE FORTHCOMING FROM THIS COURT.

IT IS THE MOST IMPORTANT QUESTION IN THIS OR SIMILIAR CASES IN ILLINOIS. IN THE ABSENCE OF SUCH AUTHORITY FROM THE ILLINOIS SUPREME COURT, THE 2ND DISTRICT APPELLATE COURT IN THE PRESENT CASE DEFIED U.S. SUPREME COURT AUTHORITY TO EVALUATE THE DELAY UNDER THE DUE PROCESS CLAUSE. THIS COURT SHOULD GRANT REVIEW IN THIS CASE, SHOULD EVALUATE THE SIX-YEAR DELAY UNDER THE SPEEDY TRIAL CLAUSE OR SEND THE CASE BACK TO THE LOWER COURTS WITH INSTRUCTIONS TO PROPERLY EVALUATE THE CASE OR IN THE COURT'S BETTER JUDGEMENT DETERMINE AN ALTERNATIVE.

ARGUMENT II

THE U.S. SUPREME COURT SHOULD GRANT REVIEW TO CLARIFY WHETHER THERE ARE ANY CONCEIVABLE CIRCUMSTANCES THAT COULD CREATE AN OFFICE-WIDE CONFLICT OF INTEREST IN A PUBLIC DEFENDER'S OFFICE.

THIS CASE CONCERNS THE SHOOTING OF GREGORY CLARK, A WELL-KNOWN GENERAL PRACTITIONER, WHO WAS ALSO UNDER CONTRACT FOR MANY YEARS AS A PART-TIME CONFLICT ATTORNEY FOR THE WINNEBAGO COUNTY PUBLIC DEFENDER'S OFFICE. SEVERAL ATTORNEYS OF THIS OFFICE, INCLUDING BOTH PUBLIC DEFENDERS WHO SERVED DURING THE PENDENCY OF THIS CASE, AND THE SENIOR PUBLIC DEFENDER OF THE OFFICE AND HER DEPUTY, HAD ADDITIONAL CLOSE TIES AND CONTACTS WITH CLARK AND HIS FAMILY, PARTICULARLY HIS OUTSPOKEN SURVIVING LAW PARTNER AND SON-IN-LAW, BARTON HENBEST. MANY OF THOSE SENIOR MEMBERS BELIEVED AND WERE CANDID IN THAT BELIEF ABOUT THE DEFENDANT'S GUILT IN CLARK'S DEATH, AND SOME COMMUNICATED THAT OPINION DIRECTLY TO THEIR CLIENT.

MOREOVER, BOTH PRESENT AND PAST MEMBERS OF THE OFFICE PARTICIPATED DIRECTLY IN THE INVESTIGATION OF THIS CASE IN 2008; SOME EVEN ATTEMPTED TO UNDERMINE THE CASE PRE-TRIAL; OTHERS WERE OCCURRENCE WITNESSES; THE JUDGE WHO ISSUED MOST OF WARRANT'S WAS A PAST SENIOR MEMBER IN THE OFFICE; THE OFFICE REFUSED TO DISCLOSE OTHER CONFLICTS; AND ONE ASSISTANT PUBLIC DEFENDER WAS THE FORMER DEPUTY STATE'S ATTORNEY WHO CONDUCTED THE GRAND JURY AGAINST THE ACCUSED IN 2008.

THE PUBLIC DEFENDER'S OFFICE FILED THREE SEPERATE MOTIONS TO WITHDRAW AS COUNSEL ALLEGING OFFICE-WIDE CONFLICTS. IN ADDITION, SENIOR ASSISTANT PUBLIC DEFENDER, FRANK PERRI, WHO WAS THE FIRST ASSISTANT APPOINTED, FILED A PERSONAL MOTION TO WITHDRAW BASED ON HIS CLOSE TIES WITH CLARK, HIS BELIEF THAT THE ACCUSED WAS GUILTY, AND HIS RELUCTANCE TO HELP THE DEFENDANT IN ANY WAY DEFEND HIMSELF.

THE TRIAL JUDGE GRANTED PERRI'S PERSONAL MOTION TO WITHDRAW AND FOUND THAT SOME OTHER MEMBERS OF THE OFFICE ALSO WERE CONFLICTED, BUT SHE IGNORED AND FAILED TO TAKE ADEQUATE STEPS CONCERNING VARIOUS BACK ROOM SHENANIGANS BY VARIOUS OFFICE ATTORNEYS AND STATE WITNESSES WHICH KEPT CROPPING UP THROUGH-

OUT THE PRESENT CASE. FOR EXAMPLE, THE RECRUITMENT OF "SNITCHES" AND INFORMANTS BY CURRENT AND FORMER STAFF MEMBERS: THE DEFENDANT INFORMED DEPUTY DOLL EARLY IN THE OFFICES' REPRESENTATION, SEPTEMBER 2014, **(C804-05)** THAT "MARGIE O'CONNOR IS RECRUITING INFORMANTS (AMOUNGST HER CLIENTS, ON MY DECK) FOR THE STATE"; SEVERAL MONTHS LATER THE DEFENDANT FILED SEVERAL LETTERS AND AFFIDAVITS DETAILING HOW FRANK PERRI WAS ATTEMPTING TO RECRUIT RICKIE LEGAULT **(C 581-84)** AND "THEN PERRI ASKED QUESTIONS ABOUT RICHARD WANKE AND HIS CASE" TO BE A SNITCH AGAINST HIM; OR STATE WITNESS AND FORMER PUBLIC DEFENDER, KRIS CARPENTER, SIMILIARLY TRYING TO INDUCE HER CLIENT, EUGENE DARNELL WOODS, TO INFORM ON THE DEFENDANT **(C 585-87)**. THE ATTEMPTS TO CULTIVATE INFORMANTS INTENSIFIED WHEN MONEY WAS OFFERED **(C577)**, SPEARHEADED BY JAIL SUPERINTENDENT BOB REDMOND, A FORMER SUPERVISING ROCKFORD DETECTIVE AND STATE WITNESS WHO OVERSAW THE CLARK INVESTIGATION IN 2008. REDMOND IS QUOTED IN THE ARTICLE, "OBVIOUSLY, PEOPLE HEAR THINGS. IF THEY TELL US... THEY CAN GET PAID FOR IT." **(C577)**.

THE TRIAL COURT REFUSED TO DISQUALIFY THE ENTIRE OFFICE ON GROUNDS THAT THERE EXISTED AN OFFICE-WIDE CONFLICT OR ON THE OTHER MATTERS BROUGHT TO HER ATTENTION. THE JUDGE REASONED THAT ASSISTANT PUBLIC DEFENDER'S WERE ALL "INDEPENDANT CONTRACTORS" WHO COULD NOT SHARE CONFLICTS. THE 2ND DISTRICT APPELLATE COURT OF ILLINOIS AVOIDED USING THE TERM "INDEPENDENT CONTRACTORS", BUT NEVERTHELESS CITED THE ILLINOIS SUPREME COURT'S HOLDING IN **PEOPLE v. COLE, 120997 ¶¶ 34-35**, FOR THE PROPOSITION THAT NO ASSISTANT PUBLIC DEFENDER'S CONFLICT COULD EVER BE IMPUTED TO ANOTHER ASSISTANT, AND ANY ARGUMENT TO THE CONTRARY WAS "INCORRECT AS A MATTER OF LAW." **PEOPLE v. WANKE, 2019 IL APP. (2ND) 170373-U, ¶120.**

THE ILLINOIS SUPREME COURT DID NOT GRANT REVIEW TO RESOLVE THE COMMON MISUNDERSTANDING AND MISINTERPRETITION OF IT'S OPINION IN **COLE; PEOPLE v. SPREITZER, 123 Ill. 2d 1 (1988); AND PEOPLE v. BANKS; 121 Ill. 2d 36 (1987) & HOLLOWAY v. ARKANSAS, 435 U.S. 475 (1978).** WHILE THOSE ILLINOIS CASES HELD THAT POTENTIAL OFFICE-WIDE CONFLICTS AMOUG ASSISTANT PUBLIC DEFENDER'S COULD EXIST AND MUST BE REVIEWED ON A CASE-BY-CASE BASIS,

NO CASE CAN BE CITED, NO CASE HAS MET THE EXACTING CRITERIA THUS FAR AND THE TRIAL JUDGE AND 2ND DISTRICT APPELLATE COURT INTERPRETED THOSE CASES AS HOLDING THAT THERE CAN NEVER BE AN OFFICE-WIDE CONFLICT IN ANY PUBLIC DEFENDER'S OFFICE. CONTRAST **WANKE, 2019 IL APP. (2ND) 170373-U, ¶1** FROM **COLE, 120997, ¶38; SPREITZER, 123 Ill. 2d AT 21; BANKS, 121 Ill. 2d AT 42.**

IN **PEOPLE v. BANKS, 121 Ill, 2d 36, 42 (1987)** THE ILLINOIS COURTS DECLINED TO FIND A PER SE CONFLICT OF INTEREST WHERE ONE PUBLIC DEFENDER ARGUED THE INEFFECTIVENESS OF ANOTHER. BANKS HELD THAT IT WOULD BE ERRONEOUS TO ASSUME THAT DEFENDERS HAVE SUCH AN ALLEGIANCE TO THEIR OFFICE THAT THEY WOULD BE UNABLE TO SUBORDINATE THAT ALLEGIANCE TO THE INTERESTS OF THEIR CLIENTS. **AT 43.**

THE DEFENDANT FILED SEVERAL PRO SE MOTIONS REQUESTING "CONFLICT FREE" REPRESENTATION, DUE TO THE MOUNTING NUMBER OF WITHDRAWAL MOTIONS FILED BY THE PUBLIC DEFENDER'S OFFICE, VERILY CONTRADICTING THE ASSUMPTIONS IN BANKS ON LOYALTY, CITING THAT A CRIMINAL DEFENDANT'S SIXTH AMENDMENT RIGHT TO COUNSEL INCLUDES THE RIGHT TO COUNSEL THAT IS FREE OF CONFLICT. **PEOPLE v. FIELDS, 2012 IL 112438, ¶17.** BUT CONFLICTS IN THE PRESENT CASE COULD NOT BE AVOIDED DUE TO THE TRIAL COURTS HOLDINGS.

ILLINOIS RECOGNIZES TWO CATEGORIES OF CONFLICTS OF INTEREST: PER SE AND ACTUAL. **2012 IL 11238, ¶17; SPREITZER, 123 Ill. 2d AT 17.** THE CONFLICTS AT ISSUE IN THIS CASE ARE PROPERLY EVALUATED AS ACTUAL CONFLICTS. **FIELDS, 2012 IL 12438, ¶17.** IF DEFENSE COUNSEL BRINGS THE POTENTIAL CONFLICT TO THE JUDGE'S ATTENTION "AT AN EARLY STAGE" IN THE CASE, THE JUDGE MUST EITHER APPOINT OTHER COUNSEL OR "TAKE ADEQUATE STEPS TO ASCERTAIN THAT THE RISK OF CONFLICT IS TOO REMOTE TO WARRANT DOING SO." **SPREITZER, 123 Ill. 2d AT 18; HOLLOWAY v. ARKANSAS, 435 U.S. 475, 484 (1978).** IN THE PRESENT CASE, THE DEPUTY OF THE PUBLIC DEFENDER'S OFFICE FILED THEIR FIRST MOTION TO WITHDRAW FOR THE HEAD OF THE OFFICE, HIMSELF AND THE ENTIRE OFFICE SIX DAYS AFTER IT WAS APPOINTED. AS SUCH, THE REMAINING AND RELEVANT QUESTION IS WHETHER THE "RISK OF CONFLICT WAS TOO REMOTE TO WARRANT "APPOINTING COUNSEL FROM OUTSIDE THE PUBLIC DEFENDER'S OFFICE. **SPREITZER, 123 Ill, 2d AT 18; HOLLOWAY v. ARKANSAS, 435 U.S. 475, 484 (1978).**

THE PUBLIC DEFENDER'S OFFICE'S CONFLICT OF INTEREST AT ISSUE IN THIS CASE WAS UNIQUE AND MULTIFACETED. CLARK WAS A PART-TIME CONFLICT ATTORNEY FOR THE OFFICE AND WAS CLOSE

FRIENDS WITH MANY OF THE MOST SENIOR PUBLIC DEFENDER'S HAVING KNOWN SOME OF THEM AND THEIR SPOUSES SINCE HIGH SCHOOL, COLLEGE AND LAW SCHOOL. CLARK'S FAMILY, PARTICULARLY HIS VOCAL SON-IN-LAW AND SURVIVING LAW PARTNER, BARTON HENBEST, WAS ALSO CLOSE FRIENDS WITH MANY SENIOR ASSISTANTS AND DISCLOSURES POST-TRIAL SHOW HE WAS FACEBOOK "FRIENDS" WITH LEAD DEFENSE TRIAL COUNSEL, NICK ZIMMERMAN **(SEE EXHIBIT 2 APPENDIX IV)**.

THE FIRST SENIOR MEMBER OF THE OFFICE APPOINTED TO THE CASE, FRANK PERRI, INDICATED IN HIS PERSONAL MOTION TO WITHDRAW EXPLICITLY TELLING THE JUDGE THAT HE AND OTHERS IN THE OFFICE SUSPECTED THE DEFENDANT HAD SHOT HIS MENTOR AND THEREFORE HE COULD NOT SET THAT ASIDE TO REPRESENT HIS CLIENT. PERRI INDICATED HE TOLD THE ACCUSED THIS AND MORE CLAIMING MANY IN THE OFFICE THOUGHT HIM GUILTY WHICH MADE PERRI UNABLE TO EFFECTIVELY REPRESENT HIM. THE DEFENDANT HIMSELF CONFIRMED THAT PERRI AND SECOND CHAIR, ERIN HANNIGAN, HAD BOTH CONFIDED PRIVATELY THAT THE OFFICE "DID NOT WANT THIS CASE" AND THAT EVERYONE "WAS AGAINST" HIM. THIS WAS NOT DENIED, BUT ALSO NOT INVESTIGATED BY THE COURT. PERRI WAS ALLOWED TO WITHDRAW SINCE "MOST COURTS HAVE HELD THAT AN ATTORNEY'S REQUEST... BASED ON HIS REPRESENTATIONS AS AN OFFICER OF THE COURT REGARDING A CONFLICT OF INTEREST, SHOULD BE GRANTED... [AN ATTORNEY] IS IN THE BEST POSITION PROFESSIONALLY AND ETHICALLY TO DETERMINE WHEN A CONFLICT OF INTEREST EXISTS OR WILL PROBABLY DEVELOP IN THE COURSE OF A TRIAL." **HOLLOWAY v. ARKANSAS, 435 U.S. AT 485**, QUOTING **STATE v. DAVIS, SUPRA, AT 31, 514 P. 2d AT 1027.**

EVEN THE YOUNGER MEMBERS OF THE OFFICE WHO MAY NOT HAVE BEEN CLARK'S PEERS, HAD MET HIM, KNEW HE WORKED IN THE OFFICE FOR MANY YEARS AND KNEW HE HAD FRIENDS AND COLLEAGUES THERE; THEY WOULD HAVE KNOWN HENBEST WHO WAS MORE THEIR AGE. DERRICK SCHMIDT'S MOTION TO WITHDRAW DISCUSSED HIS UNCERTAINTY HE FELT BECAUSE HE WAS IN THE DARK AS TO WHICH MEMBERS OF THE OFFICE SHARED PERRI'S OPINION AND WHICH HAD ACTIVELY OR WERE ACTIVELY HELPING THE STATE GATHER INCRIMINATING EVIDENCE HIS CLIENT. SCHMIDT EVEN ASSERTED THE OFFICE AS A WHOLE WOULD "BENEFIT FROM THE SATISFACTION THEY CONTRIBUTED TO THE INTO THE MURDER OF A FELLOW DEFENSE ATTORNEY, AT THE EXPENSE OF THEIR CURRENT CLIENT." SCHMIDT DID ADOPT ONE OF HIS CLIENT'S PRO SE FILINGS CONCERNING CONFLICT. THE DEFENDANT FROM THE START HAD INSISTED EXPERTS WOULD BE NEEDED IN

HIS CASE AND PROVIDED BUDGETARY PRINTOUTS OF THE LAST THREE-YEARS' OF SPENDING FOR THE PUBLIC DEFENDER'S OFFICE. THOSE DOCUMENTS SHOWED THAT NO MONEY WAS ALLOCATED OR UTILIZED TO PAY DEFENSE EXPERTS AND SCHMIDT INFORMED THE COURT THAT HIS SUPERVISORS WHO HAD ALREADY BEEN CONFLICTED OFF THE CASE HELD THE PURSE STRINGS. AT FIRST, THE COURT FIRMLY HELD THAT THE BILLS WOULD BE COVERED, EXPENSES PAID FOR DEFENSE EXPERTS, BUT AS THE CASE PROGRESSED THE COURT'S ASSURANCES GREW LESS RELIABLE AND ULTIMATELY NO EXPERTS TESTIFIED FOR THE DEFENSE. THE DEFENDANT REPEATED HIS INSISTENCE IN A SERIES OF LETTERS **(C1064)** AND PROSE MOTIONS **(C1083)** ON HAVING EXPERTS, AVOIDING RECOGNIZABLE AND AVOIDABLE DELAYS. SCHMIDT ULTIMATELY DID NOT REPRESENT THE DEFENDANT AT TRIAL. HE WAS FIRED FROM THE OFFICE, THE DEFENDANT ALLEGING, FOR DISCLOSING PRIVATE AND PRIVELEGED INFORMATION ABOUT HIS CLIENT TO A STATE. THIS WAS NOT DENIED, NOR WAS IT INVESTIGATED OR EXPLAINED IN THE RECORD.

EVERYTHING SCHMIDT SAID ABOUT HIMSELF, ABOUT HIS CONCERNS AND RELUCTANCE, OR HIS OFFICE WAS EQUALLY TRUE ABOUT ANY OTHER ASSISTANT APPOINTED TO THE CASE - NICK ZIMMERMAN AND ROBERT SIMMONS, WERE NEXT UP AND ULTIMATELY REPRESENTED THE DEFENDANT AT TRIAL. CONFLICTED INVESTIGATOR, ROBERT FAULKNER, REMAINED ON THE CASE DESPITE THE DEFENDANT'S AND HIS FRIENDS' CONCERNS **(C408, C1063, C1064, C1083)**.

IN ADDITION TO IT'S UNIQUE EMOTIONAL ASPECT WHICH CAUSED OUT-OF-CHARACTER RESPONSES IN THESE PROFESSIONALS, THE CONFLICT IN THIS CASE HAD ANOTHER, MORE TRADITIONAL ASPECT. MARGIE O'CONNOR WAS THE DEPUTY STATE'S ATTORNEY IN 2008. ON 2.06.08, HOURS AFTER THE DEFENDANT WAS FIRST ARRESTED, O'CONNOR AND UNNAMED "OTHERS" TRAVERSED A BLIZZARD, ARRIVING AT JUDGE TRUITT'S HOME, PROVIDED UNKNOWN INFORMATION, AND OBTAINED AN EX PARTE ORDER, WHICH WAS NOT IMMEDIATELY FILED, REVOKING HIS BOND IN WINNEBAGO COUNTY CASE NUMBER: 06-CF-405. AT THE TIME, THE ACCUSED WAS BEING MONITORED BY PRE-TRIAL SERVICES WHILE ON BOND, YET ALL RECORDS RECORDING HIS COMPLIANCE TO BOND CONDITIONS OR ALLEGED INFRACTIONS WERE WITHHELD AND ULTIMATELY DESTROYED. **(EXHIBITS 3,4,5,6 APPENDIX IV)**.

THAT SAME MONTH OF FEBRUARY, O'CONNOR CONVENED A GRAND JURY WHERE SHE, IN THE WORDS OF HER SUCCESSOR ASSISTANT STATE'S ATTORNEY JAMES BRUN, "LOCKED IN AND PRESENTED VARIOUS TESTIMONY TO THE GRAND JURY," MOST OF WHICH WAS ULTIMATELY INTRODUCED AS SUBSTANTIVE EVIDENCE IN THE DEFENDANT'S TRIAL NINE-YEARS LATER. O'CONNOR WAS SUBSEQUENTLY FIRED FROM THE OFFICE

FOR UNSPECIFIED IMPROPRIETIES BECOMING LATER AN ASSISTANT PUBLIC DEFENDER, BRINGING HER CONFLICTS WITH HER, AND WAS A SENIOR MEMBER OF THE OFFICE WHEN THE DEFENDANT'S CASE WAS CHARGED, TRIED, AND SENTENCED.

ZIMMERMAN AND SIMMONS FILED A MOTION TO DISQUALIFY THE OFFICE ARGUING THAT THEY WISHED TO CHALLENGE O'CONNOR'S USE OF AN EX PARTE HEARING HEARING TO REVOKE THE DEFENDANT'S BOND AS PART OF THEIR MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE, BUT ARGUED THEY FELT THEY COULD NOT DO SO AFFECTIVELY BECAUSE O'CONNOR WAS THEIR COLLEAGUE. THE DEFENDANT IN FILING HIS OWN MOTION, ALLEGED INSINCERITY OF DEFENSE COUNSEL THAT "IF COUNSEL IS AWARE OF "VIOLATIONS" HE MUST REPORT THEM." **(C800-01)**. AFTER THE JUDGE REFUSED TO ALLOW COUNSEL TO WITHDRAW, COUNSEL DID NOT PURSUE THEIR CHALLENGE, BUT THE DEFENDANT DID. IN A SERIES OF FOIA REQUESTS HE ATTEMPTED TO LEARN AND PUT ON THE RECORD WHAT THE STATE, DEFENSE COUNSEL AND THE TRIAL COURT WERE RELUCTANT TO SPELL OUT AND PUT INTO WORDS ABOUT O'CONNOR'S "ETHICAL VIOLATIONS", **(C801)**. BUT THE OFFICE OF THE PUBLIC DEFENDER FOLLOWED THE SAME COURSE AS THE OFFICE OF THE WINNEBAGO COUNTY STATE'S ATTORNEY HAD EARLIER IN 2013 **(EXHIBIT 6 APPENDIX IV)**, THEY CLAIMED THEIR OFFICE WAS PART OF THE "JUDICIAL BRANCH OF STATE GOVERNMENT" AND NOT A "PUBLIC BODY" AND THAT HAVE NO DUTY TO DISCLOSE. **(C1974-C1976)**. THE PLAYER'S HAD CIRCLED-THE-WAGONS TO PROTECT THIER OWN. WHEN THE DEFENDANT ALLEGED THIS POST-TRIAL, IN HIS MOTION OF INEFFECTIVENESS, THAT ZIMMERMAN HAVING NOW BECOME DEPUTY PUBLIC DEFENDER AND O'CONNOR'S SUPERIVISER WAS LOATH IN DAMAGING HIS COLLEAGUE'S CAREER BY ARGUING HER PRIOR PROSECUTORIAL MISCONDUCT IN OPEN COURT. THE COURT FAILED TO INQUIRE ON THIS OR OTHER POINTS MADE POST-TRIAL BY THE DEFENDANT AND ZIMMERMAN DIDN'T VOLUNTEER OR MAKE KNOWN HIS REASONINGS.

THE 2ND DISTRICT APPELLATE COURT WHICH OFTEN CITED **PEOPLE V. COLE, 2017 IL 120997, ¶¶ 34-35** IN IT'S ORDER, CHERRY-PICKED PORTIONS WHICH MET FAVORABLY WITH IT'S END GOAL AND AVOIDING THOSE PAINFUL AREAS WHICH DIDN'T FIT THE THEORY. ONE POINT IT AVOIDED, "A DEFENDANT NEED ONLY PRESENT THE GIST OF SUCH A CONFLICT," **QUOTING PEOPLE V. HARDIN, 217 Ill. 2d 289, 303 (2005)**, "THE DEFENDANT MUST SKETCH, IN LIMITED DETAIL, A PICTURE OF HOW THE WORKING RELATIONSHIP BETWEEN THE PUBLIC DEFENDERS CREATED AN APPEARANCE OF IMPROPRIETY..." RELEVANT FACTORS TO CONSIDER INCLUDE WHETHER THE TWO PUBLIC DEFENDERS WERE TRIAL PARTNERS IN THE DEFENDANT'S CASE; WHETHER THE PUBLIC DEFENDERS WERE IN HIERARCHIAL POSITIONS WHERE ONE SUPERVISED OR WAS SUPERVISED

BY THE OTHER, OR WHETHER THE SIZE, STRUCTURE, AND ORGANIZATION OF THE OFFICE IN WHICH THEY WORKED AFFECTED THE CLOSENESS OF ANY SUPERVISION. **Id AT 303.**

THE 2ND DISTRICT APPELLATE COURT SUMMARIZED THE DEFENDANT'S POSITION AS "THAT THE EMOTIONAL NATURE OF THE OFFENSE, WHICH SAW A LONG-STANDING AND WELL-REGARDED MEMBER OF THE DEFENSE BAR GUNNED DOWN IN HIS DRIVEWAY, WAS SO EMOTIONALLY HORRIFYING, THAT NO MEMBER OF THE PUBLIC DEFENDER'S OFFICE COULD BE EXPECTED TO SERVE THE ACCUSED'S INTERESTS EFFECTIVELY AND ZEALOUSLY." **WANKE, 2019IL APP. (2ND) 170373-U, ¶ 126.** THAT WAS INACCURATE. THE DEFENDANT'S POSITION IS THAT THE EMOTIONAL NATURE OF THE OFFENSE, WHICH SAW A LONG-STANDING AND WELL-REGARDED PART-TIME EMPLOYEE OF THE PUBLIC DEFENDER'S OFFICE GUNNED DOWN IN HIS DRIVEWAY, COUPLED WITH THE ENTANGLEMENT OF NUMEROUS SENIOR MEMBERS OF THE OFFICE IN THE INVESTIGATION AND PROSECUTION OF THE CASE, INCLUDING ONE MEMBER TAKING QUESTIONABLE-AT-BEST ACTIONS AS THE DEPUTY STATE'S ATTORNEY THAT THE DEFENDANT'S TRIAL ATTORNEYS REFUSED TO CHALLENGE, GAVE RISE TO A CONFLICT FROM WHICH NO MEMBER OF THE OFFICE COULD BE COMPLETELY FREE OR IMMUNE.

IN **HOLLOWAY**, THIS COURT HELD THAT WHEN AN ATTORNEY, AS AN OFFICER OF THE COURT, TELLS THE JUDGE THAT HE CONSIDERS HIMSELF CONFLICTED AND IS NOT CONFIDENT HE CAN ADEQUATELY REPRESENT HIS CLIENT, THE JUDGE SHOULD TAKE HIM AT HIS WORD. **435 U.S. 484.** EVERY ATTORNEY WHO WAS ASSIGNED TO THIS CASE TOLD THE JUDGE HE FELT CONFLICTED AND WAS NOT COMFORTABLE REPRESENTING THE ACCUSED ON ALL OR PART OF THE CASE. BOTH TRIAL ATTORNEYS, ZIMMERMAN AND SIMMONS TOLD THE JUDGE THEY WERE NOT COMFORTABLE CHALLENGING O'CONNOR'S ACTIONS IN FEBRUARY OF 2008 AND, AFTER THE JUDGE DENIED THEIR MOTION TO WITHDRAW, NOTHING MORE WAS SAID ABOUT THEIR COLLEAGUE O'CONNOR'S ACTIONS.

ANOTHER CASE BEFORE THIS COURT COULD BE GUIDING, "THE EVIDENCE OF COUNSEL'S 'STRUGGLE TO SERVE TWO MASTERS [COULD NOT] SERIOUSLY BE DOUBTED'." **CUYLER v. SULLIVAN, 466 U.S. 349, QUOTING GLASSER v. UNITED STATES, 62 S. CT., AT 47.** THAT "STRUGGLE" COULD EXPLAIN MORE THAN ZIMMERMAN AND SIMMONS ACTION OR INACTION REGARDING THEIR COLLEAGUE O'CONNOR. IT COULD EXPLAIN WHY THEY DID NOT OBJECT TO THE COUNTLESS COMMENTS OR FALSE STATEMENTS MADE BY PROSECUTORS DURING CLOSING ARGUMENTS. THEY MADE FIVE SEPERATE COMMENTS CLAIMING

THAT THE DEFENDANT SHOT CLARK BECAUSE HE WANTED TO REMOVE CLARK FROM HIS CASE. THE RECORD SHOWS THE OPPOSITE IS TRUE. CLARK ASK TO BE REMOVED FROM CASE # 06-CF-405 AND WHEN HE FILED A MOTION FOR A NEW TRIAL IN THAT CASE CLARK CLAIMED "10 THAT THE DEFENDANT HAD INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL." **(EXHIBIT 7 PAGES 1-2 APPENDIX IV)**. THE "STRUGGLE" COULD ALSO EXPLAIN WHY DEFENSE COUNSEL DIDN'T USE THE OBSERVATIONS OF SAM CORNN TO OPPOSE THE STATE'S NARRATIVE THAT THE DEFENDANT CHANGED AND WASHED HIS CLOTHES. SAM CORNN'S TESTIMONY WOULD HAVE DISPUTED THAT. **(C 1896)**. THE "STRUGGLES" COULD BE BLAMED FOR COUNSEL NOT CHALLENGING POLICE TESTIMONY TO THE GRAND JURY THAT IT WAS A "FACT" THAT "AT THE TIME OF THE SHOOTING WAS RICHARD WANKE, IN FACT, ARMED WITH A FIREARM? A. YES, HE WAS." NO WITNESS TESTIFIED TO THAT "FACT" AND DEFENSE COUNSEL LET IT SLIDE. **(C 181)**.

THE 2ND DISTRICT APPELLATE COURT APPEARS TO HAVE IT'S OWN "STRUGGLES" IN DISSEMBLING THE RECORD WITH INACCURATE AND CONTRADICTORY STATEMENTS. ONE IS REGARDING THE PUBLIC DEFENDER'S OFFICE SENIOR INVESTIGATOR ROBERT FAULKNER. THE COURT STATE'S, "IT IS ALSO MANIFESTLY APPARENT IN THE RECORD THAT THE TRIAL COURT HELD A HEARING EACH TIME DEFENDANT OR COUNSEL RAISED THE ISSUE OF POTENTIAL OR POSSIBLE CONFLICTS IN THE PUBLIC DEFENDER'S OFFICE." **WANKE, 2019 Ill. App. (2ND) 170373-U, ¶ 118.** YET, ONLY PARAGRAPHS LATER, THE COURT CONCLUDES A HEARING WAS NOT NEEDED, BECAUSE IN "HIS PRO SE 'MOTION TO COMPEL' IN WHICH HE ALLEGED THAT THE PUBLIC DEFENDER'S OFFICE'S INVESTIGATOR REFUSED TO INVESTIGATE PURPORTEDLY EXCULPATORY EVIDENCE, BELIEVED THAT DEFENDANT WAS GUILTY OF THE OFFENSE, AND EXPECTED THE OFFICE TO BE REMOVED FROM THE CASE." **WANKE, 2019 Ill. App. (2ND) 170373-U, ¶ 125.** "THE PROBLEM HERE IS THAT THE TRIAL COURT ALLOWED THE SO-CALLED MOTION TO COMPEL TO BE FILED, BUT, AS DEFENDANT WAS REPRESENTED AT THE TIME, DID NOT CONSIDER IT." **AT 125.** THE APPELLATE COURT DISTORTS THE RECORD AGAIN. THE TRIAL COURT ALLOWED THE DEFENDANT TO SUPPLEMENT THE RECORD, DUE TO HIS DISABILITY. THE DEFENDANT WAS DEAF OR HEARING IMPAIRED AND AT TIMES IT WAS THE BEST WAY TO COMMUNICATE. **(EX. 8 APPENDIX IV)**. THE TRIAL COURT ACCEPTED THIS AND NOTED WHEN IT WHEN THE DEFENDANT'S HEARING DEVICES WERE FAULTY, REMOVED OR HAD ISSUES WITH MICROPHONES. **(C 1137, C 1152)**. HERE, THE APPELLATE COURT IS EITHER PURPOSELY UNAWARE OR IGNORES THE RECORD TO MAKE IT'S POINT. **(EX. 11 APPENDIX IV)**.

HERE, THE DEFENDANT BROUGHT THE ISSUE OF THE APPOINTED SENIOR INVESTIGATOR'S ACTUAL CONFLICT BOTH TO THE ATTENTION OF HIS COUNSEL AND TO THAT OF THE TRIAL COURT AFTER EFFORTS OF DOING IT PRIVATELY FAILED, THE APPELLATE COURT SPOTLIGHTS THE METHOD AT THE EXPENSE OF THE MESSAGE. IT WAS ALLEGED THAT FAULKNER WAS HAND-PICKED BY SORENSON, WAS THE VERY FIRST APPOINTMENT, APPOINTED FIRST BEFORE ANYONE WAS CONFLICTED OFF AND DURING ALL THAT TIME OF APPOINTMENTS AND WITHDRAWALS FAULKNER REFUSED TO TAKE ANY ACTION REGARDING INVESTIGATIONS UNTIL THE MATTER OF WHETHER THE PUBLIC DEFENDER'S OFFICE WOULD REMAIN ON THE CASE WAS RESOLVED; MORE THAN ONE-AND-A-HALF YEARS. FAULKNER WAS SENIOR HEAD OF INVESTIGATIONS, ASSIGNED BY SORENSON THE HEAD OF THE OFFICE, WHO WAS CONFLICTED OFF THE CASE HERSELF AND WHO FAULKNER HAD GREAT LOYALTY FOR. FAULKNER, BEING SENIOR INVESTIGATOR, WORKED CLOSELY WITH OTHERS IN THE OFFICE, NAMELY, PERRI, SCHMIDT, DOLL, SORENSON, ZIMMERMAN, SIMMONS, AND POTENTIAL STATE WITNESSES MARGIE O'CONNOR AND KRIS CARPENTER.

THE TRIAL COURT AND APPELLATE COURT RESHAPED THE NARRATIVE CONCERNING FAULKNER AS A MATTER OF COURT ROOM MECHANICS, MORE CONCERNED WITH WHO WAS BRINGING FORTH THE INFORMATION THEN THE ALLEGATIONS THEMSELVES. THE APPELLATE COURT FURTHER DISSEMBLES, "THE MOTION TO COMPEL DID NOT CLAIM THAT COUNSEL WAS INEFFECTIVE OR SEEK TO DISQUALIFY THE PUBLIC DEFENDER'S OFFICE DUE TO A POTENTIAL OR POSSIBLE CONFLICT." **WANKE, 2019 Ill. App. (2nd) 170373-U, ¶125,** MISSTATING THAT THE DEFENDANT SOUGHT TO BE "CO-COUNSEL IN HIS OWN CASE." **AT 125.** THE FACT THAT TRIAL COUNSEL AFTER BEING MADE PUBLICLY AWARE OF THESE ACTUAL CONFLICTS AND TOOK NO ACTION, DID NOT REPLACE THE INVESTIGATOR OR ADOPT HIS CLIENT'S MOTION SPEAKS MORE THAN ANY OTHER "STRUGGLES". ZIMMERMAN HAD JUST RISEN TO BECOME DEPUTY OF THE OFFICE AND HE WAS UNWILLING TO SAFEGUARD HIS CLIENT FROM CONFLICT, APPOINT A CONFLICT-FREE INVESTIGATOR OR CHALLENGE THE STATUS QUO. **(C1563)**

ZIMMERMAN WAS UNDER A SIGNIFICANT AMOUNT OF PRESSURE UNDER THE MANTLE OF HIS NEW POSITION AND IT MANIFESTED ITSELF IN MANY WAYS **(C1079)** WITH HIS CLIENT. ZIMMERMAN WAS COMPELLED TO ARGUE ON SPEEDY TRIAL GROUNDS JUST BEFORE TRIAL COMMENCED **(C1558)**. THE FILING READS, "COUNSEL HAS FAILED TO INVESTIGATE, PURSUE OR INFORM HIS CLIENT AS TO A SPEEDY-TRIAL CLAIM OR TIME ACCRUED." **(C1559)**. COUNSEL IGNORED THE JAILHOUSE ROUTINE OF MISHANDLING HIS CLIENTS LEGAL MAIL **(C597)** OR DESTROYING

IT (C1345) OR HAVING A STATE WITNESS AND FORMER SUPERVISING DETECTIVE ON THE CLARK CASE IN 2008 SEIZE HIS LEGAL DOCUMENTS (C1340). ZIMMERMAN TURNED A BLIND-EYE TO THESE ACTIONS AT THE JAIL AND EVEN THE CIRCUIT CLERK'S OFFICE (C617) WHEN THEY FAILED TO PROPERLY HANDLE HIS LEGAL MAIL (C615). ZIMMERMAN FAILED TO CORRECT IN-HOUSE OFFICE ISSUES THE DEFENDANT ENCOUNTERED WHEN ATTEMPTING TO CONTACT HIS APPOINTED TRIAL COUNSEL (C804). ONE WOULD SPECULATE THAT THESE ISSUES HAD MORE TO DO WITH THE DEFENDANT'S PERSONALITY THAN HIS ATTORNEY'S PROFESSIONALISM OR "STRUGGLES", BUT THAT WOULD BE WRONG (C2008).

EVEN AS ILLINOIS COURTS HAVE CONSISTENTLY REJECTED THE PROPOSITION THAT PUBLIC DEFENDER'S OFFICE EXPERIENCE PER SE CONFLICTS IN THE SAME MANNER AS PRIVATE FIRMS, ILLINOIS COURTS HAVE ALWAYS CLAIMED THERE WAS THE POSSIBILITY THAT THE CIRCUMSTANCES OF AN INDIVIDUAL CASE COULD GIVE RISE TO SUCH A CONFLICT. **COLE**, 120997, ¶38; **SPREITZER**, 123 Ill. 2d AT 21; **BANKS**, 121 Ill. 2d AT 42. THERE HAS JUST NEVER BEEN A CASE WHICH MET THEIR STRICT INTERPRETATIONS, WHICH FOR ILLINOIS MEANS THEY ARE JUST WORDS. IF THERE CAN EVER BE A CASE WHERE SUCH CIRCUMSTANCES EXIST AND CAN REDEFINE THOSE PARAMETERS, THIS IS THAT CASE. YET, THE ILLINOIS SUPREME COURT PASSED ON DOING THE HEAVY LIFTING.

THIS SUPREME COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER THERE ARE ANY CONCEIVABLE CIRCUMSTANCES THAT COULD CREATE AN OFFICE-WIDE CONFLICT OF INTEREST IN A PUBLIC DEFENDER'S OFFICE. THE BETTER JUDGEMENT OF THIS COURT SHOULD PREVAIL.

Respectfully submitted,

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August 18th, 2020

No._____

In The Supreme Court Of The United States

Richard E. Wanke, Petitioner

v.

State of Illinois, Respondent

Affidavit

"I declare under penalty of perjury that the foregoing is true and correct." Executed on August 18th, 2020.

Signature