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

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	No. 06 CR 6288
	)	
v.	)	
	)	
JERMAINE WALKER,	)	
	)	
Defendant.	)	

VERIFIED PETITION FOR CERTIFICATE OF INNOCENCE PURSUANT TO 735 ILCS 5/2-702

Now comes the Defendant/Petitioner, Jermaine Walker, through his attorneys, Orum & Roth, LLC, for his Verified Petition for Certificate of Innocence Pursuant to 735 ILCS 5/2-702 states:

I.
INTRODUCTION

The Illinois Legislature enacted section 2-702 of the Code of Civil Procedure so that an individual who has served time in prison but whose conviction has been set aside may apply for certification from the State that the individual is innocent of the underlying crime. This statute enables a person who has been imprisoned unjustly to apply for assistance and redress from the State. Since actual innocence rarely can be established with absolute certainty, section 2-702 of the Code of Civil Procedure mandates that a Certificate of Innocence be issued where the petitioner can establish factors relating to the individual's incarceration and facts that support innocence of the crime pursuant to which the individual was incarcerated *by a preponderance of the evidence*. Such evidence, along with the prior reversal of the conviction or dismissal of the charges by the State, ensures that deserving individuals will benefit from the provisions of this

legislation.

Jermaine Walker is such a deserving—and innocent—individual. Mr. Walker was sentenced to 22 years in prison based on a conviction for possession of a controlled substance with intent to distribute within 1,000 feet of a school. He served over 10 years in prison. The Office of the Cook County State's Attorney conducted an investigation into allegations that a Cook County Investigator and Chicago police officers who testified at his trial had lied under oath in order to wrongfully convict Mr. Walker. Based on the State's Attorney's investigation and conclusion that its investigator and the police officers lied under oath in order to convict Mr. Walker, the State's Attorney requested that this Court dismiss the charges against Mr. Walker.

This Court, in dismissing the charges and vacating the indictment against Mr. Walker, found that it was outrageous that the States Attorney's witness and the police officers lied at trial, and that a terrible injustice had been done to Mr. Walker. Said the Court:

> It's really outrageous that police officers and an officer of the State's Attorney's office swore under oath here and actually backed it up with photographs that didn't even fit the relevant situation that we had in your case and, you know, on behalf of the entire system, I am so sorry that this has happened to you, and we hope that it, you know, does not ever happen again.
>
> I have been on—I was a State's Attorney for 14 years, a judge for 21 years, and this has never happened. I have never had to do this, and I am sickened by the fact that I have had to do it at all since I have been here. And I know that from the very moment that I saw the affidavit that this camera did, in fact exist, that I had everybody give it their utmost attention so that we can get it resolved and so that we could come to the just outcome and that you could be released.
>
> So at this time, the defendant's conviction will be vacated.[1]

For the reasons more specifically set forth in this Petition, Jermaine Walker requests that this Court find and certify that he is innocent of the crime of which he was convicted, under the provisions of section 2-702 of the Illinois Code of Civil Procedure.

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[1] See Exhibit "I" at page 8.

II.
JURISDICTION FOR PETITION

This Petition for a Certificate of Innocence is brought pursuant to 735 ILCS 5/2-702, which states in relevant part as follows:

> (c) In order to present the claim for certificate of innocence of an unjust conviction and imprisonment, the petitioner must attach to his or her petition documentation demonstrating that: (1) he or she has been convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and (2) his or her judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either he or she was found not guilty at the new trial or he or she was not retried and the indictment or information dismissed; or the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois; and (3) his or her claim is not time barred by the provisions of subsection (i) of this Section.
>
> (d) The petition shall state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State of Illinois, and the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction. The petition shall be verified by the petitioner.

III.
STATEMENT OF FACTS

On the night of February 21, 2006, Chicago Police Officer Eric Reyes, Sebastian Flatley and Sergeant Michael White were working as a tactical team. *See*, Trial Transcript, Exhibit "A" hereto at pages N-1- AA-25. At approximately 8:30 p.m., the officers were all in plain clothes traveling in an unmarked car in the area of North Sheridan Road in Chicago. Exhibit "A", at pages O-17 – O-21.

Around that time, the Petitioner, Jermaine Walker, was driving his car, a white Oldsmobile. Jermaine Walker's brother, Russel Walker, in the passenger seat. Exhibit "A", at

page O-23. Jermaine Walker's car was registered in Tennessee, as at that time, Mr. Walker was a student at Fisk University located in Nashville, Tennessee. Exhibit "A", at page O-26.

Mr. Walker drove his car northbound into the alley between a J.J. Peppers store located at 4800 N. Sheridan Road and the Lawrence House located at 1020 W. Lawrence, Chicago. Exhibit "A", at page O-22. Dewey Brown walked to the alley at that time as well. Exhibit "A", at page O-24.

The officers turned west bound on Lawrence Avenue and followed Mr. Walker's vehicle into the alleyway, close to the alleyway's entrance, where Dewey Brown was standing next to the passenger side of the white Oldsmobile. Exhibit "A", at page O-26. As they pulled behind Mr. Walker's car, the officers claimed at trial that they saw Dewey Brown tender an unknown amount of money to Russell Walker in exchange for an unknown item. Exhibit "A", at page O-26.

Parked behind the white Oldsmobile, the officers exited their vehicle as Dewey Brown ran northbound in the alley. Exhibit "A", at page O-27. Officer Flatley chased Dewey Brown through the alley. Exhibit "A", at page O-27. He caught Dewey Brown in the alley. Exhibit "A", at page O-33.

After exiting his parked car in the alleyway, Chicago Police Officer Eric Reyes walked towards Mr. Walker's car which had stopped within a couple of car lengths from the entrance of the alleyway. Exhibit "A", at page O-28. At all times, Walker's driver's side window was closed, as it was a cold night in February. Officers Reyes requested that Jermaine Walker provide his identification and vehicle registration. Mr. Walker rolled down the window a sufficient amount to allow Walker to provide Reyes with the requested information. Reyes then demanded that Walker exit the vehicle. Walker initially refused. Mr. Walker eventually exited

the car, and Officer Reyes punched him in the stomach.

Walker was thrown to the ground, and was punched by Officer Reyes. Walker began to yell that he was being abused. He also yelled that he knew his constitutional rights. As he did so, Reyes and then Flatley became angrier and Walker was kicked and hit by Reyes and Flatley as he lay on the ground.

Walker knew that there was a security camera mounted on the wall of the Lawrence House pointing directly at the driver's side of his car, where Walker was arrested and where he now lay on the ground being hit and kicked by Reyes and Flatley. Walker yelled out, in words or substance, "what you guys are doing is wrong...look you are on camera and I am going to sue you for brutality." The officers continued to kick him. He was taken to the police station where he was separated from all other individuals, and handcuffed to a chair in a dark utility closet.

Reyes and Flatley fabricated a story that Jermaine Walker had thrown out a golf ball sized object from the driver's side of the car, which the State of Illinois claimed contained cocaine. Flatley also later planted crack cocaine on Walker under the pretext of a custodial search.

Prior to trial, the Office of the Cook County State's retained Thomas Finnelly as an investigator. Finnelly is a former Chicago Police Officer. Exhibit "A", at page O-78. After retiring from the Chicago Police Department, he became an investigator for the Office of the Cook County State's Attorney. *Id.* Finnelly, in his capacity as an investigator and employee of Cook County, took photographs of the alley where Walker was arrested and where the brutality occurred. Exhibit "A", at page O-79. Finnelly deliberately took photographs of the alley at issue so that the security camera was obscured by a fire escape and also took photographs of the alley

in such a way that the security camera was not visible in the photographs.[2] The photographs were taken in that manner for the purpose of intentionally implicating Walker in a crime that he did not commit, and to cover up the police brutality. Exhibit "B" at pages 8-12.

The State prosecuted Jermaine Walker on a charges of possession of a controlled substance with intent to deliver one or more grams, but less than fifteen grams of cocaine within 1,000 feet of a school and the charge of possession of a controlled substance with intent to deliver one or more grams, but less than fifteen grams of a substance containing cocaine, specifically more than 5 grams. Exhibit "A", at page P-120.

Jermaine Walker at all times proclaimed his innocence. Walker proceeded *pro se*, and demanded a speedy trial. Exhibit "C", at page A-6. Mr. Walker was at all times was incarcerated prior to the time of the trial in his criminal matter. Walker requested that the court appoint an investigator so that he could obtain photographs of the security camera in the alley and take statements from persons at the building where the camera was located, who may have witnessed the arrest. The Court did not grant that request. Exhibit "C" at pages H-4.

Mr. Walker was at all times both before and during trial adamant that he was innocent, that a security camera existed in the alley which would have proved his innocence, and that the security camera would show that he was brutalized by Officers Reyes and Flatley. The central issue at Walker's criminal trial in his defense was whether there was a security camera in the alley, which would have shown that Walker was innocent as he never threw any drugs out of his closed window, and that he was brutalized by the police. Walker cross-examined Investigator Finnelly, Officer Reyes and Officer Flatly as to the existence of the security camera in the area which would have shown that he did not throw anything out of the window, much less drugs, and

[2] See, Amended Post-Conviction Petition, Exhibit "B" hereto at page 8-12.

that he was beaten by the Officers. Exhibit "A" at pages p, O-72, O-76 and O-141; Exhibit "B" at pages 8-12. Finnelly, Reyes and Flatley all lied under oath and testified that there was no security camera in the alley. Exhibit "A" at pages O-72 and O-141; Exhibit "B" at pages 8-12. Reyes lied under oath that Walker threw drugs out of his window. Exhibit "A" at pages O-28 – O-29. Flatley also lied under oath that Flatley found crack cocaine on Walker. Exhibit "A" at pages O-130 – O-133.

The State's Attorneys prosecuting Jermaine Walker, based on the perjured testimony of the Investigator and Police Officers, specifically argued in her closing argument as follows:

> There was a camera somewhere in the alley? Ladies and gentlemen there is absolutely no evidence of that. Witness after witness after witness took that stand and told you there is no camera. You have pictures of the alley, including close-ups that show you there is no camera. If there was a camera, do you think this defendant and his brother would be stupid enough to deal drugs in front of it? Come on. Don't you think that they would pick another alley? Get real. The police officers planting drugs? That's the most baffling of all.

Exhibit "A" at page P-104.

On June 2, 2006, based on the perjured testimony at trial, the jury found Jermaine Walker guilty of the charges of possession of a controlled substance with intent to deliver within 1,000 feet of a school and possession with intent to deliver more than five grams of a controlled substance. Exhibit "A" at pages O-92 – O-93.

Jermaine Walker filed a motion to reconsider the judgment entered against him. Exhibit "C". That motion argued that a security camera existed in the alley, that the security camera would show that Mr. Walker did not possess drugs, and that the police brutalized him. The motion also contended that the investigator and officers lied under oath at trial in order to wrongfully convict Mr. Walker. The Court denied that motion to reconsider. Exhibit "A" at page AA-23 – AA-24.

On March 12, 2007, The Court sentenced Jermaine Walker to 22 years in prison based on the Class X felony conviction of possession of a controlled substance with intent to deliver within 1,000 feet of a school. Exhibit "A" at pages AA-19 – AA-22.

Mr. Walker also filed a motion to reconsider the judgment on April 16, 2007. Exhibit "D". That motion argued, *inter alia*, that Mr. Walker should have been appointed an investigator. Mr. Walker also filed a motion for new trial on June 30, 2007. Exhibit "E". That motion for new trial again argued, *inter alia*, that Mr. Walker should have been appointed an investigator. The motions were denied. See Exhibit "D" and Exhibit "E".

Jermaine Walker appealed his conviction. The Cook County State's Attorneys argued on appeal, based on the perjured testimony, that since it was established at trial that no camera existed in the alley that the trial court correctly denied Walker the right to an investigator to take photographs of a security camera that did not exist. In the appellate court opinion, the appellate court noted that the State presented evidence at trial that overwhelmingly supported a finding that no such video camera was present in the alley. As the appellate court held: "[a]bsent some support in the record for the defendant's allegations, we find that a remand in this case would likely be a meaningless exercise regarding the appointment of an investigator. Exhibit "F" at page 7.

Mr. Walker filed a motion for post-conviction DNA testing. Exhibit "G". The Cook County Public Defender also filed an amended motion for post-conviction DNA testing. Exhibit "H". The motions argued that Mr. Walker was never in possession of any of the controlled substances that Officer Reyes claimed was thrown from Walker's car and that Flatley claimed was found on Mr. Walker during a custodial search. In fact, Mr. Walker was never in possession of any such drugs, and that DNA testing would prove Walker's innocence. The State's Attorney

Well obviously, there were witnesses that were sworn under oath that testified and presented evidence corroborating their testimony. And when someone has taken an oath to tell the truth and testifies, there is presumption they are going to tell the truth. Obviously, we have found out that that does not occur. A severe injustice was done here. But everybody in the court system was relying on the information and the photographs that were sworn to as a truth, and it is very disturbing and upsetting, especially as a judge, to be involved in a system where an officer, especially an officer of the court, would come in and swear under oath to something that was not true. That's a terrible thing and very disheartening to find out that someone has done something like this.

* * *

Well, Jermaine, you are very kind in this horrible situation that you have been put in. There's no words that can explain how sorry I am that the justice system failed in this case. And we worked very hard to try to ensure that the truth comes out and, you know, it just took so long for it to come out.

It's really outrageous that police officers and an officer of the State's Attorney's office swore under oath here and actually backed it up with photographs that didn't even fit the relevant situation that we had in your case and, you know, on behalf of the entire system, I am so sorry that this has happened to you, and we hope that it, you know, does not ever happen again.

I have been on—I was a State's Attorney for 14 years, a judge for 21 years, and this has never happened. I have never had to do this, and I am sickened by the fact that I have had to do it at all since I have been here. And I know that from the very moment that I saw the affidavit that this camera did, in fact exist, that I had everybody give it their utmost attention so that we can get it resolved and so that we could come to the just outcome and that you could be released.

So at this time, the defendant's conviction will be vacated.

A copy of the transcript of the March 25, 2016 hearing is attached as Exhibit "I", at pages 7-8.

IV.
ARGUMENT

Jermaine Walker Has Met The Requirements For A Certificate Of Innocence.

In order to obtain a certificate of innocence, a petitioner must prove the following elements by only a preponderance of the evidence[3]:

1.) That the petitioner was convicted of one or more felonies by the State of Illinois and

[3] *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 9, 984 N.E. 2d 540, 542

subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

2) That the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; and

3) That the petitioner's claim is not time barred by the statute of limitations contained within the Act.

Also, according to the statute:

> [t]he petition shall state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State of Illinois, and the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.

735 ILCS 5/2-702(c)-(d).

Jermaine Walker has established all of the elements required to obtain a Certificate of Innocence.

A. Walker Was Convicted Of One Or More Felonies By The State Of Illinois, Was Subsequently Sentenced To A Term Of Imprisonment, And Has Served A Part Of His Sentence.

Walker was convicted at trial of two felonies. He was sentenced to a term of 22 years of imprisonment. Mr. Walker was initially incarcerated in February 2006, and was released from prison on March 25, 2016 upon this Court granting the State's motion to dismiss the charges and to vacate his indictments based on the prosecution witnesses' perjured testimony. Mr. Walker served over 10 years in prison at the time of the charges were discussed on March 25, 2016.

B. The Charges Against Mr. Walker Were Dismissed, And The Indictment Against Mr. Walker Was Vacated.

The charges against Mr. Walker were dismissed and the indictment vacated in the Orders entered on March 25, 2016. See Exhibit "J".

C. The Petition Is Timely Under The Applicable Limitations Period.

Section (i) of the Act, 735 ILCS 5/2-702(i), provides that any petition to obtain a Certificate of Innocence must be filed within two years after dismissal of the charges. Mr. Walker brings this Petition within that two year period, as the charges were dismissed on March 25, 2016.

D. This Petition Sets Forth Facts Sufficient To Find That The Petitioner Is Innocent Of The Offenses Charged In The Indictment, And That The Petitioner Did Not By His Own Conduct Voluntarily Cause Or Bring About His Conviction.

(1) This Petition Sets Forth Facts Sufficient to Find that Mr. Walker is Innocent of the Offenses Charged in the Indictment.

As an initial matter, the indictment no longer exists. The Office of the State's Attorney dismissed the indictment on March 25, 2016. In the event that Mr. Walker must show facts sufficient to find by a preponderance of the evidence that he is innocent of the charges in the now dismissed indictment, this Petition certainly meets that requirement.

Mr. Walker has at all times proclaimed his innocence both before trial, during trial, and again after trial. Mr. Walker invoked his right to a speedy trial. He stated, in his opening statement at trial, that the officers fabricated this case against him in order to cover up their "negligence and their wrongful arrest." Exhibit "A" at page P-41. That is exactly what happened.

It is uncontradicted that Investigator Finnelly deliberately took photographs that did not show the cameras in the alley where the arrest occurred. It is also uncontradicted that Investigator Finnelly lied under oath at trial, and testified that cameras did not exist in the alley. It is uncontradicted that Officers Reyes and Flatley lied at trial when they testified that there was no cameras in the alley. In fact, this Court specifically ruled that these witnesses lied under oath

at Mr. Walker's trial and that their perjured testimony was "outrageous."

It is therefore not surprising that Officers Reyes also lied when he testified that Walker threw an object out of his window that the State offered evidence was cocaine, and that Officer Flatley lied when he testified that he found crack cocaine on Mr. Walker. In fact, Mr. Walker, as established in this Petition, was never in possession of possession of any drugs before or at the time of his arrest.

This Petition establishes that Mr. Walker was never in possession of any illegal drugs the day at issue. The State has never offered any evidence that Mr. Walkers' DNA was on any of the drugs at issue.

The State's Attorney argued in the State's closing argument at trial: "If there was a camera, do you think this defendant and his brother would be stupid enough to deal drugs in front of it? Come on. Don't you think that they would pick another alley? Get real." It is beyond dispute, however, and now admitted by the Office of the State's Attorney, that there was a camera in the alley as Mr. Walker had at all times maintained. Therefore, Mr. Walker was not, as the State argued in its closing argument "stupid enough to deal drugs in front of [the camera]." In fact, he did not deal drugs or possess drugs at all. The only evidence on that issue is the testimony of the officers who lied at trial. Mr. Walker's statements in this Verified Petition, made under oath, directly contradict the State's testimony which this Court has already ruled was perjured, was "disturbing and upsetting," and was "outrageous" testimony. This Petition has established facts sufficient to find by a preponderance of the evidence that Mr. Walker is innocent of the charges in the indictment.

(2) Mr. Walker Did Not by His Own Conduct Voluntarily Cause or Bring About His Conviction.

Mr. Walker certainly did not confess to any crime, as he has vehemently proclaimed his innocence. Mr. Walker did not take any action to voluntarily cause of bring about his conviction.

V.
CONCLUSION

Mr. Walker has met all of the requirements for the issuance of a Certificate of Innocence. Mr. Walker accordingly requests that this Court enter a Certificate of Innocence, and order the Clerk of the Court to send it to the Court of Claims in accordance with the Statute. A draft Certificate of Innocence is submitted with this Petition as Exhibit "K" hereto.

Respectfully submitted.

By: _____
Attorney for Jermaine Walker

Mark Roth
Orum & Roth, LLC
53 West Jackson Blvd.
Suite 1315
Chicago, IL 60604
(312) 922-6262
mark@orumroth.com

VERIFICATION

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Jermaine Walker (signature)

April 12th, 2016 (date)

Mailing address for purposes of notice:

Jermaine Walker
c/o Orum & Roth, LLC
53 West Jackson Blvd.
Suite 1315
Chicago, IL 60604
(312) 922-6262

and

Jermaine Walker
c/o Orum & Roth, LLC
181 West Madison
Suite 4600
Chicago, IL 60602
(312) 922-6262

EXHIBIT A

of District 23 on that date?

A That's correct.

Q And what shift were you working on that date?

A We were on the third watch. Basically, we started at 1800 hours which is 6:00 p.m. to 2:30 a.m.

Q On that date, were you working with any partners or a team as part of a tactical officer?

A With a team.

Q And who were you working with on that day?

A There was Officer Daly, Officer Flatley and Sergeant White. We were actually riding around together, the four of us, on that particular night.

Q And on that night of February 21, 2006, were each of you wearing civilian dress?

A That's correct.

Q Were you wearing anything that identified you as a Chicago Police Officer?

A Yes.

Q What were you wearing that identified you as a Chicago Police Officer?

A Whenever I was in civilian dress, I would

always wear this ID and badge holder, and my badge would usually be here. Right now, it's on my belt. Normally, it's here, showing, so it would always be in plain view.

MS. SHUTTER: I would ask the record to reflect the witness is pointing to the badge and the ID case he has around his neck.

THE COURT: That will be so indicated.

MS. SHUTTER: Thank you.

Q Officer Reyes, on that night, were you working or assigned to a particular mission?

A We were assigned to the dock area which is, basically, an area designated in the district where you concentrate on the narcotics and gang activity in that area. So, basically, we were assigned from Wilson up to Lawrence, from Clarendon approximately to Broadway, to concentrate, basically, on the problem at hand that was being addressed.

Q Officer Reyes, you mentioned that evening you were working with Sergeant White, Officer Flatley, as well as Officer Daly driving in a car, is that correct?

A Correct.

Q Who was the driver of that car?

A I was.

Q Do you recall what kind of car you were driving?

A It was a department issued Crown Victoria.

Q Do you recall where your other team members were seated inside the car?

A Officer White was seated in the front passenger seat. Officer Daly was seated directly behind me, and Officer Flatley was seated behind Sergeant White.

Q Approximately, around 8:30 that evening, Officer Reyes, did you receive any type of particular complaint?

A Yes, we did.

Q How did you receive this complaint?

A We were driving, at which time we received a hand waver, and it was a citizen on the side of the road. So, we pulled over. At this time, the citizen had some information that they wanted to give to us in regards to narcotics sales.

Q Did you know who this citizen was?

A No.

Q And where were you when this citizen had you flagged down?

A Approximately like 4700 north on Sheridan. That's Leland and Sheridan. So, we were just south of the area of Lawrence and Sheridan.

Q Now, you mentioned you were driving an unmarked car, correct?

A That's correct.

Q What type of license plates are on that unmarked car?

A All unmarked vehicles have M plates, the municipal plates.

Q What did this citizen tell you after he had flagged you down?

A The citizen stated that there was a white Oldsmobile with Tennessee plates and two male blacks that he believed were selling narcotics out of the vehicle.

Q Did the person give you an area?

A Lawrence and Sheridan area.

Q After you received this information, Officer Reyes, what did you and your partners then do?

A We started touring the area. It wasn't

for about 15 or 20 minutes that we actually did notice the vehicle.

Q Where were you -- were you in your car when you noticed the vehicle?

A That's correct.

Q Where were you when you noticed the vehicle?

A I was -- Well, we were actually facing northbound at Lawrence which is an east and west --

THE DEFENDANT: Northbound?

THE WITNESS: -- street, and we were facing northbound when we observed the vehicle which was facing southbound between the opening for the parking lot or the entrance and exit for J.J. Peppers, and it's actually a strip mall there. So, it's the parking lot, and that's the entrance and exit for it which is right at Lawrence.

MS. SHUTTER:

Q So, the J.J. Peppers would be at the corner of, excuse me, Sheridan and Lawrence?

A That's correct.

Q Can you describe the area of where this J.J. Peppers is at?

A The area itself, it would be the north

west corner which is more like a little strip mall which has a J.J. Peppers, a currency exchange, a little fast food market, some other establishments. I really don't recall which ones they are.

Q Is there any other street lighting at that area?

A Yes. The area is well lit, the lighting from the actual parking lot of J.J. Peppers and the street lighting.

Q When you first saw the white Oldsmobile, did you notice anyone inside of that car?

A I noticed two black males.

Q And do you know -- could you tell where each of those persons were sitting?

A I observed a black male in the driver seat and a black male in the passenger seat.

Q Officer Reyes, do you see the driver of that Oldsmobile here today in court?

A Yes, I do.

Q Can you identify that person, and identify him, and describe an article of clothing that he's wearing?

A The defendant with the blue suit jacket

and the braids.

THE COURT: In-court identification of the defendant Jermaine Walker.

MS. SHUTTER: Thank you.

Q Officer Reyes, did you later learn that the front seat passenger was Russell Walker?

A Yes.

Q And, Officer Reyes, prior to February 21st of 2006, when you first saw the defendant and Russell Walker, had you ever seen them before?

A No.

Q Officer Reyes, did you later learn that Russell Walker and the defendant are brothers?

A That's correct.

Q Officer Reyes, when you first saw the white Oldsmobile containing the defendant and his brother, did you see anyone else in or near the car?

A There was a third male black who was standing outside the vehicle at the passenger's side of the vehicle.

Q And, Officer Reyes, did you later learn that that person's name was Dewey Brown?

A That's correct.

Q And prior to that night of February 21st, have you ever seen Dewey Brown before?

A No.

Q Officer Reyes, are you familiar with a McKutchen Grammar School?

A Yes, I am.

Q And where is that located in relation to where you had first seen the white Oldsmobile in the parking lot at J.J. Peppers?

A Approximately, a half a block north of the J.J. Peppers on the east side of the street.

Q When you first noticed the car in the parking lot of J.J. Peppers, how close was your car to the car in which the defendant was driving?

A I would say, approximately 75 feet, 80 feet away.

Q Now, you couldn't hear any words that were being said, is that correct?

A That's correct.

Q Could you see anything of what was happening at that point?

A I observed the passenger of the vehicle gesture to the subject that was standing outside the vehicle to go westbound.

Q After you saw -- and that would have been Russell Walker making that gesture, correct?

A Yes, that's correct.

Q After you saw Russell Walker make this gesture, did the pedestrian or Dewey Brown do anything?

A He proceeded to walk westbound, and then turned northbound into an alley just behind the J.J. Peppers.

Q After Dewey Brown started to walk into the alley, did you see the defendant go anywhere in the car?

A The vehicle proceeded to follow, and then pulled into the alley.

Q When you saw this, what did you do?

A We were waiting for the light to turn. The light turned green. A vehicle had passed us. We had turned left and then went westbound.

Q And you turned left onto what street?

A Onto Lawrence from Sheridan. Then, we proceeded to make a right turn into the alley northbound at which time the Olds was parked in front of us.

Q How far -- approximately how far into the

alley was the white Oldsmobile parked?

A Probably about 20 to 30 feet into the alley.

Q Now, did you notice anything else about that white Oldsmobile when you pulled up behind him?

A Tennessee plates on the vehicle.

Q What did you do when you saw the car in the alley?

A As I pulled into the alley, I observed Dewey Brown tendering some kind of unknown amount of cash into the passenger window, at which time the passenger had dropped an item into his hand.

MS. SHUTTER: If I could have just one moment?

THE COURT: Sure.

MS. SHUTTER:

Q Officer Reyes, where did you drive your car into the alley?

A Directly behind the white Oldsmobile.

Q And so, how close were you to the white Oldsmobile when you pulled in?

A When we pulled in, we came to a stop, we were approximately maybe five to -- five feet away

from his vehicle.

Q And after you saw Dewey Brown receive an item from Russell Walker, what did you do?

A We started to exit our vehicles -- the vehicle.

Q And why did you and your partners get out of your car?

A It appeared to be a suspect narcotics transaction.

Q And did you get out of the car?

A Yes, I did.

Q Did, also, Sergeant White get out of the car?

A Sergeant White, Officer Flatley, and Officer Daly. We all exited the vehicle.

Q Did you see where Officer Flatley went to?

A Officer Flatley began to give chase on Dewey Brown because he started to flee northbound in the alley.

Q Did you see where Sergeant White went to?

A Sergeant White went to the passenger door of the vehicle.

Q And that would be up to Russell Walker?

A Russell Walker, yes.
Q And what did you do?
A I approached the driver's side.
Q As you approached the driver's side, and that would be where the defendant was at, correct?
A That's correct.
Q What did you see happen?
A I saw a hand come out of the driver window and an object about the size of a golf ball be tossed out of the window.
Q Officer Reyes, whose hand came out of the driver's side window?
A Jermaine Walker.
Q And what did you see the defendant's hand do when it came out of the window?
A He tossed a small object that landed on the ground.
Q And -- I'm sorry. Could you tell me the -- could you -- can you give a description of that object?
A It was the size of a golf ball, small golf ball.
Q Can you tell what was in it or what color it was?

A It was white in color.

Q When you saw the defendant throw that item out, did you see where the item went to?

A Yes.

Q Did you ever lose sight of that item from when it came out of the defendant's hand to when it hit the ground?

A No, I did not.

Q What did you then do?

A I immediately picked up the item and saw that it contained numerous, little plastic packets of suspect crack cocaine.

Q How close were you to the car that the defendant was sitting in when he tossed that baggie out of the car?

A I was in between my vehicle and his vehicle. So, about eight feet away.

Q Can you describe the lighting conditions in that alley?

A Well lit. There's, actually, a street light right at the mouth of the alley.

Q After you picked up the plastic bag, what then did you do?

A I placed it inside my vest, and I asked

had opened up a little bit, and about four or five of the suspect crack cocaine had fallen out of the bag. So, I recovered those immediately and placed them with the rest.

Q Now, when the defendant had thrown this bag out the window and you recovered it, were there any other items on the ground aside from these smaller baggies --

A No.

Q -- that came from the bag?

A That was it.

Q When you returned to the defendant's car that he was driving, did you see Sergeant White?

A Yes, I did.

Q And did he have Russell Walker in custody?

A Yes, he did.

Q When you returned to the car defendant was driving, did you see Officer Flatley?

A Yes.

Q And did Officer Flatley have Dewey Brown in custody?

A Yes, he did.

Q Officer Reyes, where were the defendant

your Defense Exhibit No. 1.

THE DEFENDANT: Okay.

MS. SHUTTER:

Q Officer Reyes, I'm handing you what's been marked as People's Exhibit 9 which is a close-up of People's Exhibit 8. Do you recognize that?

A No, I do not. It just appears to be some cables leading from a phone, a phone pole.

Q And is that a photograph or a closer photograph of part of the alley?

A Yes, it is.

Q Do you see any type of camera in that photograph?

A No, I don't.

Q And showing you what's been marked as People's Exhibit No. 10, also. Do you recognize that photograph?

A Yes. This is still in the alley facing southbound towards Lawrence.

Q And what is depicted in that photograph?

A Just the side of a building with cabling.

Q Do you see any camera in that photograph?

A No, I do not.

Q And handing you what's been marked for identification as People's Exhibit 11, do you recognize what's in that photograph?

A Yes. It's the same. It's the back of the J.J. Peppers.

Q And in that photograph, do you see any type of camera?

A No, I don't.

Q And, in fact, is there a picture of some side doors or back doors?

A Yes, there is.

Q Is there anything above those back doors?

A Appears to be lights.

Q Do each of those photographs accurately depict the area of the alley from February 21, 2006?

A Yes, they do.

MS. SHUTTER: If I could have just one moment, please?

THE COURT: Sure.

MS. SHUTTER: I have no other questions on the photos.

THE COURT: Do you have any questions based on those questions only?

THE DEFENDANT: Yes. May I use the same exhibit?

MS. SHUTTER: Yes.

THE COURT: You sure may.

CROSS EXAMINATION

BY THE DEFENDANT:

Q Sir, reflecting back to Exhibit 11, this is a building located where? It's the back of what building?

A The J.J. Peppers.

Q Do you see the other building on the other side where the driver's side of my car would be if I was facing northbound in this alley?

A No, I don't.

Q You don't see that building, correct?

A I do not, sir.

Q Thank you. Is this another exhibit of the back of the JJ building?

A Yes, it is, sir.

Q And if I was facing northbound in this alley, the driver's side would be on the Lawrence building that I'm talking about the camera was on, am I correct?

A I know your driver's side would be opposite of the --

Q The building that I'm talking about --

A Yes.

Q -- the camera was on? Thank you.

And this is another exhibit, and this is a picture of the exact same building, correct, the back of the J.J. Peppers?

A Yes, it is, sir.

Q Making this the passenger side of my vehicle?

A Yes, it was.

Q If I was facing northbound on Lawrence Avenue?

A Yes, it is, sir.

Q Back to my exhibit, how many buildings do you see in the alley?

A I see one long, continuous building.

Q And on the driver's side, if I was facing northbound in this alley, do you see another building?

A I see another long, continuous building.

Q Exactly. And this is the building that I'm talking about the camera was on, sir.

A I'm not aware of the camera, sir.

MS. WALDECK: Objection to the defendant testifying.

THE COURT: The officer is saying, no, he is not aware of any cameras on there. Two people cannot talk at the same time. You have to ask the officer a question. You can't testify at this time. If you choose to, then you can at another time, but this is a question on cross-examination, and the court reporter can only take down one response.

So, the officer said no, there is no camera.

THE DEFENDANT:

Q So, all of the exhibits you just witnessed doesn't show the driver's side with the camera -- with the building with the camera on it?

MS. WALDECK: Objection, Judge. He's assuming that there's a camera. The officer said ten times there's no camera.

THE COURT: Sustained. The officer has said there is no camera.

THE DEFENDANT: Well, for the record, your Honor, there is a camera there.

THE COURT: You cannot -- if you want to testify at a different time, then you can, and you can produce evidence; or you don't have to. That's up to you, but right now, this is the State's evidence.

THE DEFENDANT: Okay.

THE COURT: And you cannot be testifying. The officer -- you asked him a question, and he said no. So, this is not a time to argue with him. You ask questions, and he answers the questions.

THE DEFENDANT: All right, your Honor. No further questions.

THE COURT: Thank you. State, anything further of the officer?

MS. SHUTTER: No, your Honor.

THE COURT: Thank you, Officer. We'll recess for lunch.

(Witness excused.)

(Lunch recess).

THE CLERK: Jermaine Walker.

A DEPUTY: All rise for the jury.

THE COURT: State, you can call your next witness.

(Witness sworn.)

OFFICER THOMAS FINNELLY,

A witness called on behalf of the People of the State of Illinois, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WALDECK:

Q Could you state your name and spell your last name?

A Thomas Finnelly, F-i-n-n-e-l-l-y.

Q How are you employed?

A I'm an investigator for the Cook County State's Attorney's Office.

Q How long have you been an investigator for the Cook County State's Attorney's Office?

A Fourteen years.

Q What was your occupation before that?

A I was a Chicago Police Officer for 28 years.

Q I want to direct your attention to the date of April 20, 2006, did you ever receive an assignment regarding a possession of controlled substance with intent to deliver that had occurred

in the area of 4800 North Sheridan in February of 2006?

A Yes, I did.

Q And what was the nature of the assignment that you received? What were you asked to do?

A I WAS to take measurements from 4802 Sheridan in the west alley to the McKutchen School which is on the 4800 block of North Sheridan.

Q And what else were you asked to do?

A Photo the alley and the street.

Q Did you measure the distance between that west alley and the McKutchen Grammar School?

A Yes, I did.

Q And the address of the McKutchen School is 4865 North Sheridan?

A Yes, it is.

Q And what device did you use for making those measurements?

A It's a walking roll of tape.

Q And how exactly does that work?

A It's got two wheels on the bottom. It's a measuring device that measures feet, every 12 feet. It just keeps on going up.

Q Is that the device that's been authorized

for you by the State's Attorney's Office to conduct these types of measurements?

A Yes, it is.

Q Had you personally used that device before?

A Yes.

Q Approximately how many times had you measured using that device or a similar one before?

A Approximately 75 to 100 times.

Q Did you calibrate the measuring device before you began taking measurements?

A Yes, I did.

Q How did you calibrate the device?

A A Stanley Rowe photo rule, (phonetic). It's a 16 foot tape. You measure from 1 foot to 16 foot; but on the roto tape, you just set it down to measure a foot to see if it coincides with the measure device.

Q Is that before you went out to -- the date you went out to take these measurements, did you calibrate the device right before you went out to the scene?

A I did it at the scene, yes.

Q And the actual date that you conducted

the photos. That's for the witness to do.

THE DEFENDANT: Okay.

Q And Exhibit 11, what building is this, the back of the strip mall?

A It's back of the strip mall, that's correct.

Q And is there any other pictures here showing close-up shots of the opposite side of the building, sir?

A There's another picture showing the back of the building right there.

Q Exhibit 8?

A Yes.

Q This is Exhibit 8, where this was, what you call a -- you was facing -- you stated, previously, that you was facing, this is a shot of the west --

THE COURT: Sir, why don't you ask the witness to testify as opposed to you?

THE DEFENDANT:

Q Can you tell me what shot --

A I'm standing south. I'm standing at approximately 4828.

Q Okay.

A Shooting south, and this is the building that you're referring to here.

Q Exactly. That's it. That's the only question I asked. I just asked you which way you was facing.

A Okay.

Q Now, where are your close-up shots of the opposite side of the building at 4802, sir?

A The close-up shots that I went back are on this side.

Q Exactly. My point, exactly.

A Okay.

Q I want to --

MS. WALDECK: If you could instruct the defendant --

THE COURT: This is not for you to comment. It is for you to cross examine. That means, ask questions.

THE DEFENDANT:

Q Sir, did you take any close-up shots at 4802 of this building, the opposite building of the strip mall?

A That's not 4802.

Q That's --

A That's a Lawrence Avenue address, and I did not take any shots of the Lawrence Avenue address other than going north to south and south to north.

Q Okay. Thank you. You said, previously to me, that you went up and down the alley and took close-up shots of the alley, correct?

A No.

Q You said you went up and down the alley, and you didn't notice no camera devices in that alley, correct?

A That's correct.

Q Now, the same question I asked you, isn't it correct, it's a camera at 4802 west of Sheridan alley on the Lawrence building?

A No.

Q So, why you didn't take pictures of that location, sir?

A Because there's no cameras.

Q If there wasn't no cameras, you could present that today in court, am I correct?

MS. WALDECK: Objection.

THE COURT: Sustained. He presented pictures showing the side that you requested. Now, if you

don't have any other questions about the photographs --

THE DEFENDANT: Actually, your Honor, he showed me a picture of 4828.

THE COURT: If you don't have any particular questions concerning the photographs, then I would like you to go back to your table.

THE DEFENDANT: I'm referring back to 4802.

THE COURT: I would like you to go back to your table.

THE DEFENDANT: The place of the incident, your Honor.

THE COURT: You can ask all the questions you want, but go back to your table.

THE DEFENDANT: Okay.

Q So, sir, there are no close-up shots of 4802 Lawrence building?

MS. WALDECK: Objection, asked and answered three times now. No close-ups. No cameras.

THE COURT: Sustained.

THE DEFENDANT:

Q Correct?

THE COURT: Objection sustained. You asked the question, and he answered the question several

Q Those were all recovered from the white sock?

A Yes.

Q Did you recover any money from the defendant?

A Yes, I did.

Q How much money?

A $71.00, United States currency.

Q Did you -- were you present when the defendant's brother Russell Walker was searched at the 23rd District?

A Yes. I was in that same room with him.

Q Who actually searched the defendant's brother Russell Walker?

A I believe Sergeant White did.

Q And was any money recovered from Russell Walker during that custodial search?

A Yes, it was.

Q And would that be $141.00 in United States currency?

A I believe so.

Q Now, did you inventory all of the items that were recovered in this case?

A Yes, I did.

Q And that would be, not only the items that you yourself recovered, but items that were recovered by Officer Reyes?

A Yes.

Q And Officer White, is that correct?

A That is correct.

Q Let's review that for a second. You spoke of a BB gun that was recovered by Officer Reyes, is that correct?

A That is correct.

Q Did you inventory that item?

A I did.

Q And did you inventory it under No. 10698402?

A I did.

Q You also spoke about a packet of cocaine that you recovered from Dewey Brown, is that correct?

A Yes.

Q And did you inventory that item under inventory No. 10698415?

A Yes.

Q Now, did you learn that Sergeant White recovered two packages containing suspect cocaine

from the passenger seat where the defendant's brother Russell Brown, (sic), was sitting?

A Yes, consequently, I did.

Q Were you given those two items to inventory?

A Yes, I was.

Q And did you inventory those packets of cocaine under inventory No. 10698432?

A Yes.

Q Were you also given, by Officer Reyes at the 23rd District, a plastic bag containing 19 little packets of crack cocaine that the defendant -- that the defendant Jermaine Walker threw out of the driver side window?

A I did.

Q And did you inventory those items under inventory No. 10698419?

A I did.

Q And finally, did you inventory the two chunks of cocaine and the packet of marijuana that you recovered from the defendant's sock under inventory No. 10698426?

A I did.

Q Can you explain, for the ladies and

gentlemen of the jury, what you do with these items when you inventory them? How exactly you conducted this inventory process?

A Sure. Once I got to the station, I took each individual group or item, in other words, the one item recovered from Mr. Brown, the items recovered from the vehicle, independent of the items from Mr. Brown, the BB gun, all the currency separate, and the items recovered from the sock.

They were each placed in a narcotics bag except for the weapon, the BB gun. I then filled out all the boxes on the narcotics bag. Those boxes consist of court date, record division number that is assigned to us by our dispatcher, the time of the arrest, that date of the arrest, the defendant's name, address, the address of the arrest, address where the narcotics were recovered, my name, who recovered the narcotics, and what beat I was assigned that day.

Once I completed filling out all those bags, I then went into the Chicago Police internet data warehouse Etrix, (phonetic), system where I logged in with my unique pass code, and I began entering all that same information to the computer

system. Once it was entered, I submit it, and I received in return a unique, it's an eight number inventory number that I write on the bag.

After all those bags are processed in that same sequence, the desk sergeant of the district that we were at, 19th District, reviews all that information to make sure that everything that I have on the bag matches everything that is in the computer. He then approves it.

I then heat seal everything. I staple a copy of, it's an inventory slip to the bag. And while the sergeant is witnessing me, I place all the narcotics into a narcotics vault. I drop them. And then, consequently, they're picked up by the Chicago Police crime lab where they're transported to the State of Illinois crime lab, and they're tested, whether they're positive or negative.

Q And you did that with each and every one of -- you inventoried each and every one of the items in this case, is that correct?

A Yes.

MS. WALDECK: Judge, may I approach the witness?

THE WITNESS: Ma'am, I don't. I apologize.

THE COURT: He doesn't know the inches of a golf ball.

THE DEFENDANT:

Q Would you say that the narcotics that was found on the ground which was exhibit --

One moment, your Honor.

THE COURT: Take your time.

MS. WALDECK: No. 7. For the record, Exhibit No. 7.

THE DEFENDANT: It's inventory No. 419, and what exhibit is that for you, ma'am?

MS. WALDECK: It's Exhibit No. 7.

THE COURT: The inventory number is -- just so you're stating the record correctly, they have several numbers, not just three. So, if you're talking about Exhibit No. 7.

THE DEFENDANT: I was stating the last three of the inventory number.

THE COURT: Right. For the record, it has to be the complete inventory number. Are you referring to 10698419?

THE DEFENDANT: Yes.

THE COURT: Exhibit 7?

THE DEFENDANT:

Q It would actually be Exhibit No. 7, and the quantity was 19 bags,, and what was the approximate weight when you received that?

A There were 19 bags in it. I forget what weight we came up with after we weighed it in the station. I would have to look at my police report. I believe it was maybe 1.9.

Q Exactly.

MS. WALDECK: Objection, Judge.

THE COURT: Overruled.

THE DEFENDANT:

Q So, 1.9 grams is approximately 2 grams, roughly speaking, approximately 2 grams?

A I think 1.9 grams is 1.9 grams.

THE COURT: 1.9 grams, he's telling you, is 1.9 grams.

THE DEFENDANT:

Q Do you agree that 1.9 grams of substance cocaine is the size of a golf ball, yes or no?

A I don't know. I don't know how much a golf ball weighs.

Q Just in diameter, speaking diameter wise?

A You're asking me to make a guess.

Q Yes or no.

A Well, if it's placed --

THE COURT: Mr. Walker, if there's not an answer that you can answer yes or no, you can't direct him to answer the question. He can answer the way he thinks.

You may answer, Officer.

THE WITNESS: If it's placed in a plastic bag and knotted up, yes, it could be perceived as a golf ball size object.

THE DEFENDANT:

Q Now, directing your attention to, you said, the 23rd District where I was searched at. For the record, it states that I was searched at the 19th District in the police report.

MS. WALDECK: Judge, I'm going to object to the defendant testifying as to what he says is in the police report.

THE COURT: Again, Mr. Walker, I told you, if you have a question, you can ask a question, not just read police reports. And you have to know whether it's this officer's report and have him refer to a certain question in the report. There's a proper way that it needs to be done.

THE DEFENDANT:

Q Reflecting your attention back to the 23rd District, where you did a custodial search, and you stated you found two chunky rock-like substance containing crack cocaine, correct?

A That is correct.

Q What were the exact weight on those, sir?

A Again, I would have to look at my police report. I don't recall what the weight of those was.

Q Isn't it true that you put on the police report, 7.2 grams?

A I would have to look at that police report. I forget what it reads.

THE COURT: You may refresh -- you may approach him with the police reports to refresh his memory.

THE DEFENDANT: All right.

THE COURT: Let him take a look at it and see if his memory is refreshed.

THE WITNESS: Yes, it is. It's actually an arrest report, if it makes a difference to you.

THE COURT: He's looking at an arrest report. Is your memory refreshed with that

report?

THE WITNESS: Yes, it is.

THE COURT: You may continue.

THE DEFENDANT:

Q So, that making that chunky substance that you recovered from my white sock actually larger than the substance crack cocaine that was found on the ground, that is correct?

A It actually shows that the substance I recovered from your sock weighs more than the substance that Officer Reyes recovered.

Q And approximately how much more does it weigh?

MS. WALDECK: Objection, Judge.

THE COURT: Sustained as to -- there is a chemist that is going to testify that you know, and the chemist would be the proper person to talk about the weight. And that goes beyond the common knowledge of this officer, and that chemist will be available to you.

THE DEFENDANT: Okay.

Q Sir, so reflecting back to the initial incident of this report, isn't it pretty safe to assume that where a pat down of a size of, you said

7.2, in my right sock, will actually be larger than the golf ball size where you can feel that doing a pat down search?

A Actually, I'm kind of confused with the question, but --

Q Well, actually, reflecting your memory back to the alley, 4802 --

A Okay.

Q -- where your Officer Reyes stated that he recovered a BB gun from my waist?

MS. WALDECK: Judge, objection to this witness --

Q Isn't it --

MS. WALDECK: Objection to this witness being asked about what some other officer said.

THE COURT: Let's see what the question is going to be. What's the whole question?

THE DEFENDANT:

Q Isn't it true a police officer will perform a thoroughly shake down for contraband, any weapons, any ammunition, after recovering so-called looks like a pistol, correct?

MS. WALDECK: Objection.

THE COURT: Overruled. You can answer the

A This bag contains the top of the evidence bag, one heat-sealed bag containing eight new ziplocked bags containing chunky substance, plus their original packaging.

It also contains another new heat-sealed zipped bag containing eleven knotted clear plastic bags containing chunky substance.

Q Now, when you originally opened that inventoried bag, were the items separated as you've just described them, eight items in a heat-sealed bag and eleven items in another heat-sealed bag?

A They were not.

Q How were those items positioned or packaged when you opened up the inventory bag?

A I need to add also there is also a clear plastic bag.

So originally when I opened it, it contained a clear plastic bag as well as nineteen knotted clear plastic bags containing chunky substance.

Q When you began to conduct work or tests with regards to these items, did you make a -- did you weigh the items?

A Yes, I did.

Q And how did you weigh the items?

A Instead of, I did a weight by difference where I put all, I put a new disposable weighing dish on the balance. I zeroed the balance again. I placed all nineteen items including their packaging onto the balance. Then I recorded that weight onto my worksheet. Then I took one item, emptied its contents into a new weighing dish and replaced the empty packaging back on the balance. I repeated this process eight times.

And then, once the eight empty packages were back on with the original eleven containing the original chunky substance, I recorded that weight, and I subtracted the two weights and this gives me a net weight of the eight items.

So, that weight is purely the weight of the chunky substance from the eight items.

Q And did you -- pardon me. Did you obtain a weight?

A Yes, I did.

Q And what was the weight on eight of those items?

A 1.2 grams.

Q After weighing the eight items, what then did you do?

A Then I performed the analysis on them.

Q And what type of analysis did you perform on those eight items?

A The same analysis that I did on the exhibit previously mentioned. But, I treated each one individually so in other words, I did eight color tests, and eight GCMS's on those.

Q And did you come up with any results after you conducted the color test?

A I did. It was -- the results were positive for the presence of cocaine in all eight instances.

Q Did you come up with any results with regard to the GCMS test with regards to the eight items that you tested?

A I did. The GCMS confirmed the presence of cocaine in all eight of the items.

Q After you finished testing on those eight items, what did you do?

A I then repackaged them into new zip bags and heat-sealed them into a new zip bag along with their original packaging.

Q Is there a reason why you did not conduct a test on all nineteen items?

A Yes. The Controlled Substances Act, you only have to analyze up to certain weight limits.

And in this particular inventory, the gross weight was three grams, so I knew I would only have to analyze over a gram because it would not reach the next highest weight limit of five grams. So, it would not be necessary to test all of the items, only enough to get over the one gram weight limit.

Q And what is the procedure that you -- strike that. When you finished the testing on the eight items, can you tell us what you did with each of those eight items?

A When I finished the testing on them?

Q Right?

A I repackaged them.

Q And again, did you make any notations on the repackaging?

A Oh yes, I did. I have my initials, the laboratory case number, and my exhibit number.

Q And what did you do with the remaining eleven items that were contained in that inventory bag?

A The remaining 11 items, I established an estimated weight for those by taking the average weight of the eight that I did weigh, and then multiplying that by 11 to get the estimated weight, and then I heat-sealed them in a new plastic bag.

Q When you first opened up that inventory bag and saw the nineteen items, were they all similarly packaged?

A Yes, they were.

Q And again, after you had put all the items back into the inventory bag, what did you do with the inventory bag?

A I heat-sealed it and wrote my initials, the date, and the laboratory case number on the bag.

MS. SHUTTER: May I approach the witness, please?

THE COURT: Yes, you may.

arrest. Look at it yourselves. Not a mark on him. It is pure fabrication on the part of this defendant.

The truth is, ladies and gentlemen, that the police officers in this case did their job. They investigated information and they arrested the offenders.

The truth is, ladies and gentlemen, that sometimes criminals don't want to get arrested. Sometimes they don't comply with orders. Sometimes they don't put their hands in the air right away.

What would you have Officer Reyes do in that situation? Oh, I'm so sorry, Mr. Walker. You don't feel like showing me your hands? I guess I'll just walk away. Oh, I'm so sorry, Mr. Walker. Gosh, that looks like a gun in your waistband. Gee, I could get hurt here. Maybe I'll just move on down the alley and arrest someone else.

Every police officer who testified in this case testified that they did only what was proper and necessary to arrest these individuals and protect themselves and absolutely

nothing more. And there's absolutely no evidence of anything more.

Because let's get one thing perfectly clear here. You took an oath to base your verdict upon the evidence.

And just so we're clear, the evidence is the testimony that you heard from that witness stand. It's the exhibits that were marked and were shown to you, the drugs, the BB gun, the marijuana. It is the photographs that you will take back there with you. That's the evidence in the case.

Questions that are posed by the defendant on cross examination, his questions, they are not evidence. And you can't consider them as such.

What the defendant wants you to believe, what he hopes that you believe, what he prays that you believe, are not the evidence in this case. And I couldn't help but think as I sat here and listened to the defense argument that almost everything that he told you was not based upon the evidence that you heard from this witness stand. It's pure speculation, and you

can't base your verdict on that.

There was a camera somewhere in the alley? Ladies and gentlemen, there is absolutely no evidence of that. Witness after witness after witness took that stand and told you there is no camera. You have pictures of the alley, including closeups that show you there is no camera.

If there was a camera, do you think this defendant and his brother would be stupid enough to deal drugs in front of it? Come on. Don't you think that they would pick another alley? Get real.

The police officers planted drugs? This is the most baffling of all. Is he saying that Sergeant White picked up two out of the nineteen packets that were on the ground of the alley and then placed them in his car in order to confiscate his car? Where did the nineteen packets come from? How did they get on the ground to begin with?

You know where they came from. His hand. When he chucked them out the window because he had something illegal and he wanted to

get rid of it. And his choices were pretty limited at that point. That's ridiculous. There is no evidence of that.

Police officers stole his money? Come on folks. Not one single Officer testified to that.

What you know in this case is that the defendant possessed cocaine with the intent to deliver that cocaine.

Look at those nineteen packets of drugs that the defendant threw out the window. And look at the two packets or the packet that was recovered by Officer Flatley from Dewey Brown. The packaging is the same. You know why the packaging is the same? Because he's holding his baggy with the stash of drugs in it and his brother is reaching in and selling a packet to Dewey Brown. That's why the packaging on the drugs is the same.

And he's got two more chunks of cocaine in his sock, which weigh over five grams, weigh over five grams together because he intends to do the same thing with those items.

Lastly, ladies and gentlemen, the

defendant has told you numerous times -- the defense has told you that the defendant has a right to represent himself. He's chosen to do so. He's asked you not to hold that against him. And he's right. You shouldn't. Don't hold it against him.

But, for God's sake, don't hold it against us.

He chose what type of defense he thought would be most beneficial to him. That's his right. Don't hold it against the People of the State of Illinois.

Ladies and gentlemen, the day that every defendant fears is a day that he has to stand before a jury of his peers and answer for what he has done. And make no mistake about it, that was the day that the defendant was thinking of when he threw that cocaine out the window. That was the day that the defendant was thinking of when the police officers recovered more drugs and a gun and money from his person, from his car, from the purchaser. That was the day he was thinking of and that day is now.

We are asking you to go back there

THE COURT: All right, we are calling out the jury.

(Whereupon the following proceedings were had in the presence and hearing of the Jury:)

THE SHERIFF: All jurors present and accounted for.

THE COURT: Okay, you may be seated.

Sir, have you been elected the foreman?

JURY FOREPERSON: Yes, I have.

THE COURT: Have you and your fellow jurors come to a unanimous verdict?

JURY FOREPERSON: Yes ma'am, we have.

THE COURT: Hand those to my Sheriff.

Sir, would you please stand?

THE CLERK: We the jury find the defendant Jermaine Walker guilty of possession of controlled substance with intent to deliver within one thousand feet of a school.

We the jury find the defendant Jermaine Walker guilty of possession of controlled substance with intent to deliver more

than five grams.

THE COURT: And that's signed by the foreperson and each of the eleven remaining jurors.

Do you wish the jury to be polled? Do you wish the jury to be polled; asked individually?

THE DEFENDANT: They all pleaded guilty, right?

THE COURT: No, they all signed a guilty verdict form, yes.

Do you want them to be polled or not?

THE DEFENDANT: Yes.

THE COURT: There is one question that my Clerk will ask you. If you just answer the question yes or no.

THE CLERK: Jeffrey Nelson, was this then and is this now your verdict?

THE COURT: The question is: Was this now and is this then your verdict?

JUROR NELSON: Yes.

THE CLERK: Dory Hamilton, was this then and is this now your verdict?

JUROR HAMILTON: Yes.

THE CLERK: Charles Clark. Was this then and is this now your verdict?

JUROR CLARK: Yes.

THE CLERK: Gerhard Becker. Was this then and is this now your verdict?

JUROR BECKER: Yes.

THE CLERK: Mayer Becker. Was this then and is this now your verdict?

JUROR BECKER: Yes.

THE CLERK: Joan Alt. Was this then and is this now your verdict?

JUROR ALT: Yes.

THE CLERK: Joshua Schmidt. Was this then and is this now your verdict?

JUROR SCHMIDT: Yes.

THE CLERK: Shu Liu. Was this then and is this now your verdict?

JUROR LIU: Yes.

THE CLERK: Dipalika Patel. Was this then and is this now your verdict?

JUROR PATEL: Yes.

THE CLERK: Mary Martin. Was this then and is this now your verdict?

JUROR MARTIN: Yes.

THE CLERK: Mary Ann Henning. Was this then and is this now your verdict?

JUROR HENNING: Yes.

THE CLERK: Kirsten Buys. Was this then and is this now your verdict?

JUROR BUYS: Yes.

THE COURT: Okay, that's everybody.

All right, ladies and gentlemen, this concludes your jury service. We all thank you very much for all of your time and attention. We know that everybody has pressing needs every day but our system of justice could not proceed without you.

So, we're all very grateful. And on behalf of everyone, I thank you. You can be excused and go with the Sheriff and I'll be back there to give you your certificates. The alternates, I have certificates for you also.

(Whereupon the jury was excused after which the following proceedings were had:)

THE COURT: Okay. This concludes our jury. We need to order a pre-sentence investigation.

MS. WALDECK: Your Honor, the State moves to

revoke the defendant's bond.

THE COURT: Okay. All bonds are revoked. PSI will be ordered. We'll be continuing it for sentencing within -- let's continue it for sentencing. Let's try June the 30th, okay?

Okay, continue for sentencing, June the 30th. Someone will come back right now and start taking some information.

Thank you, Officers all very much. Very nice job. Very professional. Very fine job.

(Whereupon the above-entitled cause was continued to the 30th day of June, A.D. 2006.)

to the minimum of the range. Thank you, your Honor.

THE COURT: Mr. Walker, would you wish to say anything before being sentenced?

THE DEFENDANT: I believe I was convicted only for two charges.

THE COURT: Class X felony, six to 30 years in the Illinois Department of Corrections. One of them will merge into the other, so you will be sentenced on the Class X. Count one was a Class X felony, possession with intent to deliver one to 15 grams within 1,000 feet of McKutchen Grammar School. Second count was that count without the 1,000 feet. So you will be sentenced on the Class X felony.

MS. DYKES: He was convicted, Judge, on count one and count three is my understanding.

THE COURT: Yes.

MS. DYKES; A Class X and a Class 1.

THE COURT: Correct. One of them just didn't have the McKutchen School in it.

MS. DYKES: Yes, your Honor.

THE COURT: Do you wish to say anything before being sentenced?

THE DEFENDANT: No.

THE COURT: Jermaine Walker, I find this astounding that you in your life have nothing that should have held you back from being a responsible, productive role model in your community. Instead you have had a life of crime. Obviously you were born with intelligence. You have a family that supports you. However, you have chosen to still live on the streets. You have convictions dating back to 1993 starting with a very serious Class X offense of six to 30 years in the Illinois Department of Corrections, armed robbery conviction, where you received six years in the Illinois Department of Corrections. You subsequently had additional convictions, several misdemeanors, misdemeanor retail theft, misdemeanor theft, misdemeanor retail theft, and then again another felony in 1998, and despite all of that somehow you still managed to get a scholarship to be able to go to college where there are potential students all over the city, all over the state, all over the country probably dying to have a scholarship being able to go to college so that someone could help them with their funds, and you

are awarded a scholarship. Not only that, you were in a program called the Fisk University 2004 Rams participant wherein you have submitted an article here that said 20 students from predominantly minority colleges and universities successfully completed the ten-week summer 2004 intership in the Rams programs which began on June 7th, colleges and universities represented and it gives a whole list of them. It shows research topics ranged from biology, including genomes to life, and modeling medical devices, to cluster computer complex systems, to superconductivity, to visualization, to virtual environments for homeland security, training in a wide range of projects and their development, individual project abstracts, on and on and on of all of these things that were made available to you, a research alliance in math and science. Even with all of your convictions, you were still allowed to be chosen to be in this program. You still got a scholarship. You were in college. So people were kind enough to still give you a chance and you still chose to deal drugs. So you were given every opportunity possible, every opportunity possible. There is people who don't

have any family, who don't have the chance to get an education. Certainly many, many, many thousands of people don't get a scholarship. You were given all of it and you still chose to deal drugs. You chose to deal drugs within 1,000 feet of a school. You have conviction upon conviction. With all those convictions you still were given chance after chance after chance to succeed in life. None of that seems to matter to you because you still choose a life of crime. I think it's very sad that this scholarship and a chance to be in this great program were wasted on somebody who still chooses to deal drugs within 1,000 feet of a school. It's very, very sad that some other student who would have been grateful could have got that opportunity. Instead you wasted it. You took advantage of it and wasted it. Based on the serious nature of the defendant's background, the Class X felony from which he is charged, mandatory six to 30 years in the Illinois Department of Corrections, this being his second Class X conviction in his very young life, the fact that he was given numerous opportunities, probations, a taste of jail to try to detour him from wanting to

have any family, who don't have the chance to get an education. Certainly many, many, many thousands of people don't get a scholarship. You were given all of it and you still chose to deal drugs. You chose to deal drugs within 1,000 feet of a school. You have conviction upon conviction. With all those convictions you still were given chance after chance after chance to succeed in life. None of that seems to matter to you because you still choose a life of crime. I think it's very sad that this scholarship and a chance to be in this great program were wasted on somebody who still chooses to deal drugs within 1,000 feet of a school. It's very, very sad that some other student who would have been grateful could have got that opportunity. Instead you wasted it. You took advantage of it and wasted it. Based on the serious nature of the defendant's background, the Class X felony from which he is charged, mandatory six to 30 years in the Illinois Department of Corrections, this being his second Class X conviction in his very young life, the fact that he was given numerous opportunities, probations, a taste of jail to try to detour him from wanting to

be in jail, he had even been to prison before, the fact that on the outside the community was over and over again trying to help this defendant with scholarships, with schooling, with college, that the defendant still chose to endanger the community by selling drugs within 1,000 feet of a school. The defendant will be sentenced to 22 years Illinois Department of Corrections.

MS. DYKES: If I may, your Honor, at this time I am asking leave of Court to file a motion to reconsider sentence.

THE COURT: In reconsidering, I have seen nothing, nothing which would change the defendant's life. He has been given every opportunity possible. Who gets an armed robbery conviction and still is able to get a scholarship for college, who gets put in a Rams program, who has conviction after conviction, who has a Class X felony in his background and then goes on and commits another Class X felony when he has already been given a scholarship to college. Another felony, forgery conviction. Another felony, felony theft conviction. Over and over again people have tried to give you opportunities and you still keep going

back to crime. Motion to reconsider sentence is denied.

MS. DYKES: Yes, your Honor.

THE COURT: You have a right to appeal my decision today. If you feel that I have been wrong or unfair in the decision of your case, you have a right to appeal that. If you cannot afford a lawyer, I will appoint one for you. If you need a copy of a transcript, I will get that to you also. Once 30 days passes by, you waive your rights to appeal. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Also, if you want me to reconsider anything that was done in the trial of this case or in the sentencing, you must motion it back up to me within -- obviously I just did the motion to reconsider the sentence -- you must motion it up to me within 30 days, state the grounds you would like me to reconsider and why. If these issues are not set forth in a motion to reconsider before me before the appeal, they will be waived once you get to the appeal, understood?

THE DEFENDANT: Yes. May I have a comment?

THE COURT: No.

MS. DYKES: We are done.

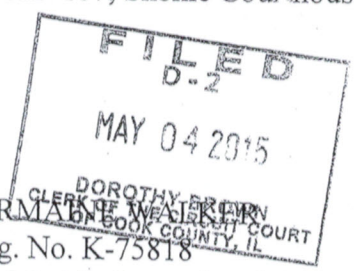
THE COURT: We are done.

(Which were all the proceedings had in the above-entitled matter, at the time and place aforesaid.)

EXHIBIT B

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

STATE OF ILLINOIS	)	
	)	
Respondent-Plaintiff,	)	
v.	)	Case No. 06 CR0628801
	)	Judge Haberkorn
	)	Room 107, Skokie Courthouse
JERMAINE WALKER	)	
Petitioner-Defendant.	)	



NOTICE OF FILING

To: ASA Kurt Smitko, Supervisor
Post Conviction Unit
Cook County State's Attorney Office
2650 South California, 11th Floor
Chicago, Illinois 60608

JERMAINE WALKER
Reg. No. K-75818
Big Muddy Correctional Center
P.O. Box 900
Ina, Illinois 62846

PLEASE TAKE NOTICE that on May 4, 2015 the undersigned will appear before the Honorable Judge Haberkorn or any judge sitting in her stead in room 107 in the Skokie Courthouse and present an **Amended Post Conviction** in the above, a copy of which is herewith served upon you.

Law Office of the Cook County Public Defender.

Ingrid Gill
Assistant Public Defender

AMY CAMPANELLI, Public Defender
Ingrid Gill, Assistant Public Defender
Law Office of the Cook County Public Defender
69 West Washington Street, Suite 1575
Chicago, Illinois 60603
(312) 603 - 0600
Firm ID. 30295

PROOF OF SERVICE

I, Ingrid Gill certifies that on May 4, 2015, I served this notice of filing together with the amended post conviction to the above-named parties through their representative instanter in ~~open~~ court.

By: Ingrid Gill
Ingrid Gill, Assistant Public Defender

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

STATE OF ILLINOIS	)	
	)	
Respondent-Plaintiff,	)	
v.	)	Case No. 06 CR0628801
	)	Judge Haberkorn
	)	Room 107, Skokie Courthouse
JERMAINE WALKER	)	Next Court Date:
Petitioner-Defendant.	)	

AMENDED POST CONVICTION PETITION

NOW COMES the Public Defender of Cook County, Amy Campanelli, through her assistant, Ingrid Gill, and seeks a new trial under the Post Conviction Hearing Act 725 ILCS 5/5-122-1 *et.all* where Mr. Walker alleges that his due process rights were violated at his jury trial because three police officers and the prosecutor's investigator lied under oath when they testified that there was not a video camera in the alley of the alleged drug transaction and arrest to rebut Mr. Walker's defense that he would not sell drugs in front of a camera.

All of these witnesses lied about the video camera in the alley to contradict Mr. Walker's defense that there would have been witnesses in the Lawrence House observing on the close circuit monitors the alleged drug transaction, the tossing of the drugs, and Mr. Walker's arrest. Post Conviction Counsel presents the attached affidavits from employees of the Lawrence House who aver that the video camera was located on the side of the building which could have allowed observation of the alleged activity. Furthermore, counsel has attached photographs of the video camera attached to the Lawrence House located in the alleyway where the alleged drug activity took place. The false testimony affected the jury's decision regarding

Mr. Walker's guilt because these police officers and the prosecutor's investigator denied the existence of the video camera that Mr. Walker sought to establish to show that he would not sell drugs or have a motive to sell drugs in front of a close circuit camera.

Further, Mr. Walker requests that this court grant him an evidentiary hearing on these claims.

In Support, Counsel states:

1. The Public Defender, through his assistant amends the pro se petition pursuant to 725 ILCS 5/122-1 et seq. The pro se petition was timely filed within three years of Mr. Walker's conviction of March 12, 2007 and within six months of the appellate mandate published on October 14, 2008.
2. Following a jury trial, Mr. Walker was found guilty of possession of a controlled substance with the intent to deliver within a 1,000 feet of a school and sentenced to 23 years imprisonment. He is currently incarcerated in the Illinois Department of Corrections pursuant to this sentence.
3. In this amended petition, Mr. Walker requests that this court grant him an evidentiary hearing where the assertions of the amended petition, supported by the record and accompanying affidavits, make a substantial showing of a violation of his constitutional rights to due process under the *U.S. Const. amend. VI & XIV* and the *ILL. CONST., art. I §2 and 8 (1970)* and his *Sixth Amendment* guarantee that a criminal defendant have a "meaningful opportunity to present a complete defense" pursuant to *U.S. Const., amend. VI, XIV.*

4. At the arraignment of April 5, 2006, Mr. Walker choose to represent himself and demanded a speedy trial. (R Vol. 1, Tr. A-13) The trial court informed Mr. Walker that the court would continued the case for jury trial everyday until the State was ready. (R Vol. 1, Tr. A-16)

5. On April 6, 2006, the court granted the State's request for a continuance to the next day for a jury trial pursuant to Mr. Walker's demand for a speedy trial. (R Vol. 1, Tr. B-3)

6. On April 7, 2006, the trial court granted Mr. Walker's request for access to the law library and continued the case for a jury trial on April 10, 2006 pursuant to the demand for a speed trial. (R Vol. 1, Tr. C-4)

7. On April 10, 2006, Mr. Walker filed a Motion for a Bill of Particulars. (R Vol. 1, Tr. D-3) and (CLR 40). The trial court granted the State's continuance to April 11, 2006 for jury trial. (R Vol. 1, Tr. D-3)

8. On April 11, 2006, both the trial court and the ASA Brown stated on the record that Mr. Walker was lying that he had filed a Bill of Particulars despite the filed stamped copy of such document in the record. (R Vol. 1, Tr. E-3) and (CLR 40). The trial court granted the State's continuance to April 12, 2006 for jury trial. (R Vol. 1, Tr. E-3)

9. On April 12, the trial court granted the State's continuance to April 18, 2006 for jury trial. (R Vol. 1, Tr. G-3)

10. On April 18, 2006, the State tendered discovery to Mr. Walker which included police report, criminal history, lab report, grand jury transcripts and an answer for discovery. (R Vol. 1, Tr. H-3) The trial court denied Mr. Walker's pre-trial request for an

investigator. (R Vol. 1, Tr. H-4) The trial court granted the State's continuance to April 19, 2006 for jury trial. (R Vol. 1, Tr. H-4)

11. On April 19, 2006, the State tendered to Mr. Walker a full copy of the transcript. (R Vol. 1, Tr. I-3) Mr. Walker filed an answer to discovery on the record; however, it is not part of the common law record. (R Vol. 1, Tr. I-3) The trial court granted the State's continuance to May 15, 2006 for jury trial. (R Vol. 1, Tr. I-3)

12. On May 15, 2006, the State tendered to Mr. Walker an investigator's report revealing the result of measurements that they took between the location of the offense and the elementary school. (R Vol. 1, Tr. J-5) The State also tendered copies of photographs to Mr. Walker. (R Vol. 1, Tr. J-5) Mr. Walker withdrew his motion to dismiss the charge and grand jury. (R Vol. 1, Tr. J-6) The trial court granted the State's continuance to May 17, 2006 for jury trial. (R Vol. 1, Tr. J-8)

13. On May 17, 2006, the trial court granted the State's continuance to May 18, 2006 for jury trial. (R Vol. 1, Tr. K-3)

14. On May 18, 2006, the trial court granted the State's continuance to May 19, 2006 for jury trial. (R Vol. 1, Tr. L-3)

15. On May 19, 2006, the trial court granted the State's continuance to May 31, 2006 for jury trial. (R Vol. 1, Tr. M-3)

16. On May 31, 2006, the State filed an amended answer to discover which listed two additional witnesses: (1) Amy Zawadski, 4800 Sheridan Road, Chicago, Illinois and (2) Thomas Finnelly, Cook County State's Attorney's Office. (CLR 46) The State showed Mr. Walker some additional close up photographs "of the alley in question showing there is no video camera in the alley." (R Vol. 1, Tr. N-4) Mr. Walker informed the

court that the camera was located on the other side of the alley. (R Vol. 1, Tr. N-5) When the court asked the State if they had the photograph of what Mr. Walker was talking about, the State ambiguously replied as follows:

> "I do, Judge. The defendant was given copies of photographs. We retained the originals, and I have the photograph we –took close up photographs of the alley." (R Vol. 1, Tr. N-5)

17. At the jury trial, Chicago Police Department tactical gang intelligence Officers Eric Reyes, and Sebastian Flately, along with the prosecutor's investigator, Inv. Finnelly testified regarding the alleged drug transactions and the existence of a video camera in the alley.

18. From their testimony, the following was adduced at trial. (Reprinted from the State's Brief 07-0841 attached as Exhibit A to [illegible] reliance upon the officer's testimony)

    a. On February 21, 2006, Chicago Police Sergent Mike White, Officer Reyes, Officer Sebastian Flately, and Officer Daley were working as a tactical team. (R. O-19)

    b. At approximately 8:30 p.m., the officers were all in plain clothes traveling in an unmarked car in the area of 4700 N. Sheridan. (R. O-15, O-20)

    c. At that time, the officers were flagged down by an unknown citizen who told the officers that there was a white Oldsmobile with Tennessee license plates with two black males who were selling narcotics out of the vehicle. (R. O-20, O-99, O-144)

d. After touring the area for approximately 15 to 20 minutes, the officers saw the vehicle matching the description given to them by an unknown citizen. (R. 0-21, O-101, 145).

e. Inside the vehicle were Jermaine Walker and his brother, Russell Walker. (R. O-23) Jermaine Walker was the driver of the vehicle. (R. O-23)

f. At that time, the officers were in an unmarked car facing nothbound at the intersection of North Sheridan Road and West Lawrence Ave at a stoplight. (R. O-21, O-101, O-145)

g. Mr. Walker's vehicle was facing southbound in the parking lot of the J.J. Peppers at the intersection of North Sheridan Road and West Lawrence Ave.. (R. O-21, O-101, O-145)

h. The officers noticed an individual, whom they later learned was Dewey Brown, leaning into the passenger window and speaking with defendant and Russell Walker in the parking lot across the street from where the officers were stopped. (R. O-23, O-148)

i. While stopped at the intersection at a red light, the officers observed Russell Walker gesture for Dewey Brown to walk westbound. (R. O-24, O-148)

j. They observed Mr. Walker drive his vehicle westbound and then northbound into the first alley next to J.J. Peppers' parking lot. (R. O-25, O-149) The numerous photographs of this alley show a camera attached to the Lawrence House at the mouth of this alley. This camera can be seen from the intersection where these officers were stopped at the red light.

k. Dewey Brown walked to the alley as well. (R. O-25, O-149)

l. These officers immediately turned west bound on Lawrence Avenue and followed Mr. Walker's vehicle into the alleyway where Dewey Brown was standing next to the white Oldsmobile close to the entrance of the alleyway (R. O-25, O-26, O-149)

m. As they pulled behind defendant's vehicle, the officers saw Dewey Brown tender an unknown amount of United States Currency to Russell Walker in exchange for an unknown item. (R. O-26, O-150, O-151)

n. Parked behind the white Oldsmobile, the officers exited their vehicle as Dewey Brown ran northbound in the alley away from the camera. (R. O-27, O-103-104, O-152) Officer Flatetly chased Dewey Brown through the alley. (R. O-104) He caught Dewey Brown in the alley at approximately 4824 North Sheridan Rd. This is about half way down the alley. (R. O-104.) This is directly across from Saint Thomas of Cantaberry Church located on North Kenmore which is the next building of the Lawrence House. The photograph's taken by the State's Attorney investigator, depict the location of the arrest of Dewey Brown, not the location of where the white Oldsmobile was stopped. The photographs actually shows the west side of the alley and the wall surrounding the back yard of the Lawrence House which is many feet away from the traffic stop.

o. After exiting his parked car in the alleyway Office Reyes walked towards the white Oldsmobile that had stopped within a couple of car lengths from the entrance of the alleyway, and arrested Jermaine Walker when he exited his parked car.. (R. O-28)

p. Investigator Finnelly lied when denied there was a camera in the alley during his testimony at the jury trial.

i. He took numerous photographs of the alley where defendant Dewey Brown was arrested on two separate occassions. (R. O-82 to 88) He did not take photographs of entrance of the alley where the officers were stopped and where Mr. Walker was arrested.

ii. Inv. Finnelly photographed the alley from north to south, and from south to north half way down the alley from where Dewey Brown was arrested by Officer Flatley. (R. O-82) He did not photograph where Mr. Walker was arrested.

iii. Inv. Finnelly testified that he walked up and down the alley and took pictures of the walls of the alley. (R. O-82. He lied because the camera is attached to the wall at the entrance of the alley.

iv. Inv. Finnelly testified that at no time did he see any cameras or security devices on any of the walls. (R. O-82) He lied because there are actually three cameras attached to the walls of the buildings that are not obstructed from viewing.

v. He testified that he went back to the alley on May 26, 2006, and he did not observe or see anything resembling a camera or security device. (R. O-83) He lied because the camera is clearly visible in different photographs taken by the investigator from the Public Defender's Office.

vi. Inv. Finnelly intentionally photograph the walls in the alley to avoid capturing any image of the close circuit camera attached to the wall in

the alleyway where the police stopped their vehicles and Mr. Walker's vehicle. These photographs are part of the record.

19. At the jury trial Defendant, *acting pro se*, cross-examined Officers Eric Reyes, Sebastian Flately, and Investigator Finnelly on whether or not there was a camera in the alley. (R. O-53, O-63, O-89 to 94, O-141) All three denied that there was a camera in the alley. ((R. O-53, O-63, O-89 to 94, O-141) The photographs and the affidavits from employees of the Lawrence indicate that there was a camera attached to the Lawrence House above where the white oldsmobile was stopped. The close circuit monitor camera showed the alleyway where the cars were stopped in the alleyway.

20. When shown photographs by the prosecutor, all of the officers and Inv. Finnelly could not identify a camera in any of the photos of the alley taken by Inv. Finnelly. (R. O-29, O-53, O-62-63, O71 [illegible], O 166)

21. In the closing arguments, the prosecutor argued that the defense's claim that the police were lying under oath about drugs on his person were unfounded by pointing to the lack of any evidence that there was a camera in the alley. (R. P-104) The prosecutor told the jury the following (R. P-105) :

> There was a camera somewhere in the alley? Ladies and gentlemen, there is absolutely no evidence of that. Witness after witness after witness took that stand and told you there is no camera. You have pictures of the alley, including closeups that show you there is no camera.
>
> If there was a camera, do you think defendant and his brother would be stupid enough to deal drugs in front of it? Come on. Don't you think that they would pick another alley? Get real. The police officers planted drugs? This is the most baffling of all.

22. The prosecutor relied upon the perjured testimony of the Chicago Police Gang Intelligence Unit and their own investigator that there was not a video camera attached to the wall of a building in the alley to refute Jermaine Walker's *pro se* defense.

23. After hearing the testimony of these officers, Investigtor Finnelly and closing arguments, the jury returned a unanimous verdict of guilty of possession of a controlled substance with intent to deliver within 1,000 feet of a school (R. P-120-123), and the circuit court sentenced Mr. Walker to 22 years of imprisonment. See attached opinion.

24. In the appellate opinion, the court noted that the State presented evidence at trial that overwhelmingly supports a finding that no such video camera was present in the alley. "Absent some support in the record for the defendant's allegations, we find that a remand in this case would likely be a meaningless exercise regarding the appointment of an investigator. Attached Exhibit B.

25. Tiffany Thomas, an investigator for the Public Defender photographed the video camera attached to the Lawrence House in the alley, and interviewed the employees who could see the close circuit monitor from this camera at the front desk of the Lawrence House. See attached photocopy of photographs.

26. Ms. Joanne Johnson avers that she worked at the Lawrence House located at 1020 West Lawrence Ave., Chicago, Illinois 60640 behind the desk located in the front lobby during the day on February 26, 2006. She avers that there was close circuit camera mounted on the side of the Lawrence House at the mouth of the alleyway which provided a live feed of the alley to the monitor located behind the front desk. She admits that the live monitor feed has never been recorded. Attached Exhibit C.

27. Ms. Ann Marie Scott avers that she worked at the Lawrence House located at 1020 West Lawrence Ave., Chicago, Illinois 60640 behind the desk located in the front lobby during the day on February 26, 2006. She avers that there was close circuit camera mounted on the side of the Lawrence House at the mouth of the alleyway which provided a live feed of the alley to the monitor located behind the front desk. She admits that the live monitor feed has never been recorded. Attached Exhibit D.

28. Mr. Walker suffered a substantial denial of his constitutional rights where the Chicago Police Officers and the Cook County State's Attorney investigator lied under oath when they testified that there was no video camera in the alley to refute his defense that the drugs were planted on him, and that he did not sell any drugs to DeweyBrown. Both the jury and the appellate court relied upon their perjured testimony in reaching a guilty verdict and an appellate opinion affirming Mr. Walker's conviction.

29. Illinois courts have reversed convictions and remanded for evidentiary hearings on the issue of whether the officers committed perjury at trial.

30. A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law such oath or affirmation is required, he makes a false statement, material to the issue or point in question, which he does not believe to be true. Ill. Rev. State 1987, ch. 38, par. 32-29a) cited by *People v. Laboy*, 227 Ill. App. 3d 654 (1992) Attached Exhibit E.

31. It has long been recognized that the deprivation of an individual's liberty based upon false testimony is contrary to the basic principles in a civilized society. *People v. Cornille*, 95 Ill.2d 497, 509 (1983)

32. Although there is nothing in this record to indicate that the prosecutor had any knowledge of the falsity in the witness's testimony, its falisity need not be known personally by the prosecutor in order for there to have been a knowing use and a constitutional violation. *People v. Cihlar*, 111 Ill. 2d 212, 219 (1986)

33. Moreover, the prosecution is charged with the knowledge of its agents including the police. *People v. Martin*, 46 Ill. 2d 565, 567 (1970)

34. This case involved issues of identification and credibility of the police officers and the prosecutor's investigator regarding whether there was a video camera in the alley. Even the prosecutor recognized the relevancy of the video camera in the alley by referring to it in closing arguments.

35. In this case, the police officers and the prosecutor's investigator committed perjury when they all testified that there was no video camera in the alley because the video camera's existence was material to the defendant's guilt or innocence where Walker asserted that he would not sell drugs in front of video camera.

36. These witnessess' perjured testimony regarding the non-existence of a video camera was argued by the prosecutor in their closing arguments, in their appellate brief and cited by the appellate court in affirming Walker's conviction.

37. If the trial court finds that the officer in fact perjured himself, Mr. Walker should be accorded a new trial.

WHEREFORE, Mr. Walker prays that this court grant him an evidentiary hearing, and a new trial.

Ingrid A. Gill, Assistant Public Defender
Law Office of the Cook County Public Defender
Atty No. 30295

69 West Washington, 15th Fl.
Chicago, Illinois 60602
312-603-0600

CERTIFICATE

I, Ingrid Gill, Assistant Public Defender, certify in accordance with Rule 651 (c) of the Illinois Supreme Court that:

1. I have consulted with petitioner by mail and in person to ascertain his contentions of deprivations of constitutional rights under the above case number.
2. I have obtained and examined the official appellate records under 07-0841, including the Report of Proceedings and common law record of the jury trial before Judge Catherine M. Haberkorn and other filings concerning Indictment Number 06 CR 0628801. I also examined the official appellate briefs and decisions under 07-0841.
3. I prepared this Amended Petition For Post Conviction Relief in my capacity as court appointed attorney in the pending proceedings.

Ingrid A. Gill

Ingrid A. Gill, Assistant Public Defender
Law Office of the Cook County Public Defender
Amy Campanelli, Public Defender
Atty No. 30295
69 West Washington, 15th Fl.
Chicago, Illinois 60602
312-603-0600

CERTIFICATION OF ATTORNEY

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned, INGRID GILL, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Ingrid A. Gill

EXHIBIT A

NO. 07-0841

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

vs.

JERMAINE WALKER,

Defendant-Appellant.

Appeal from the Circuit Court of Cook County, Criminal Division.
Honorable **Catherine M. Haberkorn**, Judge Presiding.

BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE

RICHARD A. DEVINE,
State's Attorney,
County of Cook,
Room 309 - Richard J. Daley Center,
Chicago, Illinois 60602

Attorney for Plaintiff-Appellee

JAMES E. FITZGERALD,
AMY WATROBA KERN,
ROBERT KLINE,
Assistant State's Attorneys,
Of Counsel.

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff-Appellee

vs.

JERMAINE WALKER,

Defendant-Appellant.

POINTS AND AUTHORITIES

I.

II.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court acted within its discretion in denying defendant an investigator where defendant demanded trial, told the trial court he was ready for trial, and where defendant has not shown an investigator was necessary to prove a crucial issue nor has he shown he was prejudiced by the trial court's decision.

2. Whether the trial court acted within its discretion in sentencing defendant to 22 years in the Illinois Department of Corrections in light of defendant's criminal history and the facts of the case.

STATEMENT OF FACTS

Defendant Jermaine Walker was charged by indictment with possession of a controlled substance with intent to deliver within 1,000 feet of McKutchen Elementary School and possession of a controlled substance with intent to deliver more than five but less than fifteen grams of cocaine. (C. 18-20) Defendant was subsequently found guilty of both charges after a jury trial and the trial court sentenced defendant to 22 years in the Illinois Department of Corrections. (R. P-120; AA-22)

At the first court date, April 5, 2006, defendant demanded trial and after the trial court explained what that meant, defendant chose to represent himself. (R. A-6 - 12) The trial court admonished defendant of his rights pursuant to Illinois Supreme Court Rule 401. (R. A-9 - 12) Defendant acknowledged his rights, acknowledged what an attorney could provide for him, and decided to proceed *pro se*. (R. A-11 - 12)

On each subsequent court date, defendant reasserted his demand for trial and his desire to go forward *pro se*. (R. B-3, C-3, E-3, G-3, H-3, J-6, K-3, L-3, M-3, N-3, O-3) On April 7, 2006, defendant asked for a standby attorney but the trial court denied the request. (R. C-3-4) On April 18, 2006, defendant asked for standby counsel and an investigator. (R. H-4) Defendant did not state what the investigator could specifically investigate. The trial court denied the request since defendant continued to demand trial. (R. H-4) The trial court did write an order for defendant to have access to the law library and an order for defendant to have phone access to call his witnesses. (R. C-4; N-10)

Defendant's jury trial commenced on June 1, 2006, approximately 2 months after his first court appearance. (R. O-3) The following evidence was adduced at trial. On February 21, 2006, Chicago Police Sergeant Mike White, Officer Eric Reyes, Officer Sebastian

Flatley, and Officer Daley were working as a tactical team. (R. O-19) At approximately 8:30 p.m., the officers were all in plain clothes travelling in an unmarked car in the area of 4700 N. Sheridan. (R. O-15, O-20) At that time, the officers were flagged down by an unknown citizen who told the officers that there was a white Oldsmobile with Tennessee license plates with two black males who were selling narcotics out of the vehicle. (R. O-20, O-99, O-144) After touring the area for approximately fifteen to twenty minutes, the officers saw the vehicle matching the description given to them by the unknown citizen. (R. O-21, O-101, O-145) Inside the vehicle were defendant and his brother, Russell Walker. (R. O-23) Defendant was the driver of the vehicle. (R. O-23) At that time, the officers were in an unmarked car facing northbound at the intersection of N. Sheridan Rd. and W. Lawrence Ave. (R. O-21, O-101, O-145) Defendant's vehicle was facing southbound in the parking lot of the *J.J. Peppers* at the intersection of N. Sheridan Rd. and W. Lawrence Ave. (R. O-21, O-101, O-145)

The officers noticed an individual, whom they later learned was Dewey Brown, leaning into the passenger window and speaking with defendant and Russell Walker. (R. O-23, O-148) Russell Walker gestured for Dewey Brown to walk westbound. (R. O-24, O-148) Defendant drove his vehicle westbound and then northbound into the first alley next to the *J.J. Peppers* parking lot. (R. O-25, O-149) Dewey Brown walked to the alley as well. (R. O-25, O-149)

The officers followed defendant's vehicle and pulled behind defendant's vehicle in the alley. (R. O-25 – 26, O-149) As they pulled behind defendant's vehicle, the officers saw Dewey Brown tender an unknown amount of United States Currency to Russell Walker in exchange for an unknown item. (R. O-26, O-150-151) All four of the officers, suspecting a

narcotics transaction had just taken place, got out of their vehicle and approached. (R. O-27, O-103, O-152) At that time, Dewey Brown ran northbound in the alley. (R. O-27, O-103 – 104, O-152) Officer Reyes approached the driver's side of defendant's vehicle on foot. (R. O-28)

As Officer Reyes was approaching defendant's vehicle, defendant tossed a golf-ball-sized object out the window. (R. O-28) Officer Reyes never lost sight of the object and recovered it from where it landed in the alley. (R. O-29) The object consisted of 19 little plastic packets of suspect crack cocaine. (R. O-29) Officer Reyes then asked defendant to exit his vehicle. (R. O-30) Officer Reyes repeated his request three times, but defendant would not comply. (R. O-30) Officer Reyes drew his weapon and ordered defendant out of the car. (R. O-31) At that point, defendant complied and exited the vehicle. (R. O-31)

As defendant was exiting, Officer Reyes noticed a black object that looked like the handle of a gun protruding from defendant's waistband. (R. O-31) Officer Reyes handcuffed defendant and placed him on the ground, where he recovered a silver BB gun from defendant's waistband. (R. O-31 – 32) Officer Reyes then placed defendant in his vehicle and recovered four or five pieces of suspect crack cocaine that had fallen from the bag that defendant had thrown out the window. (R. O-32 – 33) There were a total of nineteen packets of crack cocaine in the object thrown by defendant. (R. O-45)

While Officer Reyes was arresting defendant, Officer Flatley was chasing Dewey Brown through the alley. (R. O-104) Officer Flatley caught Dewey Brown in the alley at approximately 4824 N. Sheridan Rd. (R. O-104) Officer Flatley placed Dewey Brown in handcuffs and recovered a single, plastic, white-knotted baggie containing suspect crack cocaine from his right hand. (R. O-107)

At the same time, Sergeant White approached the passenger side of defendant's vehicle. (R. O-152) Sergeant White ordered Russell Walker to exit the vehicle. (R. O-152) When Russell Walker exited the vehicle, Sergeant White observed two small plastic bags containing suspect crack cocaine on the seat where Russell Walker had been sitting. (R. O-153) Sergeant White handcuffed Russell Walker and recovered those two bags. (R. O-153) Sergeant White also recovered $141.00 from Russell Walker. (R. 0-113, O-157) Russell Walker, Dewey Brown, and defendant were taken to the 23rd District for processing and later transported to the 19th District lock-up. (R. O-34 – 35, O-110)

Officer Flatley performed a custodial search of defendant at the 23rd District. (R. O-110) Officer Flatley recovered a small plastic baggie containing suspect cannabis and a plastic bag containing two separate bags of suspect crack cocaine from defendant's right sock. (R. O-112) Officer Flatley also recovered $71.00 from defendant. (R. O-113) Officer Flatley inventoried all the suspect narcotics and the BB gun recovered during the incident. (R. O-114 – 117)

The People also presented the testimony of Cook County State's Attorney Investigator Thomas Finnelly. (R. O-78) Inv. Finnelly went to the crime scene on April 20, 2006 to take pictures and measurements. (R. O-78 – 79) Inv. Finnelly measured from 4802 N. Sheridan Rd. in the west alley to the McKutchen School on the 4800 block of N. Sheridan Rd. (R. O-79) Using a properly calibrated walking roll, Inv. Finnelly found that the distance between the school and the crime scene was 629 feet. (R. O-81)

Inv. Finnelly also took numerous photographs of the alley where defendant was arrested. (R. O-82 – 88) Inv. Finnelly photographed the alley from north-to-south and from south-to-north. (R. O-82) Inv. Finnelly also walked up-and-down the alley and took pictures

of the walls of the alley. (R. O-82) At no time did Inv. Finnelly see any cameras or security devices on any of the walls. (R. O-82) Inv. Finnelly also returned on May 26, 2006 to take additional photographs of the alley. (R. O-88) On that date, Inv. Finnelly took close-up pictures of the walls of the alley. (R. O-82) Once again, Inv. Finnelly did not see anything resembling a camera or a security device. (R. O-83) At trial, Inv. Finnelly identified numerous photographs of the alley. (R. O-83 – 87) There were no cameras or security devices visible in any of the pictures of the alley. (R. O-83 – 87)

Defendant, acting *pro se*, cross-examined Officer Reyes, Officer Flatley, and Inv. Finnelly on whether or not there was a camera in the alley. (R. O-53, O-63, O-89 – 94, O-141) All three denied that there was a camera in the alley. (R. O-53, O-63, O-89 – 94, O-141)

Forensic Chemist Brian Stevenson testified that he received numerous inventory envelopes relating to this case. (R. P-30) Stevenson tested eight of the nineteen items from the object that defendant threw out of his car window. (R. P-38 – 39) The eight items weighed a total of 1.2 grams and in his expert opinion contained cocaine. (R. P-41, P-54) Stevenson also tested the two baggies containing a chunky substance and the baggie containing plant material that were recovered from defendant's right sock. (R. P-47 – 48) The chunky substance in the two baggies combined for a total weight of 5.6 grams. (R. P-49, P-52) The plant material weighed a total of .5 grams. (R. P-50) In Stevenson's expert opinion, the chunky substances recovered from defendant's sock contained cocaine and the plant material contained cannabis. (R. P-53, P-54) The items recovered from Dewey Brown and from the passenger seat in the vehicle also tested positive for cocaine. (R. P-32 – 36, P-44 – 46, P-53, P-54)

At the end of Stevenson's testimony, the People entered all exhibits, including the photographs of the alley, into evidence and rested. (R. P-67 – 68) Defendant presented no witnesses and did not testify. (R. P-68 – 69) After both sides gave closing arguments, the jury found defendant guilty of possession of a controlled substance (cocaine) with intent to deliver within 1,000 feet of a school and guilty of possession of a controlled substance with intent to deliver more than five but less than fifteen grams of cocaine. (R. P-120 – 121)

Defendant originally wanted to proceed *pro se* at sentencing, but changed his mind. (R. R-3, R-10) The trial court denied defendant's motion for a new trial and after hearing aggravation and mitigation, the trial court sentenced defendant to 22 years in the Illinois Department of Corrections for the Class X conviction for possession of a controlled substance (cocaine) with intent to deliver within 1,000 feet of a school. (R. AA-22) During sentencing, the trial court stated, "With all those [prior] convictions you still were given chance after chance after chance to succeed in life. None of that seems to matter to you because you still choose a life of crime." (R. AA-21) The trial court denied defendant's motion to reconsider sentence. (R. AA-23)

Defendant now appeals his convictions and sentence.

ARGUMENTS

I.

THE TRIAL COURT PROPERLY DENIED DEFENDANT AN INVESTIGATOR WHERE DEFENDANT DEMANDED TRIAL, INFORMED THE TRIAL COURT HE WAS READY FOR TRIAL, AND WHERE DEFENDANT HAS NOT SHOWN THAT AN INVESTIGATOR WAS NECESSARY TO PROVE A CRUCIAL ISSUE OR THAT HE WAS PREJUDICED BY THE TRIAL COURT'S RULING.

Defendant contends the trial court denied him of his right to present a defense when the court denied his request for an investigator. (Def. Br. 11) Specifically, defendant contends the lack of an investigator prevented him from obtaining evidence that a surveillance camera existed in the area where he was arrested and captured the incident on video. (Def. Br. 11) Defendant's argument is without merit. Defendant continued to demand trial and told the trial court he was prepared for trial on each court date. Moreover, defendant has not shown how an investigator was necessary to prove a crucial issue nor has defendant shown how he was prejudiced by the trial court's ruling.

The decision of the trial court to deny defendant's request for an investigator should not be overturned absent an abuse of discretion. *People v. Rhode*, 219 Ill.App.3d 1079, 1082 (2nd Dist. 1991).

Defendant has not shown that an investigator was necessary to prove a crucial issue nor has defendant shown that he was prejudiced by not having an investigator. In Illinois, there is no statutory right for a *pro se* defendant to be provided with free investigative services. *People v. Wilson*, 117 Ill.App.3d 744, 752 (4th Dist. 1983). While this issue has not been subject to very much judicial review, this Court in *People v. Veal*, 110 Ill.App.3d 919,

926 (1st Dist. 1982), held that there may be a constitutional right to free investigative services where: (1) the services are necessary to prove a crucial issue; and (2) the lack of funds necessary to provide investigative services will substantially prejudice the defendant.

In the instant case, defendant has not satisfied either of the two factors for investigative services. Defendant's reason for an investigator, set out for the first time in defendant's brief, is speculative at best. Defendant contends that an investigator was necessary to show whether there was a camera in the alley where defendant was stopped by the police. (Def. Br. 11) However, this issue was addressed at trial through the introduction of exhibits and testimony.

At trial, the People introduced testimony and exhibits which demonstrated that there were no cameras in the alley where defendant's arrest took place. Cook County State's Attorney Investigator Finnelly testified that, on April 20, 2006, he photographed the alley from north-to-south and from south-to-north. (R. O-82) Inv. Finnelly also walked the alley and took pictures of the walls lining the alley. (R. O-82) At no time did Inv. Finnelly see any cameras or security devices on any of the walls. (R. O-82) Inv. Finnelly also returned on May 26, 2006 to take additional photographs of the alley. (R. O-88) On that date, Inv. Finnelly took close-up pictures of the walls of the alley. (R. O-82) Once again, Inv. Finnelly did not see anything resembling a camera or a security device. (R. O-83) At trial, Inv. Finnelly identified numerous photographs of the alley and the photographs were entered into evidence. (R. O-83 – 87; People's Ex. 4, 8, 9, 10, 11)[1] Inv. Finnelly testified that there were

[1] The People have filed a motion to supplement the record with the photograph exhibits contemporaneously with this brief.

no cameras or security devices visible in any of the pictures of the alley. (R. O-83 – 87)

None of the pictures show anything remotely resembling a camera or security device in the alley where defendant's arrest took place. (People's Ex. 4, 8, 9, 10, 11) Moreover, when defendant was cross-examining Inv. Finnelly concerning taking pictures of both sides of the alley, defendant asked why Inv. Finnelly did not take photographs of the west side of the alley, the trial court stopped defendant and said, "[h]e presented pictures showing the side that you requested." (R. O-93) Clearly, both sides of the alley were shown in the photographs and there was no sign of any cameras or security devices. Additionally, Officers Reyes and Flatley both, on cross-examination by defendant and re-direct, testified that there were no cameras in the alley. (R. O-53, O-63, O-70 – 73, O-141)

Defendant has not shown how an investigator would have shed additional light on this issue. The evidence and testimony demonstrated that there was no camera in the alley where defendant was arrested. Defendant's claim on appeal that an investigator would be able to determine if there was a camera in the alley and, if that camera existed, whether it captured the arrest is speculative at best. The Cook County State's Attorney's Office twice sent out an investigator to determine if there was a camera or security device in the alley and, on both occasions, the investigator did not see any signs of a camera or security device. (R. O-82, O-83, O-88) While Inv. Finnelly did not take close-up pictures of the building on the west-side of the alley, the pictures of that side show no signs of a camera or security device. (People's Ex. 4, 8) A defense investigator would not have found a camera because one did not exist. Clearly, defendant has not satisfied the first prong set out by *Veal* to show that the investigator was necessary to prove a crucial issue.

Defendant contends that the photographs did not depict the west side of the alley.

(Def. Br. 13). This contention is belied by the record. Not only did the trial court and the People note that photographs of both sides of the alley were taken, (R. N-4 – 5, O-93), but the photos themselves show that both sides of the alley were photographed. (People's Ex. 4, 8)

Additionally, defendant cannot satisfy the second showing under *Veal* where defendant was not prejudiced by the trial court's ruling denying him a free investigator. As noted above, there were plenty of pictures of the alley taken that revealed there were no cameras. Clearly, defendant has not and cannot demonstrate how an investigator was imperative to determining if there was a camera in the alley where it was conclusively established at trial that no camera existed.

Contrary to defendant's claim in his brief, *Veal* is applicable to the instant case. (Def. Br. 14) In *Veal*, the defendant appealed the trial court's denial of his motion for the appointment of free investigative services to locate persons who may have witnessed the crime. 110 Ill.App.3d at 924, 926. This Court stated that the defendant failed to establish a need for an investigator since the existence of the witnesses was speculative. *Id.* at 926. In *Veal*, this Court noted that the lack of investigative assistance did not deprive the defendant from presenting his self-defense theory. *Id.* Moreover, this Court stated that the need for an investigator was not necessary for a crucial investigation. *Id.* Specifically this Court found that "[a]ny person *** should be able to *attempt* to locate a potential witness." (Emphasis in original) *Id.* at 927.

Similarly, in the instant case, defendant has failed to establish that the existence of the alleged camera was more than mere speculation. The numerous pictures introduced into evidence gave a thorough view of the alley where the arrest took place. Nowhere in any of

the pictures is there a camera or security device. (People's Ex. 4, 8, 9, 10, 11) Moreover, defendant has not shown how an investigator was necessary to his defense where the alley was already photographed by the State's Investigator.

Defendant contends the *Veal* case is distinct from the instant case because the request in *Veal* was speculative whereas, according to defendant, this request "sought investigation of a specific, concrete item." (Def. Br. 14) However, the existence of this camera was pure fiction. The numerous photographs of the alley and the testimony made it clear there was no camera in the alley. Clearly, the instant case is not distinct from *Veal.*

Defendant's argument that it was error to deny his request for an investigator also fails because defendant continued to demand trial and told the trial court that he was ready for trial. From the first court appearance, on April 5, 2006, defendant insisted on demanding trial. (R. A-6) At that time, the trial court explained to defendant that this meant he was ready to go to trial that day. (R. A-6) Defendant acknowledged this and continued his demand for trial. (R. A-6 – 12) The trial court explained that his court-appointed public defender was not ready for trial and defendant informed the court he wanted to proceed *pro se.* (R. A-6 – 12) After the trial court explained what a lawyer could do to assist him, including "investigate your case to see if there's any witnesses out there who might be able to help you on your case [,]" the trial court asked defendant, "[d]o you understand that that's what a lawyer could do, and you are choosing to proceed without any police reports, without any answers to discovery, and without a lawyer, is that correct?" (R. A-11 -12) Defendant acknowledged that he understood what he was giving up and insisted that he wanted to proceed *pro se.* (R. A-12, A-16) The trial court informed defendant, "[y]ou'll be coming back here every day until the State is ready." (R. A-16)

At every date following the first appearance, defendant asserted he was demanding trial and insisted on proceeding *pro se*. (R. B-3, C-3, E-3, G-3, H-3, J-6, K-3, L-3, M-3, N-3, O-3) On April 7, 2006, defendant asked for a standby attorney. (R. C-3) The trial court explained that he could not have standby counsel since he decided to represent himself. (R. C-3) The trial court allowed defendant access to the law library, but when defendant insisted he needed time in the library, the trial court noted that defendant chose to go forward without time for preparation. (R. C-3 – 4) At that time, the following colloquy took place:

> "[Court]: You demanded trial. I said, are you going to go without knowing the law, without preparing, without answer?
>
> [Defendant]: Yes, I demand my trial be heard today.
>
> [Court]: You demand trial. You go without going to the law library. I will write the order – you will be coming here everyday, motion State with for jury, April 10. I will write the order allowing you to go to the law library. You are the one who said you are prepared to go without any preparation, without reading the law, without having a lawyer. Those were your desires." (R. C-4)

On April 18, 2006, defendant asked for standby counsel and an investigator. (R. H-4) At that time, the following discourse ensued:

> "[Court]: You are still demanding trial, is that correct?
>
> [Defendant]: Yes. Also, with all due respect, I am asking for the Court to grant me a standby counsel and investigator.
>
> [Court]: I said no, I am not giving you a standby counsel.

[Defendant]: Can I have an investigator so I could have a solid defense for trial?

[Court]: You are the one who answered ready without anything. You are the one that is demanding trial. You put any motions that you have to me in writing, present them to me. Motion State with for jury tomorrow, [the date].

[Defendant]: All right. No problem." (R. H-4 – 5)

Notably, defendant did not state the purpose for his request for an investigator nor did defendant mention anything about a camera. On May 31, 2006, the trial court granted an order to authorize phone calls for defendant since he was having a hard time contacting witnesses by calling collect. (R. N-8 – 10)

Defendant's demand for trial and request for an investigator were inconsistent with one another. When a defendant demands trial he is informing the court that he is ready to go to trial and does not need any more time for investigation. In the instant case, it is clear defendant was more concerned with having a quick trial and continued to insist that he was ready for trial. In fact, when defendant filed a written motion to dismiss the grand jury indictment, he promptly withdrew those motions when he learned they would delay going to trial. (R. J-6 – 7) By answering ready for trial every single day, defendant was telling the trial court he did not need to conduct any investigation or prepare for trial. If defendant wanted to have an investigator, he could have easily relaxed his demand for trial in order to have time to investigate possible defenses. Instead, defendant demanded trial and pushed the cause to jury trial as soon as possible.

This situation closely resembles a situation where a defendant contends he was forced

to choose between a speedy trial and effective assistance of counsel. In *People v. Bowman*, 138 Ill.2d 131 (1990), the defendant argued that his right to a speedy trial had been violated by his replacement counsel's request for a continuance date to prepare for trial. The Illinois Supreme Court noted, "[defense counsel] could not have given defendant competent counsel without more time to prepare for trial." *Id.* at 140. The Supreme Court further noted, "[h]ad defendant chosen to go to trial [earlier], and lost, his claim on appeal might have been ineffective assistance of counsel." *Id.* at 148. The Illinois Supreme Court held, "the due process rights of defendants are not denied when they are forced to choose between the two constitutional rights of speedy trial and effective assistance of counsel." *Id.* at 147. Moreover, the Supreme Court held,

> "[d]efendant cannot contend that it was unfair to force him to choose between a speedy trial and effective assistance of counsel. Defendant may have a right, even of constitutional dimensions, to pursue whichever course he chooses, but the Constitution does not forbid requiring him to choose nonetheless." *Id.* at 148.

The rule of law from *Bowman* is applicable to the instant case. By his own actions, defendant was in a position where he faced a choice between having a trial sooner or having time to investigate. He clearly and repeatedly chose the former. In the instant case, had defendant relaxed his demand and been granted an investigator, his claim now might be that his speedy trial rights were violated. Defendant should not now be allowed to claim error where he continued to demand trial, was repeatedly admonished by the court regarding his choices and consequences, and repeatedly told the trial court he was ready for trial. *See also*

People v. Johnson, 45 Ill.2d 38, 43-44 (1970) ("To argue that he was forced to choose [between a speedy trial and effective assistance] is to argue technicalities. The right to a speedy trial and the right to avoid a precipitous trial are separate but related rights. Both are designed to assure an accused a fair trial, to prevent undue delay in one instance and undue haste in the other. He can demand action or avoid action as the exigencies of his situation may dictate. But fairness and justice are not a one-way street. Society is likewise entitled to a fair administration of justice and the measure of right and wrong must always be that which is fair, not that which is technically astute or contrived. The fact that on occasion the accused might have to jeopardize the legislative benefits of the [speedy-trial] rule by asserting his right to a continuance does not entail a denial of his right to a speedy trial.")

Even if, arguendo, this Court finds that the trial court abused its discretion by denying defendant a free investigator, any error was harmless and does not require reversal. "[E]rror is harmless when this court can conclude, after consideration of the totality of the evidence, that a trial without error would not end in a different result." *People v. Tomes*, 284 Ill. App. 3d 514, 521-522 (1st Dist. 1996). In the instant case, there was overwhelming evidence of defendant's guilt. Three Chicago Police officers testified credibly and consistently as to defendant's involvement of a drug transaction and his attempt to get rid of nineteen packets of cocaine once the police arrived. Officer Flatley also testified credibly about recovering a small plastic baggie containing suspect cannabis and two bags with suspect cocaine from defendant's sock. (R. O-112) Moreover, as discussed above, numerous photographs of the alley were admitted at trial and clearly established that there was no camera. Thus, even if the trial court had granted defendant's request for an investigator, the result of defendant's trial would have been the same.

In sum, defendant should not now be allowed to claim error where he continued to demand trial and repeatedly told the trial court he was ready for trial. Additionally, defendant has failed to establish that an investigator was necessary to prove a crucial issue or that he was prejudiced by the trial court's denial of the appointment of an investigator. Thus, this Court should affirm defendant's conviction for possession of a controlled substance with intent to deliver within 1,000 feet of a school.

II.

THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN SENTENCING DEFENDANT TO 22 YEARS IN THE ILLINOIS DEPARTMENT OF CORRECTIONS IN LIGHT OF DEFENDANT'S CRIMINAL HISTORY AND THE FACTS OF THE CASE.

Defendant contends that his sentence imposed by the trial court was excessive because the offense was non-violent, defendant only had one prior violent felony conviction in his background and defendant was enrolled on a scholarship at a university at the time of his arrest. (Def. Br. 16) Accordingly, defendant asks this Court to either reduce his sentence to ten years or remand the cause for resentencing. (Def. Br. 20) However, defendant's request must be rejected where the record establishes that the trial court acted within its discretion and that the sentence was entirely appropriate in this case.

The trial court is in a superior position to assess the credibility of the witnesses and to weigh the evidence presented at a sentencing hearing. *People v. Jones*, 168 Ill.2d 367, 373 (1995). A judgment as to the proper sentence must be based on the circumstances of each case and depends upon many factors, including a defendant's demeanor, general moral character, mentality, social environment, habits, and age. *People v. Stacey*, 193 Ill.2d 203, 209 (2000). In addition, defendant's prior criminal history, mental capacity, background, age, and future dangerousness are factors that the trial court may consider in sentencing. *People v. Thompson*, 222 Ill.2d 1, 35 (2006). Also, defendant's rehabilitative potential, the seriousness of the offense, the need to protect the public, and the need for deterrence and retribution must also be considered. *People v. Hunzicker*, 308 Ill.App.3d 961, 966 (3rd Dist. 1999).

The trial court has broad discretionary powers in choosing the appropriate sentence a defendant should receive. *Jones*, 168 Ill.2d at 373; *People v. Pryor*, 372 Ill.App.3d 422, 438 (1st Dist. 2007). The Illinois Supreme Court has repeatedly emphasized the undesirability of a reviewing court substituting its judgment or preference as to punishment for that of the sentencing court. *People v. Hicks*, 101 Ill.2d 366, 375 (1984); *People v. Pittman*, 93 Ill.2d 169, 178 (1982). Therefore, an appellate court must give a trial court's sentencing decision "great deference." *People v. Coleman*, 166 Ill.2d 247, 258 (1995). Moreover, a reviewing court may not substitute its judgment for that of the trial court simply because it would have weighed the factors differently. *Stacey*, 193 Ill.2d at 209. Where the sentence chosen by the trial court is within the statutory range permissible for the crime for which the defendant was charged, that sentence may not be disturbed absent an abuse of discretion. *Pryor*, 372 Ill.App.3d at 438.

In the present case, it is undisputed that defendant was sentenced within the applicable statutory range. Defendant was convicted of the Class X offense of possession of a controlled substance with intent to deliver (cocaine) within 1,000 feet of a school. 720 ILCS 570/401(c)(2) and 407(b)(1) (2006). Section 5/5-8-1(a)(3) of the Unified Code of Corrections provides that defendant's Class X conviction carries a sentence of 6-30 years in the Illinois Department of Corrections. 730 ILCS 5/5-8-1(a)(3) (2006). Defendant's sentence of 22 years is sixteen years over the minimum and eight years below the maximum sentence for possession of a controlled substance with intent to deliver within 1,000 feet of a school.

The trial court did not abuse its discretion in sentencing defendant to 22 years in the Illinois Department of Corrections. In sentencing, the trial court stated:

"[Defendant], I find this astounding that you in your life have nothing that should have held you back from being a responsible, productive role model in your community. Instead you have had a life of crime. Obviously you were born with intelligence. You have a family that supports you. However, you have chosen to still live on the streets. You have convictions dating back to 1993 starting with a very serious Class X offense of six to 30 years in the Illinois Department of Corrections, armed robbery conviction, where you received six years in the Illinois Department of Corrections. You subsequently had additional convictions, several misdemeanors, misdemeanor retail theft, misdemeanor theft, misdemeanor retail theft, and then again another felony in 1998, and despite all of that somehow you still managed to get a scholarship to be able to go to college where there are potential students all over the city, all over the state, all over the country probably dying to have a scholarship being able to go to college so that someone could help them with their funds, and you are awarded a scholarship. Not only that, you were in a program called the Fisk University 2004 Rams participant wherein you have submitted an article here that said 20 students from predominantly minority colleges and universities successfully

completed the ten-week summer 2004 intership [*sic*] in the Rams programs which began on June 7th, colleges and universities represented and it gives a whole list of them. It shows research topics ranged from biology, including genomes to life, and modelling medical devices, to cluster computer complex systems, to superconductivity, to visualization, to virtual environments for homeland security, training in a wide range of projects and their development, individual project abstracts, on and on and on of all of these things that were made available to you, a research alliance in math and science. Even with all of your convictions, you were still allowed to be chosen to be in this program. You still got a scholarship. You were in college. So people were kind enough to still give you a chance and you still chose to deal drugs. So you were given every opportunity possible, every opportunity possible. There is [*sic*] people who don't have any family, who don't have the chance to get an education. Certainly many, many, many thousands of people don't get a scholarship. You were given all of it and you still chose to deal drugs. You chose to deal drugs within 1,000 feet of a school. You have conviction upon conviction. With all those convictions you still were given chance after chance after chance to succeed in life. None of that seems to matter

to you because you still choose a life of crime. I think it's very sad that this scholarship and a chance to be in this great program were wasted on somebody who still chooses to deal drugs within 1,000 feet of a school. It's very, very sad that some other student who would have been grateful could have got that opportunity. Instead you wasted it. You took advantage of it and wasted it. Based on the serious nature of the defendant's background, the Class X felony from which he is charged, mandatory six to 30 years in the Illinois Department of Corrections, this being his second Class X conviction in his very young life, the fact that he was given numerous opportunities, probations, a taste of jail to try to detour him from wanting to be in jail, he had even been to prison before, the fact that on the outside the community was over and over again trying to help this defendant with scholarships, with schooling, with college, that the defendant still chose to endanger the community by selling drugs within 1,000 feet of a school. The defendant will be sentenced to 22 years Illinois Department of Corrections." (R. AA-19 – 22)

The record firmly establishes that the trial court considered the aggravating factors and the mitigating factors before sentencing defendant.

Defendant had a significant criminal background before this offense. As the People pointed out at sentencing, defendant has three prior felony convictions. (R. AA-15; C. 89-

95) Defendant was convicted of armed robbery in 1994 and served six years in the Illinois Department of Corrections. (C. 95) In 1997, defendant was convicted of forgery and sentenced to eighteen months of probation, which he violated and was thereafter sentenced to four years in the Illinois Department of Corrections. (C. 77, 93) In 2002, defendant was convicted of retail theft and sentenced to three years in the Illinois Department of Corrections. (C. 76, 91) Additionally, defendant has a theft misdemeanor conviction from 1997, two misdemeanor retail theft convictions from 1998, a misdemeanor possession of cannabis conviction from 2002, a misdemeanor drinking in a public way conviction from 2002, two misdemeanor possession convictions from Tennessee in 2005, and a misdemeanor aggravated trespassing conviction from Tennessee in 2005. (C. 76 – 78, 83-85, 91, 93-94)

Additionally, the facts of this case make it clear that the trial court did not abuse its discretion in sentencing defendant. Defendant was driving around with his brother selling cocaine out of his Oldsmobile. When the police caught defendant and his brother in the middle of a transaction, defendant threw a bag containing nineteen individual bags of crack cocaine in an effort to distance himself from the drugs. (R. O-28) Defendant repeatedly refused to cooperate with Officer Reyes and exit his car. (R. O-30) Shortly thereafter, Officer Reyes recovered a BB gun from defendant's waistband. (R. O-31 – 32) Moreover, a custodial search of defendant revealed that defendant had 5.6 grams of cocaine and .5 grams of cannabis in his right sock. (R. O-112, P-49, P-50, P-52)

Although defendant asserts that the trial court neglected to consider his rehabilitative potential, it is presumed that that the trial court considered all mitigating factors and rehabilitative potential before it, absent evidence to the contrary. *People v. Garcia*, 296 Ill.App.3d 769, 781 (1st Dist. 1998). Here, the trial court specifically stated that it considered

factors in mitigation before sentencing defendant. (R. AA-19 - 22) As set out above, the trial court specifically addressed defendant's educational progress, his scholarship to Fisk University, and his project on superconductivity. (R. AA-19 – 22) The trial court thoroughly examined defendant's educational progress and found that, "[w]ith all those convictions you still were given chance after chance after chance to succeed in life. None of that seems to matter to you because you still choose a life of crime." (R. AA-21) Defendant argues that the trial court should only have taken his education into account as mitigation and should not have considered it in aggravation. (Def. Br. 19) Defendant cites absolutely no case law to support his argument that it is "well-established law" that the trial court cannot consider defendant's educational progress as aggravation as well as mitigation. (Def. Br. 19) It is clear from the trial court's comments at sentencing that the court properly weighed the facts of this case and all factors in both aggravation and mitigation.

While it is true that a defendant's education and desire to continue his education are mitigating factors, in sentencing the trial court may take into account defendant's demeanor, general moral character, mentality, social environment, habits, and age. *Stacey*, 193 Ill.2d at 209; *see also People v. Markiewicz*, 246 Ill.App.3d 31, 56 (2nd Dist. 1993) ("Defendant's educational efforts are relevant as it relates to his rehabilitative potential"). Clearly, defendant's decision to continue a life of crime despite being given the opportunity to go to college on a scholarship and better himself reflects quite poorly on his rehabilitative potential, his demeanor, and his moral character. To make the trial court ignore defendant's continuing efforts to waste great educational opportunities would go against Illinois jurisprudence, which instructs that the sentencing court look at each case individually and consider all factors. *People v. Baker*, 123 Ill.2d 233, 240 (1988). Additionally, defendant's

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the appendix, is 28 pages.

BY: _____
ROBERT KLINE,
Assistant State's Attorney

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court affirm defendant's conviction and sentence.

Pursuant to People v. Nicholls, 71 Ill. 2d 166, 374 N.E.2d 194 (1978) and relevant statutory provisions 725 ILCS 5/110-7(h)(2004); 725 ILCS 130/13 (2004); 55 ILCS 5/4-2002.1 (2004), the People of the State of Illinois respectfully request that this Court grant the People costs and incorporate as part of its judgment and mandate a fee of $100.00 for defending this appeal. In addition, pursuant to People v. Agnew, 105 Ill. 2d 275, 473 N.E.2d 1319 (1985) and 55 ILCS 5/4-2002.1 (2004), the People respectfully request that this Court also grant the People an additional fee of $50.00 in the event oral argument is held in this case.

Respectfully Submitted,

RICHARD A. DEVINE,
State's Attorney,
County of Cook,
Room 309 - Richard J. Daley Center,
Chicago, Illinois 60602

Attorney for Plaintiff-Appellee

JAMES E. FITZGERALD,
AMY WATROBA KERN,
ROBERT KLINE,
Assistant State's Attorneys.
Of Counsel.

argument ignores the fact that defendant committed three misdemeanors while at Fisk University and additionally picked up the instant case. Clearly, this reflects badly on defendant's rehabilitative potential; it calls into question his desire to continue his education and rehabilitate himself. Defendant has failed to present any evidence demonstrating that the trial court failed to adequately consider the mitigating evidence, as required to overcome the presumption that the court did consider all mitigation. *Garcia*, 296 Ill.App.3d at 781. Contrary to defendant's argument, the trial court did consider his educational progress in mitigation, but found that defendant's criminal background and his desire to continue committing crime outweighed the mitigation. *See People v. Coleman*, 201 Ill.App.3d 803, 809 (1st Dist. 1990) (finding defendant's criminal history as evidence of a lack of rehabilitative potential).

Defendant was given numerous chances despite his extensive criminal history and he wasted those chances by continuing to commit crimes. Based on defendant's criminal history, the seriousness of the offense, and his poor rehabilitative potential, it is evident that the trial court did not abuse its discretion in sentencing defendant to 22 years in the Illinois Department of Corrections. Defendant's sentence, therefore, must be affirmed.

EXHIBIT B

SECOND DIVISION
OCTOBER 14, 2008

1-07-0841

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 6288
	)	
JERMAINE WALKER,	)	Honorable
	)	Catherine M. Haberkorn,
Defendant-Appellant.	)	Judge Presiding.

ORDER

Following a jury trial at which he represented himself *pro se*, the defendant, Jermaine Walker, was found guilty of possession of a controlled substance with intent to deliver within 1,000 feet of a school and sentenced to 22 years' imprisonment. On appeal, the defendant contends that the trial court erred when it refused his request for an investigator. He also challenges the severity of his sentence. We affirm.

BACKGROUND

On April 5, 2006, the defendant's first court date following arraignment, the public defender was appointed to represent him. However, when his attorney filed a motion for discovery and asked to continue the case, the defendant objected to the appointment, insisted that he should be allowed to proceed *pro se* and demanded an immediate trial. The trial court admonished the defendant

regarding his right to appointed counsel and told him he would be "coming back here every day until the State is ready."

The defendant appeared several more times in the following days and demanded an immediate trial each day. On April 18, 2006, the State tendered discovery materials to the defendant, and the following colloquy occurred.

> "THE COURT: You are still demanding trial, is that correct?
>
> [THE DEFENDANT:] Yes. Also with all due respect, I am asking for the Court to grant me a standby counsel and investigator.
>
> THE COURT: I said no, I am not giving you a standby counsel.
>
> [THE DEFENDANT:] Can I have an investigator so I could have a solid defense at trial?
>
> THE COURT: You are the one who answered ready without anything. You are the one who is demanding trial. You put any motion that you have to me in writing, present them to me."

The defendant never filed a written motion for appointment of an investigator or otherwise raised the issue with the trial court again.

Because the defendant does not challenge the sufficiency of the evidence, only a summary statement of the facts is required. The State presented evidence that on February 21, 2006, a team of Chicago tactical officers traveling in an unmarked police car received a tip that someone in a white car with Tennessee plates was selling narcotics. The police officers searched for the car for

approximately 20 minutes before spotting the defendant driving a car that matched the description in the 4700 block of North Sheridan Road in Chicago. The defendant's brother, Russell, was seated in the passenger seat of the car. As they approached the car, the officers saw a third man, Dewey Brown, near the passenger side window. The officers could not hear the conversation, but after Brown spoke to Russell, Russell gestured toward a nearby alley. Brown walked into the alley with the defendant driving behind him.

The police officers followed in their car. In the alley, the officers observed Brown give money to Russell in exchange for a small item. Believing that they had witnessed a narcotics transaction, the tactical officers got out of their car, chased Brown a short distance and arrested him. The defendant threw a golf-ball-sized object from the window of the car. He was ordered out of the car at gunpoint, but initially refused. As the defendant got out, one of the officers noticed a black object protruding from the defendant's waistband. This was later determined to be a BB gun. The police recovered a small object from the street containing small packets of suspect crack cocaine. They also found in the defendant's sock an object weighing approximately five grams which later tested positive for cocaine. An investigator who examined the alley measured the distance to a nearby school as less than 1,000 feet. The investigator took extensive photographs of the alley and the walls of the buildings on either side of the alley. He discovered no camera or other surveillance devices in the alley.

During cross-examination of the officers, the defendant attempted to develop a theory of police misconduct. He questioned the officers about whether they used excessive force, planted the narcotics in his car, and took money from his person without inventorying it. The police officers

denied all misconduct. The police officers also denied that their actions were captured on videotape by a surveillance camera. The defendant presented no evidence during his case in chief.

The jury found the defendant guilty. The trial court continued the matter for sentencing and, at the defendant's request, appointed counsel to represent him for the sentencing phase of the trial.

At the sentencing hearing, the State argued that the defendant's lengthy criminal history warranted a 15-year sentence. The State noted that the defendant had previously been convicted of armed robbery in 1994, when he was 16 years old, forgery in 1998, and felony retail theft in 2002. Defense counsel argued that although the defendant had prior convictions he had succeeded in "turning his life around," and counsel requested a sentence closer to the minimum of the sentencing range of six to thirty years. The presentencing investigation report (PSI) revealed that in addition to the felony convictions mentioned by the State, the defendant had numerous misdemeanor convictions. The PSI also revealed that at the time he committed this offense the defendant was enrolled as a computer science student at Fisk University in Tennessee, where he had completed 80 credit hours. He had worked on a project concerning superconductivity and had participated in a Research Alliance in Math and Science (RAMS) internship. The defendant had obtained a full scholarship to Fisk after completing an Advanced Certificate at Truman College in Chicago. According to the defendant, he planned to continue his education upon his release.

The trial court sentenced the defendant to 22 years in prison stating, *inter alia*, that:

> "Even with all of your convictions, you were still allowed to be chosen to be in [the RAMS] program. You still got a scholarship. You were in college. So people were kind enough to still give you a chance and

you still chose to deal drugs. So you were given every opportunity possible, every opportunity possible."

This timely appeal follows.

ANALYSIS

The defendant first contends that the trial court denied him a fair trial when it denied his request for an investigator. Defendant argues that the issue of whether a surveillance camera captured his arrest in the alley and whether a videotape of that arrest would contradict the police officers' testimony was crucial to his defense.

In People v. Veal, 110 Ill. App. 3d 919, 926, 443 N.E.2d 605, 610 (1982), the reviewing court held that there may be a constitutional right to investigative assistance when (1) it is necessary to prove a crucial issue and (2) the lack of funds to provide investigative services would substantially prejudice the defendant. See People ex rel. Walker v. Pate, 53 Ill. 2d 485, 495-96, 292 N.E.2d 387, 393-94 (1973) (denial of State-paid expert assistance not unconstitutional where not necessary to establish a defense). People v. Wilson, 117 Ill. App. 3d 744, 749-50, 453 N.E.2d 949, 952-53 (1983) applied the Veal factors in determining the propriety of a fee award for an expert witness. Finally, People v. Rhode, 219 Ill. App. 3d 1079, 1082-83, 580 N.E.2d 612, 614 (1991), recognized that courts have the inherent authority to appoint investigators, but held that the decision to do so is within the trial court's discretion.

On appeal, the State does not dispute the Veal formulation, but argues that even if a constitutional right to investigative assistance exists in some cases, this is not such a case. We agree, and find that the trial court did not abuse its discretion by failing to appoint an investigator to assist

the defendant.

An abuse of discretion arises only when the trial court acts improperly based on the facts and circumstances known to it at the time of its exercise of discretion. See People v. Ramey, 70 Ill. App. 3d 327, 333, 388 N.E.2d 196, 200 (1979). Here, the trial court was presented with absolutely no reason to appoint an investigator for the defendant, who simply made the bald allegation that an investigator was necessary for a "solid defense." The defendant did not inform the trial court that he needed an investigator to, for example, locate witnesses or examine physical evidence. Accordingly, because the trial court was in possession of no information to suggest that an investigator was crucial to the presentation of the defendant's case, we cannot find that the trial court abused its discretion.

The defendant argues that it was apparent from his cross-examination of the officers that he believed a video camera was present in the alley and that it captured a view of the arrest very different than that described by the arresting officers. However, none of this information was available to the trial court when it denied the defendant's oral motion for an investigator. The defendant criticizes the trial court for not making additional inquiries in response to his motion, but the trial court invited the defendant to file a written motion and he failed to do so, instead persisting in his strategy of answering ready for trial in order to exercise his right to a speedy trial.

The defendant's claim is also too speculative to constitute the violation of a constitutional right. The defendant claims that, if the court had appointed an investigator, and if that investigator had discovered a video surveillance camera, and if that camera had recorded the arrest, and if the videotape had been preserved, and if the videotape contradicted the police officers' accounts of the arrest, it would have been crucial to his trial. However, the only evidence actually presented at trial

overwhelmingly supports a finding that no such video camera was present in the alley. Absent some support in the record for the defendant's allegations, we find that a remand in this case would likely be a meaningless exercise.

The defendant also contends that his sentence is excessive because the trial court failed to properly consider the rehabilitative potential reflected by his educational pursuits.

The defendant was convicted of possession of cocaine with the intent to deliver within 1,000 feet of a school, a Class X felony. 720 ILCS 570/401(c)(2) (West 2006); 720 ILCS 570/407(b)(1) (West 2006). He was subject to a sentencing range of 6 to 30 years. 730 ILCS 5/5-8-1(a)(3) (West 2006).

The law of sentencing in Illinois is well established, and the trial court has broad discretionary authority when sentencing a defendant. People v. Evans, 373 Ill. App. 3d 948, 967, 869 N.E.2d 920, 924 (2007). Reviewing courts accord deference to trial courts in sentencing because the trial court is in a better position to decide the appropriate sentence. Evans, 373 Ill. App. 3d at 967, 869 N.E.2d at 924. Accordingly, we will not disturb a trial court's sentencing decision absent an abuse of discretion. Evans, 373 Ill. App. 3d at 967, 869 N.E.2d at 924.

"The Illinois Constitution requires that penalties be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." People v. Quintana, 332 Ill. App. 3d 96, 109, 772 N.E.2d 833, 845 (2002), quoting Ill. Const. 1970, art. I §11. To determine the appropriate sentence, the court must consider all factors in aggravation and mitigation including the defendant's credibility, demeanor, general moral character, social environments, habits, and age. Evans, 373 Ill. App. 3d at 967, 869 N.E.2d at 924.

The defendant argues that the trial court erred in sentencing him because it failed to properly consider as mitigating the evidence that he was a scholarship computer science student and, in fact, considered this evidence as aggravating. The defendant is correct that educational pursuits are generally mitigating, and should be considered by the trial court during sentencing. See People v. Markiewicz, 246 Ill. App. 3d 31, 56, 615 N.E.2d 869, 886 (1993); People v. Williams, 196 Ill. App. 3d 851, 867, 554 N.E.2d 1040, 1050 (1990). There is no doubt that defendant is intelligent and capable of furthering his educational goals. But, as the trial court noted, this is not a story of the redemptive power of education. Despite the opportunities given to him, the defendant never abandoned his criminal past. The trial court correctly observed that defendant had continued to lead a life of crime even after being given an opportunity to receive an education and move forward with his life.

The trial court also had before it other serious aggravating evidence. The defendant has a background of serious offenses including at least one prior Class X conviction for a crime of violence. Based upon all of these factors, we cannot find that the sentence actually imposed constituted an abuse of discretion.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.

CUNNINGHAM, J., with KARNEZIS, P.J., and QUINN, J., concurring.

EXHIBIT C

STATE OF ILLINOIS)
) ss
COUNTY OF FULTON)

AFFIDAVIT

Joanne Johnson, being first duly sworn on oath, deposes and says as follows:

1. I work at the Lawrence House located at 1020 West Lawrence, Chicago, IL 60640 behind the front desk located in the front lobby during the day.

2. On February 21, 2006, there was a close circuit camera mounted on the side of the Lawrence House at the mouth of the alley which provided a live video feed of the alley to the monitor located behind the front desk.

3. The monitor is plainly visible at the side of where I seat behind the front desk. The live camera feed has never been recorded.

4. I am signing this affidavit of my own free will. No promises or threats have been made to me to persuade me to sign this affidavit.

Joanne Johnson

SUBSCRIBED AND SWORN TO ME THIS

9th day of October, 2010

Signature of Notary Public

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
TIFFANY THOMAS
MY COMMISSION EXPIRES
AUGUST 31, 2014

EXHIBIT D

STATE OF ILLINOIS)
) ss
COUNTY OF FULTON)

AFFIDAVIT

Ann Marie Scott, being first duly sworn on oath, deposes and says as follows:

1. I work at the Lawrence House located at 1020 West Lawrence, Chicago, IL 60640 behind the front desk located in the front lobby in the evening.

2. On February 21, 2006, there was a close circuit camera mounted on the side of the Lawrence House at the mouth of the alley which provided a live video feed of the alley to the monitor located behind the front desk.

3. The monitor is plainly visible on the side of where I seat behind the front desk. The only people live camera feed has never been recorded.

4. I am signing this affidavit of my own free will. No promises or threats have been made to me to persuade me to sign this affidavit.

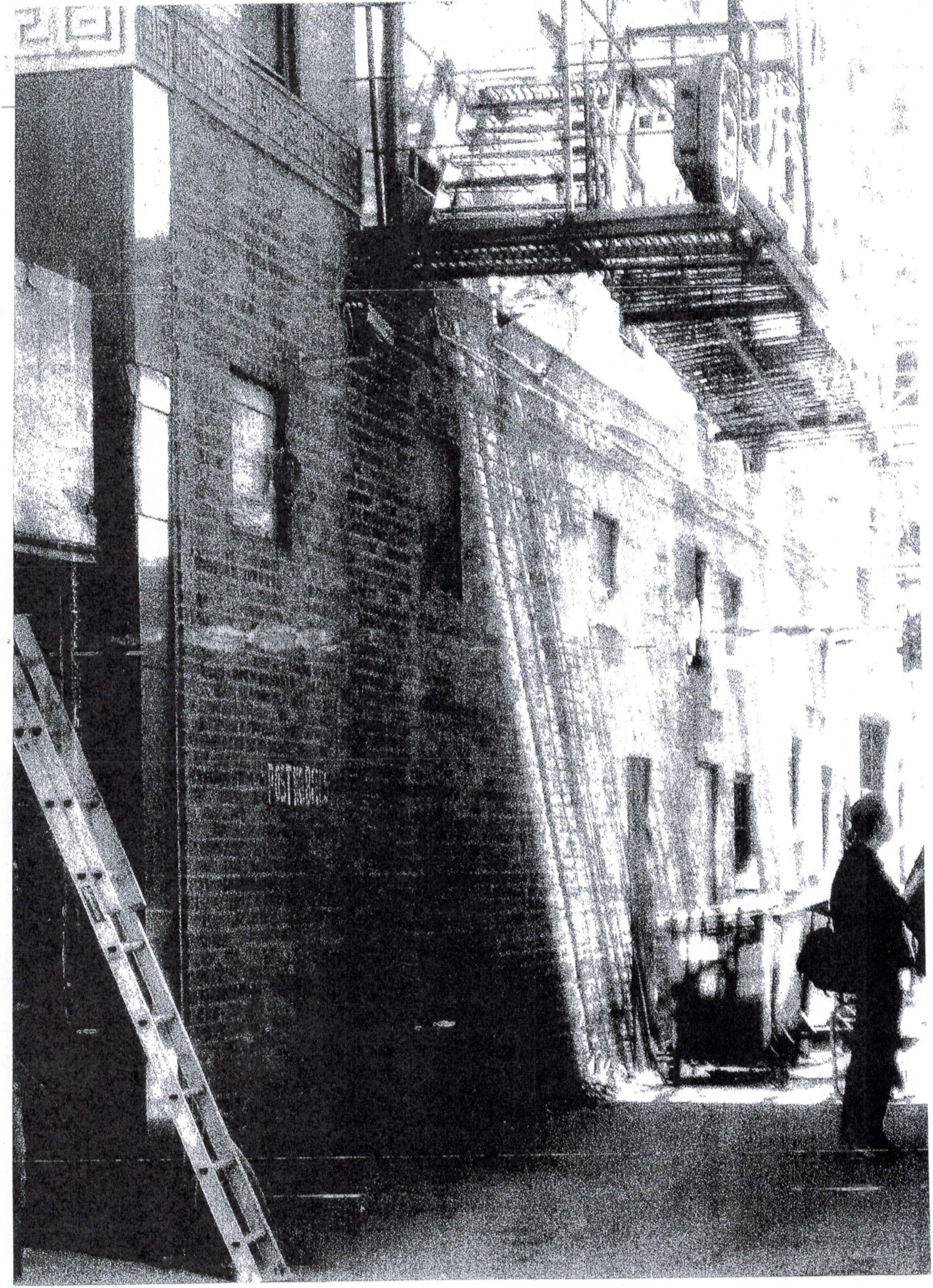
Annmarie Scott
Ann Marie Scott

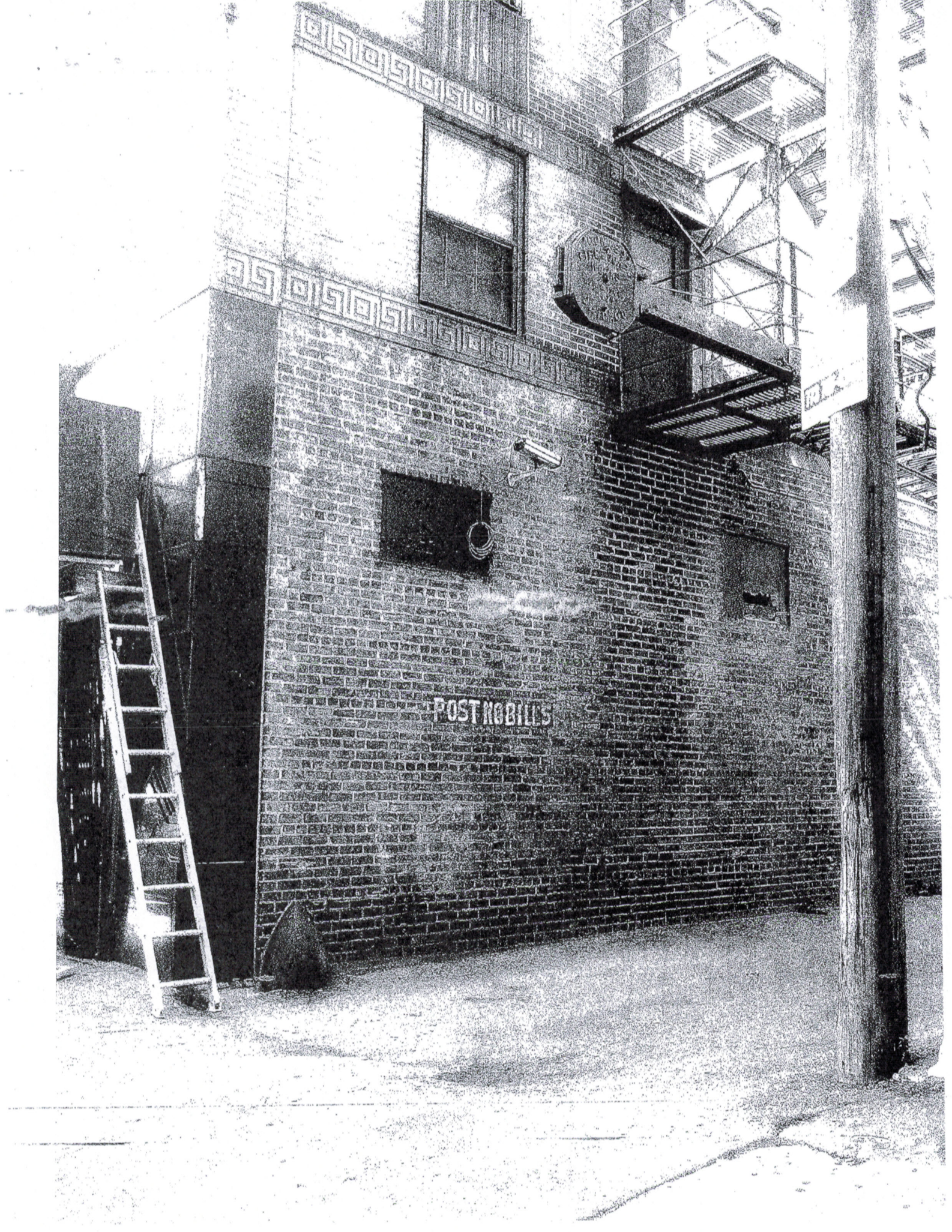
SUBSCRIBED AND SWORN TO ME THIS

__ day of October, 2010

_____
Signature of Notary Public

EXHIBIT E

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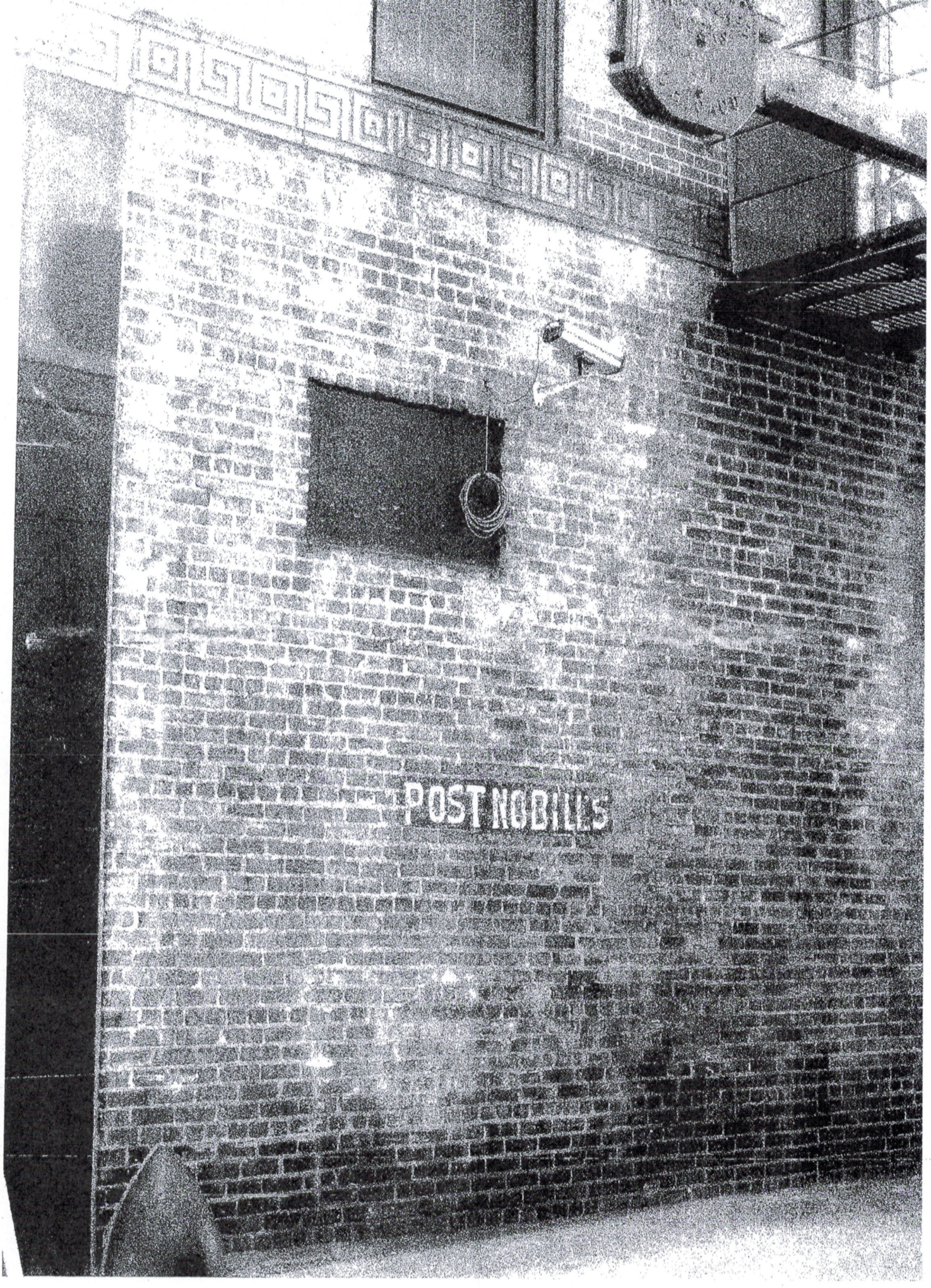
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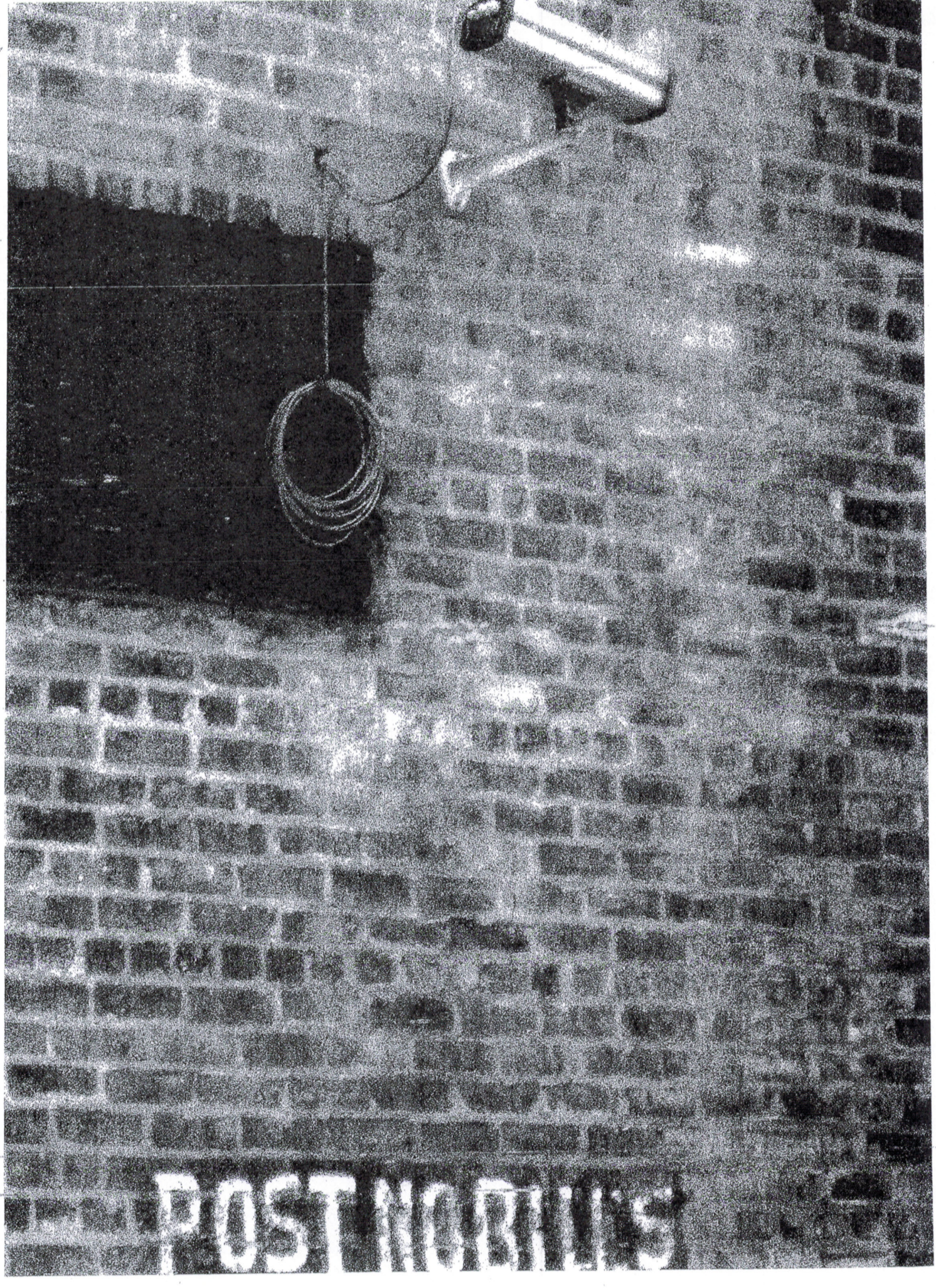
POST NOBILIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PLACIDO LABOY, Defendant-Appellant.

No. 1-89-1172

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FIFTH DIVISION

227 Ill. App. 3d 654; 592 N.E.2d 179; 1992 Ill. App. LEXIS 398; 169 Ill. Dec. 692

March 20, 1992, Decided

PRIOR HISTORY: [***1] APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY. HONORABLE CHRISTY BERKOS, JUDGE PRESIDING.

DISPOSITION: REVERSED AND REMANDED WITH DIRECTIONS.

JUDGES: MURRAY, LORENZ, GORDON

OPINION BY: MURRAY

OPINION

[*656] [**181] JUSTICE MURRAY delivered the opinion of the court:

Defendant, Placido Laboy (Laboy), was charged by indictment with the offenses of armed robbery (Ill. Rev. Stat. 1987, ch. 38, par 18-2(a)) and attempted aggravated criminal sexual assault. (Ill. Rev. Stat. 1987, ch. 38, par. 8-4/12-14(a)(1).) After a jury trial Laboy was found guilty of both offenses. Thereafter, Laboy was sentenced to consecutive sentences of 60 years' imprisonment for armed robbery and 15 years for attempted aggravated criminal sexual assault.

On appeal Laboy presents the following issues for review: (1) whether his conviction must be reversed and the cause remanded for a new trial where the trial court's findings that Detective Zuley did not commit perjury at Laboy's trial, and that the disputed testimony did not affect the outcome, were against the manifest weight of the evidence; (2) whether Laboy's consecutive sentences should be modified to run concurrently; and (3) whether the consecutive sentences must be vacated and the sentence reduced or [***2] the cause remanded for resentencing because the trial court erroneously found that the complainant suffered serious physical harm, and improperly relied on factors inherent in the offenses.

The case of *Laboy v. Zuley (N.D. Ill. 1990), 747 F. Supp. 1284* is currently pending in the Federal district court. That action is a civil rights case involving the issue of the perjury. On March 25, 1991, this court entered a rule to show cause why this case should not be stayed pending a resolution of the perjury issue in the Federal case. Both the State's Attorney's office and the State appellate defender's office have filed responses to the rule suggesting that this court should not delay a ruling in this case. We agree.

M.H. testified that at approximately 3:30 a.m., she and her boyfriend, Chris, were walking through Horner Park when they were approached by an armed man, wearing a bandana which covered his face from the nose down. Chris dropped to the ground, and pulled [*657] down M.H.'s leg so she would kneel as well. The man said he wanted their money. They told the man that they did not have any money, but that M.H. did have a gold chain. The man ripped the chain [***3] off her neck,

pulled her up, put the gun to her head, and pulled her away.

Chris testified that the gunman said, "I'm going to take your lady." Chris saw the assailant walking off into the darkness with his arm around M.H. and a gun to her head. As the assailant dragged M.H. [**182] away, Chris heard M.H. scream, "Christopher, help me. Help me."

The gunman told M.H. if Chris moved, he would kill her. He continued to tell her not to look at his face. At trial, M.H. testified that the assailant was about 5'5" tall, he weighed 150 to 160 pounds, and his nationality was "white hispanic."

The man took M.H. across the street, and went about a block to his waiting car. He pushed her into the car by her head. The assailant then put his knee on her head, closed the door, and hit her on the head with the gun five or six times. He threatened to kill her if she moved. The offender then laid the gun flat against her face and drove off.

When they arrived at Irving Park Road, the assailant told M.H. to "suck his dick." He had removed his penis from his pants and tried to push her head towards his pants. M.H. jerked her head up and screamed. She was able to see the assailant's uncovered face since [***4] he was no longer wearing the bandana. M.H. noticed that he had an indentation between his eyes, a beard and a mustache. After describing the assailant's features to the court, the victim identified Laboy as the offender.

Laboy drove faster, but then started to slow down. He then pulled her up, stuck the gun in her side, and told her to shut up and look straight ahead. M.H. saw a Chicago police department paddywagon. She specifically testified that:

"He was really angry now. He slammed my head back down to the console. The car was going faster and faster. I got very frightened. He was pressing the gun harder and harder to my head, so I pushed down his hand and he started swinging at me. I had my head lifted and was staring at him. He was trying to reach for me. I grabbed for the door and I had the door open. One of my feet was out the door. He grabbed hold of me. I look [sic] at him one last time. I pushed his hand up in the air and I jumped from the car. * * * I rolled for quite a distance, and when I stopped rolling, I was very bloody. I got up and tried to run. I was screaming. * * *."

[*658] Detective Zuley testified that he interviewed the victim briefly at the police station after [***5] the incident. She described the offender as male hispanic, medium complexion, 5'5" tall, approximately 150 pounds, 26 years old, and having facial hair. Detective Zuley was in possession of the car keys and a gold chain found in the car identified by the victim.

The vehicle's license tags were registered to Placido Laboy, and registered to an address at 4709 North Beacon Street. After the police found that the address was no longer valid, they discovered a number of traffic tickets in the car, all issued from the 4400 block of Paulina. They were able to find the defendant's last name at 4407 North Paulina by looking at the mailboxes and doorways up and down the block. The police were unable to find Laboy there at about 5:30 or 6 a.m.. Later, at approximately 7 a.m. they returned with the keys recovered from the car.

At approximately 7 a.m. Detective Zuley saw a man fitting the description of the offender that was given by M.H., walking behind the building. The officers followed that person, watched him go up to the rear, then up to the front of the apartment at 4407 North Paulina, and then heard him go to the back door. The person tapped at the back door and whispered, "Let me in." [***6] At that point, the officers approached him, identified themselves, asked him who he was, and, upon learning that he was Placido Laboy, took him into custody. At that time, Detective Zuley tried the key on the keyring to the lock of that apartment and found that it opened the door.

Detective Zuley took Laboy back to the police station and placed him in a lineup. Chris went into the room to view the lineup first and was unable to identify the offender. According to Detective Zuley, as Laboy approached the viewing window during M.H.'s viewing of the lineup, M.H. grabbed onto him and hugged him. M.H. was told not to identify her assailant until all the suspects had gone through the procedure. After viewing the subjects in the second portion of the lineup where the suspects all wore masks to cover the lower part of their [**183] faces, M.H. identified Laboy as the offender. The curtains in the viewing room were then closed, the subjects spoke, and M.H. identified the voice of Laboy as the voice of the offender. According to Detective Zuley when M.H. heard Laboy's voice she began to tremble.

Detective Zuley testified that after M.H. identified Laboy, he recovered Laboy's pants in order [***7] to look for M.H.'s hair. After recovering the pants, Detective Zuley noticed blonde hairs in the teeth of the zipper and stuck in the corner of the pocket. Detective Zuley placed the pants in a sealed plastic bag and sent it to the crime lab. He then [*659] plucked some hairs from M.H.'s head, sealed those in a separated envelope, and submitted it to the crime lab.

The jury found Laboy guilty of armed robbery, and attempted aggravated criminal sexual assault. In addition to trial counsel's motion for new trial, Laboy filed a *pro se* motion for judgment of acquittal notwithstanding the verdict, or in the alternative, for new trial. Subsequently, Laboy filed a complaint against trial counsel with the Attorney Registration and Disciplinary Commission. Laboy also filed a *pro se* motion to supplement, and a motion for attachment of exhibits to the motion for judgment of acquittal notwithstanding the verdict, or in the alternative, for new trial. The public defender's office was appointed to represent Laboy in his post-trial motions and at sentencing.

Among the contentions addressed at the hearing on the motions were: (1) Laboy was not proven guilty beyond a reasonable doubt; (2) trial counsel [***8] was ineffective for failing to investigate the case and an available alibi; (3) trial counsel was ineffective for failing to argue pre-trial suppression motions that had been previously filed by the assistant public defender and the defendant; (4) Detective Zuley perjured himself at trial, thus depriving Laboy of a fair trial; and (5) Detective Zuley's testimony at the evidentiary hearing constituted newly discovered evidence requiring a new trial.

At the post-trial evidentiary hearing, in addressing whether trial counsel was ineffective, the court entertained the motions that had been filed, including the motion to suppress testimony concerning the lineup identifications, and motion to quash the arrest and suppress evidence on the basis of a failure of probable cause to arrest. Laboy, Jeanette Laboy (his mother), and Frances Richko (his sister), testified on behalf of the defense, and Detective Zuley, and Marshall Weinberg (Laboy's trial counsel) testified for the State.

The trial court denied Laboy's motions, finding that the lineup was not unnecessarily suggestive and that there was probable cause to arrest him. The trial court also found that Laboy and his alleged alibi witnesses [***9] (Jeanette Laboy and Frances Richko) were unbelievable, that there was insufficient evidence to indicate that Mr. Weinberg failed to adequately investigate the case or present an available alibi, and that there was no merit to the motions which were not argued before trial.

After Detective Zuley testified, Laboy made a motion to amend his petition arguing that the detective's testimony at trial was perjured since it was contradictory to his post-trial testimony. Detective Zuley's testimony at trial concerning (1) information he had about the [*660] offender when he arrested Laboy; (2) whether or not he had taken Laboy's pants before Laboy was placed in the lineup and then returned them to him for the lineup, and (3) whether he kept an extra separate set of hairs found on Laboy's pants and sent them separately to the crime lab, differed from his testimony at the evidentiary hearing. The trial judge stated that he would not automatically assume there was perjury because someone said something different at the post-trial hearing than he said at trial. According to the trial judge, the inconsistencies in the detective's testimony could be error, or could be perjury, but all of these things dealt [***10] with credibility and believability of the witness which the court took into consideration.

Laboy was sentenced to 15 years' imprisonment for attempted aggravated criminal sexual assault, and an extended term of 60 years for armed robbery, both sentences to run consecutively.

[**184] For the following reasons we remand the matter to the trial court for an evidentiary hearing.

I.

Laboy argues that his conviction must be reversed and the cause remanded for a new trial because the trial court's findings that Detective Zuley did not commit perjury at the trial and that the disputed testimony did not affect the outcome were against the manifest weight of the evidence. The State concedes there were inconsistencies in Detective Zuley's testimony, but maintains that these inconsistencies fall short of establishing perjury.

At trial Detective Zuley testified to the following. On July 10, 1987, he interviewed the complainant and she described the offender as male hispanic, medium complexion, 5'5" tall, approximately 150 pounds, 26 years old, and having facial hair. Later that day at

approximately 7 a.m., he and other officers were at 4407 North Paulina and they saw a male white hispanic [***11] who fit the description given by M.H. walking into the alley behind the building. That person was Laboy, and they arrested him.

Later that afternoon a lineup was conducted which included Laboy. After Laboy was identified, Detective Zuley removed Laboy's pants for the purposes of finding strands of M.H.'s hair. Detective Zuley noticed blonde hairs in the zipper and pocket so he sealed the pants in a plastic bag and sent it to the crime lab. He then plucked hairs from M.H.'s head, sealed those in a separate envelope and submitted those to the crime lab for analysis and comparison with the hairs on the pants.

[*661] On cross-examination, it was established that Detective Zuley made up a police report in the case and nowhere in his report did he state that the person who committed the offense had facial hair. He restated that he took Laboy's pants after he was identified. He specifically denied taking the pants before the lineup and returning them to Laboy for the lineup.

Mary Pulling, a forensic scientist for the Chicago police department testified at trial. She received two sealed packages: one contained the defendant's pants and the other contained a sample of the victim's hair. Ms. Pulling [***12] determined that the hair removed from the pants exhibited characteristics consistent with M.H.'s hair.

At the hearing on Laboy's post-trial motions, Laboy testified that prior to the lineup, Detective Zuley took his pants from him and then later came back and returned them. The officer stated, "We found hairs on your pants." In his pre-trial and post-trial motions Mr. Laboy alleged that the complainant's hair was planted on his pants.

At the post-trial hearing, Detective Zuley testified for the State. Detective Zuley testified that when he approached Laboy on July 10 the description of the offender that he possessed did not mention facial hair. Laboy was followed because there was nobody else out there to follow and the way he was going up the alley in the direction he was going made Detective Zuley curious as to where he was going.

Detective Zuley also testified that at the police station, prior to the lineup, he took Laboy's pants and went outside the interview room. After he took the pants from Laboy, Detective Zuley looked at them with a magnifying glass and found hair. At that point he took the hairs off the pants because he had to return the pants to Laboy for him to wear during [***13] the lineup. After the lineup Detective Zuley took the pants away from Laboy again in order to submit the pants to the crime lab for analysis.

Due to the discrepancies in Detective Zuley's testimony at trial and at the hearing, defense counsel argued to the court that Zuley's testimony at trial constituted perjury, and therefore Laboy was denied due process and a fair trial. In denying defense counsel's motion for new trial, the trial court stated:

"It could be perjury, yes. It could be planted, yes. And I think if so, he should be indicted. It could be in error. His thought process is jogged at this point. I don't know why he would get on [**185] the stand at this point and tell a story that's totally different from other [sic] and put himself in that position where he could have easily told the original story. All of these things deal [*662] with the credibility and the believability of that particular witness which the Court will consider."

Later the trial court again denied defense counsel's motion stating:

"The defense brought out some inconsistent testimony of the police officer. It was indeed inconsistent. Why, I don't know. It concerned the hairs on his pants which is a part [***14] of the evidence during the trial. Whether or not it was a crucial part of the trial, I am not certain. I don't think it would have made any difference one way are [sic] the other, whether they had the hair or they didn't have the hair. Why the testimony is inconsistent, I don't know. There is no reason for the officer to deliberately testify today inconsistently with his testimony before. So the only thing I can really attribute it to, certainly no one would outwardly commit perjury on too separate transcripts. I take it that he made an error. Whether the error was in the first testimony or the second testimony, I am not certain. But I don't think it--I think it didn't effect the outcome of the case in anyway whatsoever in my opinion."

The inconsistencies in the detective's stories regarding the hairs is the basis of Laboy's charge of perjury. As disclosed in the trial court's rulings quoted above, the trial court concluded that the conflicts in the detective's testimony could be errors or perjury but that

all those things dealt with credibility and believability. However, perjury does not deal with inconsistency, it deals with falsity. Perjury is defined in Illinois law as:

"A [***15] person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law such oath or affirmation is required, he makes a false statement, material to the issue or point in question, which he does not believe to be true." Ill. Rev. Stat. 1987, ch. 38, par. 32-2(a).

The key element in this case is the materiality of the detective's testimony concerning his alleged recovery of the hairs allegedly found in Laboy's pants. The State claims the inconsistencies in the detective's story "fall short of establishing perjury", arguing that "it is farfetched to believe that a witness would knowingly prejudice himself at two separate proceedings when there was no plausible reason to lie." However, whether or not an individual has a reason to lie is not part of the definition of perjury. A witness, whether sworn or affirmed, is obligated to tell the truth; whether or not he has a reason to lie is irrelevant.

It has long been recognized that the deprivation of an individual's liberty based upon false testimony is contrary to the basic principles [*663] in a civilized society. *(People v. Cornille (1983), 95 Ill. 2d 497, 509, 448 N.E.2d 857, 863.)* [***16] Although there is nothing in this record to indicate that the prosecutor had any knowledge of the falsity in the witness' testimony, its falsity need not have been known personally by the prosecutor in order for there to have been a knowing use and a constitutional violation. *(People v. Cihlar (1986), 111 Ill. 2d 212, 219, 489 N.E.2d 859, 862.)* Moreover, "the prosecution is charged with the knowledge of its agents including the police." *People v. Martin (1970), 46 Ill. 2d 565, 567, 264 N.E.2d 147.*

Adequate evidence to support a finding of defendant's guilt beyond a reasonable doubt was presented at trial. Yet, without the hair allegedly recovered from Laboy's pants which also allegedly matched M.H.'s hair, the case involved issues of identification and credibility. Even the prosecution recognized the relevancy of the evidence by referring to it on more than one occasion in his closing argument at trial.

In *People v. Henderson (1976), 36 Ill. App. 3d 355, 384, 344 N.E.2d 239* this court stated:

"The knowing use of false testimony by the prosecution [***17] to procure a conviction [**186] does constitute a denial of due process. [Citation.] However, for false testimony to constitute perjury, that testimony must have been material to defendant's guilt or innocence. [Citation.] Mere conflicts in the testimony of a witness with prior statements made by him does not establish that the witness has given perjured testimony. [Citation.]"

However, "once the defendant establishes the condemned use of false testimony, he is entitled to a new trial unless the State can establish beyond a reasonable doubt that the false testimony was immaterial in that it did not contribute to the conviction." *People v. Cornille (1983), 95 Ill. 2d 497, 514, 448 N.E.2d 857, 866.*

Based upon this record, this court is unable to determine whether the police officer committed perjury. Accordingly, we remand the case to the trial court solely for the purpose of an evidentiary hearing on the issue of whether or not Detective Zuley committed perjury. Should the trial court find that there was no perjury, Laboy's convictions should be affirmed. However, if the trial court finds that the officer in fact perjured himself, [***18] Laboy should be accorded a new trial.

II

If the trial court determines that Detective Zuley did not commit perjury, we find that for the following reasons Laboy's sentences should be affirmed.

[*664] Laboy was sentenced to 15 years for attempted aggravated criminal sexual assault, and an extended term of 60 years for armed robbery, the terms to run consecutively.

As long as the decision does not conflict with the statutory regulations concerning the imposition of such sentences, the decision whether to impose consecutive or concurrent sentences is a determination left to the sound discretion of the trial court. *(People v. Tigner (1990), 194 Ill. App. 3d 600, 609, 551 N.E.2d 304.)* At the time Laboy was sentenced, section 1005-8-4 of the Criminal Code provided in relevant part:

"(a) * * * The court shall not impose consecutive sentences for offenses which were committed as part of a single course of conduct during which there was a

substantial change in the nature of the criminal objective, unless, one of the offenses for which the defendant was convicted was a Class X or Class 1 felony and the defendant inflicted severe bodily injury, in which [***19] event the court may enter sentences to run consecutively. Sentences shall run concurrently unless otherwise specified by the court.

(b) The court shall not impose a consecutive sentence unless, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that such a term is required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." Ill. Rev. Stat. 1987, ch. 38, pars. 1005-8-4(a), (b).

Laboy argues that the imposition of consecutive sentences was an abuse of discretion because the incident concerned a single course of conduct during which there was no substantial change in the nature of the criminal objective, and the complainant did not suffer severe bodily injury. The State maintains that the consecutive sentences should be affirmed since the trial judge correctly found that there was a substantial change in the defendant's criminal objective during his criminal conduct, and the term was required to protect the public from future criminal activities by the defendant. In addition, the victim did suffer severe bodily harm. We disagree [***20] with defendant's position and find that the trial court's imposition of consecutive terms of imprisonment was proper.

The trial court is in the best position to tailor a sentence to the facts and needs of the case. *(People v. Steppan (1985), 105 Ill. 2d 310, 323, 473 N.E.2d 1300; People v. Perruquet (1977), 68 Ill. 2d 149, 154, 368 N.E.2d 882.)* A trial court's decision with regard to sentencing is [*665] entitled to great deference, and absent an abuse of [**187] discretion, a reviewing court should not substitute its judgment for that of the trial court. *(Steppan, 105 Ill. 2d at 323, 473 N.E.2d 1300; Perruquet, 68 Ill 2d at 154, 368 N.E.2d 882.)* Although the victim is the same, and the time span is short, if the various offenses are distinct, multiple sentences are appropriate. *People v. Malcom (1973), 14 Ill. App. 3d 378, 302 N.E.2d 352, 357.*

During Laboy's sentencing the trial court specifically stated:

"In addition, the Court has considered the facts of his [***21] case. And after you committed your armed robbery, then your entire course of conduct changed.

At this point, okay, I have completed the robbery and now I am going to take this young lady and now I am going to rape her. That's a separate and distinct crime and perhaps unquestionably worse than a crime of armed robbery, absolutely worse. No excuse for it. And it takes a wild animal to commit that kind of a crime.

The public must be protected from you, sir. And I am going to sentence you to the sum of 15 years. And because the public needs protection and because of the separate and distinct crime, it will be consecutive to the 60 years. I am sentencing you to a total of 75 years."

In *Tigner* this court stated: "When consecutive sentences are imposed pursuant to law and supported by the record, they will not be disturbed on review." *(People v. Tigner (1990), 194 Ill. App. 3d 600, 609, 551 N.E.2d 304,* citing *People v. Holland (1987), 121 Ill. 2d 136, 520 N.E.2d 270; People v. Steppan (1985), 105 Ill. 2d 310, 473 N.E.2d 1300.)* We find ample support [***22] in the record for the trial court's determination that consecutive sentences were appropriate. Laboy approached M.H. and her boyfriend with a gun and demanded their money. Laboy got really angry about the fact that Chris and M.H. did not have any money so Chris told him he could check his pockets. Subsequently, M.H. remembered that she had a gold chain and offered that to Laboy. Laboy then ripped the gold chain from her neck. Once the robbery was completed, Laboy abducted the M.H. and attempted to committed aggravated criminal sexual assault. The record shows that the robbery and the subsequent attempted criminal sexual assault were two separate courses of action. It was not until Laboy completed his attempt to rob M.H. and her boyfriend that his conduct changed.

The trial court found both that the crimes were separate and distinct and that the imposition of consecutive terms was necessary to protect the public from the defendant. We agree with the trial court's [*666] decision and affirm the decision to impose consecutive sentences in this case.

III

Due to an armed robbery conviction in 1980, Laboy was eligible for an extended-term sentence for his armed

robbery conviction under Ill. Rev. [***23] Stat. 1987, ch. 38, par. 1005-5-3.2(b)(1). Laboy argues that the trial court's imposition of the maximum 60-year extended term sentence for armed robbery and regular maximum 15-year sentence for attempted aggravated criminal sexual assault were improper where it erroneously found that the complainant suffered serious physical harm, and improperly relied on the fact that the offender intended to sexually assault the complainant, that the robbery posed a threat of serious harm, and that the offender displayed and threatened to use a dangerous weapon during the attempted aggravated criminal sexual assault, all factors inherent in the offenses.

The State maintains that the extended term sentence for armed robbery was appropriative since the defendant had previously been convicted of the same felony, within the past 10 years, in addition to causing the victim serious bodily harm. In addition the State maintains that the 15-year sentence for attempted aggravated criminal sexual assault was appropriate since the victim suffered serious bodily harm and had a criminal history. Furthermore, the court considered other relevant [**188] factors which were not inherent in the offenses.

At the [***24] time of defendant's sentencing, the applicable statute provided:

"The following factors may be considered by the court as reasons to impose an extended term sentence under Section 5-8-2 upon any offender who was at least 17 years old on the date the crime was committed:

(1) When a defendant is convicted of any felony, after having been previously convicted in Illinois of the same or greater class felony, within 10 years, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts[.]" Ill. Rev. Stat. 1987, ch. 38, par. 1005-5-3.2(b)(1).

The State introduced two certified copies of Laboy's conviction record at the sentencing hearing. The trial court stated that it would only consider convictions, and not arrest without convictions. On May 23, 1979, the defendant pled guilty to robbery and was sentenced to three years felony probation. On August 26, 1980, the defendant [*667] pled guilty to armed robbery and was sentenced to seven years in the Illinois Department of Corrections. The State asked that Laboy be sentenced to an extended term for armed robbery under chapter 38, paragraph 1005-3-2 since he was convicted of the same [***25] class of felony within 10 years.

The trial court sentenced the defendant to a 60-year extended term for armed robbery. A trial court's decision with regard to sentencing is entitled to great deference and a reviewing court cannot substitute its judgment for that of the trial court unless there has been an abuse of discretion. *(People v. Steppan (1985), 105 Ill. 2d 310, 323, 473 N.E.2d 1300; People v. Perruquet (1977), 68 Ill. 2d 149, 154, 368 N.E.2d 882.)* The trial court properly sentenced the defendant to an extended term for armed robbery since he had previously pled guilty to armed robbery within 10 years. (See *People v. Tigner (1990), 194 Ill. App. 3d 600, 608, 551 N.E.2d 304.*) Accordingly, we affirm the decision of the trial court to impose a 60-year extended term sentence for armed robbery.

The State also maintains that Laboy's 15-year sentence for attempted aggravated criminal sexual assault was appropriate since the defendant's conduct caused serious bodily harm and he threatened even greater harm. In addition, the State maintains that the [***26] trial court considered other relevant factors beyond those inherent in the offenses.

The Illinois Supreme Court has stated:

"While the classification of a crime determines the sentencing range, the severity of the sentence depends upon the *degree of harm* caused to the victim and as such may be considered as an aggravating factor in determining the exact length of a particular sentence, *even in cases where serious bodily harm is implicit in the offense for which the defendant is convicted.* [Citations.]" (Emphasis in original.) *People v. Saldivar (1986), 113 Ill. 2d 256, 269, 497 N.E.2d 1138, 1143.*

Laboy argues that in this case the record shows that M.H. did not suffer serious harm from the offenses. Laboy maintains, "although once they were in the car the offender hit M.H. several times in the head with his gun, and then moments later M.H. jumped from the offender's moving car, there was no evidence presented to indicate that M.H. suffered serious physical injury. Laboy further points out that there was no evidence to suggest that M.H. suffered any blood loss or internal injuries, there was no evidence to show that she received [***27] any medical attention other than one examination by Dr. Reed 17 hours after the incident, and in addition, M.H. was not taken [*668] to the hospital immediately after the incident or ever hospitalized. We disagree with

defendant's argument. When the victim was taken to the hospital and whether or not she suffered internal injuries or blood loss are not dispositive of whether she suffered severe bodily injury.

M.H. testified that when she was abducted by Laboy he pushed her into his car by [**189] her head, climbed over her putting his knee on her head, and closed the door. When she tried to lift her head, he hit her in the head five or six times with his handgun. Later, she struggled with the defendant and he slammed her head against the console between the car seats. When she screamed as they passed the police paddywagon, the defendant again slammed her head against the console and pressed the gun harder and harder against her head.

Dr. Diane Reed of Ravenswood Hospital examined the victim and observed swelling and tenderness on the top of her head and forehead, a large abrasion on her buttock and smaller ones on her right hip and left shoulder, as well as, swelling and an abrasion on [***28] her right elbow.

The sentencing judge, who heard the testimony and observed the witnesses, stated, "There is no question in the Court's mind that your [defendant's] conduct certainly caused serious physical harm to this young lady [victim]." We agree with the trial court.

Laboy further argues that several of the trial court's comments preceding the imposition of the sentence disclosed that the trial court improperly considered factors inherent in the offense. Reading the trial court's comments in their entirety, it is clear that the trial court only considered proper factors in sentencing the defendant.

The defendant specifically points to the following comment by the trial court:

"You banged her a few times with the gun across the head. You told her you were going to rape her. You were going to kill her if she saw your face. And when she saw your face, you said, now you have got it. Now you have got it. You're going to die. I have to kill you."

M.H. testified that when she was abducted by the defendant he told her not to look at his face. He also told her that if her boyfriend moved, he would kill her. Once in the car, the defendant hit her five or six times with a gun and told [***29] her if she moved "so much as a heartbeat" he would kill her. When M.H. was able to lift her head and observed the defendant's face, he said, "I told you not to look at me, now you have done it." The defendant became really angry, slammed her head down and accelerated around a corner. Shortly thereafter, M.H. jumped from the moving car.

[*669] The defendant is correct; the trial court's statement does not mirror the testimony presented at trial. However, taking the statement in context, the trial judge was merely giving a synopsis of the testimony prior to imposing the sentence. Any error the trial judge made in stating that the defendant threatened to kill M.H. after she saw his face rather than before is harmless.

The defendant further argues that the aforestated comment indicates that the trial court improperly relied on defendant's threat to use the weapon as a factor in aggravation. Again, we find that the trial court was giving a brief synopsis of the crime when that statement was made. Further we do not feel that the trial court used the threat as a factor in aggravation.

In *People v. Barnes (1982), 111 Ill. App. 3d 669, 679, 444 N.E.2d 518, [***30]* this court stated as follows:

"The imposition of a sentence of any length within the range provided for the class of the crime of which defendant was convicted is a decision committed by the statute to the discretion of the sentencing court. The statute imposes no requirement that the minimum sentence be imposed in the absence of aggravating factors."

When considering factors in aggravation and mitigation, the trial court specifically found that the defendant inflicted serious bodily harm upon the victim, as well as noting the defendant's prior convictions. The trial court also specifically stated that society needed protection from the defendant. Although the defendant received the maximum possible sentence for the offense, we do not believe the record indicates that any impermissible factors contributed to the sentencing decision. A reviewing court is not a sentencing court, and it should not substitute its judgment for that of the trial court merely because it [**190] would have balanced the factors differently. *(People v. Cox (1980), 82 Ill. 2d 268, 280, 412 N.E.2d 541.)* We find that the trial court did not abuse its discretion [***31] in sentencing the defendant.

Sworn in open court

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

AFFIDAVIT

I, Jermaine Walker, being first duly sworn upon my oath depose and state that the following are both true and correct made upon personal knowledge and belief, and if called as witness, I am competent to testify thereto.

Jermaine Walker

Jermaine Walker
Reg. No. B-52757
Pinckneyville Correctional Center
P.O. BOX 999
Pinckneyville, IL 62274

SUBSCRIBED AND SWORN TO

before me this 21 day of 2015, 2015

NOTARY PUBLIC

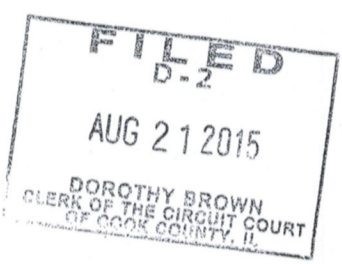

EXHIBIT C

MS. ZUN: I enter a plea of not guilty on both Mr. Walkers' behalf, ask leave at this time to file my written motion for discovery.

On behalf of Jermaine Walker, I have one quick question. Is he the 03?

MS. BROWN: He is the 03.

MS. ZUN: I'll need a date for discovery and an attorney from our Multiple Defendant Division to come in on this case. I'm going to suggest May 9th. Real busy? Do you want to go longer?

THE COURT: Is May 9th real busy?

MS. ZUN: May 9th is fine. May I have May 9th, please?

THE COURT: Yes. Sir?

JERMAINE WALKER: I want to know I don't have an attorney to represent me today?

THE COURT: She's right there.

MS. ZUN: I'll be going to represent you. Mr. Russell Walker will be given a --

THE COURT: Multiple Defendant's Unit. They're in another building. They'll be here on the next court date, and the third defendant will have a bar lawyer. This is your lawyer.

JERMAINE WALKER: I want to know if I could

put a motion in for a reduction of bond?

THE COURT: You need to have all the lawyers here so everybody can be represented by their own lawyers. So, there'll be three separate lawyers in case your defense conflicts with one another.

You have to have a bond hearing. We can have it on May the 9th.

JERMAINE WALKER: So, I demand trial today.

THE COURT: Are you ready to go?

JERMAINE WALKER: Yes.

THE COURT: You represent yourself?

JERMAINE WALKER: What?

THE COURT: Are you going to represent yourself because your lawyer doesn't even have police reports yet? Are you going to represent yourself? You're ready to go today?

JERMAINE WALKER: I'm exercising my speedy trial.

THE COURT: That means you have to be ready to go to trial today and represent yourself because your lawyer is not ready. She doesn't have the police reports. If you want to sit there and pick a jury with no police reports and no information no discovery, then go ahead. Do you

want to do that?

JERMAINE WALKER: Yes. I want to pick a jury, ma'am.

THE COURT: You're ready to represent yourself today?

JERMAINE WALKER: No. I need someone to represent me.

THE COURT: No one is ready today because there's no police reports yet. So, are you representing yourself and going to trial today with no discovery?

JERMAINE WALKER: No. I need the discovery.

THE COURT: That's what I'm trying --

MS. ZUN: May I have a minute?

THE COURT: We're trying to proceed --

JERMAINE WALKER: That's why no one talked to me today.

MS. ZUN: I didn't know I was going to represent you until about 30 seconds ago.

JERMAINE WALKER: My last court date, I was given a lawyer. The Judge represented me.

THE COURT: The last court date was for arraignment only. This is the courtroom where your trial is going to be. This is the trial

THE CLERK: Jermaine Walker.

THE COURT: This is Jermaine Walker.

You are still choosing to represent yourself?

MR. WALKER: Absolutely.

THE COURT: State, do you have discovery to tender to him today?

MS. SHUTTER: Yes, I do, Judge.

MR. WALKER: May I address the Court?

THE COURT: First, you are getting your discovery.

MS. SHUTTER: We are tendering to the defendant a copy of discovery, including police report, criminal history, lab report, and an answer for discovery, and motion for discovery, as well as Grand Jury transcripts.

THE COURT: Mr. Walker, do you acknowledge receipt of those items?

Mr. Walker, do you acknowledge receipt?

MR. WALKER: Yes.

THE COURT: That is State's answer to your discovery that you requested on the previous court date.

Now you need to review those. And you need to file an answer to discovery.

How much time do you need to file an answer, 30 days?

You have to read all the discovery. Then you have to tell me whether or not there is any affirmative defenses.

You are still demanding trial, is that correct?

MR. WALKER: Yes.

Also, with all due respect, I am asking for the Court to grant me a standby counsel and investigator.

THE COURT: I said no, I am not giving you a standby counsel.

MR. WALKER: Can I have an investigator so I could have a solid defense for trial?

THE COURT: You are the one who answered ready without anything. You are the one that is demanding trial.

You put any motions that you have to me in writing, present them to me.

Motion State with for jury tomorrow, 4-19.

MR. WALKER: All right. No problem.

(Whereupon, further proceedings in the above-entitled matter were continued to the 19TH day of April A.D., 2006.)

EXHIBIT D

* WRONFUL INCARCERATION

Motion to Reconsider Judgment

(Hearing Outline) FACTS FOR MERITS:

1.)

- I enjoyed and practiced my 6th Amendment right to a speedy trial.
- I received no defense or fight from P.D. department; there was a conflict of interest because they were only interested in a conviction.
- As a poor person, I decided to represent myself.
- I had no equal power of attorney in Skokie.
- My first nature is second and third nature for a licensed attorney.

2.)

- I was arrested for a Class 4, which carries 1 to 3 years.
- The case was fabricated by CPD.
- I decided to represent myself pro se because the case was a no-brainer.
- My lack of law training and education caused misunderstanding.
- Did not argue changes in jury instruction.
- Argued facts in vice report, complaint, and indictment.
- I object to evidence that isn't relevant to what I am charged with. On 3/14/06, cannabis and B.B. firearm dismissed.
- There were no kids or school employees out at 9:00 PM, the school zone hours were closed, and I object to the '1,000 feet from school.'

* 3.)

- The Court denied me a standby counselor, so I was completely on my own.
- I had no legal assistance to recognize technicals and address the court with fouls.
- Needed extra copies of original documents.
- Needed a set pair of eyes and ears to ensure I didn't get cheated.
- Needed a standby counselor to ensure a fair trial.
- Because I had no advisor, I was unaware of dos and don'ts at trial, which led to a mistrial.

* 4.)

- The Court denied me a private investigator and allowed only one professional investigative testimony.
- A second investigator's testimony was required to ensure accuracy, legitimacy, and legality.
- Needed outside information and witnesses' statements.
- Needed professional testimony to strengthen the defense and discredit state's witnesses.

P

- Needed an investigator to recover the film.
- This denial put my defense at a disadvantage.

✳ 5.)

- The film provides the truth regarding my arrest and proves perjury on the part of the prosecution.
- It shows no drug activity, only officers' misconduct and use of police brutality.
- Skokie's deputies tampered with court documents – my discovery – which caused me an inadequate defense.
- I am harassed by deputies with my 4th search; I am searched when I leave my deck, strip-searched before leaving my division, and searched and then forced through a metal detector before boarding the bus to Skokie.
- My entire discovery and documents are confiscated every court day and not returned to my presence until I am upstairs in my courtroom's holding cell.
- Skokie cheated me out of my victory with this tampering of evidence.
- On 5/19/06, the key weapon to my defense was stolen and missing from my confidential documents; deputy "Nicpan" confiscated my close-up shots of the existing camera.
- An employee who works in the Gunnison Building can testify that there was an existing camera working on the day of my arrest, 2/21/06.

✳ 6.)

- Before the trial, the state's attorney was made fully aware of a possible film where this so-called case occurred.
- Inside my answer to discovery, I specifically drew the surveillance camera device on the Gunnison Building on my street exhibit.
- My illustration points to the exact position of the device, but the state's attorney deliberately withheld this valuable information from the jury.
- I submitted street exhibit to elaborate.
- On 4/20/06, after complete investigation of place of offense, investigator lied under oath by denying the existence of this camera device.
- Although my diagram pinpoints the exact position of the camera, he did not submit it as investigative material, for it proves my innocence.
- My diagram, photos, and employee testimony could discredit his claims.
- On 5/26/06, he returns to the place of offense to get more *close-up* shots, a trick used by the state to misrepresent the exact position of the camera to the jury.
- He takes close-up photos of the back of the J.J. Pepper's store attached to the strip mall.
- Directly behind these shots is where the device is positioned, posted on the mouth of the alley on the Gunnison Building. See map diagram.

3 FOR HE WAS A CHICAGO POLICE FOR 25 years

11

- The state's attorney and investigator only focus their attention on the passenger's side of the vehicle, which is on the side of J.J. Pepper's store.
- They withheld information about the driver's side view and close-up shots where I was parked, for right above is where the camera is positioned.
- There was not one close-up shot of the building where I was sitting.
- With a map, I drew the exact location of the device, but they knew to cover up this truth, for it would expose the true definition of my arrest.
- On 5/15/06, the state's attorney knew, after the completion of the investigation, that the position of the camera on my map diagram was accurate.
- Hence, during our conference, she was willing to drop all charges and she offered me one year, but I declined the offer due to saving college tuition and scholarship.
- Submitted both lab reports and elaborated.
- On 5/31/06, before jury selection, amended discovery rendered to defendant – document shall not be admissible due to insufficient evidence.
- On 3/6/06, the original lab report was completed, but forensic scientist unprofessionally refused to sign his findings, making the evidence insufficient.
- On 4/5/06, state's attorney rendered original lab results without a signature inside the discovery.
- On 5/31/06, at 10:12 AM, another copy of the same lab results was faxed and signed before the jury selection.
- Evidently, on 3/6/06, these results were improper and incomplete because they were not signed by the forensic scientist.
- After 84 days without a signature, they forged a signature through fax just before trial.
- This misconduct and tampering with evidence is grounds for dismissal.
- During sentencing, prosecution added a conviction passed the ten-year statute of limitations, exemplifying malicious prosecution.

7.)

- Read and review trial's transcripts.

* 8.)

- Read the complaint filed to Disciplinary Commission.

9.)

- Review P.S.I., invalid and incomplete data.

* 10.)

- On 2/21/06, I was wrongfully arrested for Unlawful Possession of a Controlled Substance (720 ILCS 570/402c).

- On 2/22/06, at bond hearing, I was charged with a Class 4, 1 to 3 years, on (2) counts of P.C.S. (720 ILCS 570/402c), and given a super-low bond of 35,000 D.
- 3,500 of that to walk is 10%, and given original complaint with my class 4 charges.
- On 3/14/06, at preliminary hearing, I was denied a hearing, facing my accusers, and falsely indicted.
- The indictment was fabricated and invalid, misnaming me in the indictment, for incorrect charges (Line 18-24, page 2).
- On date of arrest, on CPD criminal history report, I was falsely charged with a Class 1 instead of a Class 4, for statue improper (720 ILCS 570/**401-C-2**).
- On 2/21/06, review original complaint, original vice case report, and bond hearing transcripts for a Class 4 offense.
- On 5/31/06, at trial, I was charged mistakenly for (407-B2) Brother's "original complaint" charges
  -MANU/DEL COCAINE/SCH/PUB H.S./PK –
  -MANU/DEL 01-15 GR COCAINE/ANLG – (401-C-2)
  However, I was originally charged for a Class 4, never charged for a 1,000 feet or for the above charges.
- Page 6, lines 9-11, of the indictment clearly states that this took place between my co defendants, Russell Walker and Dewey Brown.
- My brother was appropriately charged for these offenses on his original complaint, but I am illegally tried under these false offenses.
- My offense occurred in Cook County, Chicago District, not Skokie District, outside of my jurisdiction, and was tried without my peers.
- Within the last ten years, I've had neither drug convictions nor violent convictions.
- Skokie's court house was very biased in my trial, not allowing me the proper legal counsel or private investigator to recover proof of the existing security device.
- Skokie caused me an inadequate defense as well as a wrongful conviction, and gave me an extremely excessive sentence of 22 years, for what was initially a Class 4 P.C.S. charge.

11.)

- Shepardize and incorporate pro se case:
  Anthony Faretta vs. State of California 95 S. Ct 2525; 422 U.S 806 U.S Cal 1975.

EXHIBIT E

Filed on 6/13/06

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISON

PEOPLE OF THE STATE OF ILLINIS)
Plaintiff,)
)
-VS-) NO. 06CR6788
)
)
Jermaine D. Walker)
Defendant,)

MOTION FOR A NEW TRIAL

NOW COMES MOVANT, Jermaine D. WALKER, filing, pro se, and moves this Honorable Court pursuant to ILLinois Revised Statues, to grant his motion.

The Defendant, Jermaine D. Walker, moves this Honorable Court, pursuant to 725 ILCS 5/116-1, for a new trial.

IN support of this motion, the Defendant states as follows:

1. The State failed to prove the Defendant guilty of the charges against him beyond all reasonable doubt.

2. In effective assistance of

counsel, conflict of interest, and misrepresentation from the Public Defendant Office, forcing Defendant to represent himself pro se.

3. The prosecutor made prejudical, inflammatory, and erroneous statements in closing argument designed to arouse the prejudice and passions of the jury and to thereby prejudice the Defendant's right to a fair trial.

4. The verdict is based upon evidentiary facts which do not exclude every reasonable hypothesis consistent with innocence of the Defendant.

5. The Defendant was denied due process of law in that the Defendant was not equally given a Defense Investigator or stand by/ Counsel for questioning.

6. The State failed to prove every material allegation of the indictment/complaint/ information beyond a reasonable doubt.

7. The verdict is the result of passion, bias, and prejudice on the part of the jury against the Defendant.

8. The Court erred in sending the Defendant to a holding cell during jury deliberations.

9. Denied public people in courtroom during trial.

WHEREFORE, the Defendant requests that this Court vacate the judgement in this cause and grant the Defendant a new trial.

Respectfully submitted,

Jermaine D. Walker
MOVANT

EXHIBIT F

SECOND DIVISION
OCTOBER 14, 2008

1-07-0841

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 6288
	)	
JERMAINE WALKER,	)	Honorable
	)	Catherine M. Haberkorn,
Defendant-Appellant.	)	Judge Presiding.

ORDER

Following a jury trial at which he represented himself *pro se*, the defendant, Jermaine Walker, was found guilty of possession of a controlled substance with intent to deliver within 1,000 feet of a school and sentenced to 22 years' imprisonment. On appeal, the defendant contends that the trial court erred when it refused his request for an investigator. He also challenges the severity of his sentence. We affirm.

BACKGROUND

On April 5, 2006, the defendant's first court date following arraignment, the public defender was appointed to represent him. However, when his attorney filed a motion for discovery and asked to continue the case, the defendant objected to the appointment, insisted that he should be allowed to proceed *pro se* and demanded an immediate trial. The trial court admonished the defendant

regarding his right to appointed counsel and told him he would be "coming back here every day until the State is ready."

The defendant appeared several more times in the following days and demanded an immediate trial each day. On April 18, 2006, the State tendered discovery materials to the defendant, and the following colloquy occurred.

> "THE COURT: You are still demanding trial, is that correct?
>
> [THE DEFENDANT:] Yes. Also with all due respect, I am asking for the Court to grant me a standby counsel and investigator.
>
> THE COURT: I said no, I am not giving you a standby counsel.
>
> [THE DEFENDANT:] Can I have an investigator so I could have a solid defense at trial?
>
> THE COURT: You are the one who answered ready without anything. You are the one who is demanding trial. You put any motion that you have to me in writing, present them to me."

The defendant never filed a written motion for appointment of an investigator or otherwise raised the issue with the trial court again.

Because the defendant does not challenge the sufficiency of the evidence, only a summary statement of the facts is required. The State presented evidence that on February 21, 2006, a team of Chicago tactical officers traveling in an unmarked police car received a tip that someone in a white car with Tennessee plates was selling narcotics. The police officers searched for the car for

approximately 20 minutes before spotting the defendant driving a car that matched the description in the 4700 block of North Sheridan Road in Chicago. The defendant's brother, Russell, was seated in the passenger seat of the car. As they approached the car, the officers saw a third man, Dewey Brown, near the passenger side window. The officers could not hear the conversation, but after Brown spoke to Russell, Russell gestured toward a nearby alley. Brown walked into the alley with the defendant driving behind him.

The police officers followed in their car. In the alley, the officers observed Brown give money to Russell in exchange for a small item. Believing that they had witnessed a narcotics transaction, the tactical officers got out of their car, chased Brown a short distance and arrested him. The defendant threw a golf-ball-sized object from the window of the car. He was ordered out of the car at gunpoint, but initially refused. As the defendant got out, one of the officers noticed a black object protruding from the defendant's waistband. This was later determined to be a BB gun. The police recovered a small object from the street containing small packets of suspect crack cocaine. They also found in the defendant's sock an object weighing approximately five grams which later tested positive for cocaine. An investigator who examined the alley measured the distance to a nearby school as less than 1,000 feet. The investigator took extensive photographs of the alley and the walls of the buildings on either side of the alley. He discovered no camera or other surveillance devices in the alley.

During cross-examination of the officers, the defendant attempted to develop a theory of police misconduct. He questioned the officers about whether they used excessive force, planted the narcotics in his car, and took money from his person without inventorying it. The police officers

denied all misconduct. The police officers also denied that their actions were captured on videotape by a surveillance camera. The defendant presented no evidence during his case in chief.

The jury found the defendant guilty. The trial court continued the matter for sentencing and, at the defendant's request, appointed counsel to represent him for the sentencing phase of the trial.

At the sentencing hearing, the State argued that the defendant's lengthy criminal history warranted a 15-year sentence. The State noted that the defendant had previously been convicted of armed robbery in 1994, when he was 16 years old, forgery in 1998, and felony retail theft in 2002. Defense counsel argued that although the defendant had prior convictions he had succeeded in "turning his life around," and counsel requested a sentence closer to the minimum of the sentencing range of six to thirty years. The presentencing investigation report (PSI) revealed that in addition to the felony convictions mentioned by the State, the defendant had numerous misdemeanor convictions. The PSI also revealed that at the time he committed this offense the defendant was enrolled as a computer science student at Fisk University in Tennessee, where he had completed 80 credit hours. He had worked on a project concerning superconductivity and had participated in a Research Alliance in Math and Science (RAMS) internship. The defendant had obtained a full scholarship to Fisk after completing an Advanced Certificate at Truman College in Chicago. According to the defendant, he planned to continue his education upon his release.

The trial court sentenced the defendant to 22 years in prison stating, *inter alia*, that:

> "Even with all of your convictions, you were still allowed to be chosen to be in [the RAMS] program. You still got a scholarship. You were in college. So people were kind enough to still give you a chance and

the defendant.

An abuse of discretion arises only when the trial court acts improperly based on the facts and circumstances known to it at the time of its exercise of discretion. See People v. Ramey, 70 Ill. App. 3d 327, 333, 388 N.E.2d 196, 200 (1979). Here, the trial court was presented with absolutely no reason to appoint an investigator for the defendant, who simply made the bald allegation that an investigator was necessary for a "solid defense." The defendant did not inform the trial court that he needed an investigator to, for example, locate witnesses or examine physical evidence. Accordingly, because the trial court was in possession of no information to suggest that an investigator was crucial to the presentation of the defendant's case, we cannot find that the trial court abused its discretion.

The defendant argues that it was apparent from his cross-examination of the officers that he believed a video camera was present in the alley and that it captured a view of the arrest very different than that described by the arresting officers. However, none of this information was available to the trial court when it denied the defendant's oral motion for an investigator. The defendant criticizes the trial court for not making additional inquiries in response to his motion, but the trial court invited the defendant to file a written motion and he failed to do so, instead persisting in his strategy of answering ready for trial in order to exercise his right to a speedy trial.

The defendant's claim is also too speculative to constitute the violation of a constitutional right. The defendant claims that, if the court had appointed an investigator, and if that investigator had discovered a video surveillance camera, and if that camera had recorded the arrest, and if the videotape had been preserved, and if the videotape contradicted the police officers' accounts of the arrest, it would have been crucial to his trial. However, the only evidence actually presented at trial

overwhelmingly supports a finding that no such video camera was present in the alley. Absent some support in the record for the defendant's allegations, we find that a remand in this case would likely be a meaningless exercise.

The defendant also contends that his sentence is excessive because the trial court failed to properly consider the rehabilitative potential reflected by his educational pursuits.

The defendant was convicted of possession of cocaine with the intent to deliver within 1,000 feet of a school, a Class X felony. 720 ILCS 570/401(c)(2) (West 2006); 720 ILCS 570/407(b)(1) (West 2006). He was subject to a sentencing range of 6 to 30 years. 730 ILCS 5/5-8-1(a)(3) (West 2006).

The law of sentencing in Illinois is well established, and the trial court has broad discretionary authority when sentencing a defendant. People v. Evans, 373 Ill. App. 3d 948, 967, 869 N.E.2d 920, 924 (2007). Reviewing courts accord deference to trial courts in sentencing because the trial court is in a better position to decide the appropriate sentence. Evans, 373 Ill. App. 3d at 967, 869 N.E.2d at 924. Accordingly, we will not disturb a trial court's sentencing decision absent an abuse of discretion. Evans, 373 Ill. App. 3d at 967, 869 N.E.2d at 924.

"The Illinois Constitution requires that penalties be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." People v. Quintana, 332 Ill. App. 3d 96, 109, 772 N.E.2d 833, 845 (2002), quoting Ill. Const. 1970, art. I §11. To determine the appropriate sentence, the court must consider all factors in aggravation and mitigation including the defendant's credibility, demeanor, general moral character, social environments, habits, and age. Evans, 373 Ill. App. 3d at 967, 869 N.E.2d at 924.

The defendant argues that the trial court erred in sentencing him because it failed to properly consider as mitigating the evidence that he was a scholarship computer science student and, in fact, considered this evidence as aggravating. The defendant is correct that educational pursuits are generally mitigating, and should be considered by the trial court during sentencing. See People v. Markiewicz, 246 Ill. App. 3d 31, 56, 615 N.E.2d 869, 886 (1993); People v. Williams, 196 Ill. App. 3d 851, 867, 554 N.E.2d 1040, 1050 (1990). There is no doubt that defendant is intelligent and capable of furthering his educational goals. But, as the trial court noted, this is not a story of the redemptive power of education. Despite the opportunities given to him, the defendant never abandoned his criminal past. The trial court correctly observed that defendant had continued to lead a life of crime even after being given an opportunity to receive an education and move forward with his life.

The trial court also had before it other serious aggravating evidence. The defendant has a background of serious offenses including at least one prior Class X conviction for a crime of violence. Based upon all of these factors, we cannot find that the sentence actually imposed constituted an abuse of discretion.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.

CUNNINGHAM, J., with KARNEZIS, P.J., and QUINN, J., concurring.

EXHIBIT G

IN THE
CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

ine Walker,
PETITIONER,

v.

of the State of Illinois,
RESPONDENT.

No. 06 CR 0628801
HON. Catherine Haberkorn

)-SE MOTION TO COMPEL THE PERFORMANCE OF FINGERPRINTS, OR FORENSIC DNA TESTING

COMES Petitioner, Jermaine Walker (B-52757), pro se, pursuant hapter [725 ILCS 5/116-3], respectfully moves this Honorable Catherine Haberkorn to grant an Order for the performance ngerprints, or forensic testing not available at trial regarding ctual innocence.
PORT of this request, Petitioner asserts:

. Petitioner, Jermaine Walker (B-52757) is a PRO SE inmate ntly incarcerated at (Pinckneyville C.C.), Perry County, Ill.

.. On October 28th, 2008, the trial Court had appointed Defender (Ingrid Gill) to adequately represent, investigate & Petitioner's Post-Conviction Claims, and the Court granted ner's in forma pauperis application.

. On March 12th, 2007, Petitioner was unlawfully sentenced & ted to an excessive (22) twenty-two years, following a rial for the offenses [720 ILCS 570/407(b)(1) & 720 ILCS 570/

:c)(2)], and unlawfully and knowingly in possession of a
d substance (Crack Cocaine) with intent to deliver within
) feet of a School, for an unconstitutional indictment No. (06-
0628801).

4. Petitioner's guaranteed rights under the Constitution of the
States and the State of Illinois were clearly & substantially
ved in that:

(a.) the (February 21st, 2006) false arrest, search & seizure were made in violation of the Petitioner's rights under the Fourth Amendment, and Section 2, 6, and 10 of Article I of the Constitution of the State of Illinois;

(b.) At the time of this false arrest, the accused Petitioner was not violating any law either Federal, State or local, and there existed no probable cause to make the arrest, search or seizure complained of;

(c) Not only was there an absence of authority, personal possession, hand-to-hand drug transaction, or probable cause to effect Petitioner's arrest, but also because the evidence is insufficient, tainted, and at most it only establishes the Petitioner's presence at the scene of criminal activity and no knowledge thereof;

(d.) Insufficient evidence exists to convict the Petitioner to a possessory crime, and the accused Petitioner has a possessory or other valid property interest in the evidence seizure which are now sought to be "TESTED & SUPPRESSED";

(e) The Chicago Police's arrest & complaint described lacked sufficient articulable facts characteristic of drug transactions. See: People v. Harper, 603 N.E.2d 115;

(f.) The State's presentation of Chicago Officers' testimonies that they had personally observed the hand-to-hand drugs tranactions, possessing & throwing of drugs from the driver's side window, involving Petitioner's alleged left hand in grand jury proceedings & trial transcripts, in which State sought an unconstitutional indictment No. (06-CR-0628801) of Petitioner for two counts of unlawful possession of controlled substance with intent to deliver within 1,000 feet of a School, constituted "deceptive and inaccurate evidence", and thus denied Petitioner Due Process to a preliminary hearing & a fair trial.

(g.) The Due Process rights of a Defendant is violated when the prosecutor deliberately or intentionally misleads the grand jury, uses known perjured of false testimony, and presents other deceptive or inaccurate evidence is the concealment of its nature as hearsay. See: People v. Oliver, 859 N.E.2d 39 (Appl. 2nd Dist 2006).

Obviously, in this above case, "Evidence was insufficient to the jury's verdict of guilty beyond a reasonable doubt," so ppellate Court is authorized by § 2106 to "go beyond the ial relief sought"; for the Double Jeopardy Clause precludes trial once the reviewing Court has found the evidence

ally insufficient, the only "just" remedy available for that t is the direction of a judgment of a direct acquittal. Burks v. U.S., 437 U.S. 1 (1978).

6. A public prosecutor may not institute or cause to be ituted criminal charges when he or she knows it is obvious charges or evidence are not supported by probable cause. The of the States Attorney is to see that justice is done, not every defendant is convicted. See: [S.H.A. Ch 110A, Rule 1 et. seq.].

7. Relevant evidence is any evidence having the tendency to the existence of any fact of consequence to the outcome of e case more or less probable than it would be without vidence. See: People v. Monroe, 355 N.E. 2d 783 Appl; 362 N.E. 2d 297.

. Purpose of statute governing motions for post-conviction (DNA) ngerprints testing is to provide an avenue for convicted dants who maintained their innocence to test generic material le of providing new and dramatic evidence materially relevant e question of the defendant's "ACTUAL INNOCENCE". See: People re, 879 N.E. 2d 434 (IL. Appl. 1st Dist. 2007).

. Petitioner may make a "PRO SE" motion before the trial that entered the judgment of conviction in his case for the ance of fingerprints or forensic DNA testing, and to those tained under subsection (f) of Section (5-4-3) of the Unified Corrections [730 ILCS 5/5-4-3], on evidence that was in relation to the trial which resulted in his conviction, hich was not subject to the testing which is now requested e the technology for the fingerprints testing was not le at the time of trial. See: [725 ILCS 5/116-3].

10. In examining the chain of custody requirement, Courts look of delivery of evidence, presence and safekeeping:

a.) Petitioner identity or fingerprints was the issue in the trial which resulted in his conviction; and

b.) The evidence to be tested has been subjected to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

People v. Gibson, 679 N.E. 2d 419 (Appl. 1997).

11. If evidence previously tested pursuant to this Section -3 reveals an unknown fingerprint from the crime scence does not match the defendant or the victim, the Order he Court shall direct the prosecuting authority to request Illinois State Police Bureau of Forensic Science to submit nknown fingerprint evidence into the FBI's Integrated omated Fingerprint Identification System (AIFIS) for ntification.

12. Under the "Due Process Clause" of the Fourteenth ndment, a rule of evidence prohibiting the admission inst the defendant evidence of the direct result or immediate uct of illegal conduct by an Official. See: 371 U.S. 471.

13. Evidently, in the above entitled cause, the Chicago e Department acted illegal to obtain Petitioner's wrongful iction, and clearly its prime example of the "FRUIT OF THE ONOUS TREE DOCTRINE":

a.) This Doctrine draws its name from the idea that, once the Chicago Police "Poison the tree" (act illegally to obtain or to attempt to

obtain the primary evidence), then any "fruit of the tree" (any primary, secondary or other evidence) resulting from that illegal search also contains that "poison".

Petitioner presents this prima facie motion in good-faith, the above claims in this motion is not frivolous or ious, but is colorable and meritorious.

FORE, based on the forgoing reasons, Petitioner respectfully ts this Honorable Court to grant this motion, and enter der for fingerprints (DNA) testing, so Petitioner can ntiate "Newly Discovered Evidence" & "Actual Innocence" his pending Post-Conviction proceedings.

THIS 3rd DAY OF JANUARY 2011

RESPECTFULLY SUBMITTED,

Jermaine Walker

PETITIONER

ear that the facts stated in this motion are true and t in substance and in fact.

Jermaine Walker

PETITIONER

Jermaine Walker, PRO SE
I.D.O.C. NO. (B-52757)
PINCKNEYVILLE CORR. CENTER
5835 State Route 154
P.O. Box 999
Pinckneyville, IL. 62274

AND SWORN TO BEFORE ME

DAY OF Jan 2011

Notary Public

OFFICIAL SEAL
DONNA S HEIDEMANN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/19/13

EXHIBIT H

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

STATE OF ILLINOIS	)	
	)	
Respondent-Plaintiff,	)	
v.	)	Case No. 06 CR0628801
	)	Judge Haberkorn
	)	Room 107, Skokie Courthouse
JERMAINE WALKER	)	Next Court Date:
Petitioner-Defendant.	)	

NOTICE OF FILING

To: ASA Erkes
Post-Conviction Unit
Cook County State's Attorney Office
2650 South California, 11th Floor
Chicago, Illinois 60608

JERMAINE WALKER
Reg. No. K-75818
Big Muddy Correctional Center
P.O. Box 900
Ina, Illinois 62846

PLEASE TAKE NOTICE that on January 25, 2013 the undersigned will appear before the Honorable Judge Haberkorn or any judge sitting in her stead in room 107 in the Skokie Courthouse and present a Motion for Post-Conviction DNA Testing in the above, a copy of which is herewith served upon you.

Law Office of the Cook County Public Defender.

Ingrid Gill
Assistant Public Defender

Abishi C. Cunningham, Public Defender
Ingrid Gill, Assistant Public Defender
Law Office of the Cook County Public Defender
69 West Washington Street, Suite 1575
Chicago, Illinois 60603
(312) 603 - 0600
Firm ID. 30295

PROOF OF SERVICE

I, Ingrid Gill certify that on January 24, 2013, I served this notice of filing together with the motion to the State by delivering a copy to through their representative at the above address and I mailed a copy to Mr. Walker with prepaid postage through the U.S. Mail

By: Ingrid Gill
Ingrid Gill, Assistant Public Defender

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

STATE OF ILLINOIS	)	
	)	
Respondent-Plaintiff,	)	
v.	)	Case No. 06 CR0628801
	)	Judge Haberkorn
	)	Room 107
JERMAINE WALKER	)	
Petitioner-Defendant.	)	Second Municipal District

SUPPLEMENTAL MOTION FOR POST CONVICTION DNA TESTING

NOW COMES the Public Defender of Cook County, Abishi C. Cunningham, through his assistant, Ingrid Gill, and supplements Mr. Jermaine Walker's pro se motions for forensic DNA testing not available at trial regarding actual innocence under the 725 ILCS 5/116-3 et seq. (2013). Mr. Walker seeks forensic DNA testing of the plastic baggies recovered by Chicago Police during and after his arrest to support his claim of actual innocence that he did not carry or possess on his person the drugs recovered and inventoried by Chicago Police under inventoried number 10698426 and 10698419. Further, Mr. Walker seeks forensic DNA comparison of any DNA profiles recovered from these inventoried baggies against the profiles of convicted felons / co-defendants Dewey Brown and Russell Walker. Mr. Walker seeks autosomal Mini-STR DNA testing and Ancestry –informative SNPs on the plastic baggies inventoried number 10698426 and 10698419.

In Support, Counsel states:

1. Following a 2006 jury trial, Mr. Walker was found guilty of possession of a controlled substance with the intent to deliver within a 1,000 feet of a school, and sentenced to 22 years imprisonment. He is currently incarcerated in the Illinois Department of

Corrections pursuant to this sentence. Petitioner's Exhibit A – Rule 23 Order 1-07-0841 issued October 14, 2008.

2. After the jury trial, all the plastic bags, and untested plastic bags inventoried by Chicago Police in the above captioned case were impounded on April 3, 2008. Petitioner's Exhibit B – Chicago Police Property Inventory sheets impound order

3. At trial, Chicago Police Officer Reyes testified that as he was approaching Mr. Walker's vehicle, he observed him toss a golf-ball sized object out the window. (R. O-28) Officer Reyes recovered this object in the alleyway, and observed that it consisted of 19 little plastic packets of suspect crack cocaine. (R. O-29) He inventoried this item as Item Id 1275019 under inventory property number 10698419. Petitioner's Group Exhibit C – inventory property reports. Officer Flatley performed a custodial search of Mr. Walker at the 23rd District police station. (R. O-110) He recovered a small plastic baggie containing suspect cannabis and a plastic bag containing two separate bags of suspect crack cocaine from defendant's right sock. (R. O-112) Officer Flatley inventoried all suspect narcotics. (R. O-114-117) Petitioner's Group Exhibits C- inventoried reports Further, additional baggies were recovered from co-defendants Dewey Brown and Russell Walker. Petitioner's Group Exhibits C- inventoried reports None of these police officers are of sub-Saharan descent.

4. Mr. Walker asserts that all of these baggies have the STR DNA profiles in low copy number size of his two co-defendants epithelia cells' from their physical contact with the baggies. Moreover, he and his co-defendants are of sub-Saharan descent while the police officers who recovered the drugs are of Indo-European descent. Both of the

co-defendants plead guilty to possession of a controlled substance recovered in the alleyway by police; consequently, their STR DNA profiles are in the convicted offender DNA database available for comparison. Further, he asserts that his DNA profile is not on any of the bags, and Officer Flatley is mistaken that the bag recovered in lockup came from him. Ancestry-informative SNP testing will establish that the packets within the baggies came from the defendants and not from the arresting officers since the arresting officers did not testify that they touch each of the packets in the plastic baggies.

5. At trial, Forensic Chemist Brian Stevenson testified that he received numerous inventory envelopes relating to this case, and conducted forensic chemistry testing on the substances in the baggies to confirm the presence of cocaine and cannabis. (R. P-30-52) In handling suspected narcotic substances, Stevenson used safety precautions to avoid inadvertent physical contact with his skin throughout the laboratory testing as mandated by the lab by his use of latex gloves during testing. He removed the substance from the baggie and weighed it without the plastic covering. (R. P-35) Stevenson conducted gas chromatography mass spectrometry(GCMS) on eight of the nineteen items from the object inventoried by Officer Reyes which was believed thrown out of the window by Mr. Walker. (R. P-38-39) Stevenson also conducted GCMS on the two baggies containing a chunky substance and a baggie containing plant material inventoried by Officer Flatley which the Officer testified had been recovered from Mr. Walker's sock. (R. P-47-48) After he completed his confirmatory testing for narcotics, Stevenson repacked the drugs and their plastic baggies into their new zip bags and heat sealed them and placed his markings on them, initials, the laboratory case number, and the exhibit numbers. (R.

P-37, 51) Thereafter, he placed them back into the inventory bag, heat sealed it, and placed his initials, the date, and the laboratory number on that. (R. P-37, 51) Stevenson then locked them in his desk until he returned them to the police vault. (R. P-51) Petitioner's Group Exhibit D – Report and case file of Brian Stevenson

6. In this motion for forensic Mini STR DNA testing and Ancestry-informative SNPs, Mr. Walker requests that this court order that the plastic baggies in the above captioned case be subjected to these testing technologies to show that (1) the plastic baggies of drugs thrown from the car he was driving were thrown by his front seat passenger, Russell Walker, and (2) the baggies of drugs allegedly recovered from his person at 23rd district police station do not have his DNA profile, but instead come from his co-defendants Russell Walker or Dewey Brown. Petitioner's Group Exhibit C – Chicago Police Property Inventory sheets In addition to the drugs subjected to GCMS, there remains baggies that were not subject to any forensic testing that can be subject to Mini STR DNA testing and Ancestry-informative SNPs.

7. Under the provisions of 725 ILCS 5/116-3 (2013), Mr. Walker motions for forensic Mini STR DNA and Ancestry-informative SNPs testing on the plastic baggies evidence that were secured in relation to his trial which resulted in his conviction, including comparison analysis of genetic marker groupings of the defendant, and to his co-defendants maintained under subsection (f) of Section 5-4-3 of the Unified Code of Corrections [730 ILCS 5/5-4-3]

8. The plastic baggies in Petitioner's Group Exhibit C were not subject to DNA testing at the time of trial. Further, these DNA technologies were not available in 2006.

9. These new DNA technologies can generate genetic profiles from the epithelial cells shredded on the plastic baggies by the codefendants that were not scientifically available at the time of trial, and provides a reasonable likelihood of more probative results as to the true identity of the defendants who possessed the narcotics.

10. At trial, Mr. Walker challenged the identification testimony of the police officers regarding the plastic baggies recovered in the alleyway and at the 23rd District police station. (Reyes:R. O46-70; O74-78) (Flatley: R. O138-140) (White: O158-164)

11. The plastic baggies have been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect as evident from the court impound order, the Chicago Police Inventory Reports, and the Illinois State Police Forensic Science Command Center's published report and laboratory worksheets.

12. Pursuant to the 725 ILCS 5/116-3(C), the trial court shall allow the testing under reasonable conditions designed to protect the State's interests in the integrity of the evidence and the testing process upon a determination that: (1) the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence even though the results may not completely exonerate the defendant; (2) the testing requested employs a scientific method generally accepted within the relevant scientific community.

13. The results of Mini STR DNA and Ancestry-informative SNPs testing has the scientific potential to produce new, noncumulative evidence materially relevant to Mr. Jermaine Walker's assertion of actual innocence even though the results may not completely exonerate him.

14. Mini-STR DNA and Ancestry-informative SNPs testing employs a scientific method generally accepted within the relevant scientific community. John M. Butler, *Fundamentals of Forensic DNA Typing* 363-397, 423-439 (Academic Press 2010); John M. Butler, *Advanced Topics in Forensic DNA Typing: Methodology,* (Academic Press 2011)

15. DNA genetic profiles generated from both DNA testing methodologies can produce profiles that exclude Mr. Jermaine Walker as the biological contributor to the baggies recovered in the alleyway and at the 23rd police district station. Further, Ancestry-informative SNPs can eliminate the police officers as biological contributors on those packets of suspect narcotics recovered from Mr. Jermaine Walker's sock during his custodial search in lockup because lock up personnel wear latex gloves for their safety during custodial searches at the police station.

WHEREFORE, Mr. Walker prays that this court will grant his motion for forensic DNA testing utilizing Mini-STR DNA and Ancestry-informative SNPs testing on the plastic bags recovered and inventoried by the Chicago Police in the alleyway where he was arrested and at the 23rd district police station that had not been previously subject to forensic testing by Forensic Scientist Stevenson, and is currently impounded with the Clerk of the Circuit Court, and the Chicago Police Department's Evidence Recovery Section.

Respectfully submitted,
ABISHI C. CUNNINGHAM, JR.
Public Defender of Cook County

By Ingrid A. Gill, Assistant Public Defender
Law Office of the Cook County Public Defender
Atty No. 30295
69 West Washington, 15th Fl.
Chicago, Illinois 60602
312-603-0600

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT

Ingrid Gill, being first duly sworn on oath, deposes and says that your affiant is an Assistant Public Defender of Cook County, Illinois; has read the foregoing motion by her subscribed; knows the contents therein; and, on information and belief, believes them to be true, in substance and in fact.

Ingrid Gill
Assistant Public Defender

SUBSCRIBED and SWORN TO
Before me this 23th day of
January, 2013.

Hermenia Green
Notary Public

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
HERMENIA GREEN
MY COMMISSION EXPIRES
JANUARY 8, 2014

EXHIBIT I

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
VS	)	No. 06 CR 0628801
JERMAINE WALKER,	)	
Defendant.	)	

REPORT OF PROCEEDINGS of the hearing before the Honorable CATHERINE HABERKORN, Judge of said Court, on the 25th of March, 2016.

APPEARANCES:

HON. ANITA M. ALVAREZ,
State's Attorney of Cook County, by:
MS. CELESTE STACK,
Assistant State's Attorney,
for the People of the State of Illinois;

AMY P. CAMPANELLI,
Public Defender of Cook County, by:
MS. INGRID GILL,
Assistant Public Defender,
for the Defendant.

ANGELA D. HAMILTON, C.S.R., R.P.R.
Official Court Reporter
License No. 084-004138

THE CLERK: Jermaine Walker.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: Good afternoon, Jermaine.

This is Jermaine Walker. Will the parties identify themselves for the record, please.

MS. GILL: Ingrid Gill, Assistant Public Defender, on behalf of Jermaine Walker, who is in court standing next to me, your Honor, for the record.

THE COURT: Good afternoon, officers, as well.

THE OFFICER: Good afternoon.

MS. STACK: I'm Celeste Stack on behalf of the People. Your Honor, I motioned this case up. Thank you for allowing me to put it on your call today. And at this time, the State would be requesting that your Honor grant our request under 735 ILCS 5/2-1401 and vacate the convictions and the sentences against Mr. Walker today, and we have -- we would ask that the -- instead of reinstating the charges, et cetera, that they be dismissed and that Mr. Walker be released from IDOC's custody.

THE COURT: Okay, let's first address the issue of 1401.

MS. STACK: Okay. 1401, as your Honor is well aware, it's a civil statute that's long been applied to

criminal cases, and it allows for either party to move to vacate a judgment. And, obviously, after conferring with Mr. Walker's attorney and reviewing the case and doing some investigation, we --

THE COURT: And the State's been having some time to investigate this case in that we've been having many continuances in this matter since it was originally brought to the attention of the Court that there was an affidavit in which the owner of a building, where a camera was involved in this case, stated that the camera was there this entire time when, in fact, I presided over a trial in which a witness -- witnesses claimed that, in fact, there was no camera. So obviously, that's been of great concern, but the State has been having an investigation going on this entire time.

Is that correct?

MS. STACK: Yes, your Honor. We had to track down -- the building is now -- I wouldn't say abandoned, but they are doing major construction. It used to have hundreds of residents, and we found and -- the owner of the building from 2006 and verified that, you know, obviously, he was the right person, and we interviewed him and did some other investigation and

determined that the security camera was, indeed, where Mr. Walker said it was. I can't -- I can't speak for anybody.

Obviously, I wasn't here for the trial or anything, but the pictures that were shown at trial were of a different part of the alley, so I'm not sure what happened. But on appeal, the State continued, and Mr. Walker complained on appeal that he should have had an investigator that would go out and take the photograph of that alley, and we argued that since, you know, it had been established there was no camera, he didn't need the investigator, and the appellate court agreed.

THE COURT: And am I correct that you personally took over this case and you are the head of the division to ensure that justice was being --

MS. STACK: Judge, I'm head of special litigation. There is also a Conviction Integrity Unit. But I have done this kind of work for years, and Ms. Gill brought it to my attention several months ago, and I -- you know, we wanted to investigate it right away.

We took some time to find the right people, but as soon as I got the case, I made it a priority, as did our office, and we appreciate Ms. Gill bringing it

to our attention.

THE COURT: Well, obviously, there were witnesses that were sworn under oath that testified and presented evidence corroborating their testimony. And when someone has taken an oath to tell the truth and testifies, there is a presumption they are going to tell the truth. Obviously, we have found out that that does not occur. A severe injustice was done here. But everybody in the court system was relying on the information and the photographs that were sworn to as a truth, and it is very disturbing and upsetting, especially as a judge, to be involved in a system where an officer, especially an officer of the court, would come in and swear under oath to something that was not true. That's a terrible thing and very disheartening to find out that someone has done something like this.

But I applaud this particular State's Attorney in that she did actively and vehemently proceed on this investigation to make sure that the truth had come out. And I know it's been difficult to get, in some instances, the Illinois Department of Corrections to cooperate with us to get Jermaine here so that we can get to this point and to right a wrong as soon as possible.

MS. STACK: Well, we know your Honor made this case a priority. There is a Conviction Integrity Unit that is hundreds of cases, but, you know, we were able to move this one forward quickly, and I appreciate your Honor's assistance in doing so.

MS. GILL: And, your Honor, I would just say that we're waiving notice. There isn't a written 1401, but the State has been working with me. We have been exchanging information. She's kept me up to date.

It is true, I filed a post-conviction petition May 4th of 2015. After a couple of court appearances, I actually did call Celeste Stack. Celeste and I worked on my first DNA exoneration in the Lafonso Rollins case, and I knew about her due diligence and her integrity, and I did reach out to her to step in and take over this case despite her very heavy case load.

As she mentioned, your Honor, the case is very disturbing because it was three police officers and a State's Attorney investigator. And I thank you and I thank Celeste for actually stepping up. And this is how cases should work, both the State and the attorney for the petitioner in any type of wrongful conviction. It should be a joint effort to seek the truth. And we

accomplished that today, your Honor, and we have worked closely to bring this case today to where it's at.

THE DEFENDANT: Can I make a statement?

THE COURT: Sure. Certainly.

THE DEFENDANT: I just want to say first and foremost to the Judge and the State, I want to highly applaud you for correcting this miscarriage of justice, and I love the State and the Judge for that. Thank you.

MS. GILL: And just to point out, just to clarify, this misjustice occurred under the former State's Attorney, Dick Devine, and I applaud Anita Alvarez for putting the resources and the management on this case, for creating the Conviction Integrity Unit, but literally taking the deputy division chief -- I think that's what Celeste's official title is, or chief.

MS. STACK: Just a unit supervisor.

MS. GILL: Unit supervisor. Well, she'll always be a chief in my mind. For allowing her to dedicate herself in the search of the truth regardless of what the future outcome is.

THE COURT: Well, Jermaine, you are very kind in this horrible situation that you have been put in. There's no words that can explain how sorry I am that

the justice system failed in this case. And we worked very hard to try to ensure that the truth comes out and, you know, it just took so long for it to come out.

It's really outrageous that police officers and an officer of the State's Attorney's office swore under oath here and actually backed it up with photographs that didn't even fit the relevant situation that we had in your case and, you know, on behalf of the entire system, I am so sorry that this has happened to you, and we hope that this, you know, does not ever happen again.

I have been on -- I was a State's Attorney for 14 years, a judge for 21 years, and this has never happened. I have never had to do this, and I am sickened by the fact that I have had to do it at all since I have been here. And I know that from the very moment that I saw the affidavit that this camera did, in fact, exist, that I had everybody give it their utmost attention so that we can get it resolved and so that we could come to the just outcome and that you could be released.

So at this time, the defendant's conviction will be vacated.

MS. STACK: Thank you, Judge.

THE COURT: State -- Now that it is vacated, State, you are wishing to nolle pros the charges?

MS. STACK: Correct. Motion State nolle pros. We ask that the charges be dismissed, the indictment dismissed.

THE COURT: So the indictment is dismissed, that you are to be released immediately. Your lawyer has been very kind enough to get you some clothes. And since we have been having difficulty with Illinois Department of Corrections in honoring any of my orders -- which we are dealing with that as well, you should know, myself and my presiding judge. They need to honor the Court orders, which they have been acting like they don't have to. They certainly do. And I see that you did not come in street clothes today, but your lawyer has got street clothes.

So, officers, if you could allow him to take everything that he has --

THE OFFICER: Yes, ma'am.

THE COURT: -- and give it to you, and then if the sheriffs and the officers could be there while he dresses downstairs in the new clothes --

MS. GILL: Yes, your Honor.

THE COURT: -- so that you can see that it's okay

for him. And then he is to be released.

THE OFFICER: Yes, Judge.

MS. GILL: And also, your Honor, there's some housekeeping matters. There's a three-page order that's being entered today. Because of your granting the 1401, I'm not objecting to it, clearly. The pending matters actually do become moot. There's a pending amended --

THE COURT: Oh, yes, I'm sorry. There is a DNA motion.

MS. GILL: Well, there's two. On page 2 of the order, I believe as a matter of law, the defendant amended post-conviction petition is now moot and dismissed off call. The Court has the discretion to make a judgment, but generally under judicial economy, since I'm an appellate attorney, what I find is that the appellate court never rules on something if they don't have to.

The second one is the pending motion for DNA testing. You did hear oral argument. You reserved ruling after hearing the motion to dismiss by Assistant State's Attorney Mark Ertler from a different unit within the State's Attorneys Office. You wisely deferred, entering a ruling, and it is now moot.

THE COURT: Yes, I was hoping something like today would happen instead. Okay. So the amended post-conviction petition is moot as well as a pending motion for a DNA testing, of which I heard arguments, so you are dismissed and off call.

MS. STACK: Thank you, your Honor.

MS. GILL: And also, your Honor, there's no pending charges. There's nothing holding --

THE COURT: Nothing holding. Done.

MS. GILL: -- and he will be released immediately.

THE COURT: Jermaine, I don't know what to say, but good luck. I hope from here on out you can have a nice life. It's a beautiful sunny day waiting for you today.

THE DEFENDANT: Thank you, again, and get well soon.

THE COURT: Thank you, Jermaine. And I'll give the order to your officers.

(Which were all the proceedings had in the above-entitled cause.)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

I, Angela D. Hamilton, Official Court Reporter of the Circuit Court of Cook County, Municipal Department, Second District, do hereby certify that I reported in shorthand the proceedings had on the hearing in the aforementioned cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable CATHERINE HABERKORN, Judge of said Court.

Angela D. Hamilton, CSR# 084-004138

Dated this 28th day
of March, 2016.

EXHIBIT J

Order (2/24/05) CCG N

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

People of the State of Illinois

v.

Jermaine Walker

No. 06 CR 6288 01

ORDER PAGE 2 of 3 cts

It is hereby ordered, that [redacted] IDOC inmate Jermaine Walker, inmate # B527[redacted] G52757 whose convictions have been VACATED IN CASE number 06 CR 6288 today on March 25, 20[redacted] shall be released to his attorney Dan[redacted] Gill[redacted] in open court. Jermaine Walker is to be provided & shall leave the clothes that are the property of IDOC with the TRANSPORTING officers from IDOC. Walker is to be released in open court upon returning items to the IDOC officers.

Atty. No.:

Name: Celeste Stewart Staehl

Atty. for: People

Address: 2650 S California #12C40

City/State/Zip: Chgo IL 60608

Telephone: 773-674-7628

ENTERED: ENTERED MAR 25 2016 DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL DEPUTY CLERK

Dated:

Judge

Judge's No. 1632

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

People of the State of Illinois

v.

No. 06CR6288-01

Jermaine Walker
Cg. ~~RMA~~

PAGE 1 of 3 CSS

ORDER

Upon granting the People's request to VACATE the convictions + judgment, Pursuant to 735 ILCS 5/2-1401, It IS hereby ordered the ~~the~~ convictions + Judgment in case number 06CR6288-01 against Jermaine Walker, IA note #B52757 are hereby VACATED. The People's motion to DISMISS & Nolle prosse these same charges is also granted. Walker has no pending cases.

ENTERED

ENTERED:

MAR 25 2016

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Dated: ____, ____

Judge

Judge's No.

Atty. No.: ____

Name: Celeste Stewart Shark

Atty. for: People

Address: 2650 S California # 12C40

City/State/Zip: Chgo IL 60608

Telephone: 773 674 7628

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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EXHIBIT K

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

v.

No.: 06 CR 6288

JERMAINE WALKER ,
Defendant/Petitioner

ORDER GRANTING CERTIFICATE OF INNOCENCE

This cause comes before the Court on the Defendant/Petitioner's Petition for Certificate of Innocence pursuant to 735 ILCS 5/2-702. The Court being fully advised finds by a preponderance of evidence that:

1. ☐ The Defendant/Petitioner was convicted of one or more than one felony by the State of Illinois in the County of Cook and was subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

2. ☐ The Defendant/Petitioner's judgment or conviction was reversed or vacated and the indictment or information dismissed or, ☐ a new trial was ordered and either s/he was found not guilty at the new trial or s/he was not retried and the indictment or information is dismissed; or ☐ the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;

3. ☐ The Defendant/Petitioner's indictment or information was dismissed or s/he was acquitted and a Petition was filed within 2 years of the dismissal of the indictment or information or acquittal;

4. ☐ The Defendant/Petitioner is innocent of the offenses charged in the indictment or information or ☐ Defendant/Petitioner's acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State;

5. ☐ The Defendant/Petitioner did not by his/her own conduct voluntarily cause or bring about his/her conviction.

IT IS THERFORE ORDERED as follows:

1. That the Petition for a Certificate of Innocence is GRANTED.

2. That the Clerk of the Circuit Court shall transmit a copy of the Certificate of Innocence to the Clerk of the Court of Claims, together with the Defendant/Petitioner's current address as indicated on the Petition.

ENTERED:

Dated: _____, _____

_____
Judge Judge's No.