

**In the
Supreme Court of the United States**

ROBERT ELY,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

**On Petition for a Writ of Certiorari to the
Appellate Court of Illinois, Fourth District**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a court should evaluate a claim for substantial prejudice due to prosecutorial misconduct in the closing arguments by the standard articulated by the Illinois Appellate Court that “guilt did not rely solely on these (improper) comments”?

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellant below

- Robert Ely

Respondent and Plaintiff-Appellee

- State of Illinois

LIST OF PROCEEDINGS

Supreme Court of Illinois

No. 132013

People of the State of Illinois, *Respondent*
v. Robert Ely, *Petitioner*

Denial of Petition for Review: November 26, 2025

Appellate Court of Illinois, Fourth District

No. 4-24-0884 (2025 IL App (4th) 240884-U)

The People of the State of Illinois, *Plaintiff-Appellee*,
v. Robert Ely, *Defendant-Appellant*

Final Order: June 3, 2025

Illinois Tenth Judicial Circuit, Peoria County

No: 21-CF-00331-1

The People of the State of Illinois, *Plaintiff*,
v. Robert Ely, *Defendant*

Final Judgment: April 25, 2024

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OPINIONS BELOW

The Order (unpublished) of the Appellate Court of Illinois, Fourth District affirming Robert Ely's convictions and sentence is reported at *People v. Ely*, 2025 IL App (4th) 240884-U, *appeal denied*, 2025 Ill. LEXIS 842, 2025 WL 3301967 (Ill. 2025) and is included at App.2a. This order upheld the criminal judgment of the Tenth Judicial Circuit, State of Illinois, Peoria County. App.27a.



JURISDICTION

The Appellate Court of Illinois, Fourth District entered its order on June 3, 2025 (App.2a). The Supreme Court of Illinois denied the petition for leave to appeal on November 26, 2025 (App.1a). By letter dated March 2, 2026, the Clerk of Court provided an additional 60 days to file a booklet petition. This Court has jurisdiction under 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.



STATEMENT OF THE CASE

After a jury trial in Peoria County Circuit Court, the Petitioner was convicted of first-degree murder, residential burglary, and theft of property of a valuation in excess of \$100,000.00 (R. 1250; App.2a). The trial court sentenced the Petitioner to 99 years in the Illinois Department of Corrections (RR. 1298-99; App.15a, 31a).

In this case, a 92 year old retired surgeon named Dr. William Marshall was killed and his body was found in the basement of his home (R. 249). It was discovered that he died due to multiple stab wounds (R. 316). It was discovered that valuable paintings were missing from the home, but no other valuables such as cash, jewelry, or the decedent's wallet were missing (RR. 228-29). The decedent's wife Nancy suffered from an advanced form of Parkinson's disease that prevented her from moving or speaking although she had some level of cognition (R. 213).

The case against the Petitioner depended heavily on a single eyewitness and circumstantial evidence that implicated the Petitioner as well as the Petitioner's girlfriend who was never charged with any offense. There was no forensic evidence in the form of fingerprint evidence, DNA evidence, or footprint evidence linking the Petitioner to the decedent's home.

The eyewitness in this case viewed three different photo arrays in an effort to make an identification of a perpetrator. After viewing her first photo array, she made no identification of a suspect (RR. 851-52). On a subsequent date, she was re-interviewed by detectives,

viewed a second photo array, and again made no identification despite the Petitioner's photograph being in the array (RR. 855-56). On a later date when she viewed a third photo array which again had an image of the Petitioner, she viewed the array three separate times before she made an identification, viewing it on the third "go around" for a long time (RR. 637-39). On cross-examination, when she was asked which photo in the packet that she identified during the third photo array, she could not say (RR. 620-21).

Officers later found a truck in Southern Illinois which had a knife was located in the bed of the truck (R. 421). DNA testing established that blood found on the knife belonged to Dr. Marshall (RR. 741-45). The police investigation established that the white truck was in the name of the Defendant's girlfriend (R. 516). After paintings were located in a storage spot in Missouri (R. 670-76), a search of the residence shared by the Petitioner and his girlfriend uncovered a key that opened the padlock to that storage spot (RR. 888-90).

Faced with a defense that the Petitioner's girlfriend ran a burglary ring where several people, not just the Petitioner, were associated with the white truck in question, during the opening closing argument discussing the evidence against the Defendant-Appellant in this case, the prosecutor argued as follows:

Also the fact that—and this is a chilling part of the case, Nancy Marshall was disabled. She was in that chair. She could not talk, but she could hear. Imagine that.

(R. 1121)

In making reference to the identification made by state's sole eyewitness, the prosecutor argued as follows:

So that takes time to put together. And this is what they get together. And this is the folders that she's looking at when she's going one by one, and she looks at it very, very seriously. And remember, she's focusing. She picks the person we all agree is the defendant.

(R. 1132)

While discussing the evidence the defense presented regarding the involvement of the Petitioner's girlfriend as the head of this burglary operation, the prosecutor argued as follows:

But the balance on one of those receipts have like a withdrawal and the balance is \$80,000.00. This as a big effort. It's big business. Is Tilley the boss? I don't know. Maybe. But I know that's the killer. You know that's the killer.

(R. 1149)

The trial court sustained this objection and admonished the jury as follows:

All right. Please disregard any personal opinion from the lawyer.

(R. 1149)

The Appellate Court rejected the Petitioner's position that these arguments mandated reversal under existing Court and Illinois precedent. The Illinois Appellate Court held that the first listed comment that asked the jury to imagine that the victim's disabled

wife heard the altercation where her husband was murdered despite the lack of any evidence that this took place was not improper, but not substantially prejudicial. *People v. Ely*, 2025 IL App (4th) 240884-U ¶ 65, *appeal denied*, 2025 Ill. LEXIS 842, 2025 WL 3301967 (Ill. 2025).

The Appellate Court held that the second listed comment that asked the Petitioner maintains is an improper invocation of personal opinion by telling the jury that their sole eyewitness during the time where she looked at the third photo array is picking the person “we all agree is the defendant” was not improper because the jury would have to infer that the prosecutor was stating his personal opinion, which the Appellate Court stated was not the same thing as actually invoking a personal opinion. *Id.* at ¶ 62, *appeal denied*, 2025 Ill. LEXIS 842, 2025 WL 3301967 (Ill. 2025).

The Appellate Court held that the third comment “I know that’s the killer” was an improper invocation by the prosecutor of personal opinion, but that since the trial court sustained the objection to this comment, that this ruling by the trial court cured any possible prejudice. *Id.* at ¶ 68, *appeal denied*, 2025 Ill. LEXIS 842, 2025 WL 3301967 (Ill. 2025).

The Appellate Court also held that, considering the comments cumulatively in addition to individually, that the Petitioner did not establish substantial prejudice, stating that evidence was not closely balanced and that the Petitioner’s guilt did not rely solely on these comments. *Id.* at ¶¶ 70-71, *appeal denied*, 2025 Ill. LEXIS 842, 2025 WL 3301967 (Ill. 2025).



REASONS FOR GRANTING THE PETITION

I. This Court Should Grant the Petition to Determine Whether the Appellate Court Properly Evaluated the Fairness of the Trial Based on the Misconduct Committed by the Prosecutor in Argument

This Court should grant the Petition for Certiorari to decide whether the Fourteenth Amendment's guarantee of fundamental fairness in a criminal trial where the prosecutor engages in a concerted effort to make sure that the trial is fundamentally unfair necessitates that courts take a longer and more critical look at prosecutors arguments to determine if they comport with due process given the finding of the Appellate Court that the Petitioner's "guilt did not rely solely on these comments" and that it was not "impossible to determine whether the jury's ultimate determination in this case was based on the improper comments versus the evidence presented." *People v. Ely*, 2025 IL App (4th) 240884-U ¶ 70, *appeal denied*, 2025 Ill. LEXIS 842, 2025 WL 3301967 (Ill. 2025).

The Petitioner maintains that this standard as used by the Illinois Appellate Court grossly misinterpreted this Honorable Court's prior determinations regarding the meaning of "fundamental fairness" as guaranteed by the Fourteenth Amendment, and this Court urgently needs to say so. *See, Darden v. Wainwright*, 477 U.S. 168, 180-81 (1986); *citing, Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). The Illinois Appellate Court's standard as to whether the Petitioner's guilt solely relies on these comments improperly

liquidates this Court's prior statements as to how one determines whether fundamental fairness is implicated in instances of prosecutorial misconduct, making this an "important question of federal law that has not been, but should be, settled by this Court." United States Supreme Court Rule 10(c).

The kind of conduct that occurred in the Petitioner's case was planned and not in response, heated or otherwise, to any comment or conduct of sort of defense counsel as the offending remarks all occurred in the prosecution's opening argument before the defense had a chance to address the jury. These comments invoking the personal opinion of the prosecutor regarding the Petitioner's guilt as well as his comments that the decedent's wife could hear the crime being committed against her husband so we should "imagine" the horrors for which she went through are exactly the types of arguments that this Court stated "has no place in the administration of justice and should neither be permitted nor rewarded." *United States v. Young*, 470 U.S. 1, 9 (1985).

When a prosecutor asks a jury to imagine that the victim's disabled wife heard the altercation where her husband was murdered despite the lack of any evidence that this took place and every reason to believe that this never ever happened based upon the geography of this house where the offense took place was completely and substantially prejudicial. The prosecutor essentially placed the jurors, instead of into the facts of this case, into a noir thriller that is reminiscent of something "Hitchcockian" such as the movie *Rear Window* where the main protagonist is in a wheelchair and greatly limited in a great many things, including the ability to call for help. This argument invoking

scenes from a horror movie are those that called for from the trial judge a “stern rebuke and repressive measures and, perhaps, if these were not successful, for the granting of a mistrial.” *Berger v. United States*, 295 U.S. 78, 85 (1935). Otherwise, as in this case where the direct evidence of identification of the Petitioner was very shaky and the remaining circumstantial evidence pointed to a variety of other suspect in addition to the Petitioner, it becomes absolutely “impossible to say that the evil influence upon the jury of these acts of misconduct was removed by such mild judicial action as was taken.” *Id.*

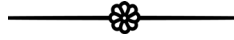
In holding that Due Process was satisfied because the Petitioner’s “guilt did not rely solely on these comments,” the Fourth District Appellate Court has diluted this Honorable Court’s Due Process protections for defendants in criminal trials in the State of Illinois. Its decision against Petitioner makes no effort to discourage the “evil influence upon the jury but rather, seeks a metaphorical “peaceful co-existence” between this improper behavior and the evidence that was actually adduced against the Petitioner.

The State of Illinois has had a long history of prosecutorial misconduct especially in closing arguments that pre-date this Court’s decision in *Berger*, harkening to the days of Clarence Darrow. *See, People v. Emerson*, 122 Ill. 2d 411, 434 (1987); *People v. Caballero*, 126 Ill. 2d 248, 272, 533 N.E. 2d 1089, 1097 (1989), *People v. Monroe*, 66 Ill. 2d 317, 324, 362 N.E.2d 295, 298 (1977); *People v. Black*, 317 Ill. 603, 618, 148 N.E. 281, 286 (1925). This is true of this specific prosecuting agency as there have been notable cases of misconduct that were brought to the attention of the Fourth District Appellate Court in this matter to no avail.

See, People v. Lee, 2023 IL App (3d) 200332-U (Peoria County prosecutors introduced into evidence a body camera video that showed the murder victim dying along with family members’ emotionally charged and futile pleas for help); *People v. Reed*, 2024 IL App (4th) 221074-U (Peoria County prosecutors played a prejudicial video clip showing the victim’s mother “screaming and wailing for Jesus to bring her son back” along with prosecution comments that were “clearly unprofessional” and “not based on the evidence presented” including that defense counsel was lodging an objection to try to keep evidence from an improper comment to the jury that “snitches get stitches”).

The State in the Petitioner’s case made comments replete with horrible speculation that was more worthy of a “B grade” horror movie than a criminal trial as well as blatantly improper expressions of and personal opinion of the Petitioner’s guilt. While the trial court did not completely ignore the prosecution’s misconduct, her reaction was of the “mild” nature described in *Berger* that was and is insufficient. The Fourth District Illinois Appellate Court by stating that the Petitioner’s “guilt did not rely solely on these comments” set forth a new and lower standard for criminal trials in the evaluation of “substantial prejudice” that this Court should immediately address to not just provide justice for the Petitioner, but also to *properly* deter future misconduct and ensure Due Process in future trials for others nationwide.

Therefore, this Honorable Court should grant the Petition for a Writ of Certiorari.



CONCLUSION

For the forgoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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