

BEFORE THE HEARING BOARD  
OF THE  
ILLINOIS ATTORNEY REGISTRATION  
AND  
DISCIPLINARY COMMISSION

In the Matter of:

JOHN PAUL CARROLL,  
No. 401579

Commission No. 2022PR00017

MICHELLE GONZALEZ  
No. 6291582

Commission No. 2022PR00018

Attorney-Respondents.

**ANSWER**

NOW COME the Respondents, John Paul Carroll and Michelle Gonzalez, and in their Answer to the above captioned Complaint, state as follows:

COUNT I

*(Alleging incompetence and failure to return unearned fees - Tomas Hernandez)*

1. Respondent Carroll admits the facts stated in this paragraph, except that his law practice is not situated in Chicago, but rather in Naperville. *[Exhibit 1 attached]*
2. Respondent Gonzalez admits the facts stated in this paragraph. *[Exhibit 1 attached]*
3. Respondents admit that Tomas Hernandez was arrested by Chicago Police Officers on August 15, 2017, at 6519 West 16<sup>th</sup> Street, Berwyn, Illinois; the police officers executed a search warrant for his apartment and the basement of 6519 West 16<sup>th</sup> Street; the police officers recovered cocaine, marijuana, \$7,500 cash from dope sales and firearms. *[Exhibit 2 attached; ADM-PROD 1736]* Respondents were unaware of the legal status of Tomas Hernandez. Respondents deny that Tomas Hernandez gave a confession while in custody

and after interrogatory questions were asked by Officer Gonzalez or any other police officers. Respondents admit that Tomas Hernandez made his spontaneous confession before he was interrogated or questioned by the police, and prior to being placed in custody. Respondents deny that *Miranda vs. Arizona*, applies to this pre-custody, pre-questioning, spontaneous and voluntary confession of Tomas Hernandez.

4. Respondents admit the facts stated in this paragraph, but further state that the bond reduction was due solely to the aggressive legal motions and activities of Michelle Gonzalez, although Thomas Hernandez stated in a short note, “I believe that is enough for the money to be returned to me because they did not do anything for me.” [*Exhibit 3 attached; ADM-PROD 062*]
5. Respondents admit the facts stated in this paragraph but state that Tomas Hernandez told them that he was on Electronic Monitoring, pursuant to the August 16, 2017 Order of Judge Adam Donald Bourgeois, Jr. which stated, “If defendant posts bond of 25,000 cash bond EM is Ordered.” [*Exhibit 4 attached; ADM-PROD 1963*] Judge Bourgeois also ordered, in capital letters, “DEFENDANT SHALL NOT BE PERMITTED TO POST BAIL UNTIL FURTHER ORDER OF COURT.” [*Exhibit 5; ADM-PROD 1869 & Exhibit 6 attached*]
6. Respondents admit that Jose D. Salas met with, and gave, Michelle Gonzalez check # 371, in the amount of \$10,000, with instructions for her to contribute his money to the funds being collected to help pay for Tomas Hernandez’s \$25,000 bond. [*Exhibit 7 attached; ADM-PROD 1887*] Michelle Gonzalez drafted an affidavit that she presented to Jose D. Salas, which he read and signed and had notarized, outlining how the \$10,000 was earned. [*Exhibit 8 attached; ADM-PROD 1879*] Subsequent to depositing the \$10,000 Salas check into her Client’s Fund Account, Michelle Gonzalez drafted two motions to present to the



Court. She filed a Motion for Bond Review and a Motion to Approve Funds for bail. *[Exhibit 9 attached; ADM-PROD 1878]* When presenting these motions to Judge Robert D. Kuzas, Michelle Gonzalez was not only able to persuade the judge to reduce the bond amount Tomas Hernandez had to post from \$25,000 to \$10,000, *[Exhibit 10 attached]* but also she was also able to convince him that the \$10,000 was the result of the legitimate earnings of Jose D. Salas and not money from any illegal activities. The Court granted both motions presented by Michelle Gonzalez. She also presented to the Court a Chase Bank Cashier's Check # 9131929532, *[Exhibit 11 attached]* which was approved by Judge Kuzas as funds permitted to be posted as Hernandez' bond. *[Exhibit 12 & Exhibit 13 attached]*

7. Respondents admit the facts stated in this paragraph.
8. Respondents admit that they were interviewed by Tomas Hernandez at the Cook County Jail, prior to being retained in his pending criminal case. The Respondents told Tomas Hernandez that they, collectively, had taken over 400 criminal jury trials to verdict, both in state and in federal courts; that John Paul Carroll was a retired Chicago Police Homicide Detective *[Exhibit 14 attached]*; that he had been a DEA undercover narcotics task force agent; that he was a former Assistant Cook County State's Attorney in the Criminal Division; that he was admitted to the Supreme Court of Illinois Capital Litigation Bar, as a lead attorney, and as such was authorized to defend capital murder defendants; that he had argued death penalty cases before the Supreme Court of Illinois, *[Exhibit 15 & Exhibit 16 attached]*; that he was admitted to the bar of the State of Connecticut; that he was a former Special Public Defender for the State of Connecticut; that he had received a Private Detective License from the State of Illinois *[Exhibit 17 attached]*; that he had lectured

attorneys at death penalty seminars [*Exhibit 18 attached*]; that he had filed and argued a death penalty post-conviction petition, which the Supreme Court of Illinois granted and then ordered a new trial for the man who was already on death row.

Tomas Hernandez initially agreed to pay an attorney's fee of \$15,000, but when he ultimately told Michelle Gonzalez that because the police had seized the \$7,500 cash that he had made from selling cocaine, [*Exhibit 19 attached; ADM-PROD 1711*] he had no money to pay the entire \$15,000. Michelle Gonzalez reduced the attorney's fee from the agreed price of \$15,000 to \$10,000, with the understanding that the attorney's fee would be paid from the refund of the bail deposit. Respondents were each ultimately paid \$4,950 in fees.

9. Respondents deny the facts stated in this paragraph. The police report states exactly the opposite:

“After presenting information regarding the found contraband to Tomas Hernandez, he voluntarily indicated to officers in Spanish, that everything belonged to him and further indicated the reason he stored the contraband in the basement was to keep it away from his family. Members then placed Tomas Hernandez in custody and advised rights.” [*Exhibit 18 attached; ADM-PROD -1711*]

Respondents deny that Tomas Hernandez made an “inculpatory statement.” Tomas Hernandez initially told the Respondents that he said nothing to the police and that the drugs were not his. Later he admitted to the Respondents that he was a dope dealer and that he had spontaneously confessed to the police while in the bedroom, after they found the cocaine, [*Photo – Exhibit 20 attached, ADM-PROD 1720*] the marijuana, [*Photo – Exhibit 21 attached, ADM-PROD 1724*] his \$7,500 dope profit cash and his firearms. [*Photo - Exhibit 22 attached, ADM-PROD 1800*]. He told them that the drugs were his, as accurately reflected in the police report. In talking to Officer Gonzalez in the bedroom, he made a voluntary confession, not an “inculpatory statement.” Tomas Hernandez's

confession to the police that the drugs were his and that he hid them in the basement to keep it away from his family, was a voluntary acknowledgement of guilt after the perpetration of an offense.

10. Respondents deny the facts stated in this paragraph. Tomas Hernandez told the Respondents that when the police arrived with a search warrant, he was stunned and anxious. When the drugs were found, he panicked. He immediately told the police the drugs were his and he would help the police by setting up his supplier, but he just didn't want the police to arrest, or even involve, any family member. When the Respondents told Tomas Hernandez that because the drugs were found in a common basement, that the police would not have been able to connect him to the drugs if only he had not volunteered his confession, Tomas Hernandez was crestfallen and began to cry, saying that he had been stupid to confess to the police. The police had not even asked him any questions about his involvement in the drugs. Thomas Hernandez made a "confession," which has been incorrectly labeled in the Complaint as an "inculpatory statement."

"Where a confession is a voluntary acknowledgment of guilt after the perpetration of an offense (Citation omitted) an admission is a statement by an accused of a fact or facts which, when taken in connection with proof of other facts, may lead to an inference of guilt of the crime charged, but from which guilt does not necessarily follow." *People vs. Sickles*, 370 N.E. 2<sup>nd</sup> 660, 663, 53 Ill. App. 3<sup>rd</sup> 35, 12 Ill. Dec. 856 (3<sup>rd</sup> Dist., 1977)

11. Respondents admit the facts stated in this paragraph, although their court appearances exceeded ten times. Tomas Hernandez had no legal grounds to file a motion to suppress his confession or to support a legal argument that his confession was tainted or inadmissible. He was not in custody and there was no questioning of Tomas Hernandez by the police, prior to his confession in the bedroom. "The test to determine whether a confession is voluntary is whether the accused's will was overborne at the time he

confessed.” *People vs. Kincaid*, 87 Ill. 2<sup>nd</sup> 107, 117, 57 Ill. Dec. 610, 429 N.E, 2<sup>nd</sup> 508 (United States Supreme Court, 1981)

12. The Respondent’s deny that they, “counseled Mr. Hernandez to accept the State’s Attorney’s offer of four years in prison.” That was Tomas Hernandez’s decision alone on the actual day set for trial. He was concerned that the Confidential Informant mentioned in the Complaint for Search Warrant [*Exhibit 23 attached; ADM-PROD 1835*] would testify against him and identify him by his dope-dealing street name of “El Guerrero,” which is Spanish for “The Warrior.” [*Exhibit 24 attached; ADM-PROD 1834*] Finally, he was afraid of the scientific conclusions of the State of Illinois Crime Lab report which listed the amount of the illegal drugs found during the search. [*Exhibit 25 attached; ADM-PROD 1758*]

13. Respondents admit the facts stated in this paragraph.

14. Respondents admit the facts stated in this paragraph.

15. Respondents deny that Tomas Hernandez, “asked for a continuance to reconsider his plea of guilty.” It was Michelle Gonzalez who informed the Court that since Tomas Hernandez had been under the impression that he would get day-for-day credit for his Electronic Monitoring, that he should be given time to consider whether he wanted to go through with the plea. The Judge agreed with Michelle Gonzalez. The Motion to Vacate Tomas Hernandez’s guilty plea was not granted based on ineffective assistance of prior counsel but because Tomas Hernandez had stated that he was on the Sheriff’s Electronic Home monitoring, pursuant to Judge Bourgeois’ Order of August 16, 2017. [*Exhibit 4 attached*] Michelle Gonzalez corrected any error or any misunderstanding on August 31, 2018, when she requested that Tomas Hernandez be allowed a continuance to decide whether he wanted

to continue his plea of guilty or withdraw it, Respondents admit that on February 6, 2019, as a result of Michelle Gonzalez's efforts, Tomas Hernandez was allowed to withdraw his plea of guilty.

16. Respondents admit that a generic, boiler-plate Motion to Suppress Statements was filed by Attorney De Leon. *[Exhibit 26 attached; ADM-PROD 1707]*.

17. Respondents admit there was a hearing on the Motion to Suppress Statements on June 27, 2019. *[Court Transcript: Exhibit 27 attached]* At the hearing, only Chicago Police Officer Gonzalez, Star 9627, testified. Tomas Hernandez did not testify, although he was in court. Gonzalez said that on August 15, 2017, he helped execute a search warrant at 6519 West 16<sup>th</sup> Street, Berwyn, Illinois, the building where Tomas Hernandez lived. *(Exhibit 27, Page 8)* He met Tomas Hernandez in the first-floor apartment. *(Exhibit 27, Page 10)* Tomas Hernandez was sitting in the kitchen with, "I believe there were three or four, three daughters maybe, and I think possibly his wife."*(Exhibit 27, Page 14)*

"We usually gather everyone that's inside the residence to a central point. And then we keep them there for our safety, as well as theirs, because we don't know what else can be found inside the residence. It could be weapons, things of that nature, so for everybody's safety, we just usually just centralize them in one location" *[Exhibit 27, Page 15/16]*

As a matter of fact, firearms were found in the apartment during the search. *[Photo: Exhibit 22 attached; ADM-PROD-1800]* All four occupants in the kitchen were detained because the search was being conducted. No one was under arrest. No contraband had even been found at that time. None of the four family members was handcuffed. *(Exhibit 27, Page 11)* "It was an ongoing investigation." *(Exhibit 27, Page 10)* After Officer Gonzalez found the narcotics in the basement, he went upstairs and, out of courtesy to Tomas Hernandez, he

asked if they could speak in private. Tomas Hernandez led Officer Gonzalez to a back bedroom, where the policeman told Tomas Hernandez what he had found in the basement. Tomas Hernandez immediately and spontaneously confessed that the drugs were his and pleaded with Officer Gonzalez not to involve any members of his family. There was no questioning or interrogation about drugs before the confession, thus no *Miranda* warnings were required for the confession to be used against Tomas Hernandez. It was after this spontaneous confession, when no *Miranda* warnings were required, that Tomas Hernandez was arrested. [Refer to Exhibit 19, Police Report, attached; ADAM-PROD 1711] The Federal Court in *United States vs. Oliver*, 142 F. Supp. 2<sup>nd</sup> 1047, 1051 (N.D. Ill., 2001) held:

“A confession is deemed voluntary if the government proves by a preponderance of the evidence that it was not obtained through psychological or physical intimidation but instead was the product of a rational intellect and free will. Police coercion is a prerequisite to a finding that a confession was made involuntarily. The crucial question is whether the defendant’s will was overborne at the time he confessed, and the answer lies in whether the authorities obtained the statement through coercive means. . . . *Miranda* applies only to custodial interrogation.” 142 F. Supp 2<sup>nd</sup> at 1052.

The reason why the judge granted the Motion to Suppress was due to the fact that the Assistant State’s Attorney did not prepare the witness – or himself -- on the facts of the case, *i.e.*, the drugs were found in the basement; the discovery of the drugs was communicated to Tomas Hernandez in the bedroom; Tomas Hernandez makes a sudden confession in an attempt to sacrifice himself in order to save his family from what he perceived to be their impending arrest. There was no interrogation and he was not in custody, as the three women were not in custody.

18. The Respondents deny the fact and employment stubs stated in this paragraph. Michelle Gonzalez was able to have Tomas Hernandez's bond reduced from a \$25,000 deposit to a \$10,000 deposit, after she prepared and presented a convincing motion, and arguing convincingly in Court. She secured an affidavit, bank records and employment stubs from Salas, and she had the funds approved by the Court, so Tomas Hernandez could be released from pre-trial detention at the Cook County Jail. The Respondents represented Tomas Hernandez in over a dozen court appearances; they convinced the State's Attorney to reduce a 16-year minimum charge at 85% to a four-year minimum sentence charge at 50%. They adjusted their defense strategy after he told them he had lied to them and had actually confessed to the police that he was guilty, even though he was not under arrest at the time and was not questioned or interrogated by the police prior to his confessing.

19. Respondents deny the facts stated in this paragraph.

20. Respondents deny:

- a. That they failed to provide competent representation, in violation of Rule 1.1(a);
- b. That they failed to keep Tomas Hernandez reasonably informed about the status of the matter, in violation of Rule 1.4(a); and
- c. That they made an agreement for charging and accepting an unreasonable fee of \$4,950 for each attorney, in violation of Rule 1.5(a).]

## **COUNT II**

*(Incompetence and unreasonable fee – John Castellanos)*

21. The Respondents reallege paragraphs one and two of their Answer in Count One.

22. The Respondents admit the facts stated in this paragraph.

23. The Respondents admit the facts stated in this paragraph.

24. The Respondents admit the facts stated in this paragraph.
25. The Respondents admit the facts stated in this paragraph, additionally stating that John Castellanos was arrested while hiding in Mexico and was successfully extradited to the United States.
26. The Respondents admit that they were contacted by members of the Castellanos family, primarily by the defendant's wife, Ruth Castellanos, and the defendant's sister, Cristina Caballero. Before Michelle Gonzalez and John Paul Carroll would undertake the Post-Conviction Petition of John Castellanos, they first needed to interview him. John Castellanos was being housed in a downstate prison which would require the Respondents driving to the downstate prison see him. The round-trip journey would take two days and the Respondents required a fee of \$2,500 in expenses and attorney's fees for that trip. The Respondents would be entitled to retain the \$2,500 even if they declined to take the Post-Conviction Petition for John Castellanos. The Castellanos family agreed and paid the \$2,500 for the visit to the downstate prison. After returning from the meeting with John Castellanos, the Respondents agreed to undertake the post-conviction petition. All the parties agreed to an attorney's fee of \$20,000. The cost and responsibility of possible expenses was never discussed. The Respondents did not agree that the \$20,000 fee would include an appeal of any adverse ruling in the post-conviction proceedings, Ultimately, the Respondents gratuitously undertook the appeal without being paid.
27. Respondents admit the facts stated in this paragraph and further state that the trial attorneys took, as their fee, the \$50,000 posted by Ruth Castellanos, without her consent or knowledge, or the consent or knowledge of John Castellanos.



28. Respondents do not agree that, at this second stage, “Mr. Castellanos had been properly notified of the trial, had failed to appear, and that attorneys Kayne’s and Martin’s decision not to file a motion to suppress statements or call Mrs. Castellanos as a witness did not constitute a violation of Mr. Castellanos’ constitutional rights.” Evidence and testimony are not allowed at this second stage, but only at the third stage. To rule the way he did, the trial judge never gave John Castellanos his rightful opportunity to testify or to present the testimony of witnesses to support his claim.

29. **SECOND STAGE OF A POST-CONVICTION PETITION:** At the second stage of a post-conviction petition, a dismissal is never warranted, prior to an evidentiary hearing, when the allegations in the petition, liberally construed in light of the trial record, make a substantial showing of a constitutional violation. *People vs. Hall*, 217 Ill. 2<sup>nd</sup> 324, 841 N.E.2<sup>nd</sup> 913 (Supreme Court of Illinois, 2005) In *People vs. Cihlar*, 11 Ill.2<sup>nd</sup> 212, 489 N.E. 2<sup>nd</sup> 859 (Supreme Court of Illinois, 1986) again the Supreme Court found that the trial court erroneously dismissed the defendant’s petition without an evidentiary hearing because the defendant’s petition sufficiently alleged the State’s use of perjury at his trial.

**THIRD STAGE:** A petitioner is entitled to an evidentiary hearing at the third stage of a post-conviction petition where the allegations, supported where appropriate by accompanying affidavits or the trial record, make a substantial showing that the defendant’s constitutional rights were violated. For purposes of this determination, all well-pleaded facts in the petition and any accompanying affidavits are taken to be true. *People vs. Mahaffey*, 194 Ill, 2<sup>nd</sup> 154, 742 N.E. 2<sup>nd</sup> 251 (Supreme Court of Illinois, 2000) In *People vs. Makiel*, 358 Ill. App. 3<sup>rd</sup> 102, 830 N.E. 2<sup>nd</sup> 731 (1<sup>st</sup> Dist., 2005), the trial judge erroneously dismissed the defendant’s post-conviction petition without an evidentiary

hearing where the record presented unanswered factual questions which could only be resolved at an evidentiary hearing.

30. Respondents admit that they filed an appeal of the post-conviction judge's May 2, 2017 and July 21, 2017 rulings. The appeal brief clearly sets out the reasons why the judge's dismissal was wrong. *[Exhibit 28 attached; ADM-PROD 2120 thru 2136]* The Respondents deny that "the strategic decisions of trial counsel formed the basis of their appeal, and that a complete record from the trial court was necessary for the appeal." It would not be until the third stage of the proceedings that evidence could be offered and the judge could make a ruling. The appeal from the dismissal of the Post-Conviction Petition had nothing to do with trial counsel's actions, but it was due to the post-conviction judge's lack of understanding as to the procedural rules of the three-step post-conviction statute. A complete record from the trial court was unnecessary and irrelevant to the appeal of the post-conviction petition dismissal at stage two. Parenthetically, the Respondents were not offered any funds to pay for the jury trial transcripts and they could not be expected, as the attorneys, to pay for that expense out of their own pocket.
31. Respondents deny that they violated Rule 341(h)(7), since it was the dismissal that was improper. It was not a dismissal based on the merits of the post-conviction petition, but rather it was an appeal of the dismissal of the second-step, which was inappropriate and improper. It is only in step-three that the post-conviction judge can make factual and credibility decisions about the underlying case and the jury trial. And yes, the Respondent's cited many appellate court decisions to show that the post-conviction judge's dismissal at the second stage, based on factual and credibility issues at the trial level, was improper.
32. The Respondents admit the facts stated in this paragraph.

33. The Respondents deny the facts stated in this paragraph.
34. The Respondents admit that they did not file an unnecessary Reply brief, but deny the other facts stated in this paragraph. At no time did Cristina Caballero, or anyone else, deliver, much less even offer, funds to the Respondents to pay for any jury trial transcripts, but instead they assumed that it was the duty of the Respondents to use their own personal assets to pay for the jury trial transcripts, which would cost thousands of dollars.
35. The Respondent's admit that the Appellate Court erroneously Ordered the dismissal of the appeal on what it erroneously perceived was a technical error, rather than dismissing the appeal on its merits.
36. The Respondents deny the facts stated in this paragraph. Rule 341 (h) (7) was not applicable and the trial transcripts were not necessary. The transcripts from the second-stage hearing would be necessary if testimony had been allowed and heard. This was a procedural error by the post-conviction judge at the second stage.
37. Upon receiving the decision of the Appellate Court, Respondents decided to file a Motion to Reconsider. With an abundance of caution, the Respondents hired Joshua Sachs, a lawyer and published author on Post-Convictions Petitions. He has spoken and lectured extensively at attorney seminars on Post-Conviction Petitions. In 2003, while in the Capital Litigation Division of the Office of the State Appellate Defender, he authored the 109 page "Habeas Corpus." *[Exhibit 29 attached]* In 2007 he authored an updated edition of "Habeas Corpus." *[Exhibit 30 attached]* In 2015, he authored, "Elements of Illinois Law: Criminal Law" published by the Illinois Institute for Continuing Legal Education." *[Exhibit 31 attached]* Mr. Sachs wrote the Appellant's Petition for Rehearing to the Appellate Court *[Exhibit 32 attached; ADM-PROD 2065 thru 2071]* and the Appellant's Motion to

Reconsider and Vacate Order of Dismissal and to Reinstate Appeal. [*Exhibit 33 attached; ADM-PROD 2457 thru 2463*] He filed his Verified Statement, setting out his vast legal experience. [*Exhibit 34 attached; ADM-PROD 2483*] Mr. Sachs' brief echoed and supported the arguments and case law contained in the Respondent's initial appellate brief. Joshua Sachs was paid \$5,000 by the Respondents from their own funds. Regrettably, Joshua Sachs died November 7, 2020, years before this Complaint was even filed.

38. Respondents admit that on June 15, 2018, after receiving the letter from the appellate court clerk, John Paul Carroll contacted Joshua Sachs to be sure to notify Ruth Castellanos of the appellate court's decision, because at the prison meeting John Castellanos told the Respondents that it was his wife who was in charge of his defense and had the authority to make the decisions in his stead. [*John Paul Carroll was prohibited from giving any legal advice to Ruth Castellanos or anyone else, as of June 14, 2018, the day before he received the notice of dismissal, so he could not converse with John or Ruth Castellanos about the case.*] John Paul Carroll spoke to Joshua Sachs and Joshua Sachs told the Respondent that he had received a copy of the notice from the appellate court, [*Exhibit 35 attached; ADM-PROD 1999*] and that he had already discussed with Ruth Castellanos the options available to her and her husband. On July 17, 2018, before any deadline passed, Michelle Gonzalez and Cristina Caballero were discussing the Appellate Court Order, belying the claim by Cristina Caballero that she was not notified of the letter until July 20, 2018. [*Exhibit 36 attached; ADM-PROD 2442*] Additionally, Cristina Caballero had been employed for years as a paralegal at a law firm, and knew that a motion for a late Notice of Appeal to the Illinois Supreme Court could be filed, although Cristina Caballero could have filed the

Notice on July 17, 2018, which was before the deadline, instead of using that day to converse with Michelle Gonzalez.

39. Respondents deny the facts stated in this paragraph.

40. Respondents deny the facts stated in this paragraph.

41. The Respondents were not paid \$22,500 for the Post-Conviction matter. \$2,500 was paid solely to compensate the Respondents for their two-day trip to interview John Castellanos at his downstate prison. \$5,000 was paid to Joshua Sachs by the Respondents, leaving \$7,500 to each of the attorneys for their fee, in comparison to the \$50,000 in bond refunds taken by the trial attorneys as their fees.

42. Respondents deny:

- a. That they failed to provide competent representation, in violation of Rule 1.1(a);
- b. That they failed to keep a client informed about the matter, in violation of Rule 1.4(a);  
and
- c. That they made an agreement for charging and collecting an unreasonable fee, in violation of Rule 1.5(a).

WHEREFORE, the Respondents request that this matter be heard by a panel of the Hearing Board and that a recommendation that the Respondents did not violate any Rules as aforesaid.

*ss/ John Paul Carroll*

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John Paul Carroll – No. 401579

*ss/ Michelle Gonzalez*

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Michelle Gonzalez – No. 6291582

## **RULE 231 DISCLOSURE**

### **Michelle Gonzalez:**

- (a) Was admitted to the Northern District of Illinois Federal Bar

### **John Paul Carroll:**

- (a) Was admitted to the Northern District of Illinois Federal Bar;
- (b) Was admitted to the bar of the State of Connecticut in 2000 under John Paul Carroll and assigned Juris Number 417951;
- (c) Was admitted to the Illinois Supreme Court Capital Litigation Trial Bar as a lead attorney;
- (d) Has been admitted *pro hac vice* to represent and appear in court for criminal defendants in California, Indiana, Massachusetts, Montana, Minnesota, New York, Tennessee, Texas and Wisconsin.

# EXHIBITS

1. Sheriff of Cook County Attorney Identification
  2. Tomas Hernandez Arrest Report = ADM-PROD-1736
  3. Tomas Hernandez November 27, 2019 note to ARDC = ADM-PROD-0062
  4. August 16, 2017 Court Order = ADM-PROD-1963
  5. August 16, 2017 Court Order = ADM-PROD-1869
  6. August 16, 2017 Court Order
  7. Salas \$10,000 check # 371 = ADM-PROD-1887
  8. Salas Affidavit = ADM-PROD-1879
  9. Motion for Bond Review / Approve Funds = ADM-PROD-1878
  10. September 5, 2017 Court Order of Judge Robert Kuzas
  11. September 7, 2017 Chase \$10,000 check #9131929532
  12. September 8, 2017 Court Order of Judge Robert Kuzas
  13. September 8, 2017 Court Order of Judge Robert Kuzas Approving Funds
  14. Chicago Police Retired Detective Identification
  15. Supreme Court of Illinois Court Argument Tape- Death Penalty Case
  16. Supreme Court of Illinois case – Rissley Death Penalty Case
  17. Illinois Class A Private Detective License
  18. Death Penalty Defense Seminar Faculty
  19. Narcotics Supplementary Report = ADM-PROD-1709 thru 1711
  20. Photo of Cocaine = ADM-PROD 1720
  21. Photo of Marijuana = ADM-PROD 1724
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22. Photo of Firearms = ADM-PROD 1800
23. Complaint for Search Warrant, Page 1 = ADM-PROD 1835
24. Search Warrant = ADM-PROD = 1834
25. Laboratory Report = ADM-PROD 1758
26. Motion to Suppress Statements = ADM-PROD 1707
27. Court Transcript of June 27, 2019 Motion to Suppress
28. Appellate Brief = ADM-PROD 2120 thru 2136
29. "Habeas Corpus" by Joshua Sachs, 2003
30. "Habeas Corpus" by Joshua Sachs, 2007
31. "Elements of Illinois Law: Criminal Law" by Joshua Sachs, 2015
32. Appellant's Petition for Rehearing = ADM-PROD 2065 thru 2071
33. Appellants Motion to Reconsider = ADM-PROD 2457 thru 2463
34. Verified Statement of Joshua Sachs = ADM-PROD 2483/2484
35. June 13, 2018 Appellate Court letter = ADM-PROD 1999
36. July 17, 2018 correspondence from Cristina Caballero



Office of the Sheriff of Cook County



THIS CARD HAS BEEN ISSUED TO  
**MICHELLE GONZALEZ**  
ATTORNEY

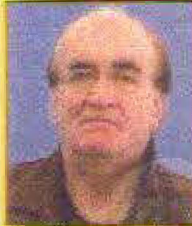
**\*\*NOT AN EMPLOYEE\*\***



EXPIRES **06/30/2024**


Sheriff of Cook County IL

Office of the Sheriff of Cook County



THIS CARD HAS BEEN ISSUED TO  
**JOHN P CARROLL**  
ATTORNEY

**\*\*NOT AN EMPLOYEE\*\***



EXPIRES **01/31/2024**

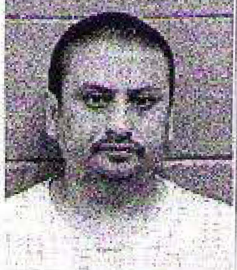
Sheriff of Cook County IL

EXHIBIT  
1

CHICAGO POLICE DEPARTMENT  
**ARREST REPORT**  
 3510 S. Michigan Avenue, Chicago, Illinois 60653  
(For use by Chicago Police Department Personnel Only)  
 CPD-11.420C(REV. 6/00)

FINAL APPROVAL

CB #: 19523147  
 IR #: 1959128  
 YD #:  
 RD #: JA392821  
 EVENT #: 1722714988

ARREST REPORTING				
OFFENDER	Name: <b>HERNANDEZ, Tomas</b>	Beat: 3100	Male	
	Res: 6519 W 18th St. #1FL, REAR Berwyn, IL		White Hispanic 5' 03" 120 lbs Brown Eyes Black Hair Natural Hair Style Medium Complexion	
INCIDENT	Empl: None None			
	DOB: 27 November 1973 AGE: 43 years POB: Mexico (State Is Unknown) ARMED WITH: Unarmed			
CHARGES	Arrest Date: 15 August 2017 20:40	TRR Completed? No	Total No Arrested: 1	Co-Arrests
	Location: 6519 W 18th St. #1FL, REAR Berwyn, IL 090 - Apartment Holding Facility: District 011 Male Lockup Resisted Arrest? No	Beat: 3100		DCFS Ward? No
RECOVERED NARCOTICS	1	Offense As Cited 720 ILCS 550.0/4-G		Victim
	2	CANNABIS - POSSESS MORE THAN 5000 GRMS Class 1 - Type F		State Of Illinois, P.O. Velez #13216
WARRANT	1	Offense As Cited 720 ILCS 570.0/402-A-2-B		State Of Illinois, P.O. Velez #13216
		PCS - POSSESS 100<400 GRAMS COCAINE Class 1 - Type F		
		Type	Approx. Weight/Quantity	Units
		Suspect Controlled Substance	111	GRAMS
		Suspect Cannabis	7122	GRAMS
				Estimated Street Value
				\$13,875.00
				\$42,732.00
NO WARRANT IDENTIFIED				



Ms. Smart.

I, Tomas Hernandez believe I sent all the information from the case. I believe they did not do their job and I met two people that are in prison for the same reason I was. They had the same lawyers I had and they did the same thing to them. Moises Barreras is one of them, his information is Y31521 Stateville and the other person is Juan Galvez. Another person is Nicolas Meza. I believe that is enough for the money to be returned to me because they did not do anything for me.

Tomas Hernandez

RECEIVED

NOV 27 2019

ATTY REG & DISC COMM  
CHICAGO



ADM-PROD-000062



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

23

THE PEOPLE OF THE STATE OF ILLINOIS,

Peritioner

No. 17111596001

Hernandez, Tomas

Defendant

ORDER FOR SPECIAL CONDITIONS OF BAIL

IT IS HEREBY ORDERED THAT, in the event the Defendant is admitted to bail, he or she shall comply with the special conditions of bail as set forth below:

Report to Pretrial Services Unit of the Adult Probation Department and comply with ongoing reporting requirements as determined by Pretrial Services or as specified below:

- Pay up to \$50.00 monthly pretrial supervision fee in accordance with the guidelines of the Adult Probation Department's Pretrial Supervision Fees Instructions.
Submit address verification to Pretrial Services at the first office visit.

- Participate in Pretrial Services Drug Monitoring Program
Attend counseling as arranged by Pretrial Services

- Undergo drug and/or alcohol assessment
Participate in a recommended substance abuse program
Report to drug treatment facility for inpatient detoxification/treatment
Refrain from indulge in intoxicating liquor, illegal drugs or the following drugs:

- Undergo medical or psychiatric treatment.
Remain at the address:

during the curfew hours of:

- Remain in the custody of the designated person or organization agreeing to supervise the release of the defendant

- Surrender his or her Firearm Owner's Identification Card to the Clerk of the Circuit Court within 48 hours following release.
Surrender all firearms in his or her possession immediately to the following law enforcement agency:
Do not possess any firearm or dangerous weapon
Do not contact the victim/complainant witness(es) or members of their family(ics):

Refrain from contacting the victim/complainant for 72 hours following release.

Do not enter the premises or the area:

Refrain from entering the victim's/complainant's residence for 72 hours following release.

Vacate the residence located at:

until further order of the court.

Make payment of temporary child support to his or her dependants.

Refrain from contact or communication with child victim as ordered by court.

Minor to reside with parents or in foster home, attend school, attend non-residential youth program, contribute to own support (Strike those not applicable.)

Be placed in a pretrial bond home supervision capacity with an approved electronic monitoring device.

GPS monitoring

Report to Adult Probation and comply with GPS requirements in addition to those specified below:

Surrender his or her passport prior to being admitted to bail.

Other as specified:

IF defendant posts bond of 25,000 cash bond EM is ordered.

VIOLATIONS OF THE CONDITIONS OF BAIL MAY RESULT IN ARREST, INCREASE IN BAIL, OR REVOCATION OF BAIL.

ENTERED:

Dated: August 16, 2017

Judge



Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF ADM-PROD-001963





IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COOK  
(COUNTY (MUNICIPAL))

DEPARTMENT

CRIMINAL  
(DIVISION) (DISTRICT)

PEOPLE OF THE STATE OF ILLINOIS

TOMAS HERNANDEZ

ADDRESS 6519 W 16TH ST

IR# 1959128

CASE NUMBER: 17111596001 M023

ORDER SETTING BAIL AND COMMITMENT TO COOK COUNTY DEPARTMENT OF CORRECTIONS AND REQUIRING A SOURCE OF BAIL FUNDS HEARING PRIOR TO ACCEPTANCE OF BAIL FUNDS

This cause coming to be heard and the Court after considering:

(a) the following charges, Illinois Revised Statutes, 725 ILCS 5/110-5 and other relevant matters

CHARGES	ILCS
720-550/4-G	CANNABIS - POSS
720-570/402-A-	PCS - POSSESS 1

*Scdp*

(b) it is hereby ordered that bond is set to the above-captioned Defendant at TWENTY FIVE THOUSAND AND 00 CENTS DOLLARS \$ 25,000.00 C

(c) It is further ordered that the clerk shall not accept funds tendered or sought to be tendered until a source of bail funds hearing is conducted and until further order of the Court.

(d) It is further ordered that the Sheriff confine the Defendant in the Cook County Department of Corrections and shall bring him/her before the judge sitting in Branch/Room 44/2 located at 3150 W. FLOURNOY ST. on 09/05/2017 at 9:00 AM

for further proceedings.

DATED 08/16/2017

*Adam Bourgeois Jr.*

1791

JUDGE BOURGEOIS ADAM DONALD J

JUDGE'S NO.

DEPUTY CLERK: WILMA MEEKS

BRANCH/ROOM: CBC



DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS



JOSE D. SALAS 01-08  
 ALEJANDRA SALAS  
 4129 1/2 WISCONSIN AVE.  
 STICKNEY, IL 60402

DATE: 8/30/17 371

PAY TO THE ORDER OF Michelle Gonzalez \$ 10,000  
Ten Thousand DOLLARS

CHASE  
 JPMorgan Chase Bank, N.A.  
 www.Chase.com

MEMO: Ronald Hernandez Jose d. Salas

#1  
 Posting Date: 20170831  
 Sequence Number: 9870036793  
 Amount: \$10,000.00  
 Account: [REDACTED]  
 Routing Transit Number: 07 [REDACTED]  
 Check/Serial Number: 00000000371  
 Bank Number: 111  
 IRD Indicator: 0  
 BOFD: 074909962  
 Capture Source: BY  
 Entry Number: 000004672  
 UDK: 111170831009870036793  
 Cost Center: 711104  
 Teller Number: 15  
 Teller Sequence Number: 240  
 Missing Image: 5  
 PE Indicator: P  
 Application Code: 1  
 Trancode: 000371  
 DB/CR: DB  
 Item Type: P  
 Processing Date:

JPMorgan Chase Bank 083115 711104 9288200530 4

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

*Michelle Gonzalez*

Copyright © 2010 J.P. Morgan Chase & Co. All Rights Reserved

<https://oneview.jpmchase.net/OneView/CADefault.do>



01/17/17

ADM-PROD-001887



I, Jose D. Salas do hereby

Swear under Oath to the following:

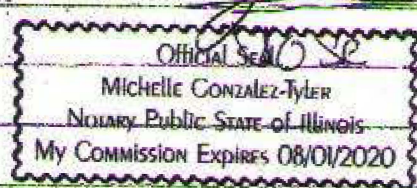
- 1 I am the Uncle of Lusia Hernandez, the wife of the Defendant, Tomas Hernandez
- 2 Lusia Hernandez has been married to Tomas for 20 years.
- 3 I have been an employee of Long Construction Company, for 12 years (See Check Stubs)
- 4 I have saved legitimate funds in my Chase bank accounts totaling over \$65,000.00.
- 5 I would like to contribute \$10,000.00 for the Bail of Tomas.

Signed & Sworn to  
before me this 30th

Jose Salas

day of August 2017

Michelle Gonzalez-Tyler



Salas





br. 44

9/5

IN THE CIRCUIT COURT OF COOK COUNTY  
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,

vs.

NO. ~~12CR~~ 2017 111 96007

TOMAS HERNANDEZ,

Defendant.

2017 AUG 31 PM 2:03  
CLERK OF COURT  
JULIA A. HARRIS  
CLERK OF COURT

MOTION FOR BOND REVIEW  
AND TO APPROVE FUNDS

NOW COMES THE DEFENDANT, Tomas Hernandez, by and through his attorney, Michelle Gonzalez and John Paul Carroll, pursuant to the Eighth and Fourteenth Amendments to the United States Constitution moves that this Honorable Court set a bond in this matter to an amount the defendant can post, and in support of his motion states as follows:

1. Mr. Hernandez was arrested on August 16, 2017, and is charged with Possession of Cannabis >5000 grams.
2. Mr. Hernandez's bail has been set at \$25,000 C.
3. Mr. Hernandez has no previous failures to appear in court.
4. Mr. Hernandez has a wife, 3 daughters and extended family that reside in Chicago.
5. Two of his daughters are in College, and the youngest is in high school.
6. Mr. Hernandez is the sole provider for his family, which is why the uncle of his wife is willing to post the funds for his bond in the amount of \$10,000.00. (see attached Affidavit.

WHEREFORE, Tomas Hernandez respectfully requests that this Honorable Court enter an Order setting Mr. Hernandez's bail to \$100,000 (D) so that his family may post the \$10,000.

*Michelle Gonzalez*  
One of the Defendant's Attorneys



ADM-PROD-001878

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COOK  
(COUNTY (MUNICIPAL))

DEPARTMENT

CRIMINAL  
(DIVISION) (DISTRICT)

PEOPLE OF THE STATE OF ILLINOIS

CASE NUMBER: 17111596001

MOTION TO REDUCE BOND GRANTED

TOMAS v. HERNANDEZ

ADDRESS 6519 W 16TH ST

IR# 1959128

**ORDER SETTING BAIL AND COMMITMENT TO COOK COUNTY DEPARTMENT OF CORRECTIONS AND REQUIRING A SOURCE OF BAIL FUNDS HEARING PRIOR TO ACCEPTANCE OF BAIL FUNDS**

This cause coming to be heard and the Court after considering:

(a) the following charges, Illinois Revised Statutes, 725 ILCS 5/110-5 and other relevant matters

CHARGES

ILCS

720-550/4-G  
720-570/402-A-2-B

ENTERED

CANNABIS - POSS  
PCS - POSSESS 1

SEP 05 2017

DOROTHY BROWN  
CLERK OF CIRCUIT COURT

(b) it is hereby ordered that bond is set to the above-captioned Defendant at

ONE HUNDRED THOUSAND AND 00 CENTS DOLLARS \$ 100,000.00 D

(c) It is further ordered that the clerk shall not accept funds tendered or sought to be tendered until a source of bail funds hearing is conducted and until further order of the Court.

(d) It is further ordered that the Sheriff confine the Defendant in the Cook County Department of

Corrections and shall bring him/her before the judge sitting in Branch/Room 44 /2

located at 3150 W. FLOURNOY ST. on 09/08/17 at 0900 AM

(date)

(time)

for further proceedings.

DATED SEPTEMBER 05, 2017

JUDGE KUZAS, ROBERT D.

2129  
JUDGE'S NO.

DEPUTY CLERK: C DOTSON  
VERIFIED BY:

BRANCH/ROOM: 1144

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY,

COPY NUMBER: ONE

COURT FILE COPY





HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

282111107 NEW Q1409 85180048074



CASHIER'S CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

Date 09/07/2017 Void after 7 years 9131929532 25-3 440

Remitter: MICHELLE GONZALEZ *Michelle Hernandez*

Pay To The Order Of: THE CLERK OF THE CIRCUIT COURT

Pays: TEN THOUSAND DOLLARS AND 00 CENTS

\$\*\* 10,000.00 \*\*

Drawn: JPMORGAN CHASE BANK, N.A.

Do not write outside this box  
Memo: *Thomas Hernandez Bond*  
Note: For information only. Comment has no effect on bank's payment.

*[Signature]*  
Managing Director  
JPMorgan Chase Bank, N.A.  
Columbus, OH



⑈9131929532⑈ ⑆044000037⑆ 758661359⑈



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

People  
v.  
Thomas Hernandez

No. 2017/1159 6007

ENTERED

SEP 08 2017

DOROTHY BROWN  
CLERK OF CIRCUIT COURT

ORDER

On Defendant's motion to Approve Source of bail it is so ordered:

- 1) Source of Bail Approved, motion Granted
- 2) Family of Defendant allowed to post Cashiers check #9131929532 Sheriff - Bond Department is to accept this Cashiers Check only

Atty. No.: 43754

Name: Michelle Gonzalez ENTERED:

Atty. for: Hernandez

Address: 8770 W. Bryn Mawr Ave <sup>St. 1300</sup> Dated: 9/8 2017

City/State/Zip: Chicago, IL 60631 [Signature] Judge

Telephone: (312) 504-7796 Judge's No. 02109

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

ORIGINAL - COURT FILE

EXHIBIT  
12



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

STATE OF ILLINOIS  
COUNTY OF COOK | SS:

THE PEOPLE OF THE STATE OF ILLINOIS,

v.

TOMAS

HERNANDEZ

ENTERED

SEP 08 2017

DOROTHY BROWN  
CLERK OF CIRCUIT COURT 17111596001

No.

ORDER APPROVING FUNDS FOR SOURCE OF BAIL

This matter having been heard before the Honorable Judge KUZAS, ROBERT D.,  
pursuant to 725 ILCS 5/110-5 (b-5), it is hereby ordered that:

1. The Court finds that the following source of funds is acceptable to post as bail and as such the Clerk of the Circuit Court is authorized to accept only these funds for release of Defendant:  
CASHIER'S CHECK #9131929532 FOR \$10,000 REMITTER MICHELLE GONZALEZ FROM  
CHASE BANK NEXT COURT DATE 9/13/17

2. The Clerk of the Circuit Court shall **NOT** accept any other funds for release of Defendant ~~except those listed above.~~

ENTERED:

ENTERED  
SEP 08 2017  
DOROTHY BROWN  
CLERK OF CIRCUIT COURT

Dated: SEPTEMBER 08, 2017

[Signature]  
Judge  
KUZAS, ROBERT D. Judge's No. 2129  
2129

[Signature]  
T JACKSON Deputy Clerk

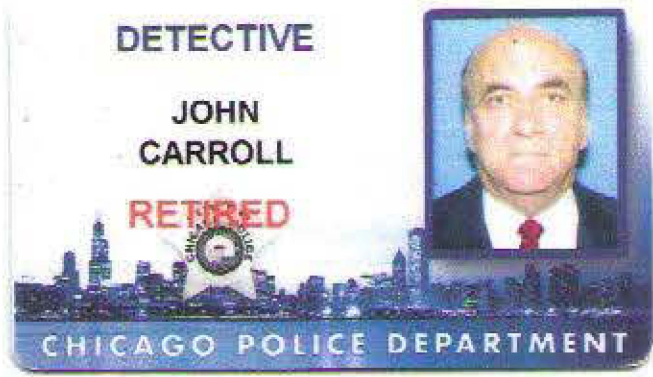
VERIFIED BY

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 1 of 1

COURT FILE COPY

EXHIBIT  
13





# Illinois Supreme Court People v. Sutherland

## September 13, 2005

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The Illinois Circuit  
401 E. Capitol Ave.  
Springfield, IL 62701  
Phone: 217-255-7640 Fax: 217-255-2248  
Email: [illinois@illinois.gov](mailto:illinois@illinois.gov)  
Website: [www.illinois.gov](http://www.illinois.gov)



tabbles

EXHIBIT

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
PRINCETON, BUREAU COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,  
Plaintiff-Respondent,  
vs.  
JEFFREY D. RISSLEY,  
Defendant-Appellant.

No. 91-CF-92

THIS COPY RECEIVED  
AND FILED

MAR 1 1996

HOWARD SCHOU  
CLERK OF CIRCUIT COURT  
BUREAU COUNTY, ILLINOIS

AMENDED PETITION FOR POST-CONVICTION RELIEF

John Paul Carroll  
Suite 101  
608 South Washington Street  
Naperville, Illinois 60540-6657  
(708) 369-9103

Illinois Capital Resource Center  
Suite 600  
600 West Jackson Blvd.  
Chicago, IL 60661-5612  
(312) 814-5100

Received at Bureau County  
State's Attorney's Office 3-1-94  
Duta May

EXHIBIT

16



DETACH POCKET CARD HERE

STATE OF ILLINOIS  
DEPARTMENT OF PROFESSIONAL REGULATION, SPRINGFIELD

EXPIRES: 05/31/1999 CLASS A  
PRIVATE DETECTIVE

JOHN P CARROLL

115-000883  
Leonard A. Sherman DIRECTOR

*Leonard A. Sherman*  
DIRECTOR 10253270

DETACH POCKET CARD HERE

THIS LICENSE MUST BE CONSPICUOUSLY  
DISPLAYED AT ALL TIMES IN YOUR OFFICE  
OR PLACE OF BUSINESS IN ACCORDANCE  
WITH THE LAW.

EXHIBIT  
17



**OFFICE OF THE STATE  
APPELLATE DEFENDER**

**DEATH PENALTY DEFENSE SEMINAR**

**DATE: FRIDAY, MAY 10, 1991**  
**SITE: RAMADA RENAISSANCE HOTEL,  
SPRINGFIELD, IL.**

**AGENDA**

8:45 9:15 A.M. REGISTRATION

9:15 - 10:00 KEYNOTE - Avoiding Death - Negotiating Life - STEVE BRIGHT.

10:00 - 10:45 JURY SELECTION: 1) Choosing Jurors to Vote for Life - NEAL WALKER; 2) Life Qualifying the Jury - THEODORE A. GOTTFRIED; 3) Making Your Batson Record - TIMOTHY M. GABRIELSEN.

10:45 - 11:00 BREAK

11:00 - 12:00 Developing and Presenting Mitigation - KEVIN F. SMITH and STEVEN M. WAGNER.

12:00 LUNCH

1:00 - 1:45 Illinois Death Penalty Update - ROBERT E. DAVISON.

1:45 - 2:15 Winning No Death in a Difficult Case - EDWARD R. JAQUAYS, JON GRAY NOLL and JOHN PAUL CARROLL.

2:15 - 2:30 BREAK

2:30 - 3:30 Dealing with the Victim's Family - NEAL WALKER and ✓ STEVE BRIGHT.





Identify and describe all property or possible evidence recovered at the end of the Narrative in column form. Show exactly where found, when found, who found it and it's description (include Property Inventory numbers). If property taken was scribed for Operation Identification, indicate I.D. number at the end of the Narrative. Offender's approximate description, if possible, should include name if known, nickname, sex, race code, age, height, weight, color eyes and hair, complexion, scars, marks, etc. If suspect is arrested, give name, sex, race code, age, C.B. or I.R. number, if known, and state "In Custody." All descriptions and statements in this entire report are approximations or summarizations unless indicated otherwise.

**Narcotic's Division Supplementary Report**  
CHICAGO POLICE-FOR USE BY B.O.C. PERSONNEL ONLY

JA-392821

Offense Classification / Last Report		IUCR Code	Offense Reclassification / DNA			Revised IUCR		
Possession of Controlled Substance Cocaine		2022						
Address of Occurrence	Type of Location	Location Code	Date of Occurrence	Time of Occurrence	Beat of Occ	Beat Assigned		
6519 W. 16th St. 1st floor Rear Apt Berwyn, IL	Residence	290	15-Aug-17	2035	3100	6231G		
Victims	Victim's Name	Relation	Method Code	Method Assigned	Unit	Safe Method	If Residence/Where	
1	State of Illinois			Field	189			
Offenders	Offender's Name	Relation	Num Arrested	Arrest Unit	Adults	Juveniles	Fire	Gang Related
1	Tomas Hernandez	024	1	189	1		No	No

Update Information \*See Narrative For Updated Information

Victim Verified <input type="checkbox"/>	Offender Verified <input type="checkbox"/>	Property Verified <input type="checkbox"/>	Circumstances Verified <input type="checkbox"/>
Victim Updated <input type="checkbox"/>	Offender Updated <input type="checkbox"/>	Property Updated <input type="checkbox"/>	Circumstances Updated <input type="checkbox"/>
<b>Status</b>			
0-Prog 1-Sus 2-Unf 3-C/C 4-C/O 5-C/C/X 6-C/O/X 7-C/N/C			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>How Cleared</b>			
1 - Arrest 2 - Juv-Ct 3 - Ref Pros 4 - Comm Adj 5 - Other			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EVENT NUMBER: 14998 INCIDENT NUMBER: 170358 RAID NUMBER: 189-17-3892 R.D. NUMBER: JA-392821

This is a Narcotic's Division Investigation Officer's Report by Beat Assigned: 6231G

OFFENDER(S): Tomas Hernandez IR#1959128  
 CHARGE(S): PCS Cocaine, Poss. Cannabis  
 COURT BRANCH DATE AND COURT OFFICER: Br. 44-2, 05 Sep 2017  
 SEARCH WARRANT NUMBER: 17 SW 7557  
 ASA APPROVING SEARCH WARRANT: Jennifer Walker  
 JUDGE APPROVING SEARCH WARRANT: Judge Araujo #1995  
 PERSON(S) PRESENT NOT ARRESTED: Lucia Hernandez F/ [REDACTED]  
 Lucette Hernandez [REDACTED]  
 Margarita Hernandez F/ [REDACTED]  
 Lesley Hernandez F/ [REDACTED]

POLICE PERSONNEL ON SCENE: Sgt. A. Sanchez #2141  
 E. Gonzalez #9627  
 V. Gurrola #5847  
 P. McDonough #14416

90. EXTRA COPIES REQ'D	91. DATE SUBMITTED 16 Aug 17	TIME 1500	92. SUPERVISOR APPROVAL Sgt. A. Sanchez #2141
93. REPORTING OFFICER - PRINT F. Velez	STAR 13216	94. REPORTING OFFICER D. O'Brien	STAR #4921
SIGNATURE <i>FV</i>	SIGNATURE <i>DOB</i>	DATE APPROVED 16/Aug 2017	SIGNATURE <i>[Signature]</i>

SIGNATURES IN BLUE

**EXHIBIT**  
19

JA-392821

ADM-PROD-001709



This is a Narcotic's Division Investigation Officer's Report by Beat Assigned: 6231G

D. O'Brien #4921  
F. Velez #13216

Additional Investigating  
G. Anderson #6369

Berwyn P.D.  
Esposito #273  
Audiffred #287

K9 Officer J. Tricka #295 K9 "Patser"

EVIDENCE INVENTORIED:

#13981399: (1) Large Blue Rubbermaid Cooler (Found by Gonzalez and witnessed Gurrola from the rear basement floor)

#13981402: (1) Light Blue IGLOO Cooler (Found by Gonzalez and witnessed by Gurrola in the rear basement floor)

#13981404: (1) large bale of suspect cannabis wrapped in plastic (recovered by Gonzalez witnessed by Gurrola, this item was originally contained in the Rubbermaid cooler) Inv. #13981399, (8) clear ziplock bags each containing suspect cannabis (found by Gonzalez witnessed by Gurrola, this item was originally contained in the Igloo cooler)Inv. #13981402

#13981406: (4) clear knotted plastic each containing a white powder substance suspect cocaine (Found by O'Brien witnessed by McDonough from the basement on a shelf on the east wall)

#13981407: (1) Blue Gun case, (2) silver gun magazines, (1) plastic case containing numerous .22 cal rounds, (1) Black gun magazine, (1) .380 cal. round (Found by O'Brien witnessed by McDonough from the basement on a shelf on the east wall )

#13981411: (1) Beretta Pietro, 9 short, .380 Cal, semi automatic pistol S/ N B04206Y, (1) black magazine, (4) .380 cal. rounds (Found by O'Brien witnessed by McDonough found in Inv. #13981407)

#13981418: (1) Smith and Wesson, .22 caliber, semiautomatic blue steel pistol S/NUAN9254 (Found by O'Brien witnessed by McDonough found in Inv. #13981407)

#13981419: (1) Bundle of U.S.C. (pending bank count, Found by O'Brien witnessed by McDonough on a table3 in the front part of the basement)

#13981421: (1) Bulk Currency seizure (CIB): Bundle of U.S.C. pending bank count (Found by Velez witnessed by Sanchez from rear bedroom in a dresser drawer)

PREPARER - SIGN OR INITIAL 	APPROVAL - SIGN OR INITIAL 
---	--

JA-392821



This is a Narcotic's Division Investigation Officer's Report by Beat Assigned: 6231G

#13981422: (1) plastic bag (this item originally contained currency inventoried under #13981421), (1) white envelope (this item originally contained currency inventoried under #13981421)

#13981424: (1) Illinois vehicle registration showing proof of residency (Found by Velez witnessed by Sanchez from rear bedroom on top of a small dresser)

#13981431: (1) black plastic bag (#13981399), (1) blue shopping bag containing misc. plastic packaging, (1) plastic bag (13981402), (1) red tin cookie tin (#13981406), (1) Digital scale

#13981433: (1) copy of search warrant 17SW7557, (1) evidence recovery log, (1) photo disc

TOTAL WEIGHT & STREET VALUE:

Cocaine Est. Weight 111 grams Est. Value \$13,875.00  
Cannabis Est. Weight 7,122 grams Est. Value \$42,732.00

EVIDENCE OFFICER:

D. O'Brien

NOTIFICATIONS:

Lt. C. Mostek  
OEMC  
Berwyn P.D.  
Gun Desk Sandoval #7055

OFFENDERS VEHICLE:

SUMMARY OF INVESTIGATION:

The following is a synopsis of a narcotic investigation conducted by members of Narcotics Squad C-4. During this investigation, officers executed Search Warrant No. 17SW7557 at the location of 6519 W. 16th Street, 1st floor rear apartment, Berwyn, IL. Officers identified and arrested the subject now known as Tomas Hernandez and subsequently recovered cocaine, cannabis, 2 handguns and U.S.C. totaling \$7,522.00 (pending bank count).

Members of Bureau of Organized Crime, Narcotics Division, Squad C-4 obtained search warrant No. 17SW7557. Members formulated a plan with the assistance of Berwyn II. P.D. and relocated to 6519 W. 16th St. Berwyn, IL. to execute said warrant. After knocking on the door for approximately one minute and receiving no response, members made forced entry. While inside the location, members encountered the subject now known as Tomas Hernandez along with the persons listed above. Members presented a copy of said warrant and conducted a systematic search of the location.

During this search, the above listed contraband was recovered. After presenting information regarding the found contraband to Tomas Hernandez, he voluntarily indicated to officers in Spanish, that everything belonged to him and further indicated the reason he stored the contraband in the basement was to keep it away from his family. Members then placed Tomas Hernandez in custody and advised rights. Members turned the residence over to Lucia Hernandez and the receipts were given.

Members relocated to Unit 189 to complete all necessary reports.

R/O respectfully requests this case be classified clear/closed by arrest.

PREPARER - SIGN OR INITIAL

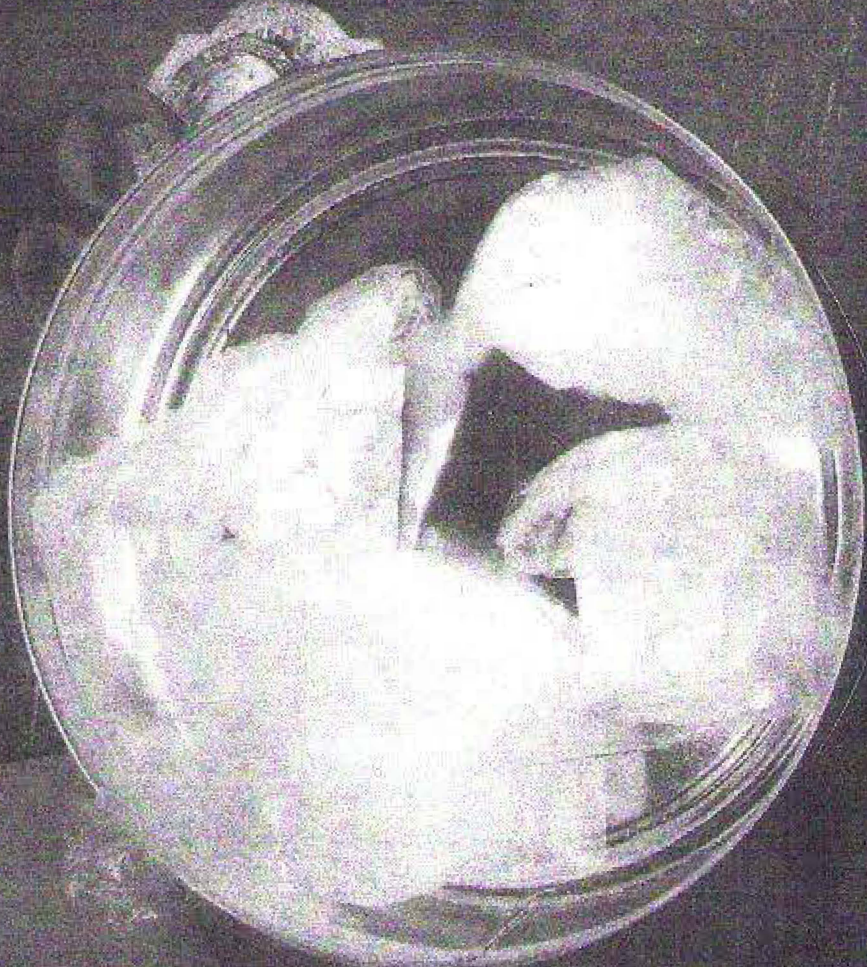
APPROVAL - SIGN OR INITIAL

JA-392821



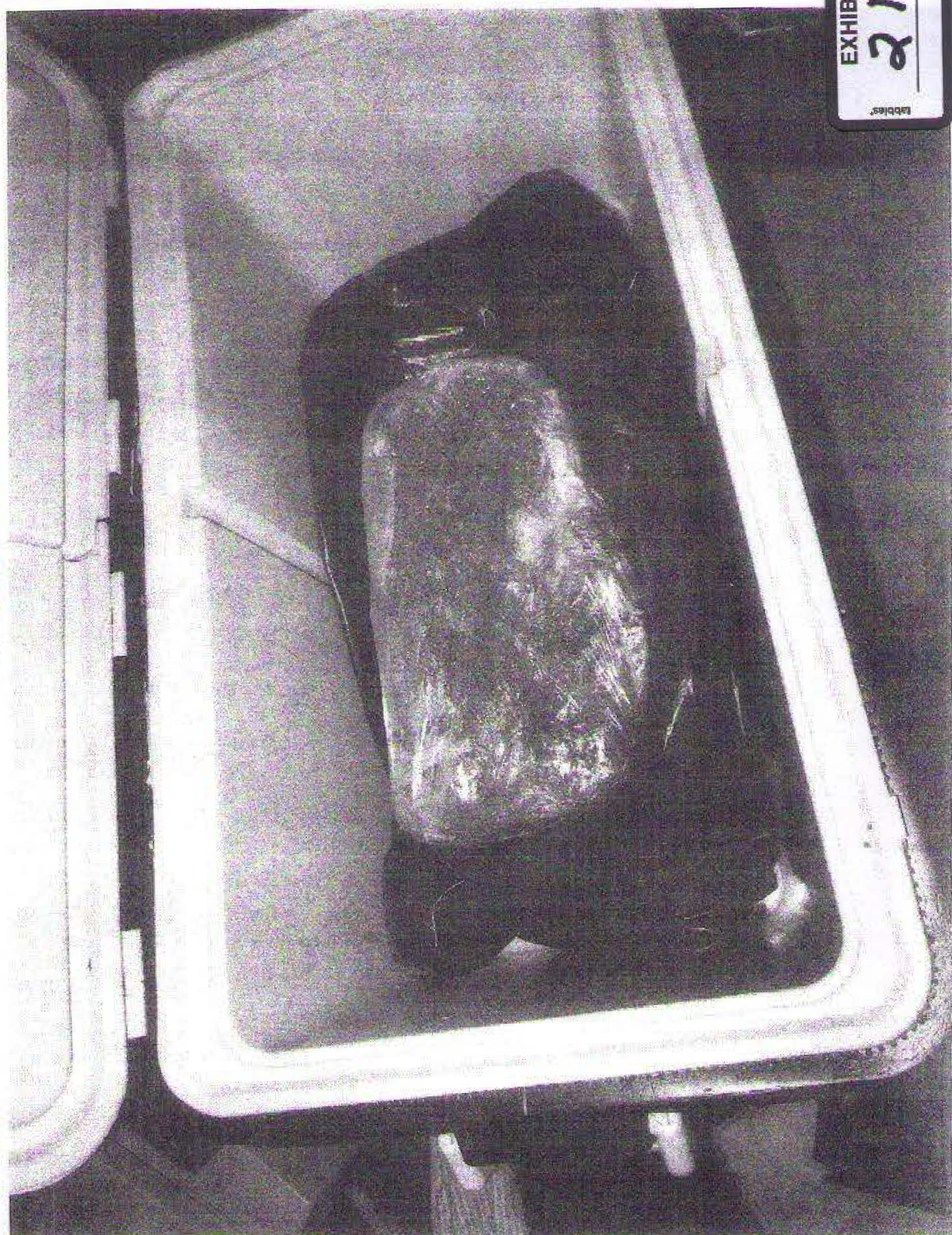
EXHIBIT  
20  
MADDEX

ADM-PROD-001720



Investigated By: \_\_\_\_\_  
Reviewed By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Case No. \_\_\_\_\_  
Investigator No. \_\_\_\_\_  
Investigator Name \_\_\_\_\_  
Investigator Title \_\_\_\_\_  
Investigator Department \_\_\_\_\_  
Investigator Division \_\_\_\_\_  
Investigator Office \_\_\_\_\_  
Investigator Phone \_\_\_\_\_  
Investigator Fax \_\_\_\_\_  
Investigator Email \_\_\_\_\_  
Investigator Address \_\_\_\_\_  
Investigator City \_\_\_\_\_  
Investigator State \_\_\_\_\_  
Investigator Zip \_\_\_\_\_  
Investigator Country \_\_\_\_\_  
Investigator Notes \_\_\_\_\_  
Investigator Signature \_\_\_\_\_  
Investigator Date \_\_\_\_\_  
Investigator Initials \_\_\_\_\_  
Investigator Printed Name \_\_\_\_\_  
Investigator Printed Title \_\_\_\_\_  
Investigator Printed Department \_\_\_\_\_  
Investigator Printed Division \_\_\_\_\_  
Investigator Printed Office \_\_\_\_\_  
Investigator Printed Phone \_\_\_\_\_  
Investigator Printed Fax \_\_\_\_\_  
Investigator Printed Email \_\_\_\_\_  
Investigator Printed Address \_\_\_\_\_  
Investigator Printed City \_\_\_\_\_  
Investigator Printed State \_\_\_\_\_  
Investigator Printed Zip \_\_\_\_\_  
Investigator Printed Country \_\_\_\_\_





EXHIBIT

21

Labbles

ADM-PROD-001724





EXHIBIT  
22  
ibohier



44-2  
COURT BRANCH

5 SEP 17  
COURT DATE

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(3-81) CCMC-1-219

STATE OF ILLINOIS  
COUNTY OF COOK

THE CIRCUIT COURT OF COOK COUNTY

**COMPLAINT FOR SEARCH WARRANT**

P.O. Fernando Velez #13216, Chicago Police Department, Organized Crime Division, Narcotics Division, Complainant now appears before the undersigned judge of the Circuit Court of Cook County and requests the issuance of a search warrant to search:

"El Guerrero" male Hispanic, approximately 38 years of age, approximately 5'04", approximately 140 lbs., light complexion  
**and the premises:**

1st floor rear apartment and basement located at 6519 W. 16th St, Berwyn, IL, Cook County

**and seize the following instruments, articles and things:**

Cocaine and Cannabis, to wit a controlled substance and any documents showing residency, any paraphernalia used in the weighing, cutting or mixing of illegal drugs. Any money, any records detailing illegal drug transactions. Any stored electronic information.

**which have been used in the commission of, or which constitute evidence of the offense of:**

720 ILCS 570/402 Possession of Controlled Substance, 720 ILCS 550/4 Possession of Cannabis

Complainant says that he has probable cause to believe, based upon the following facts, that the above listed things to be seized are now located upon the person and premises set forth above:

I, P.O. Fernando Velez #13216 am a police officer of the City of Chicago for the past 25 years. I am currently assigned to the Bureau of Organized Crime, Narcotics Division. On August 15th, 2017, I had a conversation with a reliable informant (hereinafter "CI") whom I have known for the past 10 years. The CI has used cannabis and cocaine in the past and has sold cannabis and cocaine in the past. The CI is familiar with the appearance, packaging, odor and effects of cocaine and of cannabis. During the past year, CI has given information to the Chicago Police department on at least 3 occasions regarding drug trafficking. As a result of this information, arrests were made on each of the 3 occasions and drug contraband was recovered which has proved the CI to be reliable. The drug contraband was submitted to the Illinois State Police Forensic Science Center at Chicago and the test results on each of these 3 occasions were in fact controlled substances. These 3 cases are currently pending in court. CI is a paid source source for the Chicago Police department. The CI's criminal history, including pending investigations, if any, have been presented to the undersigned judge.

The CI knows "El Guerrero" as someone who sells cannabis and cocaine. The CI described "El Guerrero" a male Hispanic, approximately 38 years of age, approximately 5'04", approximately 140 lbs., with a light complexion. has known "El Guerrero" for approximately one month. The CI knows that "El Guerrero" lives in the 1st floor rear apartment located at 6519 W. 16th St., Berwyn, IL.

On August 15th, 2017, CI stated to me that on August 13, 2017, CI was in the basement of the 1st floor



ADM-PROD-001835



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois to all peace officers of the state

SEARCH WARRANT

On this day, Police Officer Fernando Velez #13216, Chicago Police Department, Bureau of Organized Crime, Narcotics Division complainant has subscribed and sworn to a complaint for search warrant before me. Upon examination of the complaint, I find that it states facts sufficient to show probable cause.

I therefore command that you search:

"El Guerrero" male Hispanic approximately 38 years of age, approximately 5'04", approximately 140 lbs. light complexion

and the premises:

1<sup>st</sup> floor rear apartment and basement located at 6519 W. 16<sup>th</sup> St, Berwyn, IL, Cook County

and seize the following instruments, articles and things:

Cocaine and Cannabis, to wit a controlled substance and any documents showing residency, any paraphernalia used in the weighing, cutting or mixing or illegal drugs. Any money any records detailing illegal drug transactions.

which have been used in the commission of, or which constitute evidence of the offense of:

Possession of Controlled Substance 720 ILCS 570/402  
Possession Of Cannabis 720 ILCS 550/4

I further command that a return of anything so seized shall be made without necessary delay before me or before:

Judge \_\_\_\_\_ or before any court of competent jurisdiction.

JUDGE

Judge's No.

Date and time of issuance: \_\_\_\_\_



ADM-PROD-001834

ASAC [signature] 6-15-17 @ 1638  
SW 7557 app

ILLINOIS STATE POLICE  
Division of Forensic Services  
Forensic Science Center at Chicago  
1941 West Roosevelt Road  
Chicago, Illinois 60608-1229  
(312) 433-8000 (Voice) \* 1-(800) 255-3323 (TDD)

Bruce Rauner  
Governor

Leo P. Schmitz  
Director

September 11, 2017  
LABORATORY REPORT

FERNANDO VELEZ 13216  
CHICAGO PD UNIT 189  
NARCOTICS SECTION  
3340 WEST FILLMORE STREET  
CHICAGO IL 60624

Laboratory Case #C17-015372  
RD #JA392821

OFFENSES: Violation of Cannabis Control Act/Violation of Controlled Substances Act  
SUSPECT: Tomas Hernandez

The following evidence was received by the Forensic Science Center at Chicago on August 17, 2017:  
Inventory# 13981404

<u>LAB EXHIBIT</u>	<u>ITEM SUBMITTED</u>	<u>FINDINGS</u>
1	4186 grams of compressed plant material from one plastic wrapped bundle	Delta 9 Tetrahydrocannabinol (Delta 9 THC)
2A	1406 grams of plant material from three plastic bags	Delta 9 Tetrahydrocannabinol (Delta 9 THC)
2B	A gross weight of 1337 grams of plant material in five plastic bags	No Analysis

The following evidence was received by the Forensic Science Center at Chicago on August 21, 2017:  
Inventory# 13981406

<u>LAB EXHIBIT</u>	<u>ITEM SUBMITTED</u>	<u>FINDINGS</u>
3	104.1 grams of chunky powder from four plastic bags	Cocaine

730 ILCS 5/5-9-1.4(b) states that a criminal laboratory analysis fee of \$100 shall be imposed for persons adjudged guilty of an offense in violation of the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act.



ADM-PROD-001758

STATE OF ILLINOIS     )  
                                   ) ss.  
 COUNTY OF COOK        )

IN THE CIRCUIT COURT OF THE FIRST  
 JUDICIAL CIRCUIT, COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS     )  
                                   Plaintiff,                     )  
                                   Vs.                                 ) No. 18 CR 4310  
 TOMAS HERNANDEZ,                     )  
                                   Defendant,                     )

**MOTION TO SUPPRESS STATEMENTS**

Now comes the Petitioner, TOMAS HERNANDEZ, through his Attorney, JOHN DE LEON, and moves this Honorable Court to suppress as evidence herein any and all oral or written communications, statements, admissions, declarations, or confessions made by defendant which were the fruits of constitutional violations subsequent to his arrest in the above-entitled cause. In support of this motion, the Defendant states as follows:

1. The Petitioner is the Defendant in the above-entitled cause and was arrested on August 15, 2017 at or near 6519 W. 16<sup>th</sup> Street, 1<sup>st</sup> Floor Rear, in Chicago, Illinois
2. That subsequent thereto, the Defendant was interrogated by law enforcement officials both at the scene and at the police station.
3. That prior to such questioning and interrogations meant to illicit potentially incriminating statements, the Defendant was not:
  - a) Informed that he had the right to remain silent,
  - b) Informed that anything he might say or do could be used against him in court,
  - c) Informed that he had a right to consult with a lawyer,
  - d) Informed that he had a right to have a lawyer present with him during the questioning or interrogation
  - e) Informed that if he was indigent, he would nonetheless be provided with a lawyer by the state to be present during any questioning or interrogation.



ADM-PROD-001707

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

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

5 THE PEOPLE OF THE STATE )  
OF ILLINOIS, )  
6 )  
Plaintiff, )  
7 )  
vs. ) No. 17 CR 13484-01  
8 )  
TOMAS HERNANDEZ, )  
9 )  
Defendant. )

11 REPORT OF PROCEEDINGS had in the  
12 above-entitled cause before the HONORABLE DOMENICA A.  
13 STEPHENSON, Judge of said court, on the 27th day of  
14 June, 2019.

16 PRESENT:  
17 HONORABLE KIMBERLY M. FOXX,  
State's Attorney of Cook County, by:  
18 MR. PATRICK TURNOCK, ASA, and  
MS. REVA GHADGE, 711,  
19 appeared on behalf of the People;  
20 MS. ALANA DELEON and  
MS. JOHN DELEON,  
21 appeared on behalf of the Defendant.

23 ADRIENNE ANDERSON, CSR  
Official Court Reporter  
24 CSR No. 084-004320



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I N D E X

PEOPLE vs. TOMAS HERNANDEZ  
CASE NO. 17 CR 13484-01

DATE: 06/27/2019  
PAGES: 1 through 25  
REPORTER: Adrienne Anderson, CSR

MOTION

<u>Witness:</u>	<u>Direct</u>	<u>Cross</u>	<u>RDX</u>	<u>RCX</u>
OFFICER GONZALEZ	8	12	18	

26<sup>th</sup> STREET COURT REPORTERS

773-674-6065

Room 4C02

DEPOSIT PAID

Date: 5/4/22

Amount: \$ 100 -

Court Reporter: Adrienne Anderson

Case Name: Thomas, Hernandez

Ordered by: Michelle Gonzalez

Cash

Check #

1 THE CLERK: Tomas Hernandez.  
2 THE COURT: Hi, Mr. DeLeon.  
3 MR. DELEON: Good morning, Your Honor. John DeLeon  
4 for Tomas Hernandez. He's present in court.  
5 THE COURT: Okay. You're Tomas Hernandez?  
6 THE DEFENDANT: Yes.  
7 THE COURT: He's on bond; right?  
8 MR. DELEON: Right, he's on bond.  
9 MR. TURNOCK: Good morning, Your Honor. Patrick  
10 Turnock for the People, T-U-R-N-O-C-K.  
11 THE COURT: Okay.  
12 MR. TURNOCK: We have it set for bench. I think  
13 we'll be able to answer ready.  
14 MR. DELEON: Right, right.  
15 THE COURT: Okay. We'll pass it then.  
16 MR. TURNOCK: Thanks, Judge.  
17 MR. DELEON: Thank you, Your Honor.  
18 THE COURT: You're second in line, though,  
19 because --  
20 MR. DELEON: Okay.  
21 THE COURT: -- there's one motion in front of you.  
22 MR. DELEON: Okay.  
23 (Whereupon the Court attended to  
24 other matters on its call, after



1                   which the following proceedings were  
2                   had herein:)

3           THE COURT:   Tomas Hernandez.

4           MR. DELEON:   Here is another copy of a motion to  
5           suppress statements.

6           THE COURT:   Oh, perfect.   Thank you.

7                   Ms. Interpreter, your name for the record.

8           THE INTERPRETER:   For the record, Your Honor, good  
9           afternoon.   Sonia Garcia, Spanish interpreter.

10          THE COURT:   Please raise your right hand.

11                   (The oath was thereupon duly  
12                   administered to the Spanish interpreter  
13                   by the Court.)

14          THE COURT:   Okay.   This is a motion?

15          MR. DELEON:   Motion to suppress statements, Your  
16          Honor.

17          THE COURT:   Okay.   And the parties are answering  
18          ready?

19          MR. DELEON:   Yes.

20          MR. TURNOCK:   Yes, Your Honor.

21          THE COURT:   Okay.   Is there a motion to exclude  
22          witnesses?

23          MR. DELEON:   Yes, Your Honor.

24          MR. TURNOCK:   Yes.

1 THE COURT: That's granted.

2 Mr. DeLeon, this is -- you can all be seated at  
3 counsel table.

4 MR. DELEON: All right. Thank you, Your Honor.

5 MS. DELEON: And, for the record, Alana DeLeon,  
6 A-L-A-N-A, D-E-L-E-O-N, also for Mr. Hernandez, Judge.

7 MR. TURNOCK: And, Your Honor, I have a 711 with me.

8 THE COURT: And who is that?

9 MS. GHADGE: Reva Ghadge, R-E-V-A, G-H-A-D-G-E, 711.

10 MR. DELEON: And her first witness would be --

11 THE COURT: Do you wish to make an opening  
12 statement?

13 MR. DELEON: Yeah. Just briefly, Your Honor.

14 THE COURT: Okay. I'm ready.

15 MR. DELEON: Your Honor, this was a search warrant  
16 case that Officer Gonzales wrote the arrest report,  
17 E. Gonzales. I don't know what his first name is.

18 He went to the location of 6519 West 16th  
19 Street, first-floor rear, made contact with Mr. Tomas  
20 Hernandez who he looked at the description on the search  
21 warrant and determined that he believed this was the  
22 target of the search warrant.

23 Mr. Hernandez, at that point in time, was taken  
24 up to the first -- to the apartment because he answered

1 the door just a few steps to go up. He was held there,  
✓ 2 was not free to leave.

3 The search warrant was then executed. Officers  
4 searched the basement of that building and eventually  
5 find contraband narcotics of some kind. They then  
6 proceed to go back upstairs to where Mr. Hernandez is  
7 and ask him questions about the contraband or, as they  
8 said in the report, confront him with the fact that they  
9 found contraband in the basement.

10 According to Mr. Gonzales, the officer -- the  
11 defendant made some sort of admission at that time, a  
12 statement. Prior to him asking him about the narcotics,  
13 no Miranda was given to Mr. Tomas Hernandez prior to him  
14 making a statement in reference to the contraband.

15 Based on the lack of rights being given to the  
16 defendant who was in custody, we're asking that the  
17 statement be suppressed.

18 THE COURT: Okay. This motion to suppress  
19 statements was filed on May 8th; right?

20 MR. DELEON: I believe so, Your Honor.

21 MR. TURNOCK: That sounds correct, Judge.

22 MR. DELEON: Correct.

23 THE COURT: Okay. I don't know that I had it that  
24 you filed a motion. You must have filed it in between --



1 I think it was filed in between court dates.

2 MR. DELEON: It might have been filed at the Clerk's  
3 Office. Right, Your Honor. There should be one in the  
4 file, though. Of course, they told me to bring one  
5 over. And I did send --

6 MR. TURNOCK: I received one in the spring that I've  
7 had for some time.

8 MR. DELEON: Right.

9 THE COURT: Okay. All right. Because I had it set  
10 for bench trial today, not for motion. That's why I was  
11 asking.

12 MR. DELEON: Right. Well, previously we were going  
13 to do the motion and the bench trial at the same time.

14 THE COURT: Okay. I'm ready.

15 State, do you wish to make an opening  
16 statement?

17 MR. TURNOCK: Your Honor, this is a custodial  
18 interrogation issue. Our position is that there was an  
19 interrogation that occurred. Our position is the  
20 defendant was not in custody at the time, and that's  
21 what we think the facts will clear up.

22 THE COURT: Okay. You can call your first witness.

23 MR. DELEON: Mr. Gonzales, Officer Gonzales.

24 (Witness approaching.)

1                   (The oath was thereupon duly  
2                   administered to the witness by the  
3                   Clerk.)

4                   OFFICER GONZALEZ,  
5                   appearing as a witness, having been first duly sworn,  
6                   was examined and testified as follows:

7                   DIRECT EXAMINATION

8                   By Mr. DeLeon:

9                   Q.     Would you state your name, please.

10                  A.     Officer Gonzalez, G-O-N-Z-A-L-E-Z, Star  
11                  No. 9627.

12                  THE COURT:   Okay.   Hold on one second.

13                  G-O-N-Z-A-L-E-Z?

14                  THE WITNESS:   That is correct.

15                  THE COURT:   Star?

16                  THE WITNESS:   9627.

17                  THE COURT:   Thank you.

18                  BY MR. DELEON:

19                  Q.     And calling your attention to August 15th,  
20                  2017, where were you so assigned?

21                  A.     I was assigned to the narcotics division.

22                  Q.     And, again, the same date, August 15, 2017, did  
23                  you have occasion to go to 6519 West 16th Street?

24                  A.     Yes.

1 Q. And --

2 THE COURT: West what street?

3 MR. DELEON: 16th Street.

4 THE COURT: Got it. Thank you.

5 BY MR. DELEON:

6 Q. And that's in Berwyn, Illinois?

7 A. That is correct, sir.

8 Q. And who did you go there with?

9 A. My teammates.

10 Q. And who else was on your team, if you recall

11 their names now?

12 A. It was Sergeant Sanchez, Officer Velez,

13 Officer Gorolla (phonetic), Officer O'Brien, Officer

14 McDonough, and myself.

15 Q. And you were armed with a search warrant,

16 again, for that address?

17 A. We were.

18 Q. When you arrived at that address, did you have

19 occasion to see anybody in court at that address?

20 A. Yes.

21 Q. Would that be the gentleman there in the blue

22 shirt?

23 A. Yes.

24 Q. And do you know his name?

1           A.    Defendant Hernandez.

2           Q.    Tomas Hernandez?

3           A.    Uh-huh, right.

4           Q.    And --

5           THE COURT:  The record will reflect an in-court  
6           identification of the defendant.  You can be seated.

7           BY MR. DELEON:

8           Q.    And where did you see him when you arrived  
9           there?

10          A.    Eventually I ended up seeing him in the first  
11          floor of the residence.

12          Q.    The first-floor apartment?

13          A.    Yes.

14          Q.    And when you looked at your search warrant and  
15          the description in the warrant, did you determine that  
16          he was the target of the search warrant at that time?

17          A.    Yes.

18          Q.    And at that time then he was not free to leave?

19          A.    We had -- no.  It was an ongoing investigation.

20          Q.    Okay.  So he was held in the first floor by  
21          who, which officer?

22          A.    I don't recall who was up on the first floor.

23          Q.    Okay.  And the other officers then conducted a  
24          search pursuant to that search warrant?



1           A.    Yes.

2           Q.    And was contraband narcotics found in that  
3 building?

4           A.    Yes, there was.

5           Q.    And where was it found?

6           A.    It was found in the basement.

7           Q.    And were you there when it was found?

8           A.    I was.

9           Q.    After those narcotics were found, did you go  
10 back upstairs to where Mr. Hernandez was being held?

11          A.    Eventually I did, yes.

12          Q.    Okay.  And when you went upstairs, at that time  
13 he was in custody still upstairs?

✓ 14          A.    He was still detained.  He wasn't handcuffed.

15          Q.    But he was detained?

16          A.    Yes.

17          Q.    Okay.  And there were officers guarding him?

18          A.    Yes.

19          Q.    You just don't remember which one?

20          A.    That is correct.

21          Q.    Okay.  In any event, at that time, did you  
22 question him about those narcotics?

23          A.    Eventually I did.  I did question him about the  
24 narcotics that was found.

1 Q. And prior to asking him questions, did you read  
2 him his Miranda rights?

3 A. I did not.

4 Q. He gave a statement then to you about the  
5 drugs?

6 A. He did.

7 Q. You placed him under arrest officially then and  
8 handcuffed him?

9 A. Again, eventually, he was then taken into  
10 custody and he was handcuffed.

11 Q. And he was charged with the cocaine and  
12 marijuana that was found in the basement?

13 A. That is correct.

14 MR. DELEON: I have no other questions, Your Honor.

15 THE COURT: Cross.

16 MR. TURNOCK: Yes, Judge.

17 CROSS-EXAMINATION

18 By Mr. Turnock:

19 Q. You -- when you went into the home -- just for  
20 the benefit of the Court, when you go in, there's half a  
21 flight of stairs that go down to a basement and another  
22 half flight of stairs that go up to the first floor?

23 A. That is correct.

24 Q. Kind of like a bungalow style home; correct?

1           A.    Yes.

2           Q.    You went to the basement immediately; right?

3           A.    I did.

4           Q.    So you did not see the defendant when you made  
5           initial entry into the home?

6           A.    That is correct.  Eventually I did see it, but  
7           not in the initial phase.

8           Q.    And when you went into that basement, the first  
9           order of business was to make sure no one else was down  
10          there?

11          A.    That is correct.

12          Q.    And then did you start the search?

13          A.    Yes.

14          Q.    Okay.  And as you conducted the search, you  
15          found cannabis in two coolers; correct?

16          A.    That is correct.

17          Q.    And other officers were -- other officers were  
18          in the basement with you as well; correct?

19          A.    Yes.

20          Q.    And during that time, cocaine was also found on  
21          the shelf in the basement; correct?

22          A.    Yes.

23          Q.    Okay.  You're a Spanish speaker; correct?

24          A.    Yes.



1 Q. Are you fluent in Spanish?

2 A. I am.

3 Q. Okay. You've spoken it your whole life?

4 A. Yes.

5 Q. After these items were found, did you then go  
6 back up to the first floor?

7 A. I did.

8 Q. I'm sorry, to the first floor for your first  
9 time?

10 A. Yes.

11 Q. You found the defendant in the kitchen?

12 A. Yes.

13 Q. What was he doing in the kitchen?

14 A. He was sitting down at the kitchen table.

✓ 15 Q. At the kitchen table?

16 A. Uh-huh.

17 Q. Anyone else there with him?

18 A. I believe there were three or four, three  
19 daughters maybe, and I think possibly his wife. I'm not  
20 too sure.

21 Q. So some women that you assumed or later  
22 determined were family members?

23 A. Yes.

24 Q. Okay. When you saw the defendant in the

1 kitchen, what did you do when you approached them?

2 A. I approached them. I introduced myself to him.  
3 And then I asked if -- that I want to speak to him in  
4 private.

5 Q. And did he agree to speak to you in private?

6 A. Yes.

7 Q. Okay. And was that so you spoke to him outside  
8 the presence of his family?

9 A. Yes.

10 Q. All right. When he's sitting at the table, was  
11 he handcuffed?

12 A. No, he was not.

13 Q. Okay. Is anyone keeping him at the table?

14 A. Yes. There were some officers there. I just  
15 can't recall who was there.

16 Q. They were in the room; correct?

17 A. They were, yes.

18 Q. And the purpose for when you execute a search  
19 warrant and there are people present, do you allow the  
20 people to remain in various parts of the home or what do  
21 you do?

22 A. No. We usually gather everyone that's inside  
23 the residence to a central point. And then we keep them  
24 there for our safety, as well as theirs, because we

1 don't know what else can be found inside the residence.  
2 It could be weapons, things of that nature, so for  
3 everyone's safety, we just usually just centralize them  
4 in one location.

5 Q. And at that time they're detained for your  
6 safety and to protect the integrity of the search;  
7 correct?

8 A. That is correct.

9 Q. Okay. So after you asked the defendant to go  
10 talk, where did you guys go?

11 A. We walked back towards the -- back towards the  
12 residence into a bedroom.

13 Q. Not handcuffed; correct?

14 A. That is correct.

15 Q. Okay. And he agreed to go back there with you?

16 A. He did.

17 Q. And is that when you had this conversation with  
18 him?

19 A. Yes.

20 Q. And in terms of what you said to him, you told  
21 him what was found in the basement; correct?

22 A. That is correct.

23 Q. You told him that there had been marijuana and  
24 cocaine found in the basement?



1           A.    Yes.

2           Q.    And after you told him that, did you ask him  
3 anything?  What did he tell you?

4           A.    He said that the narcotics belonged to him.

5           Q.    Okay.  Did he say anything about why they were  
6 in the basement?

7           A.    Yes.  He stated that --

8           Q.    What was that?

9           A.    He stated that he placed narcotics in the  
10 basement because he didn't want his family to know about  
11 it.

12          Q.    Okay.  Now, after you talked to him, did --  
13 what happened with him?  Did he go back to the kitchen?  
14 Did he go somewhere else?

15          A.    No.  After that, I walked him back towards the  
16 kitchen.

17          Q.    And he remained with his family at that point?

18          A.    Yes.

19          MR. TURNOCK:  Okay.  I have no further questions,  
20 Judge.

21          MR. DELEON:  Now, Officer --

22          THE COURT:  One second.  One second.

23                 Okay.  Any redirect?

24          MR. DELEON:  Just very -- a couple of questions,

1 Your Honor.

2 REDIRECT EXAMINATION

3 By Mr. DeLeon:

4 Q. Officer, you wrote an arrest report, did you  
5 not, in reference to your activities in this case?

6 You are Officer E. Gonzales, Star No. 9627?

7 A. That is correct, yes.

8 Q. Do you remember you wrote an arrest report?

9 A. No, I don't. Can I take a look at it?

10 Q. Would that refresh your recollection?

11 A. Uh-huh.

12 THE COURT: Is that Exhibit 1?

13 MR. DELEON: One. I'm sorry, Your Honor.

14 BY MR. DELEON:

15 Q. Is that the arrest report on this case?

16 A. It is an arrest report.

17 Q. And you're -- the attesting officer is listed  
18 as you?

19 A. Yes. That is correct.

20 Q. So you wrote this report?

21 A. Yes.

22 Q. Would you look at the body of the narration of  
23 the report.

24 Did you state anywhere in your report that the

1 defendant was read his rights?

2 A. No, not in this report.

3 Q. Okay. And --

4 A. I'm sorry. Hold on.

5 That I explained his rights or somebody  
6 explained to him his rights?

7 Q. Well, you've already told us you did not read  
8 him his rights before you questioned him; correct?

9 A. I did not, no.

10 Q. Okay. And you didn't indicate in your report  
11 that you read him his rights --

12 A. I did not.

13 Q. -- before you questioned him?

14 A. Yes.

15 Q. So you did not read him his rights before you  
16 questioned him about the narcotics; correct?

17 A. I did not, no.

18 Q. Okay. The report does have an indication that  
19 he was Mirandized, but that was after the statement was  
20 given; correct?

21 A. That is correct, sir.

22 Q. Okay. And he was in custody, again, being held  
23 in the kitchen on the first floor prior to -- during the  
24 search and prior to you going upstairs?





1 MS. DELEON: Judge, yes, just briefly.

2 We have testimony here today that the  
3 defendant, in fact, was not free to leave. No  
4 reasonable person would believe that they were free to  
5 leave at that time. This was absolutely a custodial  
6 situation.

7 Once the narcotics were found, pursuant to the  
8 search warrant, the officer testified that he was  
9 questioned and gave a statement. Prior to Miranda he  
10 was actually, in fact, taken into a different room to be  
11 interrogated.

12 There is no mention of the statement in the  
13 arrest report initially written. There's no words that  
14 we heard in the testimony about what this admission  
15 said, no Miranda again before these -- this questioning  
16 occurred.

17 They took the statement, gave him Miranda, and  
18 then he was formally arrested. But we would argue that  
19 it is absolutely a custodial interrogation, that he  
20 should have been given his Miranda warnings prior to any  
21 questioning once these narcotics were found.

22 And for those reasons, we believe, Judge, that  
23 this -- these facts render the statement inadmissible  
24 and ask you to please suppress the statements at this

1 time, Judge.

2 THE COURT: Thank you.

3 State.

4 MR. TURNOCK: Your Honor, we believe the division  
5 here is that the officer detained all the residents that  
6 they found in the property for their safety and for the  
7 integrity of the investigation, so they're not under the  
8 legal sense of they're under arrest.

9 And so when the officer engaged in a  
10 conversation with the defendant, the defendant's  
11 statements were not custodial in nature during that --  
12 during that interview and so Miranda wasn't required.  
13 Therefore, the statement should be admissible.

14 Thank you.

15 THE COURT: Okay. Anything further, Mr. or  
16 Ms. DeLeon?

17 MS. DELEON: Your Honor, just briefly. Just that  
18 the officer described the situation as custodial in  
19 nature himself during his testimony. That's all.

20 THE COURT: All right. Thank you.

21 The Court's heard the testimony of the officer.  
22 Basically the officers went to this location to execute  
23 a search warrant. The defendant was placed into the  
24 kitchen, along with other family members. There were



1 three other officers there.

2 The Court finds that even though the officer  
3 said that they were detained, he also said the defendant  
4 was not free to leave; therefore, the defendant was in  
5 custody.

6 After the narcotics were found, the defendant  
7 is removed to another room. Even though the defendant  
8 wasn't handcuffed, it is a custodial type of situation;  
9 and therefore, Miranda rights should have been given  
10 prior to speaking to the defendant, especially after the  
11 narcotics were found.

12 Based upon that, your motion to suppress  
13 statements is granted.

14 MR. DELEON: Thank you, Your Honor.

15 MR. TURNOCK: Your Honor, it will be Motion, State,  
16 nolle pros as to the underlying matter.

17 THE COURT: Motion, State, nolle pros. Off call.  
18 That's all counts?

19 MR. TURNOCK: All counts.

20 THE COURT: All counts. Off call.

21 MR. DELEON: And demand for trial noted, Your Honor.

22 THE COURT: Okay. So noted.

23 Is he on EM? No.

24 MR. DELEON: Yeah. I believe he is, Your Honor.

1 THE COURT: Still?

2 MR. DELEON: Yeah.

3 MR. TURNOCK: Yeah. I think he is.

4 THE COURT: Are you sure?

5 MR. DELEON: Yes. Let me double-check. I asked him  
6 this morning.

7 (Whereupon a discussion was held  
8 outside the record, after which the  
9 following proceedings were had  
10 herein:)

11 MR. DELEON: He still has the EM.

12 THE COURT: Is it through Pretrial Services, though?

13 MR. DELEON: It's Pretrial Services.

14 MS. DELEON: It's Pretrial Services, Your Honor.

15 THE COURT: Okay. That's terminated instanter. If  
16 you want to draft an order, I'll sign it.

17 MS. DELEON: Thank you, Judge.

18 (Which were all the proceedings had  
19 at the hearing of the above-entitled  
20 cause, this date.)

21

22

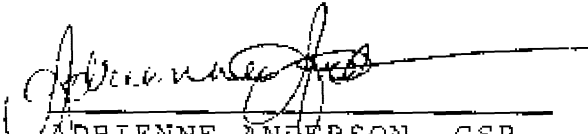
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24

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

3  
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
5 COUNTY DEPARTMENT - CRIMINAL DIVISION

6 I, Adrienne Anderson, an Official Court  
7 Reporter for the Circuit Court of Cook County, County  
8 Department-Criminal Division, do hereby certify that I  
9 reported in shorthand the proceedings had at the  
10 above-entitled cause; that I thereafter caused the  
11 foregoing to be transcribed into typewriting, which I  
12 hereby certify to be a true and accurate transcript of  
13 the proceedings had before the HONORABLE DOMENICA A.  
14 STEPHENSON, Judge of said court.

15  
16  
17   
18 ADRIENNE ANDERSON, CSR  
19 Official Court Reporter  
20 No. 084-004320

21 Dated this 4th day  
22 of May, 2022.

23  
24

No. 2-17-0605  
IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court of DuPage County
	)
Plaintiff-Appellee,	)
	)
Vs.	) 12 CF 1107
	)
JOHN CASTELLANOS,	) Honorable Liam Brennan, Judge Presiding
	)
Defendant-Appellant.	)

---

**BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT**

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COUNSEL FOR THE APPELLANT

**ORAL ARGUMENT REQUESTED**

26/27





**POINTS AND AUTHORITIES**

- 1. John Castellanos should have been granted an evidentiary hearing when at the second-stage there were sufficient facts alleged which, if proven true at a third-stage hearing, would be sufficient for the trial court to grant post-conviction relief.**

	Page
725 ILCS 5/122 (Post-Conviction Hearing Act) .....	12
<i>People vs. Coleman</i> , 701 N.E.2d 1063 (1968).....	12
<i>People vs. Knight</i> , 937 N.E.2d 789 (2010) .....	13
<i>People vs. Alexander</i> , 11 N.E.3d 388 (2014) .....	14
<i>People vs. Lamar</i> , 44 N.E.3d 1178 (2015) .....	15
<i>People vs. Sanders</i> , 47 N.E.3d 237 (2016) .....	16

**NATURE OF THE CASE**

At the second stage of John Castellanos' Post Conviction Petition, the trial court determined that a third-stage evidentiary hearing was not warranted by the allegations in the Petition.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

**ISSUE PRESENTED FOR REVIEW**

Did the allegations in John Castellanos' Post-Conviction Petition entitle him to have a third-stage evidentiary hearing?

**STATUTES AND RULES INVOLVED**

**725 ILCS 5/122; Post Conviction Hearing Act**



## STATEMENT OF FACTS

John Castellanos was indicted on June 21, 2012, on five counts of firearm violations and two counts of narcotics charges (C. 115 thru C. 123) stemming from a search of the residence where he and his wife, Ruth, lived. John Castellanos was admitted to bond (C. 124) but failed to appear for trial. (C. 153) A jury trial was held *in absentia*. (C. 187) The defense attorney called no witnesses at trial. On July 31, 2013, John Castellanos was convicted of all charges (C. 230 thru 236) and sentenced to 25 years in the Illinois Department of Corrections. (C. 254 thru C. 257) No post-trial motion or notice of appeal was filed by the attorneys on his behalf. The defense attorneys petitioned the Court for the bail bond refund (C. 245 thru C. 253) which was granted. On December 17, 2015, a Body Writ was served on John Castellanos and he was remanded to the custody of the Illinois Department of Corrections (C. 264 thru C. 266) to serve out his sentence. On October 17, 2016, John Castellanos filed his Post-Conviction Petition. (C. 274 thru C. 288) The trial court reviewed the petition at phase one, found that there was a gist of a constitutional violation and allowed the petition to stand, moving on to phase two. (C. 304 thru 307) On February 1, 2017, the state filed a Motion to Dismiss Post-Conviction Petition. (C. 311 thru C. 354) On March 28, 2017, John Castellanos filed a Response to Motion to Dismiss Post-Conviction Petition. (C. 359 thru C. 379) On May 2, 2017, a hearing was had and the Court granted the state's motion to dismiss. (R. 2 thru R. 20; C. 381 thru 384) On May 31, 2017, John Castellanos filed a Motion to Reconsider Court's Ruling of May 2, 2017. (C. 392 thru C. 402) On July 21, 2017, a hearing was had and the Court denied the Motion to Reconsider Court's Ruling of May 2, 2017. (R.21 thru R. 25) (C. 404) A notice of appeal was timely filed. (C. 405 thru C. 407)

## ARGUMENT

The trial court should have granted a third-stage hearing, because the allegations, if proven true at an evidentiary hearing, would require the petition to be granted.

On October 16, 2017, John Castellanos filed his Petition for Post-Conviction relief (C. 274) claiming actual innocence and alleging the following acts and omissions on the part of the defense attorneys.

1. Ruth and John Castellanos both told their attorneys, Rick Kayne and Tim Martin, that the police searched their home without their permission. Both attorneys stated that they would file the appropriate Motion to Suppress Evidence, pursuant to 725 ILCS 5/114-11. The attorneys told Ruth and John Castellanos that Ruth and John Castellanos would be called as witnesses at the Motion to Suppress Evidence. Ruth Castellanos told the attorneys that the guns recovered from her closet in the house were her firearms and not John's firearms; that she had a valid FOID card at that time; and that the narcotics were not John's. The attorneys never filed the Motion to Suppress Evidence. (C. 275, subsections a, b, c and d) (C. 289, subsections 7, 8; C. 301, subsection a)
2. After discussing the facts and circumstances surrounding a statement allegedly made by John Castellanos to the police, the attorneys promised to file a Motion to Suppress Statement. That motion was never filed and the state, without objection from the defense attorneys, used the statement in their case-in-chief. (C. 275, subsection f) (C. 289, subsection 9; C. 301, subsection b)
3. When the state's attorney requested a trial *in absentia*, the defense attorneys never even objected. The defense attorneys had a conflict of interest with John Castellanos at this point, because they wanted to embezzle the money posted by the surety Ruth Castellanos



as bond for John Castellanos, even though the attorneys had already been paid in full. (C. 275, subsection g)

4. Pursuant to statute, before a trial *in absentia* can be held, the Clerk of the Circuit Court must send a certified letter to the address of the defendant, as evidenced by the bond slip, along with a copy of the Order of Court that a trial will be held *in absentia*. The address listed on the bond sheet of John Castellanos was 4 N. 336 Mill Street, Addison, IL, but the Official Certificate of Mailing by the Clerk of the Circuit Court, DuPage County, certifies that the letter was sent to a wrong address, i.e. 4 N. 366 Mill Street, Addison, Illinois. The defense attorneys did not object to the trial *in absentia* even though the precedent statutory requirement had not been met. Attorney Kayne did not call Ruth Castellanos to testify that the certified mail was not sent to her house and that neither she nor her husband signed for the mail. Kayne did not remind the Court that John Castellanos was allowed by the Court to travel throughout the United States, so that the little police investigation of the surrounding hospitals was not enough to establish "substantial evidence" that John Castellanos knew of the trial date and that he was willfully avoiding trial. Kayne did not remind the Court that John Castellanos was an informant for the Drug Enforcement Agency and was using a name different than John Castellanos and that he may be hospitalized or incarcerated under a different name. Instead, when asked by the Court if Kayne had any evidence to offer in opposition to the trial *in absentia*, the attorney replied, "I have no evidence, your Honor." Thus, Kayne never even made a naked objection to the trial *in absentia*. (C. 275, subsection h; C.276, subsections i, j, k, l, m, n; C. 277 subsections o, p, q; C. 289, subsection 13; C. 278, subsection y; C. 301, subsections e, f, g, h)

5. Kayne agreed to allow the State to present the hearsay document that John Castellanos allegedly wrote, which Kayne had told Ruth and John Castellanos had been obtained illegally and which Kayne had promised to file a Motion to Suppress Statement. (C. 277, subsection s)
6. Kayne's sole concern was the \$35,000 that Ruth Castellanos had posted as surety, which Kayne was ultimately able to secure through larceny and false statements to the trial court judge. (C. 277, subsection r)
7. Kayne never asked for a continuance in an attempt to locate John Castellanos so he could appear at trial. (C. 276, subsection m, C. 301, subsection d))
8. Defense attorney Kayne did not call Ruth Castellanos to testify that she had not received the certified letter from the Clerk of the Circuit Court, DuPage County, and that neither she nor her husband signed for any certified letter and that the signature on the postal card was neither her nor her husband's signature. (C. 276, subsection n; C. 301, subsection g))
9. Ruth Castellanos had been in Kayne's law office a mere 4 weeks before the start of the trial *in absentia*, yet Kayne did not tell Ruth Castellanos about the upcoming trial date and request her appearance at the trial to testify that the guns were hers and the narcotics were not John's. (C. 278, subsection t; C. 290, subsections 18, 19, 20, 21; C. 278, subsection z)
10. Kayne did not contact Cristina Caballero, the sister of John Castellanos, in an attempt to locate John Castellanos and tell him of the trial date, even though Kayne knew that Cristina Caballero was a paralegal employed at the law firm of SpyratosDavis, 1001 Warrenville Road, Suite 210, Lisle, DuPage County, Illinois, with a phone number of 630.810.9067 and a fax number of 630.963.8733. (C. 278, subsections u, v, w)



11. Cristina Caballero could have contacted her brother, John Castellanos, to tell him of the trial date, but Kayne never contacted her, even though Kayne told Judge Fawell:

"Judge, for the record, I tried to contact the defendant's sister, who I have had contact with in the past; and I called her the night before the trial and did not get a call back. I did gets (*sic*) her voicemail, didn't just go into something, but I haven't heard back." [Court transcript, page 144, Exhibit 1 attached to affidavit of Cristina Caballero] (C. 299 and C. 300)

Kayne never called and left a message with Cristina Caballero and his statement to Judge Fawell was deliberately false. (C. 301, subsections h, i)

12. At trial, the jury even had a question as to whether the police had a right to search the house, as evidenced by the note that the jury sent out to the court during deliberations. This issue would have been resolved by the Court if only Kayne had filed the Motion to Suppress as he had promised Ruth and John Castellanos that he would do. (C. 278, subsection x)

13. Kayne never called Ruth Castellanos as a witness at trial to testify that the narcotics found in the house did not belong to John Castellanos, even though she had repeatedly told Kayne and Attorney Martin that she would truthfully testify that the narcotics did not belong to John Castellanos. (C. 279, subsection aa)

14. Kayne filed no objection to the state's Motion in Limine No. 2 where the state sought permission of the court to argue to the jury that because John Castellanos was not in court, his absence was an indicium of guilt. The Court granted the state's motion without any written or oral objection from Kayne. (C. 183 thru 185; C. 279, subsection bb)

15. After the verdicts of guilty, Kayne never filed any post-trial motions so that the issues could be preserved for appeal, including the judge's decision to allow a trial *in absentia*. Kayne preserved nothing for appeal. Nothing. (C. 279, subsection cc)

16. Kayne never filed a post-trial Motion to Reconsider the 25-year sentence, so that sentence could be appealed. (C. 279, subsection dd)
17. Kayne never filed a Notice of Appeal. (C. 279, subsection ce)
18. Kayne and Martin deliberately did not notify Ruth Castellanos, the bail bond surety who had posted \$35,000, that they were going to fraudulently take the bail bond refund, even though the attorneys had been paid in full prior to the trial and after Ruth Castellanos had been in Kayne's office just weeks earlier. (C. 279, subsections ff, gg, hh, ii, jj)
19. Attorneys Kayne and Martin hid their conflict of interest, where they were planning to appropriate the surety's \$35,000, from Ruth and John Castellanos and neither Ruth nor John Castellanos signed a petition that the money be returned to either attorney. (C. 280, subsections kk, ll, mm, nn)

\*\*\*\*\*

In 1998, our Supreme Court reviewed guidelines when a Post-Conviction Petition, 725 ILCS 5/122, is litigated in Illinois courts. In *People vs. Coleman*, 701 N.E.2d 1063, 183 Ill.2d 366, 233 Ill. Dec. 789, (Supreme Court of Illinois, 1998) Coleman had been convicted of murder and he filed a post-conviction petition, alleging ineffective assistance of counsel. The trial court dismissed the petition without an evidentiary hearing. In reversing and remanding the case, the Court made the following observations.

"Thus, at the dismissal stage of a post-conviction proceeding, whether under section 122-2.1 or under section 122-5, the circuit court is concerned merely with determining whether the petition's allegations sufficiently demonstrate a constitutional infirmity which would necessitate relief under the Act. Moreover, our past holdings have foreclosed the circuit court from engaging in any fact-finding at a dismissal hearing because all well-pleaded facts are to be taken as true at this point in the proceedings." (701 N.E.2d at 1071)



"Although a post-conviction petitioner is not entitled to an evidentiary hearing as a matter of right, this court has repeatedly stressed that a hearing is required whenever the petitioner makes a substantial showing of a violation of constitutional rights. . . . On the other hand, when a petitioner's claims are based on matters outside the record, this court has emphasized that it is not the intent of the Act that such claims be adjudicated on the pleadings. Rather, the function of the pleadings in a proceeding under the Act is to determine whether the petitioner is entitled to a hearing. Therefore, the dismissal of a post-conviction petition is warranted only when the petition's allegations of fact – liberally construed in favor of the petitioner and in light of the original trial record – fail to make a substantial showing of imprisonment in violation of the state or federal constitution. (701 N.E.2d at 1072)

"In light of the foregoing, we are of the opinion that the ultimate question regarding the sufficiency of the allegations contained in a post-conviction petition merits treatment as a legal inquiry requiring plenary appellate review. . . . We acknowledge that our decision today on the standard of review marks a departure from previous holdings of this court. Therefore, we hold that in the interests of justice and public policy, the standard of review announced in this opinion shall be applied to all future appeals and those that are pending at the time this decision becomes final in this court." (701 N.E.2d at 1075)

Thus, an Appellate Court should view the allegations enumerated above to determine whether those factual allegations are sufficient to require an evidentiary hearing at a third-stage proceeding.

In *People vs. Knight*, 937 N.E.2d 789, 403 Ill.App.3d 461, 344 Ill. Dec. 766 (3<sup>rd</sup> Dist., 2010), Knight had pled guilty to murder. In his post-conviction petition he alleged that a prison gang leader had forced him to plead guilty to the murder in order to mollify prison officials and preserve the ability of the gang to run drugs, prostitution and movie rentals in the prison. The

circuit court dismissed the petition as being without merit. On appeal, the Appellate Court reversed the dismissal and sent it back to the circuit court. Following arguments, the circuit court granted the state's motion to dismiss. The Appellate Court again reversed the dismissal and remanded it for an evidentiary hearing.

"We reject the State's argument that defendant's affidavits do not qualify as newly discovered evidence. Defendant's affidavits constitute new evidence within the meaning of postconviction proceedings." (937 N.E.2d at 794)

"Defendant argues that any statement on his part [during the guilty plea admonitions] that his plea was not coerced was itself the result of the same coercion that forced him to plead guilty. Defendant argues that even under the State's claim that the transcript belies the claim that the plea was coerced, the question of whether his plea was coerced and thus involuntary is a matter of credibility that can only be resolved at an evidentiary hearing. At the second stage of postconviction proceedings, a petition may be dismissed if its factual claims are baseless." (937 N.E.2d at 795)

"The standard, at the second-stage of postconviction proceedings, is that all well-pled allegations are taken as true unless positively rebutted by the record of the proceedings." (937 N.E.2d at 796)

"We do not think that defendant's factual assertions in support of his claim that his guilty plea was coerced and thus involuntary are baseless. We also find that defendant can raise his free-standing claim of actual innocence in postconviction proceedings. Defendant's guilty plea does not prohibit him from raising either claim in postconviction proceedings. Accordingly, we hold that the trial court erred in dismissing defendant's postconviction petition without an evidentiary hearing." (937 N.E.2d at 798)

In *People vs. Alexander*, 11 N.E.3d 388, 381 Ill. Dec 757, 2014 IL App (2d) 120810 (2<sup>nd</sup> Dist., 2014), Alexander challenged his conviction for possession of a controlled substance with a



postconviction petition based on newly discovered evidence. The circuit court dismissed the petition and this Appellate Court reversed and remanded.

"At the second-stage dismissal hearing, the defendant bears the burden of making a substantial showing of a constitutional violation. Further, the trial court must accept as true all well-pleaded facts that are not positively rebutted by the trial record. Where, as here, the defendant's claims are based on matters outside the record, the trial court is prohibited from engaging in fact finding. Thus, where factual disputes require a determination of the truth or falsity of supporting affidavits or exhibits, that determination cannot properly be made at a hearing on a motion to dismiss, but rather can be resolved only during a third-stage evidentiary hearing. If a substantial showing of a constitutional violation is set forth, the petition advances to the third-stage for an evidentiary hearing. We review *de novo* the trial court's dismissal of a postconviction petition at the second stage of the proceedings." (11 N.E.3d at 395)

"We reiterate that, at this stage in the postconviction proceedings, all well-pleaded facts that are not positively rebutted by the trial record are taken as true." (11 N.E.3d at 396)

In reversing and remanding the dismissal of a post-conviction petition in *People vs. Lamar*, 44 N.E.3d 1178, 398 Ill. Dec. 766, 2015 IL App (1<sup>st</sup>) 130542 (1<sup>st</sup> Dist., 2015), the Appellate Court remarked:

"The Act provides a remedy for defendants who have suffered a substantial violation of constitutional rights at trial, and establishes a three-stage process for adjudicating a postconviction petition. In the first stage, the circuit court may dismiss petitions that are frivolous or patently without merit. In the second stage, the circuit court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. If the petitioner makes the requisite substantial showing that his constitutional rights were violated, he is entitled to an evidentiary hearing. At such a hearing, the circuit court serves as the fact finder, and, therefore, it is the court's function to determine witness credibility, decide the weight to be given testimony and evidence, and

resolve any evidentiary conflicts. . . . Dismissal is warranted only if the allegations in the petition, when liberally constructed in light of the trial record, cannot support a substantial showing of a constitutional violation. . . . In other words, the substantial showing of a constitutional violation that must be made at the second stage is a measure of the legal sufficiency of the petition's well-pled allegations of a constitutional violation, *which if proven* at an evidentiary hearing, would entitle petitioner to relief." (Emphasis in original) (44 N.E.3d at 1182)

Finally, the 2016 Supreme Court case of *People vs. Sanders*, 47 N.E.3d 237, 399 Ill. Dec. 732, 2016 IL 118123 (Supreme Court of Illinois, 2016) reiterated that a dismissal at the second-stage is to be reviewed by the appellate court *de novo*.

"The dismissal of a postconviction petition without an evidentiary hearing is reviewed *de novo*. The question raised in an appeal from an order dismissing a postconviction petition at the second stage is whether the allegation in the petition, liberally construed in favor of the petitioner and taken as true, are sufficient to invoke relief under the Act. Since there are no factual issues at the dismissal stage of the proceedings, the question is essentially a legal one, which requires the reviewing court to make its own independent assessment of the allegations of the petition and supporting documentation. (47 N.E.3d at 245)

When considering the allegations listed in John Castellanos' Post-Conviction Petition, as discussed in Paragraphs 1 through 19 above, and in light of the standard of "all well-pled allegations are taken as true unless positively rebutted by the record of the proceedings," any number of his allegations, standing alone, cry out for an evidentiary hearing at the third-stage. It is at such a hearing that the trial court can flush out truth from fiction and ensure that John Castellanos has received the full benefits that he is entitled to under the law.



### CONCLUSION

For the foregoing reasons, John Castellanos, Defendant-Appellant, respectfully requests that this Honorable Court reverse the dismissal of his Post-Conviction Petition and send this matter back to the Circuit Court for a third-stage evidentiary hearing.

Respectfully submitted,

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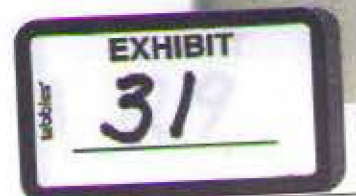
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IN THE APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT

No. 2-17-0605

**PEOPLE OF THE STATE OF ILLINOIS,**

*Plaintiff-Appellee,*

-vs-

**JOHN CASTELLANOS,**

*Defendant-Appellant.*

On Appeal from the Circuit Court of Du Page County, Illinois;  
No. 12 CF 1107; The Hon. Liam C. Brennan, Circuit Judge, Presiding.

**APPELLANT'S PETITION FOR REHEARING**

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ADM-PROD-002065



IN THE APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT

---

No. 2-17-0605

---

**PEOPLE OF THE STATE OF ILLINOIS,**

*Plaintiff-Appellee,*

-vs-

**JOHN CASTELLANOS,**

*Defendant-Appellant.*

---

**APPELLANT'S PETITION FOR REHEARING**

---

**Grounds for Rehearing**

Appellant John Castellanos, by his attorneys John Paul Carroll and Michelle Gonzalez, respectfully petitions for rehearing of the summary order of May 2, 2018, dismissing this appeal for failure to comply with Illinois Supreme Court Rule 341(h)(7) in his opening brief. Appellant respectfully submits that the remedy of dismissal imposed in this case is excessively severe and penalizes appellant with the forfeiture of his appeal due to the errors of his attorney. He submits that an order striking his brief and directing him to file an amended brief in compliance with Rule 341(h)(7) is the adequate and appropriate remedy.

This petition is filed within twenty-one days of the order of summary dismissal, as required by Supreme Court Rule 367(a). Simultaneously with this petition, appellant is filing a motion to reconsider and vacate the order of dismissal as an alternate procedural basis for the same relief.

-1-

ADM-PROD-002066

The summary order recites:

Defendant's brief consists of a general outline of the numerous claims that he made in his postconviction petition, and four pages of block quotations from cases concerning the stages of postconviction proceedings. Defendant concludes with his "argument" that, taking the allegations of his petition as true, "any number of his allegations, standing alone, cry out for an evidentiary hearing at the third stage." However, he does not tell us why. . . . Given the absence of clearly defined issues supported with cohesive arguments and citation to pertinent authority, we will not consider defendant's appeal.

The order concludes, "Where an appellant's brief does not comply with the supreme court rules, we have the inherent authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). Accordingly, we do so here. Appeal dismissed."

Rehearing is requested because the sanction imposed, the most drastic remedy available in the court's discretionary armory, is excessively severe and unfairly penalizes the appellant for the curable mistakes of his attorney. Appellant recognizes that where an appellant's brief does not comply with the supreme court rules, the court has the inherent authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (1st Dist. 2005). Violation of the rules does not divest the court of jurisdiction, but rather is an admonishment to the parties. *Zadrozny v. City Colleges*, 220 Ill. App. 3d 290 (1991). Whether to impose the sanction of dismissal is a matter committed to the reviewing court's discretion. *In re: Marriage of Gallagher*, 256 Ill. App. 3d 493 (1st Dist. 1993), *Alderson v. Southern Company*, 321 Ill. App. 3d 822 (1st Dist. 2001).

In this case appellant Castellanos has colorable and arguably meritorious grounds for appealing the stage-two dismissal of his post-conviction petition. Rather than review all of his claims in the context of this motion, it is sufficient to point to one example. Castellanos claimed that he received ineffective assistance of counsel when the attorneys at his trial *in absentia* failed to present the testimony of his wife



that the firearms and drugs found in the house were hers and not his. The petition was supported by Ruth Castellanos's affidavit. The state asserted two bases for dismissal of this claim, both of which would have been successfully refuted by argument satisfying Rule 341(h)(7).

First, the State asserted in its motion to dismiss that counsel's failure to call Ruth Castellanos was a matter of reasonable trial strategy because the prosecution had put into evidence the defendant's custodial statement that admitted that the firearms and the drugs were his. The contradiction between defendant's custodial statement and his wife's acknowledgement that the items were hers presented a disputed issue of fact for the jury. If the jury found Ruth Castellanos's testimony credible it could have rejected defendant's custodial statement, perhaps concluding that he made the admission in order to protect his wife. The fact that credible defense evidence may be contradicted by some evidence offered by the state is not by itself grounds not to present the exculpatory evidence and a decision not to present exculpatory evidence is not reasonable trial strategy. *See, e.g., People v. Baines*, 399 Ill. App. 3d 881, 896 (2nd Dist. 2010) ("The State also argues that defense counsel's actions were merely trial strategy. But it defies reason to believe that defense counsel would intentionally fail to bring out the very essence of the defense theory in the clearest possible manner."), *People v. Garza*, 180 Ill. App. 3d 263, 269 (1st Dist. 1989) ("We can conceive of no sound tactical reason not to call defendant's [witnesses].")

Second, the state asserted that defendant was not prejudiced by the failure of counsel to present his wife's testimony because there was overwhelming evidence of his constructive possession. *People v. Hammer*, 228 Ill. App. 3d 318 (2nd Dist. 1992) is dispositive of this argument. Whether the state has established constructive possession is a question of fact for resolution by the jury. Merely because the



prosecution has offered evidence from which an inference of constructive possession can be drawn does not mean that the jury was required to draw that inference. The ineffective assistance of counsel consisted in failing to challenge the heart of the prosecution's case with the testimony of a readily available witness. Castellanos has a strong argument that second-stage dismissal of this claim was improper.

Appellant concedes that the argument section of his brief was deficient and failed to comply with Rule 341(h)(7), and apologizes both to this court and to the People. The remedy of dismissal, however is excessive in that it deprives him altogether of his right to pursue a potentially meritorious appeal for defects in his filings which are curable. As recited in his simultaneously filed motion to reconsider, appellant's counsel have retained attorney Joshua Sachs, a former assistant in the second district office of the State Appellate Defender, to make revisions necessary to bring his brief into compliance. A copy of the verified statement of attorney Sachs, as submitted with the motion to reconsider, is attached as an appendix to this petition. Although he had no contact or familiarity with this case until after the entry of the dismissal order of May 2, he has made a preliminary review of appellant's brief as originally submitted, has made an initial review of excerpts from the record on appeal, and is prepared, should the court grant this motion, to revise appellant's brief so as to bring it into compliance with the Supreme Court Rules.

#### **Conclusion**

Appellant submits that the remedy of dismissal is excessive where he has made a good-faith effort to comply with the applicable rules of court, where the conceded deficiencies in his filings are curable, and where his attorneys have obtained assistance of experienced appellate counsel to bring his brief into compliance.

**Wherefore**, appellant respectfully moves that this court, in the exercise of its discretion, vacate the order of dismissal entered on May 2, 2018, that it reinstate his appeal, and that it grant him an extension of time to and including July 16, 2018, in which to file an amended and corrected opening brief.

Respectfully,

/s/ John Paul Carroll

*Attorney for Appellant*

**CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 341(c)**

I certify that this petition for rehearing conforms to the requirements of Rules 341(a) and (b) and 367(a). The length of this petition, excluding the pages containing the cover and appendix, is 5 pages.

/s/ John Paul Carroll

*Attorney of Record for Appellant*

John Paul Carroll  
Michelle Gonzalez  
608 S. Washington  
Naperville IL 60540  
Tel: 630-717-5000  
email: johnpaulcarroll@aol.com

**APPENDIX**

People v. Castellanos, summary order, May 2, 2018 ..... A1-4  
Verified Statement of Joshua Sachs ..... A5-6





2-17-0605

In the Appellate Court of Illinois  
Second Judicial District

E-FILED  
Transaction ID: 2-17-0605  
File Date: 5/23/2018 2:16 PM  
Robert J. Mangan, Clerk of the Court,  
APPELLATE COURT 2ND DISTRICT

No. 2-17-0605

MB

People of the State of Illinois,

*Plaintiff-Appellee,*

-vs-

John Castellanos,

*Defendant-Appellant.*

---

APPELLANT'S MOTION TO RECONSIDER AND VACATE  
ORDER OF DISMISSAL AND TO REINSTATE APPEAL

Appellant John Castellanos, by his attorneys John Paul Carroll and Michelle Gonzalez, respectfully moves that this court vacate the summary order entered on May 2, 2018, dismissing this appeal, and that it reinstate the appeal, strike appellant's opening brief, and grant an extension of time for appellant to submit an amended opening brief that will comply with Illinois Supreme Court Rule 341(h)(7). In support of his motion appellant submits that:

1. This case is before the court on appeal from a final order of the circuit court of Du Page County granting the People's motion to dismiss appellant's post-conviction petition.
2. On May 2, 2018, this court entered a Supreme Court Rule 23(c)(2) summary order dismissing the appeal for failure of appellant's opening brief to comply with Illinois Supreme Court Rule 341(h)(7).

**Procedural Status**

3. Appellant filed timely notice of appeal from the final order of the circuit court.

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ADM-PROD-002457

4. By summary order entered May 2, 2018, this court ordered the appeal dismissed for failure of appellant's brief to comply with Illinois Supreme Court Rule 341(h)(7), which sets forth the requirements for the argument section of an appellant's brief, and requires an appellant to include in his brief "[a]rgument, which shall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and pages of the record relied on" and provides that "points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."

5. The summary order recited:

Defendant's brief consists of a general outline of the numerous claims that he made in his postconviction petition, and four pages of block quotations from cases concerning the stages of postconviction proceedings. Defendant concludes with his "argument" that, taking the allegations of his petition as true, "any number of his allegations, standing alone, cry out for an evidentiary hearing at the third stage." However, he does not tell us why. . . . Given the absence of clearly defined issues supported with cohesive arguments and citation to pertinent authority, we will not consider defendant's appeal.

6. This court's order concluded, "Where an appellant's brief does not comply with the supreme court rules, we have the inherent authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. Ap. 3d 36, 42 (2005). Accordingly, we do so here. Appeal dismissed."

7. Simultaneously with this motion to vacate, and as a procedurally alternative form of relief, appellant has filed a petition for rehearing seeking the same relief requested in this motion.

8. This motion is filed within 21 days of the entry of the order of dismissal.

#### **Grounds for Relief**

9. Reconsideration is requested because the sanction imposed by this court's order is excessively severe and unfairly penalizes the appellant for the mistakes of his attorney.



10. Appellant recognizes that where an appellant's brief does not comply with the supreme court rules, the court has the inherent authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (1st Dist. 2005). Violation of the rules, does not divest the court of jurisdiction, but rather is an admonishment to the parties. *Zadrozny v. City Colleges*, 220 Ill. App. 3d 290 (1991). Whether to impose the sanction of dismissal is a matter of the reviewing court's discretion. *In re: Marriage of Gallagher*, 256 Ill. App. 3d 493 (1st Dist. 1993), *Alderson v. Southern Company*, 321 Ill. App. 3d 822 (1st Dist. 2001).

11. Appellant respectfully submits that his appeal presents a meritorious issue for this court's review as to whether his post-conviction claims were sufficient to survive a stage two motion to dismiss without a third-stage evidentiary hearing. As this court is aware, the circuit court allowed the petition to advance to the second stage, finding that Castellanos satisfied the first-stage obligation to present the gist of a constitutional claim, *People v. Edwards*, 197 Ill. 2d 239, 244 (2001), a standard that requires the petitioner to allege sufficient facts to make out claim that is arguably constitutional. *People v. Hodges*, 234 Ill. 2d 1 (2009), *People v. Allen*, 2015 IL 113135, ¶ 25 (2015). At the second stage all well-pleaded facts are taken as true for purposes of ruling on a motion to dismiss. *People v. Caballero*, 126 Ill. 2d 248, 259 (1989), *People v. Wegner*, 40 Ill. 2d 28, 31-32, (1968). Dismissal at the, second stage is warranted only when the petition's allegations of fact, liberally construed in favor of the petitioner and in light of the original trial record, fail to make a substantial showing of imprisonment in violation of the state or federal constitution. *People v. Domagala*, 2013 IL 113688, ¶35 (2013). *People v. Tate*, 2012 IL 112214, ¶10 (2012), *People v. Coleman*, 183 Ill. 2d 366, 382 (1998). If the Circuit Court does not dismiss the petition at the pleading stage, the proceeding advances to the third



stage, at which the court conducts evidentiary hearings. 725 ILCS 5/122-6, *People v. Gaultney*, 174 Ill. 2d 410, 418, (1996).

12. Significantly for Castellanos's case, denial of a legally sufficient petition on the merits, without evidentiary hearing and based solely on the pleadings, is forbidden under Illinois law. *Coleman*, 183 Ill. 2d at 385, 701 N.E.2d at 1073.

At the dismissal stage of a post-conviction proceeding, all well-pleaded facts that are not positively rebutted by the original trial record are to be taken as true. The inquiry into whether a post-conviction petition contains sufficient allegations of constitutional deprivations does not require the circuit court to engage in any fact-finding or credibility determinations. The Act contemplates that such determinations will be made at the evidentiary stage, not the dismissal stage, of the litigation.

Thus petitioner must be granted an evidentiary hearing unless his claims are either facially invalid or are positively rebutted by the original trial record. *Id.*

13. A review of Castellanos's post-conviction petition demonstrates that at least some of his claims had sufficient merit and both legal and factual basis to satisfy the stage-two standard, to withstand a motion to dismiss, and to call for an evidentiary hearing if not for the outright grant of the petition. Rather than review all of his claims in the context of this motion, it is sufficient to point to one instance.

14. Castellanos claimed that he received ineffective assistance of counsel when the attorneys at his trial *in absentia* failed to present the testimony of his wife, Ruth Castellanos, that the firearms and drugs found in the house were hers, not his. The petition was supported by Ruth Castellanos's affidavit. The state asserted two bases for dismissal of this claim. First, it asserted that counsel's failure to call Ruth Castellanos was a matter of trial strategy and was appropriate because the prosecution had put into evidence the defendant's custodial statement that admitted that the firearms and the drugs were his. The

contradiction between defendant's custodial statement and his wife's acknowledgement that the items were hers presented a disputed issue of fact for the jury. If the jury had found Ruth Castellanos's testimony credible it could have rejected defendant's custodial statement, perhaps concluding that he made the admission in order to protect his wife. The fact that credible defense evidence may be contradicted by some evidence offered by the state is not by itself grounds not to present the exculpatory evidence and a decision not to present exculpatory evidence is not reasonable trial strategy. See, e.g., *People v. Baines*, 399 Ill. App. 3d 881, 896 (2nd Dist. 2010) ("The State also argues that defense counsel's actions were merely trial strategy. But it defies reason to believe that defense counsel would intentionally fail to bring out the very essence of the defense theory in the clearest possible manner."), *People v. Garza*, 180 Ill. App. 3d 263, 269 (1st Dist. 1989) ("We can conceive of no sound tactical reason not to call defendant's [witnesses].") Second, the state asserted that defendant was not prejudiced by the failure of counsel to present his wife's testimony because there was overwhelming evidence of his constructive possession. *People v. Hammer*, 228 Ill. App. 3d 318 (2nd Dist. 1992) is dispositive of this argument. Whether the state has established constructive possession is a question of fact for resolution by the jury. Merely because the prosecution has offered evidence from which an inference of constructive possession can be drawn does not mean that the jury was required to draw that inference. The ineffective assistance of counsel consisted in failing to challenge the heart of the prosecution's case with the testimony of a readily available witness. Castellanos has a strong argument that second-stage dismissal of this claim was improper.



15. Appellant concedes that the argument section of his brief was deficient and failed to comply with Rule 341(h)(7), and apologizes both to this court and to the People.
16. Appellant submits, however, that the remedy of dismissal is excessive in that it deprives him altogether of his right to pursue a potentially meritorious appeal for defects in his filings which are curable.
17. Appellant has attempted to pursue this appeal vigorously and in good faith.
18. Appellant's counsel have retained attorney Joshua Sachs, a former assistant in the second district office of the State Appellate Defender, to make revisions necessary to bring his brief into compliance.
19. The verified statement of attorney Sachs is attached to this motion. Although he had no contact or familiarity with this case until after the entry of the dismissal order of May 2, 2018, he has made a preliminary review of appellant's brief as originally submitted, has made an initial review of the record on appeal, and is prepared, should the court grant this motion, to revise appellant's brief so as to bring it into compliance with the Supreme Court Rules.
20. The verified statement of attorney Sachs also explains his present deadline obligations in other cases through June 30 and his suggestion that this court set a filing date for appellant's amended opening brief of July 16, 2018.

#### **Conclusion**

21. Appellant submits that the remedy of dismissal is excessive where he has made a good-faith effort to comply with the applicable rules of court, where the conceded deficiencies in his filings are curable, and where his attorneys have obtained assistance of experienced appellate counsel to bring his brief into compliance.



**Wherefore**, appellant respectfully moves that this court vacate the order of dismissal entered on May 2, 2018, that it reinstate his appeal, and that it grant him an extension of time to and including July 16, 2018, in which to file an amended and corrected opening brief.

Respectfully,

/s/ John Paul Carroll

*Attorney for Appellant*

John Paul Carroll  
Michelle Gonzalez  
608 S. Washington St.  
Naperville IL  
Tel: 630-717-5000  
email: johnpaulcarroll@aol.com

State of Illinois

Cook County

ss.

VERIFIED STATEMENT OF JOSHUA SACHS

I, Joshua Sachs, certify, pursuant to Section 1-109 of the Code of Civil Procedure, that:

1. I am an attorney licensed to practice law in the State of Illinois since 1974, and in good standing.
2. I am in private practice with offices in Evanston and Chicago, Illinois, concentrating my practice in the defense of criminal cases at the appeal level. I previously served for approximately eight years with the Office of the State Appellate Defender, including service in the Second District office under then Deputy Defender Ralph Ruebner. I have filed briefs and presented oral argument in well over two hundred cases before all five districts of the appellate court, before the Illinois Supreme Court, before the United States Courts of Appeal for the Seventh and Ninth Circuits and before the Supreme Court of the United States (briefing only; no oral argument before the United States Supreme Court).
3. I am making this statement in connection with a proposed Motion to Reconsider and Vacate Order of dismissal to be filed on behalf of appellant John Castellano in the matter of *People v. Castellano*, pending before the appellate court as docket no. 2-17-0605.
4. I have agreed with appellant's attorneys of record that if the appellate court vacates the order of dismissal and reinstates Mr. Castellano's appeal, I will revise and amend appellant's brief so as to bring it into compliance with the applicable Illinois Supreme Court Rules.
5. It is my opinion based on my review of the record postconviction pleadings as filed in the circuit court that appellant has a colorable and arguably meritorious claim to raise on his appeal.
6. Due to my prior obligations to other courts at the time I was first contacted about this case, I have not been able to revise appellant's brief so as to allow appellant to tender an amended brief for proposed filing *instanter* together with his Motion to Reconsider and Vacate Dismissal. I am completing appellant's opening brief in *People v. Martin* (1st Dist. No. 1-16-2645), which I am acting as a contract attorney to the State Appellate Defender, not later than June 30, the case having been assigned to me because it is substantially past its due date. Simultaneously I must prepare a reply brief in *People v. Sinico*, (1st Dist. No. 1-17-0760) on which my motion for an extension of time to June 30, 2018 is pending, the reply having originally been due on May 15. I am also required to prepare sentencing memoranda on an exceptionally difficult federal fraud case, *United States v. Weinstock*, (No. 15-cr-295, in the United States District Court for the Northern District of Illinois, Judge Coleman) Defendant's sentencing memorandum is due on June 1, 2018, and his reply memorandum is due on June 8, 2018. Sentencing is set for June 15th. I expect to be seeking an extension of time on the *Weinstock* matter.

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ADM-PROD-002483



7. If this court allows appellant's Motion to Reconsider and Vacate Dismissal I will do my utmost to work on a revision of his opening brief simultaneously with my work on the *Martin* and *Sinico* matters. Once those briefs are filed I propose, in recognition of the history of this appeal, to make that revision my first priority. If continuance of the *Weinstock* matter is granted, all of these matters will advance on my docket by several weeks.

8. Based on what I know of the present case and on my prior obligations as set forth above, an extension of time to and including July 16, 2018, would be reasonable to allow me to revise appellant's opening brief for review and filing by counsel of record. I would expect that date to advance if a continuance is allowed in the *Weinstock* case.

Under penalties as provided by law pursuant to Section 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 state to be on information and belief, and as to such matters the undersigned certifies that he verily believes the same to be true.

/s/ Joshua Sachs

May 23, 2018





STATE OF ILLINOIS  
**APPELLATE COURT**  
SECOND DISTRICT  
55 SYMPHONY WAY  
ELGIN, IL 60120

CLERK OF THE COURT  
(847) 695-3750

TDD  
(847) 695-0092

June 13, 2018

John Paul Carroll  
Law office of John Paul Carroll  
608 S. Washington St.  
Naperville, IL 60540

RE: People v. Castellanos, John  
General No.: 2-17-0605  
County: DuPage County  
Trial Court No: 12CF1107

The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless otherwise ordered by this court or a petition for leave to appeal is filed in the Illinois Supreme Court.

Motion by appellant to reconsider is denied.

Honorable Donald C. Hudson  
Honorable Mary S. Schostok  
Honorable Robert B. Spence

Robert J. Mangan  
Clerk of the Appellate Court

cc: Joshua Sachs  
Kristin Marie Schwind



ADM-PROD-001999

**From:** [Michelle Gonzalez](#)  
**To:** [Cristina Caballero](#)  
**Cc:** [rcast1723](#); [darlan\\_maya](#); [paralegalcc@gmail.com](#)  
**Subject:** 7.17.18 Re: People v. John Castellanos (motions denied II)  
**Date:** Tuesday, July 17, 2018 2:08:07 PM

---

We were hired to do the post conviction petition.

On Tue, Jul 17, 2018, 1:36 PM Cristina Caballero <[ccaballero@spydavlaw.com](mailto:ccaballero@spydavlaw.com)> wrote:

Why wouldn't Mr. Sachs appeal? I don't understand.

**SpyDavSig**



linkedin fb

**Cristina Caballero**

Paralegal to Kimberly A. Davis, Douglas S. Strohm  
and Andrea L. Kmak

SpyratosDavis LLC

1001 Warrenville Road Suite 210

Lisle, IL 60532

Direct: 630.810.9067 / Fax: 630.963.8733

[ccaballero@spydavlaw.com](mailto:ccaballero@spydavlaw.com)

[www.spydavlaw.com](http://www.spydavlaw.com)

Please be advised that this e-mail and any files with it are confidential attorney-client communication or may otherwise be privileged or confidential, and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or re-transmit this communication but delete it immediately and contact me to notify me that you have received this communication in error. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

---

**From:** Michelle Gonzalez [<mailto:michelle.gonz.esq@gmail.com>]  
**Sent:** Tuesday, July 17, 2018 1:06 PM  
**To:** Cristina Caballero <[ccaballero@spydavlaw.com](mailto:ccaballero@spydavlaw.com)>  
**Subject:** RE: People v. John Castellanos

No. He will not. You will have to hire an attorney if you would like to appeal to the supreme court.

On Jul 17, 2018 12:56 PM, "Cristina Caballero" <[ccaballero@spydavlaw.com](mailto:ccaballero@spydavlaw.com)> wrote:

I take it that at this point, Joshua Sachs will appeal the decision then correct?

**Cristina Caballero**

Paralegal to Kimberly A. Davis, Douglas S. Strohm  
and Andrea L. Kmak

0065

ADM-PROD-002442

