STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

vs. No. 15 CR 14066 (01)

RICKY WINFIELD,
Defendant.

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause, before the Honorable WILLIAM H. HOOKS, Judge of said court, on the 11th day of January, A.D. 2023.

PRESENT:
HON. KIMBERLY M. FOXX,
State's Attorney of Cook County,
BY: MR. MICHAEL PATTAROZZI,
BY: MR. PATRICK WALLER,
Assistant State's Attorneys,
On behalf of the People;

MR. SHARONE R. MITCHELL, JR.,
Public Defender of Cook County,
BY: MS. MARGARET H. DOMIN,
BY: MR. RICHARD GUTIERREZ,
BY: MS. ASHLEY SHAMBLEY,
BY: MS. CELESTE ADDYMAN,
BY: MR. JOSEPH CAVISE,
Assistant Public Defenders,
On behalf of the Defendant.

Carolyn C. Brown, CSR No. 084-003848
Official Court Reporter - Circuit Court of Cook County
County Department - Criminal Division

THE COURT: You may be seated. Bring the defendant out, please.

THE SHERIFF: He's coming out.

THE COURT: Okay. All parties present. First of all, let me have the State identify yourself for the record, please.

MR. WALLER: Judge, Patrick Waller, W-a-l-l-e-r, for the State. Mr. Pattarozzi had a personal issue, and he had to run out of here so.

THE COURT: Okay. You've excused him for the day? He's been excused for the day?

MR. WALLER: Yes, absolutely, Judge.

THE COURT: Okay. Thank you. Defense, can you identify yourself, please.

MS. DOMIN: Sure. Assistant Public Defender Margaret Domin, D-o-m-i-n.

MR. GUTIERREZ: Assistant Public Defender Richard Gutierrez, G-u-t-i-e-r-r-e-z.

MS. SHAMBLEY: Good afternoon, Judge. For the record, Assistant Public Defender Ashley Shambley, Shambley is S-h-a-m-b-l-e-y.

MS. ADDYMAN: Good afternoon, Judge. Assistant Public Defender Celeste Addyman, A-d-d-y-m-a-n.

MR. CAVISE: Good afternoon, Judge. Assistant

Public Defender Joseph Cavise, C-a-v-i-s-e.

JUDGE'S RULING

BY THE COURT:

Let me start by, first of all, complimenting everyone, the attorneys that are present here for both sides with respect to the level of scholarship that they have exhibited by the memorandums, briefs, and collections of evidence, the testimony of the witnesses in support of their various cites in the Frye hearing. I've giving up counting the number of pages with respect to the submissions as it relates to the, I have some reference in later on in the ruling as to how long the various submissions were and the relevance of those submissions and their possible use in these proceedings.

Both sides provided a lot. And I'll say they did not provide, but they didn't provide too much. They provided with this type of issue deserves, in terms of the seriousness of the issue, the interest that the State has with respect to public safety, and with respect to the goals and the tasks they have as the prosecutors and as the, also the upholders of the constitutional due process rights even though they prosecute. And the Defense Attorneys with respect to

their obligations to their client and the due process rights that their client deserves in these matters.

The summary of the procedural history is not very exciting. It is lengthy -- it's not very lengthy, except that the case has been around for a variety reasons, but at the request of the Defense, first, I'll start with a summary, a summary of the procedural history of the Frye slash 402 hearing on the admissibility of firearms examination in this case. This constitutes my oral memorandum order and ruling.

The summary is that at the request of the Defense in connection with the murder indictment and subsequent proceedings during the Spring of 2022, over the course of a number of weeks in March and April, a series of lengthy and complex pretrial evidentiary hearings were held in this matter. The hearings were supplemented with a rolling submission from both the State and the Defense with affidavits, forensic articles, scientific study results, larger on articles, et cetera.

This order and this memorandum of rulings is the result of a Frye hearing granted by the Court at the request of the defendant Rickey Winfield and his attorneys from the Law Office of the Cook County Public

Defender. The hearing was granted over good faith objections to the hearing by the Office of the Cook County State's Attorney.

The granting of the Frye hearing rested in the sound discretion of this court. This court is still confident in the discretion that it used in granting the hearing.

The traditional purpose of a Frye hearing is to safeguard the court's truth finding role by avoiding the use of what is sometimes called or labeled junk evidence. It's a basis for judicial or jury decision making. Failure to recognize and appreciate the utility of a pretrial Frye hearing may force the parties to proffer that which would be lengthy and a projected evidentiary objections and delays once the trial has started. Along with rolling and quick judicial rulings to matters that would be better sorted out during pretrial proceedings which we've had here.

This court having some preliminary knowledge of the complexities of radically emerging controversies in the field of ballistics and toolmark forensics felt that an upfront preview of whether the particular evidence anticipated in the instant first-degree murder case should come in under Frye, under the Frye

standard, and if allowed as admissible, to what nature and to what extent.

An equally important consideration to this court exercising its discretion to allow such a hearing was to determine what interplay, if any, with the Illinois Rules of Evidence 401, 402, and 403, have if the proffered State evidence is allowed in, survives, excuse me, survives a Frye analysis by this trial court.

The issues concerning the Frye hearing and the presentation of reasons for and against the consideration of this particular brand of forensics evidence resulted in both sides of this case appearing to bring in its very best Prosecutors, Defense Attorneys, who have appeared to be the most well-trained in all aspects for the prosecution and defense of serious felonies involving forensic science matters.

The Frye hearing for the instant matter was not only a battle of the subject matter, forensic experts, but it was also a battle between two equally capable sets of heavily trained brisk attorneys with exceptional litigation skills. Their in-court presentations and extensive written submissions,

professionalism, and assistance to this court in putting in a position to sort out the Frye and IRE, the Illinois Rules of Evidence 401 and 402 and 403 matters.

I'll start with issue one, the burden of proof, standard of proof. The State attempts simply to collapse these two issues, burden of proof and standard of proof into its interpretation of People versus Watson, 237 Ill. App. 3rd 915 at 925, 1st D. 1994, by advocating that a preponderance of the evidence standard as the burden -- well, first of all, they accept, I believe they accepted with respect to their analysis the burden of proof that as the proponent of the Frye evidence they have to go forward with that burden.

In some of the other jurisdictions, I believe in my assessment, some of the Judges may have gotten confused with respect to burden of proof. And often the attorneys and even some law professors get confused with respect to burdens of proof and standards of proof, they become tricky. Some of the Judges, even in the Supreme Court, U.S. Supreme Court, and other arenas kind of intermixed the standard of proof, burdens of proof, and it creates a hodgepodge, in that, those of us in the lower court have to attempt to sort out. And

more importantly the attorneys who are representing the People and also representing defendants with real charges and real issues have to do their best to interpret it.

This court rather than complicate matters -- well, let me just say this. The Defense on the other side says, stop, not so fast. The Defense argues on pages 11 and 12 of their post-hearing brief, they indicate that that Watson case doesn't necessarily have to be interpreted the way that the State says. They also go on later, which I'll make some comment about, suggesting because of the societal tissues and the due process concerns that in these type of serious matters, perhaps, the burden, the standard of proof should be different, because these are not typical preliminary matters which the evidentiary rules always fall back on preponderance as a standard. I think that the, for the purposes of this ruling, I'm going to stick with not the clear and convincing, which when you deal with issues that are of such magnitude and have such due process and equal protection concerns in the Court's personal assessment those are more matters of that require more of a review under clear and convincing, but the default is, for the purposes of this ruling,

I'm going to stick with the preponderance and handle this as if it's a regular preliminary proceeding motion and see how that carries it through.

It is left up to, I believe, Appellate Courts, including the Illinois Supreme Court and the Illinois Appellate Courts to clarify and make distinctions, if they feel appropriate, as to what the standard of proof should be in these types of matters.

In fact, the Defense says that they don't believe that that standard binds this court. They refer to it as a mere obiter, o-b-i-t-e-r, dicta, which they argue that the case of People versus Lacy, 2011 Ill. App. 5th 1347 at paragraph 18, supports their position as I said.

The Defense also goes on to suggest the following proposition that the highest standard of clear and convincing evidence may be what the court should be using in this matter. Again, the court feels that at this point, unless there's guidance, clear guidance from our Illinois Supreme Court and our Appellate Court to dictate that, I am aware of there being a split between a number of the State's concerning these same issues.

In briefs provided by the Defense there was a

separation between the States that the Defense wanted me to consider. The basic lineup put Texas really on the side of clear and convincing which kind of surprises me, puts Florida in the other camp, puts Jersey, I believe, in clear and convincing. Having had some contact with the highest justice in Texas on a commission I was on, who was a very bright person, I guess I shouldn't be that surprised.

The Texas court system has a higher separate court for criminal matters, and they have an equal court for civil matters. Of the litigation coming out of criminal court in Texas surprisingly is more informed than one would maybe think because of some of the politics in the State of Texas, but they often come up with pleasant surprises for those who studied more detailed analysis in criminal matters. And I think the fact that Texas has two separate higher courts, one not higher than the other, the Court of Appeals and the Supreme Court of Texas being subject. I was please to see that Texas, I was actually in the camp where they looked at the issue which required the highest standard, but as an Illinois Judge, I'm going to stick with the preponderance of the evidence at this point -- I'm sorry, Madam Court Reporter. Tell me again if my

voice falls.

The complication with -- the difference as to whether Frye, Daubert, and Frye plus and all that makes, is that it first requires an analysis of general acceptance. Both sides did a good job of outlining in the Deerfield and concerning what general acceptance in the sense of Frye means to them and their respective clients.

The State in its post-hearing brief, I'll get to in a second, they did an analysis not only of why they believe that Frye is generally accepted, their arguments concerning the same, likewise, the Defense provided its analysis, which I found equally as comprehensive. And I will have to dive into those areas that both sides gave me information on that is helpful.

The State provides that, in relevant part, out of its brief in response to the filing this post-hearing is called People's Final Pretrial Brief. And the State instructs, tells, advocates that the record establishes that firearms evidence is generally accepted as a relevant scientific field, the discipline is practiced in over 200 accredited laboratories in the United States, including the FBI Laboratory, the AFT

Laboratory, the United State's Army Criminal Investigation Laboratory. They make proper reference to the places in the record concerning those matters.

As I will comment later the mass of materials the parties provided me, as well as the extensive and well-documented briefs, at this juncture are impossible to put specificity in the record, but I have found in checking what the State has put in as its citations to the record of the Frye hearing to be accurate and their interpretations are consistent with their position throughout the hearing, their brief is.

Likewise, the Defense, their brief matches with the proofs and with the record that took place in this courtroom. So I will say it's fairly unusual to have both sides which the only advocates that they have is the advocacy -- it's unusual to have advocates that provide a clear record as to what the proceedings are and only debate their differences in the interpretation of those matters, but I found, I was amazed to find that both sides were very specific in terms of supporting their position.

The State cites People versus Luna, 2013 Ill. App. 1st 072253 at paragraph 76. When they say that they feel that the relevant scientific community to

opine on generally accepted, acceptance includes forensic scientists practicing within the field of firearms identification and individuals with scientific knowledge and training sufficient to allow them to comprehend the methodology underlying firearm identification and to form an opinion about it. Citing that Luna case. I believe that the State's point is that, their suggestion is that the broader view that the Defense had in terms of bringing in, what I will call allied fields of the forensics that in a more expansive view of whether Frye is generally accepted, the State has a different view that it should be narrowly. Those people that on a daily basis have hands on the firearms as they come into a laboratory setting. That's consistent with the whole thing that the State has in this matter.

The State talks about, as I said, there are several Federal agencies talks about the fact that firearms identification indeed international and indicates that the practice of firearms identification demonstrates that the methodology underlying this discipline is accepted not only by practitioners of firearms identification, but also by the larger forensic science community, including laboratory

directors and organizations that offer laboratory accreditation among others.

In brief, in the brief and the post-hearing brief the State indicates that over the last decade a series of black box false positive error rate studies in the field of firearms identification designed and conducted by what is referred to as classically trained scientists holding terminal degrees in relevant scientific fields demonstrates the reliability and general acceptance of this discipline. I'm paraphrasing.

State instructs and advocates that these studies designed and conducted reported by the scientists also establish that the acceptance of the methodology underlying firearms identification extends to the larger relevant scientific community and is not limited to practitioners in the discipline. Although, in the other places in the brief, also during argument, and also during the method of cross-examination, which I'm not suggesting anything improper at all, the emphasis of the State was, basically, to suggest that this court rely primarily, if not exclusively, on those who are employed in tasks to examine firearms and the artifacts of firearms whether they be bullets or

cartridges. And that's their position, and I understand that's their position.

The Defense had a broader view, and their broader view, I believe, reflects an emerging, not only criticism of the area of firearms identification evidence remaining in a status that it once enjoyed, but instead in this Court's assessment more accurately reflect the general acceptance standard which is not static, constantly moving, consistent with the type of resources that the scientific community is putting in to decide where it's going.

When I say that, many of the critical studies that dictate where these various forensic areas are going have created a necessity that private as well as public agencies get involved to reflect upon what they have done in the past and what they plan on doing in the future.

Within the last, say, 20 years a lot has been done, a lot more needs to be done. The 2009 National Academy of Sciences report, the parties have sent that to me, I have some amateur familiarity with that particular report, and that report shows where things are going, not where things have been, but where things are going.

The NAS Report, N-A-S Report, that report covered a wide variety of topics including biological evidence, analysis of controlled substances, fiction ridge analysis, a fancy word for fingerprints, shoe, prints, tire tracks, and our area that is before this court, toolmark and firearm identification. It also included other areas beyond what we have here, including a whole review of trace evidence, and also included explosives and the artifacts of fires. I am personally aware that these areas are continuing to grow.

I spent a week with NIS down in Colorado where they warned us about mountain lions coming out a few years ago. So it kind of deterred, kind of deflected my interest from my studies to remember that when I went outside of this compound for the Federal Government a mountain lion might come up and eat up my notes.

The reason I mentioned these things is nothing stays the same. Nothing stays the same in the medical industry, nothing stays the same in the products industry. There is recently a case involving one of my colleagues in the Law Division when it was a Law Division case. She made a ruling in a case

involving Frye, but it was the granting of a motion for summary judgment. In a kind of a routine pedestrian analysis was done by, in my opinion, the Appellate Court had moved right through it, but that's not a criminal justice case. That's a case that does not involve the possibility that somebody may receive a sentence that would be the functional equivalent of spending the rest of their life in jail.

It was the distinction between the civil practice and the criminal practice is that at the end of the day if a Judge makes a mistake it can be rectified, and if it doesn't get rectified the only difference is somebody may be paying some money, but nobody is going to go to prison for 20 years and nobody is going to die. The death penalty not being here, but I'm talking more globally about forensics nationally and why there is a push and a need to do things differently in the criminal arena than we, perhaps, do in the civil arena.

Going specifically to toolmark and firearms, the Defense has given us some very specific, has applied a very specific set of analysis concerning why they believe that the general acceptance analysis has to be more than counting and balancing which

jurisdictions are persuasive maybe by, you know as I gave you the four that were my amateur analysis of the Texas Criminal Justice System, and looking at States we think are progressive states and those that are not.

The position of the Defense is, all that's nice, but what's really the community of what's generally accepted is not what State Appellate Courts have decided they are, it's not what Judges who sit at trial courts do or don't do based upon oftentimes things that are expediency things. This is suggesting that courts take a more enlightened view and look at the forensic experts that are beyond the particular field that is before the tribunal.

Here, we have you can't separate toolmark from firearms because they are both akin all the way down to the end for better or for worse. I'm looking at ethical standards in forensic science. It's a CRC Press Publication. I feel I have a license as those who review these matters and experts who come in these courtrooms to look at things in the field that I need to look at in order to interpret what the attorneys give me. While you've given me a lot some things are secular because I'm not on the same level as you are with respect to that being both sides as to the depth

that you all enjoy in the forensic fields. But I look at, and consistent with the Defense's position, the writings of the people that do forensics analysis as a matter of a living and as a matter of a study, and as a matter of a goal of expanding the credibility of forensics have these comments about toolmarks and firearms. And it comes from the whole NIS, not NIS -- the NIS-related matters which all, a lot of which are already in evidence.

And I quote from the book by Harold Franck, F-r-a-n-c-k, and Devon, same last name. This is a publication that I rely on in these areas for other purposes. And the particular text that I'm looking at is a 2020 text put out by Thomas and Frances Rouk indicates that the alleged scientific field of toolmark evidence does meet the required basic concept associated with science. Toolmark identification is predicated on the unproven and mystical concept that any tool making a mark is unique. And I will say there was that a point in time where that may have been more true than not.

For example, if we go to a hardwood store and purchase two identical screwdrivers which were manufactured consecutively and installed them on a jig,

j-i-g, which scratches a surface at the same angle, the same length, and the same pressure will the mark be unique. That is, will the tool examiner be able to identify which screwdriver made which scratch? The claim is that it is so. Similarly, it is also claimed that the firing pin of a revolver and the ejection mechanism of that gun or the rifling of the barrel will be unique on the bullet and the casing. Remember the uniqueness requires to the exclusion of all others. I'm reading from page 81 to 83 of a text that I find to be authoritative with respect to those matters.

I will skip the technical next paragraph, but go down to, where the advent of computer numerically controls the CNC machines better accuracy and repeatability were achieved. Today machines are statistically process, control SPC, and can achieve tolerances less than 0.1-millimeter for very critical components. However, such precision is simply not warranted in applications such as screwdrivers, hammers, wrenches, and of course they have made the same comment about firearms.

A relevant part, on page 48 of that text, the uniqueness theory of toolmark examiners states that a tool, such as a gun, will produce identical markings

when the firing pin strikes the cartridge. If that is the case, they have a diagram where they show two subsequent firing pin impressions from the same high standard target model, and they asked whether they differ. And someone with a trained eye can look at that. Somebody with the microscopes that the Illinois State Police can look at that, and the Defense, I think, are suggesting that that whole process of looking and comparing whether human function or the individual who is looking at that has an opportunity to either look at something one way or look at it another way is not what forensic science that is responsible for deciding who may go to prison and who may not go to prison. Can't rest on that.

The cloudiness between Frye, Daubert, Frye plus, really in looking at the three standards is clearly not, it is not a valid jurisdiction but four miles or five miles east of here and near the Lake is, at 219 South Dearborn.

The merits of that, or the fairness of that are irrelevant, but it becomes a little complicated because having worked in that system for a while, whatever we don't do on the State Court side right, there's a thing called a writ of mandamus, and there's

also a due process, due process issues, that no matter what a State Court does the Federal government can, in fact, correct it, if they choose to. I'm not aware of any writs of mandamus concerning the State using the Frye standard that calls something that the Federal authorities in this jurisdiction have dealt with, could be wrong, could be wrong. But it seems to me that there needs to be some continuity, but the blessing is, is that the difference between the two in this Court's assessment are not that great, except that the big point is that under Frye if you do a basic analysis of Frye, this court does not have a right to be a gatekeeper. I think that analysis is right. This court cannot be a gatekeeper as it would be in Daubert, or in those States that have Daubert or the Federal Government has Daubert. I don't need to take a hard opinion on it because it's not there. So I have to look at whether the definition of general acceptability is simply how many States go one way, how many States go another way, or whether there's something else to it other than just numerically looking at it and making a decision that Frye means that I can't decide anything. The jury has to decide it. The rest of this ruling will suggest where this court falls on that.

In brief from the Defense, the Defense points out that the Illinois Supreme Court has thus far refused to join those jurisdictions adopting Frye. The Illinois Court is unequivocal, the exclusive tests for the admission of expert witness -- expert testimony is governed by the standard first expressed in Frye. That's the, of course, case of 54 App. D.C. 46, 293 F. 1013, decided by a District of Columbia magistrate in 1923. So Frye is a centurial. They are a hundred years old now.

The underlying case that Frye examined was a polygraph issue, and the polygraph, I'm not aware of the polygraph being used anywhere, but Frye was successful in saying that that can't make it in. The irony of Frye keeping out a polygraph examination, which although not admissible in evidence is relied on every day in the Federal Government to conduct examinations for U.S. agencies to go overseas to perform to protect the United States, and their jobs depend on whether they can pass that polygraph, and the polygraph is used to determine whether they are Russian spies or Soviet Union spies in the old days, but not admissible in court is absolutely fascinating, but that's where they drew the line concerning a brand of

evidence that may be more credible than the evidence of toolmark firearm examination.

So where does this court land concerning Frye? Is Frye generally accepted? Well, Frye is generally accepted. How is it generally accepted? Is it accepted by determining that the court can go no further, or can the court be expansive and look at how firearms evidence is being thrown about and utilized by agencies, including the Illinois State Police? Should this court take into account the testimony took place in this courtroom and the expert that the State decided to tender to carry the flag, for lack of a better word, for the concept that things are right and there's no problem?

I will say that the expert that was chosen for the State has not helped the State's position. I'm concerned about the testimony that took place in this courtroom with the sole witness the State had concerning that issue. I am appreciative a broader view. We cannot simply look at whether something is widely accepted, because we have paid the money and we have the equipment and the State has an obligation to have some type of method of examination so that things that police officers collect can go through a process

and reach some result.

And the question of what happens if Frye, if things fall short concerning there being something that we can rely on in the field of firearms identification that problem is not a Defense problem, that problem is not a due process problem, that problem is not something that anybody can worry about except for those that are charged with having, I won't say the best forensics, but at least forensics that are such that the reliability is at a level so that people's lives can have a chance of going on based upon something that's not -- something that's more than a mere hunch.

When you really boil down what an expert would testify to in these proceedings and the proffers that have been thrown about as to what I could expect as evidence, and then there is no finding concerning somebody saying to a reasonable degree of medical certainty, engineering certainty, all that's been watered down to basically nothing, and it ends up being something that the parties, that the Defense ask me to consider what two or three of my other colleagues did in the building, and whether these weapons, this weapon and these bullets from these weapons cannot be ruled out. I don't really know what that means. They can't

be ruled out. Can't be ruled out doesn't do anything for anything. That, I don't know if cannot be ruled out even meets 401 before taking the short journey to 402. And I don't know how that even, we can even say in a full breath without smiling anything about a 403.

I got a chance to look at what may be a safe position. I've just suggested one, and the parties, I think the Defense put that in its brief to try to suggest that I shouldn't say to anything stronger than that, but, actually, the one suggested was a concession by the Defense concerning at least give us something that your other colleagues gave us, Judge.

I found something that says that the expert may testify as to whether or not the cartridges or the bullets, in this case, I'm not talking about this case, I'm talking about a case that is before a colleague, are consistent with having been fired from a particular firearm. I have no idea what firearms and what bullets were in that case. I have no idea of what the State Police examiner looked at with those bullets which caused him or her to make a subjective, or what they believed to be objective assessment as to that proposition.

Based upon what I've heard so far in terms of

what might come in in this case, or what may be considered in this case, I don't know how that leap could be made in this matter, but we'll come back to it.

The test of whether, the reason for the hearing is to decide whether it's widely accepted or not. Widely accepted to this court has to have a broader definition than County jurisdictions that do it. Widely accepted has to consider due process. It also has to consider what civil courts are concerned with and don't need to be concerned with, and that's called burden shifting.

This court does not want to be in a position of trying a case where the most basic proposition as to a piece of evidence would cause a shift of burden from the State to the Defense. It becomes a circle where we as Judges are asked to do things because they're always done a certain way.

The other problem with the state of firearms identification evidence is that it creates an ethical dilemma for everybody involved in the process. It creates, in this Court's opinion, an ethical dilemma for the prosecutors more particular, because the prosecutors are representing the people, and they are

only given one tool box, no pun intended, and that tool box is what they have from their agencies that gather the information. So they gallantly suit up, put their armor on, get the shield and get the sword, and they come in like troops from the Roman days to do battle, I'm not suggesting anything, but it puts them in a situation that if you look at the evidence and what you're asking to do when the State, I'm not talking about this particular prosecutor, I'm talking the prosecutor from the prosecutorial function, it puts them in a position to ignore that part of the prosecutorial function that is responsible for safeguarding not only the public but safeguarding the due process and equal protection rights of those that are charged in a democracy with a crime.

The U.S. is not like a place that I've visited courtrooms where some years ago, about six years ago, where the cage that contains the prisoners comes up from the bottom of the floor. And I got a chance to look at that about six years ago with Judge Chiampas through the justice department when we were lecturing to the Supreme Court of the Bahamas and some other judges nationally. And we were talking about the fact that we were down there to try to suggest to them

that maybe they should consider a constitution that had something that may have been the Bill of Rights, it may be a speedy trial. And as we're discussing those concepts it came quickly to my attention that I was dealing with a portion of the world that did not understand due process and equal protection as we do, because I asked the Judge in the courtroom to push the button so I could see the floor come up. Luckily, there were no prisoners when the floor came up. So a cage came in. It was about half the size of the courtroom and in that cage human beings were being held for misdemeanors, sometimes for four or five years because there's no speedy trial.

Until we get the forensics right for the science right, the forensics right, the equipment right, for the agencies that are charged with taking what the first responders gallantly gather, and strict protocols by the way, but they didn't start the strict protocols. You go back to criminal investigation and gathering of evidence and the history of it, it didn't start with the knives, pick it up and put it in the evidence bag and all that. It started very roughly and it stayed like that, and some places in the south it's still like that.

We have a special duty in America in a democracy to have the best procedures we can, not the most perfect, but you have to have something other than, I looked in this microscope, my eye is trained better than your eye. I see something here that makes this look like this came from this so, therefore, it is. And then it's packaged up. And then it's labeled and then it comes to the courtroom. And then since it's there, and it's in a little brown envelop and a big weapon is sitting there, or somebody died, a Judge has to make a decision how it can come in. So the default position is everybody is dressed up, they got the weapon and they've got the little envelops with the bullets, I got to find a way of doing this. No, that's not what it's about.

For prosecutors having to be put into that dilemma, having been a prosecutor, but not here, but certainly in the military, that's not a position that's good to be put in, because you're suited up with a shield and a sword to go in in a case against a citizen or noncitizen with Third World evidence or Third World analysis or Third World procedures. And basically, just what I told the Justice down there in the Bahamas, you can't -- you should, if you want some assistance

from the U.S. you can't do this, you've got to figure out something else. Whether you have a, whether they had a speedy trial act or not, I said you can't leave somebody in jail for five years, if you want U.S. assistance.

We cannot prosecute people because this is just what the lab has. You have to have in the Illinois State Police Lab something more than what I've heard here, I've read about, it is tragic, and it's not just Illinois, it is also across the U.S. The dilemma that we find ourselves in with respect to post-conviction matters, wrongful imprisonment matters, the larger question, due process matters, makes common sense that we've got to do better.

The standards that we rely on, and I'm taking from the brief here, hinge on the proposition, the purpose for which a given methodology is being used at trial in this area. I'm looking at Defense's brief, pages 6 and 7, citing People versus McKown, M-c-K-o-w-n, 236 Ill. 2d 279 at 301-302 (2010). The purpose of firearms examination is using the comparison of individual characteristics to provide conclusions regarding a specific gun if fired a given cartridge or bullet. The relevant scientific field for the purpose

of evaluating general acceptance of a methodology must include all experts whose scientific background and training are sufficient to allow them to comprehend and to understand the process and to form an opinion about it.

Defense's brief, pages 26, 27, People versus Watson 237 -- excuse me, 257 Ill. App. 3d 915, (1st Dist. 1994). The State must demonstrate that a count of votes amongst such experts shows consensus as opposed to controversy regarding the reliability of a particular method. Defense brief at pages 10-11 and 34 through 26. Because of its subjectively and lack of verifiable criteria, the validity of firearms examination can only be assessed through the consideration and evaluation of empirical studies on examiner performance.

As the State -- as the Defense proffers, and then going back to their brief at pages 29 and 30, and this Court happens to agree, thus, the relevant scientific community of experts capable of opining on the legitimacy of firearms evidence, though, it may include practitioners, must also encompass scientists, mathematicians with advanced training in statistics, research methods, study design, and human

perception/decision making, as the latter are best poised to assess the numerous human factors sampling issues and other design aspects which may impact the significance of study results. Defense brief 29 and 30.

These issues, accordingly, force this court to agree with the Defense. The State has failed to satisfy its burden and show consensus within the relevant scientific field. Defense brief at 13 and -- pages 13 through 26.

To back up its position they point out that the sole witness called by State to opine on general acceptance, one Todd Weller, W-e-l-l-e-r, was not credible. That's their suggestion. That's my finding.

A firearms examiner by training relying on the field for his livelihood, that's not the biggest deal, it's a factor Mr. Weller showed little interest in, or knowledge about the field's critics, and has repeatedly mischaracterized studies regarding his field's accuracy to scientific bodies and during sworn testimony. At Defense brief 15 through 21. That's this Court's holding.

Second, if credible, Mr. Weller's testimony alone could not satisfy the State's burden, because

allowing witnesses, whose reputation and livelihoods, and I quote from the Defense's brief, depends on the use of the technique to alone certify in effect self-certify the validity of the technique would undermined the scrutiny of the marketplace of general scientific opinion central to Frye. The opinions of practitioners alone cannot, should be common sense, cannot demonstrate general acceptance across the relevant scientific field. And this is at Defense brief, pages 13, 16, citing Michigan versus Young, 391 N.W. 2d 270, note 24. It's an 1986 opinion.

This court concurs with the Defense that the State failed to present the opinion of a single non-practitioner, in the form of sworn testimony, affidavit, academic publication, in support of the reliability of firearms examination methods: it's reliance on scientific practice, and the opinions of law enforcement agencies cannot carry the day under Frye. The publications it presented they were authored by non-practitioners do not contain any supportive statements regarding the ultimate question of the discipline's, key point here, reliability/general acceptance; and its suggestion that laboratory directors, with advanced scientific degrees and

research background, as well as researchers designing 3D comparison tools for the field support the current methods used to conduct firearms examinations was contradicted by the fact that the only such individuals to provide testimonies or affidavits in this matter did so on behalf of the Defense and in opposition to the reliability of contemporary methods. Defense brief at pages 21 through 26.

In contrast, and, again, this Court's finding the Defense witnesses, affidavits, and other exhibits showed widespread rejection, I say again, rejection, of firearms examination methods from experts across the relevant scientific fields; each and every time neutral research scientists have validated the field's reliability, they have expressed skepticism and dissent regarding its validity. Defense brief at pages 23 through 26 and 30 through 36.

The two most prestigious scientific organizations in the United States, the National Academy of Sciences and the President's Council of Advisers on Science and Technology, have across multiple reports questioned the validity of firearms examination citing among other things that firearms examination evidence lacks, quote, any meaningful

scientific validation, determination of error factors, or reliability testing to explain the limits of the discipline, end quote, as well as the discipline's methods fall short of scientific criteria for foundational validity. Defense brief at pages 31, 32.

Further, experts that even the State and its chief witness Mr. Weller, would include within their definition of relevant scientific community have opined that two little is known about the field's accuracy to draw legitimate conclusions about its validity. And I can go on, but I don't need to, and you'll see why in a moment.

This court contemplated and, in fact, must include for Appellate review the reason why everybody is kind of hyped up about this. I use a term off the street. The reason comes in the name of a Ricky Ross, who in 1989, the Los Angles County sheriff's deputy was wrongfully arrested for and charged with the murder of several sex workers. After two LA Police Department officers erroneously concluded that his gun fired the bullets recovered at the scene of each murder. Prosecutors dismissed the charges against Mr. Ross only after three independent firearm examiners excluded the gun as the source of the relevant bullets. Cite

provided.

Mr. Williams, with respect to a case out of Houston, Texas, he was convicted of a series of murders from 1992, based upon, in part, on the opinion of the Houston Police Department firearms examiner who testified that Williams' pistol and not the State's corroborating witness fired a bullet recovered from a surviving victim of the shooting. Although Williams was never, has never been acquitted during the post-conviction proceedings the government's firearms examiner recanted his earlier testimony and admitted that he had identified the wrong firearm as the source of the bullet. Cite to the case came out of the 5th District. That may have been that post -- that may have been that Rick case of some sort that I didn't know existed up here.

Desmond Ricks. Ricks was convicted of murder in 1992, based largely on the testimony of firearms examiners of the Detroit Police Department, which matched bullets taken from the victim's body to a gun recovered from the defendant's home. The bullets taken from the victim were severely damaged and deformed. But when the Defense hired its own firearms examination expert, he was mysteriously sent pristine bullets and

told that they were, in fact, the evidence bullets taken from the victim. Only decades later did Mr. Ricks and his attorneys discover the subterfuge. And during post-conviction proceedings, multiple independent firearms examiners agreed that the original identification made by the Detroit Police Department was not only incorrect, it was impossible. The evidence bullets had different class characteristics than the handgun recovered from Mr. Ricks' home. All told, Mr. Ricks spent 25 years wrongfully incarcerated before his conviction was reversed. The State declined to retry him. The murder charges were dismissed with prejudice. That came out of a district court opinion out of the eastern district of Michigan just in March 2020.

Skipping over a number of these matters. Going to Leslie Merritt. Four shootings occurred along the I-10 freeway in Phoenix, Arizona in 2015. During its investigation of those shootings the Arizona Department of Public Safety Crime Laboratory matched four bullets from the scene to a handgun reportedly pawned by Mr. Merritt. He was arrested and incarcerated for six -- seven months, until re-analysis by an independent, emphasis, independent firearms

examiner revealed the originally conclusions were misidentifications. The four evidence bullets could not be excluded or identified as having been fired from Mr. Merritt's handgun. Cite to a Federal case out of Arizona.

This is only a portion, the Defense has provided a portion of the cases that it found on point. The Court in its own library otherwise, personal library, has cases that number more greatly than the collection that the Defense provided. The Defense provided a whole lot, but this is not, they did not intend this to mean the whole of what was out there.

There is a great deal of effort by the Defense to point out that this area as practiced and utilized by the Illinois the State Police as with respect to this particular case as we have seen it revealed itself here, does not reach a level that this Court feels matches up with the widely accepted practices that are emerging that give us results that we can hangs lives on, at least.

Let's move to the evidentiary issues. The plain reading of Illinois Rule of Evidence 401, is exactly the same as the Federal Rule of Evidence, but I quote from the Illinois Rule, which uses in its caption

the Definition of Relevant Evidence. The Federal Rule uses the same rule, but it calls it Test for Relevant Evidence. Quite honestly, that's the only difference between the two rules, except for the way that they are written and structured.

Relevant evidence under Illinois 401 means, evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. So if I freeze there, without even considering all the evidence that suggests that in the best possible scenario the evidence would be that, and I'm going to collapse this, this gun cannot be ruled out with respect to these bullets.

In this case I think we have three weapons and we have three sets of bullets, or something close to it. I don't know if that, that proposition or that word, that phrase is being used in this courthouse an others, even makes it pass 401, but let's assume that it does. That moves me to 402.

402 tells us under the Federal Rule, and a little bit different than the Illinois Rule, the Illinois Rule says, relevant evidence is generally admissible, irrelevant evidence is inadmissible. I'm

going to stop right there. Irrelevant evidence is inadmissible. This court gets to determine what irrelevant evidence is inadmissible. This court may, if it had to, do that. The court doesn't really have to. The threshold that the State is going to have on that one after it does 401 it could be interesting.

The rule of the day under Illinois is 403. Under 403, it says, although relevant, that's a leap here. That's a leap. That's Superman jumping on top of the moon from the earth. Although relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of evidence. That's a whole lot.

The unfair prejudice of that rule makes reference to People versus Pelo, P-e-l-o, 404 Ill. App. 3d 839 at page 67 (2010) case. The question is not weather the circumstantial evidence is more prejudicial than probative, instead, relevant evidence is inadmissible only if its prejudicial effect of admitting that evidence substantially outweighs the probative value. Citing People versus Hanson within the People versus Pelo. And that's at 238 Ill. 2d 74

at 102 (2010).

And here's the caveat for those of us who get paid so little in the trial courts as opposed to those that are at the Appellate level or Supreme Court level. A court may exercise its discretion in excluding evidence, even if relevant, if the dangers of unfair prejudice substantially outweighs the probative value.

And jumping down to what's usually used for this proposition is People versus Bryant, 391 Ill. 3d 228 at page 244 (2009). Prejudicial effect in its context admitting that evidence means that the evidence in question will somehow cast a negative light upon a defendant for reason that have nothing to do with the case on trial.

Citing People versus Lynn 388 Ill. App. 276, (2009) case. In other words, the jury would be deciding the case on an improper basis such as sympathy, hatred, contempt or horror. That's not applicable here unless you can think about the horror of being wrongfully convicted. So I would have to ignore all the other basis under 403. This Court's favorite article on 403, in general, comes out of a 1976 Article 49 South California Law Review -- I mean California Law Review -- yeah, South California Law

Review at 220, pages 230 to 243. And it does a great job of breaking down every aspect of 403.

Although relevant, here's the although relevant portion, the prejudice rule presumes that the contested evidence is relevant. In this case that's a problem for the State. If the evidence is irrelevant, it is inadmissible whether or not unfairly, prejudicial, confusing, misleading, or time wasting. We'll get to time wasting here.

The justification for the universal rule, excluding irrelevant evidence is that such evidence does not in any way further proof of issues before the court. So that's another issue this court has to weigh in making a decision concerning, even if I, even if I closed my eyes and decide that Frye mandates a narrow definition, that is, the counting of beans or the counting of jurisdictions, or the counting of Judges who have a stamp that produces rubber that goes into an ink pad, even if I got beyond that then it adds to say, the other part of that famous saying is, there are two important introductory points concerning the meaning of exclusionary segment of the prejudice rule.

First, the rule allows exclusion of otherwise admissible evidence. It does not permit the admission

of otherwise inadmissible evidence because the probative value of the evidence outweighs the prejudicial effect. A rule to the latter effect, in fact, may be a good rule since it would often ameliorate the detrimental effect of the exclusionary rule. That's helpful. Let me skip. The dissection of this has always been a fascination, but let's get to the last part about danger of unfair prejudice. One of the last parts.

The term of prejudice has rarely been defined. It appears to fall within Justice Stewart's now famous dictum about obscenity, although admittedly undefinable, I know it when I see it. A few meaningful definitions emphasize a tendency to exploit the biases and dislikes of the jury. The term prejudice, obviously, does not include all evidence that hurts the case on the side seeking to exclude the evidence. So true. But is there any question concerning the danger of unfair prejudice in this case? This court believes not. Is it substantially outweighed? Although, the huge majority of jurisdictions, and that's at that time back in '76, provide for balancing as the method for comparing probative value of prejudicial value in terms of tests widely vary. Nevertheless, most of them

fairly would put in that weighing of two categories.

The first group requires that the probative value be substantially outweighed. That's the Illinois wording by the prejudicial effect. Therefore, indicating a preference for more than an imbalance of the equities.

The second group provides the probative value need to be outweighed by the prejudicial effect. We are in the substantially outweighed category.

It seems as though 403 was written for this case, because it goes to the issue in that phrase that causes confusion of the issues. The need for the phrase is a separate prejudice rule factor may seem questionable. It appears that the confusion of issues as well as misleading the jury consequence of admitting prejudicial evidence rather than this theme criteria for the Judges to weight against probative value. Yet, cases and statutes continually list confusion of the evidence in a separate value.

I think that in a case where I've had the best sets of Defense attorneys that happen to be employed by the Public Defender's office in the area of forensics and also general prosecution of murder cases, and in my assessment the best prosecutors in that area,

if this was not this team that spent a week with this court, who has some pedestrian understanding of the forensics, I can't fathom this rollout in a jury trial. I just can't fathom it. What do I select, 50 jurors, and count the ones that don't die during the trial of the case over six months? Do we have the ability do that in these courtrooms? I say not.

The Prosecution and Defense in this case have dummy downed the evidence enough for this court to understand. I don't know what happens if they dummy down the evidence as you're taught in trial advocacy for a group of people that have never heard of the word forensic evidence except for in a TV show. I don't know how long that process would last. I don't know how we could pay those people. I don't know how we would give birth to their babies if they're pregnant in the courtroom. I just don't know how that would work. This sounds like a case I'd have to send to a floating Judge or some sort, or a Judge that needs a courtroom.

Misleading the jury. Misleading the jury may sound like some confusing issue, but it's not. While it's true that evidence which confuses the issues is likely to mislead as well, the reverse is not true.

The cases relying slowly on the fact that

reveal a pattern of situations where the evidence has been considered misleading. Generally, the problem is, is that evidence that will, in the court's view, be given too much weight by the jury, although, neither prejudice nor ancillary issues exist.

Well, I think that if we have somebody all dressed up from the Illinois State Police Lab, and they come here, and they've had the job for a certain amount of time, and they can read and write, and they've got title, and they've gone over and they've said that, I've looked at this, and I've looked at that, and that's what it is, if this Defense team will put on the same or more witnesses because it is a murder case to rebut the proposition. That can't work.

Undue prejudice on the Rule of 403 is addressed by the Defense in this brief at page 67. It goes onto page 68. It goes on, and I took out 69. It goes on to 70, but on page 70, that's where I have the issue of what others have done. And these are good others who I highly respect. I don't know, and they have cases that are different than the case here, but in those courtrooms those Judges would not let phrases in that they thought would be unduly prejudice.

So what happened? I think that's where we

got the, Defense went ahead and said, looking for something from this court, which goes, if you can't exclude the firearms evidence outright, join the host of others by going further than merely putting away the most patently, putting away the most patently and verifiably false phrases favored by firearms examiners.

More specifically, in keeping with the recommendation of experts, the available data on the actual impact conclusion language upon jurors and the rulings the courts have concluded that the most robust, in some of the most robust hearings nationwide.

Adopted language proposed by the Defense in its opening statement confined Mr. Parr to discussing class characteristics in opining. Now, this is what the Defense is doing to try to keep this court from doing more, but this court has already taken a leap, I don't know how this court could allow testimony to be taken opining that something could not exclude a specific gun as a source of a particular weapon or a particular cartridge.

What sense does that make? It makes no sense. I don't think it survives 401, I don't think it survives 402, and I surely don't see how it survives 403. That is the Defense trying to gear what they ask

for based upon the tribunal and the situation they find themselves in. And I think it's commendable that they're trying to do something for their client.

The weight of the evidence here in the interest with respect to the issues I've headed to before suggest that I don't know of a way that, if I wanted the evidence to come in, what type of degree of instruction I could give about the evidence which to this court at this point is a big nothing. It's a big nothing. It's just something that philosophically, it's like I got the paper bag here. The paper bag may have had something in it at one point. I don't know, but it's a paper bag. I don't know. I don't know what I could do with that. And the parties in their proceedings as they move down the road, can give me a suggestion. If my opinion gets reversed and it comes back, maybe there will be a bright Judge that can replace me on this.

Now, I am about to wrap up. I am of the hope that there is nothing that I have received so far. And I'm not going to suggest that the State has given me everything, because they didn't have to at this stage, but for what I have heard as the proffers I don't know how, even if I wanted to be sympathetic I don't know

how I could survive a 401, 402 and 403 analysis, and let those matters in.

I will say the following. Due to the unusually complex and technical nature of this five day plus Frye hearing, not the trial, the Frye hearing conducted on these matters, the Defense submitted, and it's Defendant's Post-Hearing, or Post-Frye slash Rule 403 Hearing Brief Against the Admissibility of Firearms Examination Evidence, I'll call it the post-hearing brief. They made a filing of over 110 pages. I think it was 80-some or about 89 pages numbered, and then when you count the appendixes to that I think it came out to be 110 pages in length. That 110 pages included 397 highly detailed footnotes, in rough calculations the 397 highly detailed footnotes probably included well over a thousand references, to hearing records, proofs, journal articles, scientific standards, scientific studies from private groups and from government agencies, technical references, case law, the complete glossary, and the cases that are beyond the cases I read into the record, which is just a sampling to point out how important these matters are.

So the court, this court has been working on this, probably, started working on it when the case,

when I saw the first motion was filed by the Defense long ago. It was a motion for the Frye hearing. And subsequently, as events rolled in the court went from hard copy to more and more other copies. The court has gone through this stack by both the Defense and by the State. At this point I've gone through, the parties even last, late last week when I was without my living room copies of everything and wanted to spend some four or five hours that evening to followup on something else. They were nice enough to get together, both sides, and give me what I wanted.

I can't imagine, as I said before, how this material would translate in front of a jury or even a Judge, for that matter. I cannot imagine, more importantly, the State, the Defense shows this to the State, and the State responded to it, and the State responded to it in a champion fashion, I can't imagine, I know civil law firms in this city, I came from a 300 lawyer firm at one point in my career in this city, I don't know how many associates, partners, paralegals, secretaries, that even the most well-healed firm in this town on the civil side would use or could gather to put into a case like the Public Defender's office and the State's Attorney's office did in this case.

I will say there is no private attorney in the City of Chicago, that I'm aware of in my few years of practice, that could amass this level of materials, and it's not filler materials, I've gone through these cases. I've gone through these studies, I went through the studies and the references as I was going through it and got bogged down by the almost thousands of references, then I had to go back through the briefs again.

So I don't know if this level of science coming out of the Illinois State Police Lab with a zealous Defense team, who is mounting every logical and legal and forensic argument against it, how can somebody that hires one of our solo practitioners or one of our offices that have two guys to come over here to see me, and then they go downtown and do a DUI? I mean how do they get involved in a case like this? Do they have the ability to gather this type of team? How do the State's Attorney's office, I have two State's Attorneys, and the numbers don't matter, the two State's Attorneys here, there is no deficit in the State's Attorneys keeping up with what the Defense put in.

If this was based upon cross-examination and

minimizing from an advocacy point of view, without really listening to what the cross-examination is in great detail, with all the confidence in the world the lead for first prosecutor here after I heard all this to get up and say, well, it's really no big deal you know, and for part of my brain is like saying, well, wait a minute, is it, and then I have to go back. So that's a reflection on the prosecutor, not misleading, but doing his job. But if he is prosecuting, if these two prosecutors are prosecuting the case, and we don't have, basically, the whole of the Public Defender's office putting this together and the resources, I can't imagine the price tag. Not even counting, just the experts that were marshaled in to the City of Chicago, in the Cook County courtroom, there's no law firm that can do this.

But anyway, so because of that, this matter, this is not the end of the road for the State. I've given the State a whole lot so the State can be critical of what I put here. And I am familiar with both of these Assistant State's Attorneys. And they are going to go back and they're going to marshal behind seeing all of the resources they can find, and they might, perhaps, do a motion for reconsideration or

not, or they may just take it up to the Appellate Court.

Whatever they do is going to be big, but because of the, well, because of the timing of this matter, and the important issues here, this court in its discretion is going to incorporate by reference the complete brief entitled "Defendant's Post-Frye/Rule 403 Hearing Brief Against the Admissibility of Firearms Examination Evidence" as a portion of this ruling.

Likewise, and you all do what you want to on the Appellate side otherwise, but this is the encyclopedia that my summary, my brief ruling today references. Likewise, in order to make sense out of it, I'm also going to incorporate by reference, the post-conviction -- I mean the Post-Hearing Brief, separately titled by the State. The difference is this though. And this is not an insult to the State. The State's brief is not being incorporated by reference with respect to the content of it being related or part of this Court's decision. It's being incorporated so the Appellate Court without going any further, because they're going to get all the fancy stuff, it is incorporated so they can see at first glance what the Defense was referring to, because I am incorporating

for substantive purposes the Defense brief. The State's brief is being provided, not incorporated by reference to make since of certain references to their brief.

So to be clear, and this has nothing to do with the State's Attorneys. It's a well-written document. This is part of the evidence of the ruling, these are my rulings, these are part of my ruling in this matter. It's attached thereto.

Conclusion. We are a civilized society. We are responsive to the democratic experiment in governance, which is called these United States of America. The national ethos of America is that we have to be the leader concerning these matters. We can't fall short on the duties of everybody on the criminal -- levels in the criminal justice system by their assignment, not by their status. First responders have to collect when collection is necessary. They have to stop the bleeding when the bleeding takes place on the street. They have to make the scene safe. Police officer first responding have to follow the constitutional safeguards with respect to those areas in which they go into whether it's a briefcase, a digital phone, or simply safeguard those

matters, get search warrants concerning the same.

The mere stop of the citizen or non-citizen on the street has to be done with respect to the constitutional protections that are accorded to citizens and non-citizens, both under the U.S. Constitution, as well as the Illinois Constitution.

The process is that the police department must follow guidelines that guarantee from the place where the evidence is acquired a chain of custody that is going to be reasonable and necessary to secure the lack of a change in those items, whether it's a computer, a gun, a bomb, so they can get it to the proper agency to make the proper forensic evaluation.

The proper agency receiving those items has to be, and I emphasize has to be equipped in a community with the type of gun cases we have and the type of murders we have, murder charges we have, shootings we have, they have to be ready for prime time.

The Illinois State Police Forensic Section as it relates to firearms identification is not what the taxpayers, it's not using taxpayers money in a way to give the results, to give the process that we need to charge for the police to charge these cases, for the

prosecutor to take these cases and get convictions.

They're also not giving us a product to guarantee the due process rights of citizens that are presumed to be innocent when law enforcement officials arrest them and take them before places like this for us to make a decision. This is not, the Illinois State Police Laboratory, first of all, the problem with all of, many of our laboratories nationwide is they're police laboratories. So by definition that's not the Illinois State Police problem, but by definition the structure of forensic examination in these United States is problematic from the getgo.

Even the most prestigious laboratories, including the FBI laboratory part of which is in Quantico, a large part of which is in D.C., and other places. They in their most serious cases send out things for the evaluation. When they didn't, they got criticized by their own inspector generals. The ATF, the ATF laboratories were a mess and in some cases still a mess.

We are beyond what we used to have in Chicago, most of you all were not born, I believe, when the Chicago Police Department had a lab. They did what -- well, okay. Maybe I'm not sure. But anyway, I

know I was. We had the Chicago Police Department with a police lab. And then of course, they we say, okay. This is not working. We need an Illinois State Police Lab. We have it.

Now, we're at this point that there has to be some collaboration, there's got to be some government investment in a reliable, transparent, non-law enforcement agency being responsible for this.

The bias, I didn't talk about the bias with respect to a police lab doing something is biased that the State, Defense pointed out in this litigation. We don't have a wall that protects the lab personnel from knowing what's going on with respect to what's being brought in. Whether officially or unofficially the homicide detective is going to come in and tell the lab, yelp, we need this expedited, or the prosecutor more than likely the homicide detective, we need this expedited. This is a double murder. This is, we've got five guns here. These bullets came from this scene. No. That's not what happens forensically.

Forensic examination is, give me the stuff. I put the pieces together. It's like being in the intelligence community. Give me the raw intelligence and I figure out the job. It's more important though

than the intelligence community because you're dealing with the due process rights of citizens across these United States and people who are non-citizens. And if you get it wrong, and you give them to Judges who get it wrong, and you give it to prosecutors who get it wrong, people go to jail, in some States people die.

One day in an Illinois State prison is worth a million dollars for people to get stuff right. Guilty need to go away with proof beyond a reasonable doubt. The guilty need to suffer the time of their being there. I don't mean they need to be tortured, but they need to be taken off the street. Citizens need to be safeguarded. If we talk this talk, we need to walk this walk, and don't give prosecutors who cannot, they cannot create pottery out of sand with no water. They can't do it. They're gallant, they do what they can. They try to carry the flag, they can't.

In closing, I'm going to give this, I'm going to end this ruling with an edited version of a Marine Corp saying, since I spent 20 years in the Marine Corp. That saying has been modified to meet the standards, community standards for public decency. And the standard goes as follows, and the saying goes as follows. And I had to memorize this as a Marine, but I

can't recite what I had to memorize, because it may be viewed by some as obscene.

So this is my reflection on IRE 401, and the 402 analysis, and the 403 analysis. Here is a rifle, here is a gun, here is some bullets, I know not from wince they come.

This is this court rulings only these matters. I'm ready to set this matter for a status date, State.

Madam Court Reporter, in a couple of days -- tell how long is it going to take you do the transcript. If you've got to get some assistance, get some assistance. Two or three, two weeks or so.

And State knowing that it's going to take two or three weeks or so, I'm prepared at this point to, why don't you get your 30-day date. I'm fully prepared to give a period of time after that date. Take your 30-day date. If it's impossible for you to do something in the 30-day date, or you may have some connections on the Clerk, you can just run down there and say, this is what we have. Do what you want to do. I'm prepared to give you whatever time you want. Pick a date when you're available, and one of the six or seven Defense attorneys will be here.

MR. WALLER: Judge, how is February 9th?

THE COURT: It's a Zoom date, but for the purpose that you're -- you know what, it might come to something that you want to say.

MR. WALLER: How about the 8th?

THE COURT: Yes. February 8th, yes. That's a Wednesday. I'll see you here. Now, if it's substantive and it's beyond you know ten minutes or so, given our morning call, if you want to curse me out in another language, we'll put it on the 1:00 call, not the 9:30 call so.

MR. WALLER: Surely.

THE COURT: So you can make a decision. Right now I'm putting you on the 9:30 call. If you even want to come in at 1, I don't have a problem, because I might have motions in the afternoon, but this is a priority case. And if you're coming in just to get the continuance, I can do it on the Zoom.

MR. WALLER: Right, Judge. I mean if we have a file -- I don't know that if we file something, I'm assuming that the Defense is going to want to read it, and I don't think any substantive thing is going to happen on that day.

THE COURT: I don't know what you can do by 2/9,

but get another extension, okay. And I'm not intending for this to be viewed as an unfair proceeding. I'm tasked with doing what I do. Sometimes I don't like necessarily what I do. And again, I emphasize, because I know how the world is, this ruling has nothing to do with you and your office at all. I mean there is no, there's nothing but heavy duty advocacy from you and Mike Pattarozzi. And as I said, I'm marveled at the cross-examination that you exhibited in this courtroom and your knowledge of the forensics from just without any notes was, was amazing. So you're going to get the time to do what you have to do.

MR. WALLER: Thank you, Judge.

THE COURT: And there's a whole bunch of Appellate Courts and Supreme Courts that will you know look at this and they may throw it right through this window and hit me in the head with it, and that's okay, because I don't have all their staff. I put you down for the morning.

MR. WALLER: Okay.

THE COURT: Tell the room prosecutors and the Defense that you need it on the afternoon, and we'll do it.

MR. WALLER: Sure, Judge. Thank you.

THE COURT: Okay. So that's that. Madam Court Reporter, the transcript when it's ready I'm going to attach the two documents. I'll give them to you to attach. I'm not going to give them to you today.

MS. DOMIN: Judge, if I may just say on behalf of my client, my client really wants to, I understand the Judge's ruling and the ramifications for the State and filings, but my client really wants to reserve a jury trial date.

THE COURT: Oh, really, okay. All right. I don't have that book here. And I really, I really appreciate his flexibility with respect to these matters. I can't set a date today.

MS. DOMIN: Okay.

THE COURT: I mean if you want to file a demand you can do that, if that's what he wants to do, but I have found that just like under 401, 403 balancing of the issues equities play out. That's all I can tell you.

MS. DOMIN: And I appreciate that, Judge.

THE COURT: Oh, I know you do. I know you don't --

MS. DOMIN: Judge, I just wanted to put my client's position on the record.

THE COURT: Well, he can take his position -- he can take his position if he wants to, but the State has an absolute right, and I'm going give them that right, and I'm not going to require that they stay up and do -- this is not his only case, it's part of his other case, but you know, that's good to know. When we go back, when we come back to begin on 2/9, we'll see where we are with that. And here's the other thing, if the Defense wants to be -- put a demand on this situation, I am aware of us having three brand new Judges in this building, and I like all of them. In fact, I like them so much that I have all this stuff that can easily go to those jurists. You know I've already had mine. This is the second big case I've had. I had the Jackie Wilson case. This was even more work than the Jackie Wilson case, which was 20-some boxes because this is highly, this is very specific. So I don't want him to be delayed in this situation you know. And if you want to play that, I got some folks.

Also, I understand Judge Sacks is winding down some of his cases, and I think that you know there's some colleagues there that are more senior than me that like to try cases, and they could take this matter. And the bright colleagues that just got here,

they're good. But Judge Sacks is my go-to guy.

MS. SHAMBLEY: Judge, no, I think we'll stay here.

THE COURT: No, no, no. It's no problem.

MS. DOMIN: Well, Judge, clearly we --

THE COURT: No, no, no --

MS. SHAMBLEY: Judge, we'll stay here. There's no demand.

THE COURT: There's a lot of good people. We've got some retired people we can bring back, but, anyway, thank you. You got your time.

MR. WALLER: February 8th, right, Judge.

THE COURT: Yes, sir.

MS. SHAMBLEY: 8th or 9th?

MR. WALLER: Because you said 9th at the end.

THE COURT: Yes, 9th. Just leave it for in person.

MR. WALLER: For the 9th.

MS. DOMIN: 8th.

THE COURT: 8th, 8th. I'm sorry, the 8th. The 8th is a Wednesday.

MS. SHAMBLEY: Yes, the 8th is in person. Okay.

THE COURT: That's in person, that's in the morning. And even though it's here, if you want to switch it to 1:00 o'clock because you've got a lot to

say, it doesn't matter. Whatever you want to do.

MR. WALLER: Thank you, Judge.

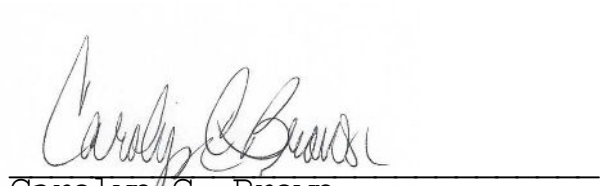
THE COURT: Court's in recess.

(The above-entitled cause was continued to February 8, 2023.)

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

I, CAROLYN C. BROWN, an Official Court Reporter for the Circuit Court of Cook County, County Department - Criminal Division, do hereby certify that I reported in shorthand the proceedings had at the hearing of the above-entitled cause, and that the foregoing is a true and accurate transcript of the proceedings had.



Carolyn C. Brown
Official Court Reporter
CSR No. 084-003848
Circuit Court of Cook County
County Department - Criminal Division

Dated this 19th day
of January, 2023.