

No. _____

E-FILED
 2/24/2020 12:34 PM
 Carolyn Taft Grosboll
 SUPREME COURT CLERK

IN THE
 SUPREME COURT OF ILLINOIS

| | | |
|-----------------------------|---|---------------------------------------|
| JUSSIE SMOLLETT, |) | Appeal from the Circuit Court of Cook |
| |) | County, Illinois, County Department |
| Movant, |) | Criminal Division |
| |) | |
| |) | Circuit Court No. |
| v. |) | No. 19 MR 00014 |
| |) | |
| |) | |
| THE HON. MICHAEL P. TOOMIN, |) | The Honorable |
| |) | Michael P. Toomin, |
| Respondent. |) | Judge Presiding. |

**EMERGENCY MOTION FOR SUPERVISORY ORDER PURSUANT TO RULE 383
 AND MOVANT’S EXPLANATORY SUGGESTIONS IN SUPPORT OF THE MOTION**

William J. Quinlan
 Lisa H. Quinlan
 David Hutchinson
 THE QUINLAN LAW FIRM, LLC
 Willis Tower
 233 South Wacker Drive, Suite 6142
 Chicago, Illinois 60606
 (312) 883-5500
wjq@quinlanfirm.com
lquinlan@quinlanfirm.com
dhutchinson@quinlanfirm.com

Tina Glandian
 Rule 707 Admission forthcoming
 GERAGOS & GERAGOS, APC
 256 5th Avenue
 New York, New York 10001
 (213) 625-3900
tina@geragos.com

Attorneys for Jussie Smollett

EMERGENCY MOTION FOR SUPERVISORY ORDER

Pursuant to Supreme Court Rule 383, Movant Jussie Smollett (“Movant”) respectfully requests that the Court issue a Supervisory Order compelling the Honorable Michael P. Toomin (“Respondent”) to vacate the Order entered on June 21, 2019 granting the appointment of a special prosecutor and the Order entered on August 23, 2019 appointing Dan K. Webb as the special prosecutor. In further support of this Motion, Movant states as follows:

INTRODUCTION

1. Movant Jussie Smollett requests a Supervisory Order from the Court to vacate Respondent’s Orders that appointed a special prosecutor contrary to the requirements of Illinois law and, in addition, vested the special prosecutor with overly broad duties that have now resulted in a second prosecution of Mr. Smollett, on identical charges that were previously *nolle prossed* by the duly-elected State’s Attorney. Despite Mr. Smollett’s clear interest in the underlying matter, Respondent denied Mr. Smollett’s Petition for Intervention on the grounds that Mr. Smollett’s interest was purely hypothetical. Mr. Smollett, now facing an arraignment on the second round of charges, has an actual and clear interest and seeks the Court’s intervention.

2. Mr. Smollett is unable to obtain relief via typical appellate avenues so that a Supervisory Order from the Court is warranted. Indeed, on July 31, 2019, Respondent denied Mr. Smollett’s request to intervene and reconsider the appointment of a special prosecutor, rulings that were not immediately appealable under Rule 301. The Special Prosecutor has now filed charges against Mr. Smollett. To the extent the second indictment of Mr. Smollett has terminated the proceedings in the underlying matter, an appeal would not afford Mr. Smollett adequate relief. Specifically, if a reviewing court were to reverse the denial of the Petition to Intervene, such an action would not specifically address the appointment of the Special Prosecutor which Mr. Smollett contends was improper and contrary to Illinois law. Thus, the extraordinary remedy of supervisory order is necessary.

REVLEVANT BACKGROUND

3. The renewed criminal prosecution giving rise to this Motion stems from a racist and homophobic attack on Movant Jussie Smollett on January 29, 2019 by two masked men. Although Mr. Smollett was initially treated as the victim of a hate crime, the Chicago Police Department later accused Mr. Smollett of staging the hate crime and filing a false police report.

4. On March 7, 2019, a felony indictment was filed against Mr. Smollett in the Circuit Court of Cook County, case number 19 CR 3104, alleging 16 counts of disorderly conduct, namely filing a false police report in violation of Chapter 720, Act 5, Section 26-1(a)(4) of the Illinois Compiled Statutes Act of 1992, as amended.

5. On March 26, 2019, the State's Attorney's Office moved to *nolle pros* all 16 counts. The Honorable Steven G. Watkins granted the motion and dismissed the case against Mr. Smollett. The \$10,000.00 bond Mr. Smollett had posted was forfeited, as agreed by the parties. Judge Watkins also ordered the records in this matter sealed.¹

6. At the time, this matter had drawn national attention and the sudden dismissal of all charges without proper explanation caused public confusion.

7. On April 5, 2019, Sheila M. O'Brien, in *pro se*,² filed a Petition to Appoint a Special Prosecutor to preside over all further proceedings in the matter of the *People of the State of Illinois v. Jussie Smollett* (hereafter "Petition"). SR1.

8. Movant and Cook County State's Attorney Kim Foxx both filed separate oppositions to the Petition. SR29 & SR37.

9. On May 10, 2019, Judge Martin transferred the matter to Respondent, the

¹ On May 23, 2019, Judge Watkins granted the Media Intervenors' "Emergency Motion to Intervene for Purposes of Objecting to and Vacating the Sealing Order," which had been filed on April 1, 2019. Mr. Smollett's records were unsealed on a rolling basis following the Court's May 23, 2019 Order.

² Ms. O'Brien had no relation to the case; rather, she asserted standing based on her status as a resident of Cook County who was unsatisfied with the unexplained dismissal of charges against Mr. Smollett.

Honorable Michael Toomin of the Juvenile Justice Division.³

10. On June 21, 2019, Respondent issued a written order granting the appointment of a special prosecutor. Specifically, Respondent appointed a prosecutor authorized as follows:

“to conduct an independent investigation of any person or office involved in all aspects of the case entitled the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, and if reasonable grounds exist to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result. Additionally, in the event the investigation establishes reasonable grounds to believe that any other criminal offense was committed in the course of the Smollett matter, the special prosecutor may commence the prosecution of any crime as may be suspected.”

SR51.

11. On July 19, 2019, Movant Jussie Smollett filed four motions: (1) Motion for the Substitution for Cause of the Honorable Michael P. Toomin, Judge Presiding, and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions; (2) Motion to Intervene Instantly; (3) Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor; and (4) Motion to Disclose Transcripts of Grand Jury Testimony. SR74, SR83, SR93, SR246. Petitioner O’Brien opposed the motions and Mr. Smollett filed replies in support of his motions. SR315.

12. On July 31, 2019, the parties appeared before Respondent for a hearing on Mr. Smollett’s motions. Respondent denied the motion for substitution of judge for cause. In doing so, Respondent stated:

And for these reasons -- both of them, the lack of a valid affidavit and the fact that the bias and prejudice are shown by matters occurring within this proceeding -- I will deny the motion to transfer this case, and the motion for substitution of Judges

³ On May 2, 2019, the parties appeared before Judge LeRoy Martin, Jr. on the various motions that had been filed. During the hearing, Ms. O’Brien filed a suggestion of recusal based on recent media reports that Judge Martin’s son worked for the Cook County State’s Attorney’s Office as an Assistant State’s Attorney. After argument by Ms. O’Brien and counsel, the court adjourned the hearing until May 10, 2019 so Judge Martin could read and consider Ms. O’Brien’s suggestion of recusal and any response the State’s Attorney’s Office chose to file. The court subsequently found that recusal was unnecessary, but transferred the matter “in the interest of justice.”

shall be and is hereby denied.⁴

SR349. (Tr. at 13)

13. As to the motion to intervene, Mr. Smollett, through counsel, argued that Mr. Smollett “should be entitled to intervene in a case that directly impacts him, in which [h]is interests are not represented, and in which constitutional concerns are raised.” SR83. Respondent ruled that the appointment of counsel would not necessarily directly impact Mr. Smollett:

THE COURT: You say directly impact him?

MS. GLANDIAN: Correct.

THE COURT: Seems to me, by recalling the granting of the prayer for relief, I indicated that the Special Prosecutor saw fit, if there was a reasonable ground to re-prosecute Mr. Smollett, and if it was in the interest of justice, that was within the purview of his grant of authority.

I don’t consider that to be a direct -- direct cause or effect upon Mr. Smollett. It is conditional. It could happen; it could not happen. But it’s not a direct consequence of the authority to further prosecute him, if these contingencies are met.

MS. GLANDIAN: And your Honor, I believe the law is -- may or will be bound. It’s not will be bound, but it’s may, may be bound. And so as your Honor just conceded, he may be bound if the Special Prosecutor determines that they believe it’s appropriate to further prosecute him.

THE COURT: Okay.

MS. GLANDIAN: And so I think it’s fundamentally unfair for him not to have an opportunity to raise these issues, and to actually visit the grounds upon which the Court even appointed the Special Prosecutor, which we believe is flawed, and again, I think it’s in everyone’s interest to actually address that motion on its merits and for the Court to look at that order again, and the basis on which it was granted.

SR356-SR357. (Tr. at 20-21)

⁴ Mr. Smollett maintains that his motion for substitution of judge for cause was improperly denied because (1) an affidavit was not required where actual bias and prejudice could be established from the assertions in the Court’s June 21, 2019 Order itself; (2) the affidavit by Mr. Smollett’s counsel affirming the basis for the substitution of Judge Toomin for cause was adequate; and (3) despite his finding that no extrajudicial source was involved, the June 21, 2019 Order indicated that fair judgment was impossible.

14. Respondent later added: “One further issue I would like to address, and that is under the intervention statute, while the party need not have a direct interest in the pending suit to intervene, he must stand to gain or lose by direct legal operation and effect of the judgment in that suit. If his interest is speculative or hypothetical, this does not constitute sufficient evidence or sufficient interest to warrant intervention.” SR367 (Tr. at 31).

15. In denying the motion to intervene, Respondent stated:

Post-judgment intervention is limited to situations where it is the only way of protecting the rights of the intervenor.

That is not applicable here for the reasons I earlier expressed, that it’s not the – has no direct effect upon the rights of the intervenor. ***These issues could be raised at any time if, in fact, Mr. Smollett was prosecuted.***

SR364 (Tr. at 28) (emphasis added).

16. Accordingly, Respondent ruled: “The Court will deny the motion to intervene. Based upon that ruling, there is no basis to proceed with the motion for reconsideration, the Court having ruled that there is no right to intervene as is requested, and the -- also the motion to publish the Grand Jury transcript that was referred to in Counsel’s pleadings.” SR368 (Tr. at 32).

17. On August 23, 2019, over Mr. Smollett’s objection, Respondent appointed Dan K. Webb, a private attorney as the special prosecutor to preside over further proceedings in this matter. SR370.

18. On February 11, 2020, pursuant to an investigation led by Mr. Webb, a special grand jury indicted Mr. Smollett of six counts of disorderly conduct, namely filing a false police report in violation of Chapter 720, Act 5, Section 26-1(a)(4) of the Illinois Compiled Statutes Act of 1992, as amended. The charges arise from the same January 29, 2019, attack on Mr. Smollett, which was previously the subject of a 16-count indictment against him in the Circuit Court of Cook County, case number 19 CR 3104 (filed on March 7, 2019 and dismissed on March 26, 2019). SR373

19. Movant's arraignment on the new indictment is scheduled on February 24, 2020.⁵

ARGUMENT

20. By appointing a special prosecutor, Respondent exceeded its jurisdiction because the circuit court lacked authority to essentially horizontally reverse the circuit court's dismissal of the case and to appoint a special prosecutor to "further prosecute" Mr. Smollett. As discussed herein and in the Suggestions filed in Support, the appointment of the special prosecutor failed to comply with applicable law, as established by section 3-9008 of the Counties Code. 55 ILCS 5/3-9008.

21. The appointment was contrary to Illinois law for numerous reasons. Section 3-9008 provides the legal framework within which a court may appoint a special prosecutor. Subsections (a-5) and (a-10) authorize the appointment of a special prosecutor on a petition by an interested person or on the court's motion in two discreet situations -- when the State's Attorney has a conflict of interest or when the State's Attorney is unable to fulfill his or her duties. Respondent ruled that neither of these circumstances existed.

22. Subsection (a-15) provides that a court shall appoint a special prosecutor when a State's Attorney files a petition for recusal. Despite the clear requirements of the statute and the undisputed fact that the State's Attorney did *not* file a petition, Respondent appointed a special prosecutor.

23. In addition, Respondent determined that all prior proceedings against Mr. Smollett were null and void. Such a ruling was without basis in fact or law and wholly undermines the appointment of a special prosecutor here.

24. Section 3-9008 of the Counties Code provides that before appointing a private attorney, the court shall first contact public agencies "to determine a public prosecutor's availability to serve as a special prosecutor at no cost to the county and shall appoint a public agency if they are able and willing to accept the appointment." 55 ILCS 5/3-9008 (a-20). Here,

⁵ Concurrent with the filing of this Motion, Mr. Smollett is filing a Motion to Stay the criminal proceedings related to the second prosecution.

Respondent indicated that it had contacted numerous public agencies but that only three public prosecutors had advised him of their willingness to serve as the special prosecutor in this case. When counsel for Mr. Smollett objected to the appointment of Mr. Webb based on the fact that three public prosecutors were available for the appointment, Respondent stated that although the three public officials were willing to serve as the special prosecutor, it was his opinion that they were willing but not “able.” Respondent failed to provide any explanation for his conclusion. Such action was in excess of the authority provided under the law.

25. The Court may issue a supervisory order “when the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice.” Ill. Sup. Ct. R. 383; *Burnette v. Terrell*, 232 Ill. 2d 522, 545 (2009) (citations omitted). Here, the Court’s intervention under Rule 383 is necessary because the typical appellate process is unable to afford Movant meaningful relief. Mr. Smollett is facing imminent criminal prosecution, including an arraignment on February 24, 2020, based on invalid court orders and proceedings that resulted in an improper indictment. Moreover, as discussed above, Respondent denied Mr. Smollett leave to intervene in the proceedings so that relief under the typical appellate process would be limited to reversing the denial of Mr. Smollett’s petition to intervene. A reversal of that Order would not necessarily vacate the appointment of the special prosecutor and additional proceedings would likely exist concurrently with the criminal prosecution of Mr. Smollett.

26. This unprecedented matter is important to the administration of justice. Due to the high profile of this case, by exceeding its jurisdiction and improperly appointing a special prosecutor with overly broad authority, Mr. Smollett has been harmed, but also the public interest and confidence in the integrity of the judiciary is implicated.

WHEREFORE, Movant respectfully requests that the Honorable Court grant his Motion for Supervisory Order and the following relief:

- (1) the June 21, 2019 Order granting the appointment of a special prosecutor is vacated;

- (2) the August 23, 2019 Order appointing Dan K. Webb as the special prosecutor is vacated;
- (3) the indictment filed on February 11, 2020 against Mr. Smollett is vacated; and
- (4) any further prosecution of Mr. Smollett for disorderly conduct arising from the January 29, 2019 attack based on the appointment of the Special Prosecutor is barred.

**MOVANT’S EXPLANATORY SUGGESTIONS
IN SUPPORT OF HIS MOTION FOR SUPERVISORY ORDER**

The renewed prosecution of Mr. Smollett is truly unprecedented and stems from the improper appointment of a special prosecutor. Illinois law sets forth a clear framework that applies to the appointment of a special prosecutor, section 3-9008 of the Counties Code. 55 ILCS 5/3-9008 Despite the fact that the statutory requirements set forth in section 3-9008(a-15) were not met, Respondent appointed a special prosecutor vested with overly broad authority. Tellingly, the Petition and the Order appointing the prosecutor concede that the appointment is based almost entirely on media reports and not on facts or evidence.⁶

Respondent exceeded its authority by appointing a special prosecutor under section 5/3-9008 (a-15) for several reasons. Although Respondent indicated that the appointment was premised on section 5/3-9008 (a-15), the statutory prerequisite for the appointment, namely the filing of a petition for recusal by the State’s Attorney, was not met. The record is undisputed that

⁶ Importantly, in ruling on the petition for the appointment of a special prosecutor, the court was not called upon to make a determination as to Mr. Smollett’s guilt or innocence of the prior charges. Rather, the court was required to determine whether the evidence in support of the petition established the statutory criteria for the appointment of a special prosecutor in accordance with section 3-9008. The Petition wholly lacked factual evidence to support any findings as to Mr. Smollett’s guilt. Rather, Petitioner O’Brien admitted that “[t]he evidence for this petition is what is reported in the press, not traditional evidence under oath.” SR16. And the court essentially agreed that it relied heavily on media reports as support for the factual allegations in the petition. See SR52. (“Petitioner’s factual allegations stem from a number of articles published in the Chicago Tribune, the Chicago Sun-Times and other newspapers as well as local broadcasts, together with Chicago Police Department reports and materials recently released by the State’s Attorney’s Office. Although the court recognizes that portions of these sources may contain hearsay rather than ‘facts’ within the semblance of a trial record, the materials provide a backdrop for consideration of the legal issues raised by the petition.”).

the State's Attorney did not file a petition for recusal and therefore, on this basis alone, the appointment does not meet the criteria established in section 3-9008 (a-15). Respondent also improperly ruled that the State's Attorney lacked the power to delegate her authority to one individual, her first assistant, to be exercised in a particular, individual, criminal prosecution. It is well settled that the duly elected State's Attorney, Kim Foxx, was well within her rights to do so and such a delegation has previously been sanctioned by Illinois courts.

Respondent further exceeded its authority when it ruled that Ms. Foxx's informal "recusal" rendered the entirety of the proceedings--from Mr. Smollett's arrest to the dismissal of the charges against him--null and void. Indeed, even if there was no valid authority to prosecute Mr. Smollett, this would not nullify the prior proceedings because the right to be prosecuted by someone with proper prosecutorial authority is a personal privilege held here by Mr. Smollett who has not challenged that prosecution. On the contrary, the People of the State of Illinois were properly represented by an Assistant State's Attorney acting with the permission and authority of the State's Attorney at all times during the proceedings. By ruling that such proceedings were void, Respondent well exceeded its authority.

Finally, Respondent appointed a special prosecutor vested with impermissibly vague and overbroad authority. The Order failed to limit the investigation in any way or specify a date or event that would terminate the special prosecutor's appointment. Moreover, the broad prescription of authority to the special prosecutor, namely that the special prosecutor may "further prosecute" Mr. Smollett if reasonable grounds exist, is vague and overbroad.

Mr. Smollett respectfully submits that the Court should invoke its supervisory authority and enter an Order that requires the circuit court to vacate the June 21, 2019 and August 23, 2019 Orders entered in excess of its authority and to prevent the renewed prosecution of Mr. Smollett based on a misapplication of the law.

ARGUMENT

I. The Court Should Exercise Its Supervisory Authority to Vacate the Circuit Court Orders of June 21, 2019 and August 23, 2019 That Exceeded the Circuit Court’s Authority.

Illinois Supreme Court Rule 383 authorizes the Court to exercise its broad supervisory authority over a lower court. *See* Ill. Sup. Ct. R. 383. In *People ex rel. Daley v. Suria*, the Supreme Court affirmed the breadth of its supervisory authority, stating that “[w]e may, under our supervisory authority, require a trial court to vacate orders entered in excess of its authority or as an abuse of discretionary authority.” 112 Ill. 2d 26, 38 (1986) (citing *People ex rel. Ward v. Moran*, 54 Ill. 2d 552 (1973); *Doherty v. Caisley*, 104 Ill. 2d 72 (1984)). The Court may also exercise its supervisory authority when, as here, the normal appellate process will not afford adequate relief or where the dispute involves a matter important to the administration of justice. *See Burnette v. Terrell*, 232 Ill. 2d 522, 545 (2009) (citations omitted).

Here, all of these factors warrant that the Court exercise its supervisory authority. *First*, Respondent clearly exceeded its authority when it entered the June 21, 2019, and August 23, 2019, Orders. As set forth herein, although the statutory prerequisite for the appointment of a special prosecutor was not established, Respondent not only appointed a special prosecutor but in so doing, provided an overbroad and vague delegation of authority to the special prosecutor. By doing so, Respondent effectively rewrote the special prosecutor statute (55 ILCS 5/3-9008 (a-15)) and deprived the State’s Attorney the discretion which the statute expressly grants the office. *Second*, the normal appellate process will not afford Mr. Smollett adequate relief because he is facing imminent criminal prosecution including an arraignment on February 24, 2020, that stems from the improper appointment of a special prosecutor. Respondent declined to allow Mr. Smollett to intervene and in so doing, did not consider the Motion for Reconsideration of the underlying appointment of a special prosecutor submitted by Mr. Smollett. Although Respondent indicated that Mr. Smollett’s interest was merely a hypothetical interest, it cannot be disputed that Mr. Smollett now has a real interest. Nonetheless, review of the denial of the intervention would not provide relief at this time because the appointment of the special prosecutor has led to new charges against Mr. Smollett. *Third*, the unprecedented and unique manner in which the special prosecutor

was appointed impacts the administration of justice. The issues in this case implicate core constitutional values, including the presumption of innocence, right to a fair trial, and separation of powers. Due to the high profile of this case, by exceeding its authority, Respondent has harmed not only Mr. Smollett, but also threatens to undermine public confidence in the integrity of the judiciary and improperly divest the duly elected State's Attorney of the authority granted to the office. Mr. Smollett respectfully submits that the Court's intervention is thus critical.

A. Respondent Exceeded Its Authority by Finding that the State's Attorney Formally Recused Herself Under Section 3-9008(a-15) in Order to Appoint a Special Prosecutor.

Section 3-9008 (a-5), (a-10) and (a-15) provide three bases in which a court may exercise its discretion to appoint a special prosecutor. Respondent properly rejected the Petition to the extent it sought the appointment based on subsections (a-5) and (a-10) and exclusively relied on subsection (a-15) in its ruling. Specifically, in the June 21, 2019, Order, Respondent first rejected Petitioner's argument that State's Attorney Kim Foxx was unable to fulfill her duties stemming from her "familiarity with potential witnesses in the case." *See* SR62-SR63 Respondent also recognized that "Petitioner has failed to show the existence of an actual conflict of interest in the Smollett proceeding." SR64. Nonetheless, based on public statements and an internal memorandum by the Chief Ethics Officer stating that State's Attorney Foxx had "recused" herself from this matter, the court found that "a reasonable assumption exists" that State's Attorney Foxx had invoked a permissive recusal under 55 ILCS 5/3-9008 (a-15) which can be done for "any other reason he or she deems appropriate." *Id.* In so ruling, Respondent misapplied the law and exceeded its authority.

Although section 3-9008(a-15) provides that the court shall appoint a prosecutor when a State's Attorney files "a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate," Respondent specifically noted in its Order that State's Attorney Foxx never filed a petition for recusal or otherwise alerted the court of her recusal. *Id.* Importantly, and in opposition to the Petition, State's Attorney Foxx unambiguously stated that she did not intend to formally or legally recuse herself. Notwithstanding the State's Attorney's

position, Respondent nonetheless concluded that “[a] review of the record confirms our understanding that what was intended by Ms. Foxx, and what indeed occurred, was an unconditional legal recusal. Her voluntary act evinced a relinquishment of any future standing or authority over the Smollett proceeding. Essentially, she announced that she was giving up all of the authority or power she possessed as the duly elected chief prosecutor; she was no longer involved.” SR65-SR66. Respondent failed to cite any authority to support its ruling that the informal use of the term “recusal” in a public statement and internal memorandum constituted an unconditional legal recusal under Illinois law to essentially strip the State’s Attorney of any future standing or authority in the matter. The court’s analysis is also deficient for the reasons outlined below.

1. The statutory prerequisite for the appointment of a special prosecutor was not met

Section 3-9008 (a-15), provides:

Notwithstanding subsections (a-5) and (a-10) of this Section, ***the State’s Attorney may file a petition to recuse himself or herself from a cause or proceeding*** for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

55 ILCS 5/3-9008 (a-15) (emphasis added). It is undisputed that State’s Attorney Foxx never filed any such petition for recusal in this case.

In interpreting a statute, the primary rule of statutory construction to which all other rules are subordinate is to ascertain and give effect to the true intent and meaning of the legislature. *Village of Cary v. Trout Valley Ass’n*, 282 Ill. App. 3d 165, 169 (2d Dist. 1996). In order to determine the legislative intent, courts must read the statute as a whole, all relevant parts must be considered, and each section should be construed in connection with every other section. *Id.* Courts should look to the language of the statute as the best indication of legislative intent, giving the terms of the statute their ordinary meaning. *Id.* A statute is to be interpreted and applied in the manner in which it is written, when it is permissible to do so under the Constitution, and is not to be rewritten by a court in an effort to render it consistent with the court’s view of sound public policy. *Kozak v. Retirement Board of the Firemen’s Annuity & Benefit Fund*, 95 Ill. 2d 211, 220

(1983) (citations omitted).

Section 3-9008 (a-15) provides that the State's Attorney *may* file a petition for recusal "for any other reason" he or she deems appropriate. The plain and unambiguous language of the statute indicates that the State's Attorney is not required to file such a petition but may do so in his or her discretion. In other words, the filing of such a petition is permissive, not mandatory. *See In re Estate of Ahmed*, 322 Ill. App. 3d 741, 746 (1st Dist. 2001) ("As a rule of statutory construction, the word 'may' is permissive, as opposed to mandatory.").

Here, not only did State's Attorney Foxx not file such a petition, but expressly stated that she did not intend to formally and legally recuse herself. Respondent's conclusion that notwithstanding her stated intent and the fact that a petition for recusal was not filed, "a reasonable assumption exists" that State's Attorney Foxx invoked a permissive recusal under section 3-9008 (a-15), SR64, ignores the permissive language of the statute and violates principles of statutory construction. By deeming the use of the word "recusal" in a public statement and internal memorandum as the equivalent of filing a petition for recusal under section 3-9008 (a-15), Respondent effectively rewrote the statute and deprived State's Attorney Foxx the discretion which the statute expressly grants her. And contrary to its ruling, any such informal statements did not effectuate a legal recusal by State's Attorney Foxx. *See, e.g., People v. Massarella*, 72 Ill. 2d 531, 538 (1978) ("At two separate arraignments, assistant State's Attorneys made noncommittal statements that the Attorney General was in charge of the case. These comments do not express, as the defendant urges, exclusion of or objection by the State's Attorney.").

Importantly, in the absence of a petition for recusal, Respondent should have ended its inquiry when it found that subsections (a-5) and (a-10) of the Section did not require the appointment of a special prosecutor. Unlike these two subsections which begin with the phrase, "The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging . . .," subsection (a-15) contains no such clause. Thus, it is clear that the circuit court cannot appoint a special prosecutor pursuant to subsection (a-15) on its own motion or on the petition of an interested person. The only time subsection (a-15) is applicable is

when it is invoked by the State's Attorney—which was not done in this case.

The filing of a petition for recusal is a statutory prerequisite to the appointment of a special prosecutor under 55 ILCS 5/3-9008 (a-15). Because the statutory prerequisite was not met here, the trial court exceeded its authority in granting the appointment of a special prosecutor.

2. State's Attorney Foxx had the power to delegate her authority to her first assistant.

Respondent incorrectly asserted that by recusing herself and appointing Joe Magats as “the Acting State's Attorney for this matter,” State's Attorney Foxx attempted to create an office which she did not have the authority to create. SR66. But Ms. Foxx did not attempt to create a new office nor did she appoint Joe Magats as a special prosecutor in this case. Rather, Ms. Foxx delegated her authority to one individual, her first assistant, to be exercised in a particular, individual, criminal prosecution. Such a delegation has been sanctioned by Illinois courts. *See, e.g., People v. Marlow*, 39 Ill. App. 3d 177, 180 (1st Dist. 1976) (“As illustrated by the evidence, the request procedure used in this case fully observed the ‘strict scrutiny’ admonition set forth in Porcelli. The State's Attorney of Cook County delegated his authority to one individual, his first assistant, to be used only when he himself was not available. This delegated power was exercised with discretion and care.”); *see also Scott v. Ass'n for Childbirth at Home, Int'l*, 88 Ill. 2d 279, 299 (1981) (“Where a statute vests power in a single executive head, but is silent on the question of subdelegation, the clear majority view is that the legislature, ‘understanding the impossibility of personal performance, impliedly authorized the delegation of authority to subordinates.’”) (quoting 1 A. Sutherland, *Statutory Construction* § 4.14 (4th ed. 1972)).

None of the cases that Respondent relied on support the contention that State's Attorney Foxx could not delegate her authority to her first assistant. *People v. Munson*, 319 Ill. 596 (1925), and *People v. Dunson*, 316 Ill. App. 3d 760 (2d Dist. 2000), are inapplicable, as they involve the delegation of authority to **unlicensed** prosecutors. Here, State's Attorney Foxx turned the Smollett case over to her first assistant, Joe Magats, whom Judge Toomin describes as “an experienced and capable prosecutor.” SR66.

Respondent also cites to *People v. Jennings*, 343 Ill. App. 3d 717 (5th Dist. 2003), *People*

v. Ward, 326 Ill. App. 3d 897 (5th Dist. 2002), and *People v. Woodall*, 333 Ill. App. 3d 1146 (5th Dist. 2002) as support for its position; however, those cases are readily distinguishable. All of those cases involved the delegation of power to attorneys from the State’s Attorneys Appellate Prosecutor’s office—not the first assistant, as was the case here. Unlike assistant state attorneys, “[a]ttorneys hired by the [State Attorney’s Appellate Prosecutor’s Office] are not constitutional officers. Their powers are derived from the statute that created them, and those powers are strictly limited by the authority conferred upon the Agency by our state legislators.” *Woodall*, 333 Ill. App. 3d at 1149 (citing *Siddens v. Industrial Comm’n*, 304 Ill. App. 3d 506, 510-11 (4th Dist. 1999)). As one court explained, “the State’s Attorneys Appellate Prosecutor’s Act (Act) (725 ILCS 210/4.01 (West 1998)) provides specific instances in which attorneys employed by the State’s Attorneys Appellate Prosecutor’s office may represent the State, with the most obvious instance being when a case is on appeal.” *Ward*, 326 Ill. App. 3d at 901. In each of these cases, attorneys from the appellate prosecutor’s office exceeded their authority to prosecute **as prescribed by statute**. See, e.g., *id.* at 902 (because “[t]he Cannabis Control Act, under which defendant was prosecuted, is not expressly listed, . . . prosecution under this Act [was not] allowed by attorneys from the State’s Attorneys Appellate Prosecutor’s office”); *Jennings*, 343 Ill. App. 3d at 725 (“Section 4.01 of the Act does not specifically include a murder prosecution as an instance in which an employee of the appellate prosecutor’s office may assist a county State’s Attorney in the discharge of his or her duties.”); *Woodall*, 333 Ill. App. 3d at 1149 (noting that the Act limits the types of cases in which attorneys from the State’s Attorneys Appellate Prosecutor’s office may assist local prosecutors in the discharge of their constitutionally based duties and concluding that the appointment process relied on by the State was flawed).

In contrast to the State Attorney’s Appellate Prosecutor’s office, the Court has explained that Assistant State’s Attorneys are “officers for the performance of the general duties of the offices of state’s attorney.” *People ex rel. Landers v. Toledo, St. L. & W.R. Co.*, 267 Ill. 142, 146 (1915). Accordingly, “[a]n Assistant State’s Attorney is generally clothed with all the powers and privileges of the State’s Attorney; and all acts done by him in that capacity must be regarded as if

done by the state's attorney himself." *People v. Nahas*, 9 Ill. App. 3d 570, 575-76 (3d Dist. 1973) (citing 27 C.J.S. District and Pros. Attys. Sec. 30(1).) Indeed, "the legislative purpose in creating the office of Assistant State's Attorney (Sec. 18, c. 53, Ill.Rev.Stat.) was to provide an official who should have full power to act in the case of the absence or sickness of the State's Attorney, or in the case of his being otherwise engaged in the discharge of the duties of office, in the same manner and to the same extent that the State's Attorney could act, and we also believe that the General Assembly in using the term, 'a State's Attorney' did intend that an assistant could act." *Nahas*, 9 Ill. App. 3d at 576.

In *Office of the Cook County State's Attorney v. Ill. Local Labor Relations Bd.*, 166 Ill. 2d 296 (1995), the Court specifically discussed the statutory powers and duties of the Cook County State's Attorney and Assistant Cook County State's Attorneys. The Court held that the assistants were vested with the authority to exercise the power of the State's Attorney, played a substantial part in discharging the statutory mission of the State's Attorney's office, and acted as "surrogates for the State's Attorney" in performing the statutory duties of the State's Attorney. *Id.* at 303.

The General Assembly intended, and the cases have long held, that an Assistant State's Attorney legally has the same power to act on behalf of the State's Attorney either by virtue of the office of Assistant State's Attorney, or as specifically authorized by the State's Attorney, pertaining to (1) initiating criminal prosecutions against a person; (2) intercepting private communications; and (3) procedures that may result in a person being deprived of his or her liberty for life. *See, e.g., People v. Audi*, 73 Ill. App. 3d 568, 569 (5th Dist. 1979) (holding that an information signed by an Assistant State's Attorney rather than the State's Attorney himself was not defective); *People v. White*, 24 Ill. App. 2d 324, 328 (2d Dist. 1960), *aff'd*, 21 Ill. 2d 373 (1961) (rejecting defendant's argument that an Assistant State's Attorney does not have the power or authority to prosecute by information in his own name in the county court); *Nahas*, 9 Ill. App. 3d at 575-76 (holding that the authorization of an eavesdropping device by a First Assistant, rather than the State's Attorney, was proper because "[a]n Assistant State's Attorney is generally clothed with all the powers and privileges of the State's Attorney; and all acts done by him in that capacity

must be regarded as if done by the State’s Attorney himself”); *Marlow*, 39 Ill. App. 3d at 180 (holding that the State’s Attorney can delegate his authority to give eavesdropping consent to a specifically indicated individual); *People v. Tobias*, 125 Ill. App. 3d 234, 242 (1st Dist. 1984) (holding that an Assistant State’s Attorney has the authority to sign a petition to qualify the defendant for a life sentence under the habitual criminal statute, which provides that such petition be “signed by the state’s attorney”).

Accordingly, Respondent mistakenly ruled that State’s Attorney Foxx did not have the power to delegate authority in the Smollett matter to her first assistant, Joe Magats, and that by doing so, she invoked a permissive recusal under 55 ILCS 5/3-9008 (a-15), authorizing the appointment of a special prosecutor.

B. Even if There Was No Valid Commission to Prosecute Mr. Smollett, This Would Not Render the Prior Proceedings Null and Void Because Mr. Smollett Has Not Challenged the Allegedly Defective Commission to Prosecute.

Respondent exceeded its authority when it ruled that State’s Attorney Foxx’s informal “recusal” rendered the entirety of the proceedings—from Mr. Smollett’s arrest to the dismissal of the charges against him—null and void. In the Order, Respondent concluded that because State’s Attorney Foxx could not delegate her authority to her first assistant:

- There was no duly elected State’s Attorney when Jussie Smollett was arrested;
- There was no State’s Attorney when Smollett was initially charged;
- There was no State’s Attorney when Smollett’s case was presented to the grand jury, nor when he was indicted;
- There was no State’s Attorney when Smollett was arraigned and entered his plea of not guilty; and
- There was no State’s Attorney in the courtroom when the proceedings were *nolle prossed*.

SR70.

In an effort to somehow nullify the arrest, prosecution, and dismissal of charges against Mr. Smollett, Respondent relied on five cases: *People v. Jennings*, 343 Ill. App. 3d 717 (5th Dist. 2003), *People v. Ward*, 326 Ill. App. 3d 897 (5th Dist. 2002), *People v. Woodall*, 333 Ill. App. 3d 1146 (5th Dist. 2002), *People v. Munson*, 319 Ill. 596 (1925), and *People v. Dunson*, 316 Ill. App. 3d 760 (2d Dist. 2000). Significantly, none of these cases support the conclusion that the prior proceedings against Mr. Smollett are null and void. In the Order, Respondent quoted the following passage from *Ward*:

If a case is not prosecuted by an attorney properly acting as an assistant State's Attorney, the prosecution is void and the cause should be remanded so that it can be brought by a proper prosecutor.

Ward, 326 Ill. App. 3d at 902. However, the court in *Woodall*—also relied upon by Respondent—actually distinguished *Ward* and *Dunson* and held that the defective appointment of special assistant prosecutors **did not nullify** the defendant's judgment of conviction in that case. *Woodall*, 333 Ill. App. 3d at 1161.

The court in *Woodall* began its analysis by explaining that “[t]here are only two things that render a judgment null and void. A judgment is void, and hence, subject to attack at any time, only when a court either exceeds its jurisdiction or has simply not acquired jurisdiction.” *Id.* at 1156 (citing *People v. Johnson*, 327 Ill. App. 3d 252, 256 (4th Dist. 2002)). The court also noted that it failed “to comprehend how the prosecutors’ flawed station in this case could serve to deprive the court of jurisdiction and thus void the defendant’s convictions, when the prosecutorial pursuit of people actually placed twice in jeopardy could not.” *Woodall*, 333 Ill. App. 3d at 1157. The court then went on to explain why neither *Ward* nor *Dunson* supports the proposition that a prosecution by attorneys who lacked the legal authority to act on the State’s behalf would render the proceedings null and void. *Id.*

First, *Woodall* noted that *Ward* does not, in fact, stand for such a proposition: “The author of the *Ward* opinion cited the aged decision in a manner that warned that it did not exactly stand for the proposition stated. . . . [T]he term ‘void’ was not used in conjunction with a jurisdictional analysis, and a question over whether or not the trial court acquired jurisdiction was not

raised.” *Woodall*, 333 Ill. App. 3d at 1157. The court further noted:

Ward should not be read as the source of a novel jurisdictional rule that would void all convictions procured by licensed attorneys who, for whatever reason, mistakenly believe that they are authorized to act on the State’s behalf and who are permitted to do so by those being prosecuted. Any defect in an attorney’s appointment process or in his or her authority to represent the State’s interests on a given matter is not fatal to the circuit court’s power to render a judgment. The right to be prosecuted by someone with proper prosecutorial authority is a personal privilege that may be waived if not timely asserted in the circuit court.

Id. at 1159.

Second, *Woodall* distinguished *Dunson*, in which the court held that a prosecution by a prosecutor who did not hold an Illinois law license rendered the convictions void as a matter of common law. *Id.* at 1160. The *Woodall* court explained: “Our case is not one where the assistance rendered, even though it was beyond the statutory charter to assist, inflicted any fraud upon the court or the public. The State was represented competently by attorneys who earned the right to practice law in this state. There was no deception about their license to appear and represent someone else’s interests in an Illinois courtroom.” *Id.* at 1160-61.⁷

As noted above, *Woodall* held that “the right to be prosecuted by someone with proper prosecutorial authority is **a personal privilege** that may be waived if not timely asserted in the circuit court.” *Woodall*, 333 Ill. App. 3d at 1159 (emphasis added). Thus, if there, in fact, had been a defect in the authority to prosecute Mr. Smollett, the only person who could properly challenge the validity of the proceedings would be Mr. Smollett--and he has not done so.

Although *Woodall* held that the State’s Attorney did not have the authority to unilaterally create a special assistant office by appointing attorneys employed by State’s Attorney’s Appellate Prosecutor’s office to conduct trial on his behalf without county board approval, it nonetheless found that the defective appointment of the special assistant prosecutors did not nullify the defendant’s judgment of conviction. *Woodall*, 333 Ill. App. 3d at 1161. The court explained:

⁷ *Dunson* relied heavily on *Munson*, an older case from 1925. Although *Woodall* did not separately address *Munson*, that case also involved the unauthorized practice of law and is distinguishable for the same reasons as *Dunson*.

The defendant has not attempted to demonstrate the harm visited upon him by his prosecutors' defective commission to prosecute. For that matter, he does not even claim that anything evil or wrong occurred in the process to verdict other than that defect. To the extent that the Agency attorneys' lack of proper authority to prosecute somehow inflicted injury, it was a wound that the defendant invited by allowing their presence to go unchallenged. We find no reason to overturn the defendant's convictions.

Id. Here, like in *Woodall*, because any such defect has gone unchallenged by Mr. Smollett, there is no basis on which the court can void the proceedings in this case.

Similarly, in *Jennings*, relied on by Respondent, the court held that although the attorney who tried the case for the State did not have the authority to prosecute the defendant, the defendant waived his right to challenge the defective commission of the attorney. *People v. Jennings*, 343 Ill. App. 3d 717, 727 (5th Dist. 2003). *Jennings* explained: "The defendant does not argue and the record does not indicate that he was harmed by Lolie's prosecution. At no time in the proceedings did the defendant object to the trial court's recognition of Lolie as a prosecutor. The defendant, therefore, waived his right to challenge Lolie's defective commission to prosecute." *Id.*

An analysis of the cases which Respondent relied on illustrates that Respondent erroneously ruled that that the entirety of the proceedings--from Mr. Smollett's arrest to the dismissal of the charges against him--are null and void. On the contrary, the record supports the conclusion that the People of the State of Illinois were properly represented by an Assistant State's Attorney acting with the permission and authority of the State's Attorney at all times during the proceedings.

C. The Appointment Was Vague and Overbroad.

The Order's broad prescription of authority to the special prosecutor, namely that the special prosecutor may "further prosecute" Mr. Smollett if reasonable grounds exist, is unquestionably vague and overbroad. SR71. If it was intended that such further prosecution could only be the result of some potential new discovery of wrongdoing by Mr. Smollett during the pendency of the case (which does not exist), this should have been clarified in the Order. But if the court intended to authorize the special prosecutor to further prosecute Mr. Smollett for filing a

false police report on January 29, 2019 (as alleged in the indictment that was thereafter dismissed), then the Order is overbroad and vague as to this critical issue.

Furthermore, the Order does not limit the investigation in any way or specify a date or event that would terminate the special prosecutor's appointment. Illinois courts have held that such a deficiency renders the appointment vague and overbroad. *See, e.g., In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220, 233 (3d Dist. 2009) ("The order's definition of the scope of the subject matter and the duration of Poncin's appointment is vague in that it does not specify an event for terminating the appointment or the injunction. The circuit court should not have issued the appointment without a specific factual basis, and the court should have more clearly limited the appointment to specific matters. Under the circumstances, we view the circuit court's prescription of Poncin's authority to be overbroad and, therefore, an abuse of discretion.").

II. The Harm to Movant Cannot Be Remedied Through the Normal Appellate Process.

The Court should issue a supervisory order "when the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice." *Burnette*, 232 Ill. 2d at 545 (citation omitted); *see e.g. Delgado v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 481, 481, 488-89 (2007) (finding that "direct and immediate action [was] necessary" to remove a candidate from a ballot where there was an impending election).

Here, Mr. Smollett sought leave to intervene and filed a motion to reconsider the appointment of a special prosecutor. Respondent denied Mr. Smollett leave to intervene and such a ruling was not immediately appealable. Pursuant to Respondent's overly broad appointment, the special prosecutor convened a special grand jury which returned a six-count indictment against Mr. Smollett on February 11, 2020. An appeal of the denial of intervention would not provide Mr. Smollett adequate relief because a reversal of that order does not necessarily implicate the appointment of the special prosecutor and the resulting charges against Mr. Smollett that result from the improper appointment. Mr. Smollett submits that Respondent appointed the Special Prosecutor in a manner that exceeded its authority and was contrary to Illinois law so that review of such orders via supervisory order is warranted. Further, because Mr. Smollett is facing imminent

criminal prosecution, with an arraignment on February 24, 2020, the normal appellate process will not afford adequate relief to Mr. Smollett. The only adequate remedy will be the immediate intervention of this Court through the exercise of its unique supervisory powers.

CONCLUSION

For the foregoing reasons, Movant Jussie Smollett respectfully requests that his Emergency Motion for Supervisory Order be granted and that this Court order Respondent to vacate the June 21, 2019 Order appointing a special prosecutor, to vacate the August 23, 2019 Order appointing Dan K. Webb as the special prosecutor, to dismiss the indictment filed against Mr. Smollett on February 11, 2010, and to vacate all further proceedings in that matter.

Dated: February 24, 2020.

Respectfully submitted,

/s/ William J. Quinlan

William J. Quinlan
 Lisa H. Quinlan
 David Hutchinson
 THE QUINLAN LAW FIRM, LLC
 Willis Tower
 233 South Wacker Drive, Suite 6142
 Chicago, Illinois 60606
 (312) 883-5500
wjq@quinlanfirm.com
lquinlan@quinlanfirm.com
dhutchinson@quinlanfirm.com

Tina Glandian, Rule 707 Admission forthcoming
 GERAGOS & GERAGOS, APC
 256 5th Avenue
 New York, NY 10010
 (213) 625-3900
tina@geragos.com

Attorneys for Jussie Smollett

| | | |
|-----------------------------|---|---------------------------------------|
| JUSSIE SMOLLETT, |) | Appeal from the Circuit Court of Cook |
| |) | County, Illinois, County Department, |
| Movant, |) | Criminal Division |
| |) | |
| |) | Circuit Court No. |
| v. |) | No. 19 MR 00014 |
| |) | |
| |) | |
| THE HON. MICHAEL P. TOOMIN, |) | The Honorable |
| |) | Michael P. Toomin, |
| Respondent. |) | Judge Presiding. |

To: See Certificate of Service

Dated: February 24, 2020

THE QUINLAN LAW FIRM, LLC

/s/ William J. Quinlan

William J. Quinlan
THE QUINLAN LAW FIRM, LLC
Willis Tower
233 South Wacker Drive, Suite 6142
Chicago, Illinois 60606
(312) 629-6012
wjq@quinlanfirm.com

No. _____

IN THE
SUPREME COURT OF ILLINOIS

| | | |
|-----------------------------|---|---------------------------------------|
| JUSSIE SMOLLETT, |) | Appeal from the Circuit Court of Cook |
| |) | County, Illinois, County Department, |
| Movant, |) | Criminal Division |
| |) | |
| |) | Circuit Court No. |
| v. |) | No. 19 MR 00014 |
| |) | |
| |) | |
| THE HON. MICHAEL P. TOOMIN, |) | The Honorable |
| |) | Michael P. Toomin, |
| Respondent. |) | Judge Presiding. |

CERTIFICATE OF SERVICE

William J. Quinlan, an attorney, certifies that on February 24, 2020, he caused the **Notice of Filing, Emergency Motion for Supervisory Order and Movant's Explanatory Suggestions in Support of His Motion for Supervisory Order, Supporting Record and [Proposed] Supervisory Order** to be electronically submitted to the Clerk of the Supreme Court of Illinois, by using the Odyssey eFileIL system.

The Hon. Michael P. Toomin
Leighton Criminal Court
2600 S. California Ave., Rm. 400
Chicago, Illinois 60608
(service via hand delivery)

Sheila M. O'Brien, *Pro Se*
360 E. Randolph #1801
Chicago, IL 60601
sobrien368@aol.com
(service via electronic mail)

Dan K. Webb
Court Appointed Special Prosecutor
WINSTON & STRAN LLP
35 W. Wacker Drive
Chicago, IL 60601-9703
DWebb@winston.com
(service via electronic mail)

Cathy McNeil Stein
Assistant State's Attorney Chief
Civil Actions Bureau
500 Richard J. Daley Center
Chicago, IL 60602
cathymcneil.stein@cookcountyil.gov
(service via electronic mail)

Valerie L. Hletko
Buckley LLP
353 N. Clark St., Suite 3600
Chicago, IL 60654 vhletko@buckleyfirm.com
(service via electronic mail)

Risa Lanier
Assistant State's Attorney
Cook County State's Attorney's Office
2650 S. California Avenue, 11D40
Chicago, IL 60608
risa.lanier@cookcountyil.gov
(service via electronic mail)

He further certifies that on February 24, 2020, he caused the above-named filings to be served on the following parties as indicated above.

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.

/s/ William J. Quinlan

No. _____

IN THE
SUPREME COURT OF ILLINOIS

| | | |
|-----------------------------|---|---------------------------------------|
| JUSSIE SMOLLETT, |) | Appeal from the Circuit Court of Cook |
| |) | County, Illinois, County Department, |
| Movant, |) | Criminal Division |
| |) | |
| |) | Circuit Court No. |
| v. |) | No. 19 MR 00014 |
| |) | |
| |) | |
| THE HON. MICHAEL P. TOOMIN, |) | The Honorable |
| |) | Michael P. Toomin, |
| Respondent. |) | Judge Presiding. |
| |) | |

SUPERVISORY ORDER

This matter coming to be heard on Movant's Emergency Motion for Supervisory Order, and the Court having been fully advised in the premises, IT IS HEREBY ORDERED that:

1. the June 21, 2019 Order granting the appointment of a special prosecutor is vacated;
2. the August 23, 2019 Order appointing Dan K. Webb as the special prosecutor is vacated;
3. the indictment filed on February 11, 2020 against Mr. Smollett is vacated; and
4. any further prosecution of Mr. Smollett for disorderly conduct arising from the January 29, 2019 attack is barred.

Hereby entered the _____ day of February, 2020:

JUSTICE

JUSTICE

JUSTICE

JUSTICE

JUSTICE

JUSTICE

JUSTICE

Prepared By:

THE QUINLAN LAW FIRM

Willis Tower

233 South Wacker Drive, Suite 6142

Chicago, Illinois 60606

(312) 629-6012

wjq@quinlanfirm.com

| | | |
|-----------------------------|---|---------------------------------------|
| JUSSIE SMOLLETT, |) | Appeal from the Circuit Court of Cook |
| |) | County, Illinois, County Department, |
| Movant, |) | Criminal Division |
| |) | |
| |) | Circuit Court No. |
| v. |) | No. 19 MR 00014 |
| |) | |
| |) | |
| THE HON. MICHAEL P. TOOMIN, |) | The Honorable |
| |) | Michael P. Toomin, |
| Respondent. |) | Judge Presiding. |

SUPPORTING RECORD

E-FILED
2/24/2020 12:34 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

TABLE OF CONTENTS

| | |
|--|-------------|
| Supporting Affidavit of William J. Quinlan | i-ii |
| Petition for Appointment of Special Prosecutor (April 5, 2019)..... | SR1-SR28 |
| Jussie Smollett’s Opposition to Petition to Appoint a Special Prosecutor and Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear the Petition (April 18, 2019)..... | SR29-SR36 |
| Cook County State’s Attorney’s Objection to the Petition to Appoint a Special Prosecutor (April 30, 2019)..... | SR37-SR50 |
| Order Granting the Appointment of a Special Prosecutor (June 21, 2019)..... | SR51-SR73 |
| Jussie Smollett’s Motion for Substitution of Judge for Cause and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions (July 19, 2019)..... | SR74-SR82 |
| Jussie Smollett’s Motion to Intervene Instantly (July 19, 2019)..... | SR83-SR92 |
| Jussie Smollett’s Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor (July 19, 2019)..... | SR93-SR245 |
| Jussie Smollett’s Motion to Disclose Transcripts of Grand Jury Testimony (July 19, 2019) | SR246-SR264 |
| Petitioner’s Response to Motion for Substitution of Judge for Cause (July 25, 2019)..... | SR265-SR268 |
| Petitioner’s Response to Motion to Intervene (July 25, 2019)..... | SR269-SR302 |
| Petitioner’s Response to Motion for Reconsideration (July 25, 2019)..... | SR303-SR306 |
| Petitioner’s Response to Motion to Disclose Transcripts of Grand Jury Testimony (July 25, 2019)..... | SR307-SR309 |
| Petitioner’s Information to Spread of Record (July 25, 2019)..... | SR310-SR314 |
| Jussie Smollett’s Joint Reply to Information to Spread of Record Concerning Pleadings Filed on July 19, 2019 and Petitioner’s Responses to Motions (July 30, 2019)..... | SR315-SR336 |
| Circuit Court Report of Proceedings (July 31, 2019)..... | SR337-SR369 |
| Order Appointing Dan K. Webb as the Special Prosecutor (August 23, 2019)..... | SR370-SR372 |
| Indictment (February 11, 2020) | SR373-SR379 |

AFFIDAVIT OF WILLIAM J. QUINLAN

William J. Quinlan, being duly sworn, states as follows:

1. I am a principal of The Quinlan Law Firm, LLC, counsel for Movant Jussie Smollett, in the matter styled *People of the State of Illinois v. Smollett*, Case No. 20 CR 03050-01, pending in the Circuit Court of Cook County, Illinois, County Department, Criminal Division and the instant action.

2. I submit this Affidavit in support of the Emergency Motion for Supervisory Order and Emergency Motion to Stay Proceedings filed by Movant. This Affidavit is submitted to authenticate the documents in the Supporting Record in accordance with Supreme Court Rules 328 and 383(a). I have personal knowledge of the matters stated below and would testify competently thereto if called as a witness

3. Included in the Supporting Record at SR1-SR28 is a true and correct copy of the Petition for the Appointment of Special Prosecutor, filed by Sheila O'Brien on April 5, 2019.

4. Included in the Supporting Record at SR29-SR36 is a true and correct copy of Jussie Smollett's Opposition to Petition to Appoint a Special Prosecutor and Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear the Petition, filed on April 18, 2019.

5. Included in the Supporting Record at SR37-SR50 is a true and correct copy of the Cook County State's Attorney's Objection to the Petition to Appoint a Special Prosecutor, filed on April 30, 2019.

6. Included in the Supporting Record at SR51-SR73 is a true and correct copy of the Order Granting the Appointment of a Special Prosecutor, entered on June 21, 2019.

7. Included in the Supporting Record at SR74-SR82 is a true and correct copy of Jussie Smollett's Motion for Substitution of Judge for Cause and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions, filed on July 19, 2019.

8. Included in the Supporting Record at SR83-SR92 is a true and correct copy of Jussie Smollett's Motion to Intervene Instantly, filed on July 19, 2019.

9. Included in the Supporting Record at SR93-SR245 is a true and correct copy of Jussie Smollett's Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor, filed on July 19, 2019.

10. Included in the Supporting Record at SR246-SR264 is a true and correct copy of Jussie Smollett's Motion to Disclose Transcripts of Grand Jury Testimony, filed on July 19, 2019.

11. Included in the Supporting Record at SR265-SR268 is a true and correct copy of Petitioner's Response to Motion for Substitution of Judge for Cause, filed on July 25, 2019.

12. Included in the Supporting Record at SR269-SR302 is a true and correct copy of Petitioner's Response to Motion to Intervene filed on July 25, 2019.

13. Included in the Supporting Record at SR303-SR306 is a true and correct copy of Petitioner's Response to Motion for Reconsideration filed on July 25, 2019.

14. Included in the Supporting Record at SR307-SR309 is a true and correct copy of Petitioner's Response to Motion to Disclose Transcripts of Grand Jury Testimony filed on July 25, 2019.

15. Included in the Supporting Record at SR310-SR314 is a true and correct copy of Petitioner's Information to Spread of Record filed on July 25, 2019.

16. Included in the Supporting Record at SR315-SR336 is a true and correct copy of Jussie Smollett's Joint Reply to Information to Spread of Record Concerning Pleadings Filed on July 19, 2019 and Petitioner's Responses to Motions, filed on July 30, 2019.

17. Included in the Supporting Record at SR337-SR369 is a true and correct copy of the Circuit Court Report of Proceedings in case number 19 MR 00014 on July 31, 2019.

18. Included in the Supporting Record at SR370-SR372 is a true and correct copy of the Order Appointing Dan K. Webb as the Special Prosecutor, entered on August 23, 2019.

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.

Dated: February 24, 2020

/s/ William J. Quinlan
William J. Quinlan

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR

No. 2019 Misc. 80014

The Hon. Leroy Martin, Jr.

NOTICE OF MOTION

TO: Kim Foxx, Cook County State's Attorney
50 W Washington St., Suite 500
Chicago, Illinois 60602

2650 S. California
Chicago, Illinois 60608

Patricia Holmes, Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on *Thurs May 2* 2019 at 9:00 a.m. I will appear before The Honorable LeRoy Martin, Jr. in courtroom 101, at the Circuit Court of Cook County, Criminal Division, and will present the attached *Petition to Appoint a Special Prosecutor in the matter of the People of the State of Illinois v. Jussie Smollett*

Sheila M. O'Brien

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

19 APR -5 AM 10:46

FILED

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR

No. 2019 Misc. 00014

Hon. LeRoy Martin, Jr.

PETITION TO APPOINT A SPECIAL PROSECUTOR
In the Matter of
PEOPLE OF THE STATE OF ILLINOIS v. JUSSIE SMOLLETT

INTRODUCTION

This petition asks for the instant application of 55 ILCS 5/3-9008 (attached as Exhibit 1) to the investigation and prosecution of the People of the State of Illinois v. Jussie Smollett, filed in the Circuit Court of Cook County. The statute is clear on its face, not subject to interpretation and requires the Court to appoint a special prosecutor, where as here, the State's Attorney is unable to fulfill her duties, has an actual conflict of interest or has recused herself.

State's Attorney Kim Foxx has explicitly stated that she welcomes "an outside, nonpolitical review of how we handled this matter" and thus, has waived any objection to this petition.

THE PETITIONER

1. Sheila M. O'Brien, is a citizen of the United States, a resident of the State of Illinois, the County of Cook and the City of Chicago and is a taxpayer in each jurisdiction. Her bio (Exhibit 3) is attached to this pleading.
2. Petitioner is an "interested person" pursuant to 55 ILCS 5/3-9008.
Petitioner has been associated with the Illinois justice system for her entire career and her personal reputation as a member of that system is being harmed and questioned based upon the facts pled in this petition.
Petitioner served in the judiciary of the State of Illinois from 1985-2011.
3. Petitioner has been questioned by people across the country about the "Illinois Justice system" with derogatory labels about the Illinois courts, judges, prosecutors and personnel.
4. Petitioner has been harmed by these words and her ability to live peacefully has been diminished.
5. Petitioner is an active member of her community and has witnessed this case and its handling as a consistent and upsetting topic of concern for the people of Cook County.
6. Petitioner is concerned that without a special prosecutor that the public perception of Cook County and Chicago will be harmed, bringing harm to all the residents of Cook County.
7. Petitioner and all residents of Chicago and Cook County and our justice system, have been subject to ridicule and disparaging comments in the

- media and have been the subject of comedy routines on national television, all to our detriment.
8. Petitioner is not seeking any public office and has no intention to seek another public office during her lifetime.
 9. Petitioner has no agenda in this proceeding - other than seeking the truth and restoring public confidence in the Cook County State's Attorney's Office and the Circuit Court of Cook County.
 10. Petitioner was licensed to practice law in the State of Illinois in 1980 and in the State of Missouri in 1981. Upon her retirement in 2011, petitioner moved those licenses to the status of "retired". Petitioner has done some sporadic consulting during retirement.
 11. Petitioner has drafted, typed, filed, copied and will serve this petition herself and is not represented by any law firm, nor has she been assisted by any group. Petitioner apologizes for any typos or errors in formatting.
 12. Petitioner will not speak outside the courtrooms of Cook County about this petition while this case is pending. Everything petitioner will do concerning this petition will be in open court, for all to see, hear and witness.
 13. Petitioner does not know Kim Foxx, the State's Attorney of Cook County and has no vendetta against her or the State's Attorney's Office. Petitioner does not know Jussie Smollett, had never heard of him or his television show until this case was reported in the news media and has no vendetta against Jussie Smollett. Petitioner knows Patricia Holmes as an attorney

and has worked with her in the past, has no vendetta against Patricia Holmes and respects her ability as an attorney. Petitioner has not consulted with any of these people concerning this case or this petition.

**FACT TIMELINE IN THE
PEOPLE *of the* STATE of ILLINOIS v. JUSSIE SMOLLETT
INVESTIGATION AND PROSECUTION**

Jan. 22, 2019

-- Jussie Smollett is an actor appearing in a television series named "Empire". Jussie Smollett reports receiving an envelope addressed to him at his production studios on Chicago's West Side. The envelope is postmarked in southwest suburban Bedford Park four days earlier, on Jan. 18. The letters "MAGA" are written, in red ink, in the return address section of the envelope. Smollett tells police that he and the show's executive producer used gloves to open the envelope. Inside was a threat in cut-out letters: "You will die black (expletive)." There was white powder in the envelope, but it was determined to be crushed pain reliever, according to police.

Jan. 29, 2019

— Smollett reports he was attacked by two men while outside getting food from a Subway sandwich shop around 2 a.m. Smollett, African-American and openly gay, said he was walking back to his apartment in the 300 block of East North Water Street when two men walked up, yelled racial and homophobic slurs, declared "This is MAGA country," hit him and wrapped a noose around his neck. The men also poured an "unknown substance" on him.

Jan. 30, 2019

— The Chicago Police Department reports it has at least a dozen detectives reviewing hundreds of hours of surveillance camera footage, including of Smollett walking downtown,

but none of the videos show the attack. Police release images of two people in the area at the time. The two people were captured by a surveillance camera on New Street near Illinois Street between 1:30 and 1:45 a.m. Smollett said he was attacked about 15 to 30 minutes later around the corner. The images are dark and the faces indistinguishable.

—Members of the United States Congress, television talk show hosts and public figures express outrage by social media over Smollett's attack.

Jan. 31, 2019

—The President of the United States tells reporters that he saw a story the evening before about Smollett and that, "It doesn't get worse, as far as I'm concerned."

—Smollett's family issues a statement calling the attack a racial and homophobic hate crime. The family says he "has told the police everything" and "his story has never changed," disputing assertions on social media that he has been less than cooperative and has changed his story.

Feb. 1, 2019

— Smollett issues a statement telling people that he is OK and thanking them for their support. He says he is working with authorities and has been "100 percent factual and consistent on every level."

--Foxy receives and responds to texts from a private attorney requesting that Foxy refer the case to the federal authorities and communicate with Smollett's family. Foxy begins communications with Smollett's family.

Feb. 12, 2019

— The Chicago Police Department says Smollett turned over some, but not all, of the phone records that the detectives requested as part of their investigation. Smollett said his music manager was on the phone with him at the time of the attack and can corroborate this story. Police say the heavily redacted files aren't sufficient. Smollett says the information was redacted to protect the privacy of contacts and people not relevant to the attack.

Feb. 14, 2019

— Smollett says on a national television interview, “You do such a disservice when you lie about things like this.” He says he is convinced that the men in the surveillance images were his attackers. “I don’t have any doubt in my mind that that’s them. Never did.”

— The Chicago Police Department announce hours later that detectives are interviewing the two “persons of interest” captured on video. A law enforcement source said the two men, brothers in their 20s, were brought in for questioning Wednesday night from O’Hare International Airport after arriving from Nigeria. One of them worked as an extra on Smollett’s television show “Empire”, according to the media report.

— The Chicago Police Department later says that local media reports that the attack against Smollett was a hoax are unconfirmed.

Feb. 15, 2019

—The Chicago Police Department spokesman Anthony Guglielmi says the two “persons of interest” are now considered potential suspects. He says the men are brothers, are in custody but have not been charged with a crime.

— Twelve hours later, the Chicago Police Department releases the brothers, saying the brothers are no longer were considered suspects. “Due to new evidence as a result of today’s interrogations, the individuals questioned by police in the Empire case have now been released without charging and detectives have additional investigative work to complete,” Guglielmi said in a tweet.

Feb. 16, 2019

— Chicago newspapers report that a law enforcement source says the Chicago Police Department is investigating whether Smollett paid the two brothers to stage an attack, following up on information provided by the two brothers while they were in custody

— The attorney for the brothers, Gloria Schmidt, is asked whether Smollett set up the attack.

"There's still a lot of moving parts to this. ... I'm not part of Jussie's defense," she said. "I'm not part of what's going on with him. I can just tell you that my guys (are) innocent of the charge and they're going home."

—Smollett issues a statement saying, "Jussie Smollett is angered and devastated by recent reports that the perpetrators are individuals he is familiar with. He has been further victimized by claims attributed to these alleged perpetrators that Jussie played a role in his own attack. Nothing is further from the truth." The statement said one of the brothers was Smollett's personal trainer. Media reports say that the brothers worked with Smollett on his television show.

Feb. 19, 2019

— Foxx says recuses herself from the case. Foxx says she made the decision "out of an abundance of caution" because of her "familiarity with potential witnesses in the case."

(Exhibit 2 attached)

Feb. 20, 2019

—Smollett is charged with disorderly conduct for allegedly filing a false police report about the attack. The Chicago Police Department announces that Smollett is officially classified as a suspect in a criminal investigation for filing a false police report, which is a felony.

--One of Foxx's aides says that Foxx "had conversations with a family member of Jussie Smollett about the incident" after the initial report of the attack and "facilitated a connection to the Chicago Police Department who were investigating the incident."

— Former Cook County State's Attorney Anita Alvarez writes on a website, "Maybe I should have just recused myself from the difficult cases that came across my desk when I was state's attorney. I was under the impression that when the voters elected me and I took my oath of office it meant I had to do my job."

Feb. 21, 2019

— Smollett surrenders to Chicago police and is arrested in the early morning hours. He is booked and his mug shot is taken.

— Chicago police Superintendent Eddie Johnson says Smollett faked both the threatening

letter and the attack because “he was dissatisfied with his salary” on the television show. Johnson calls the alleged hoax “despicable” and says Smollett “dragged Chicago’s reputation through the mud.”

— Smollett appears in court, has his bond set at \$100,000. Smollett will have to post \$10,000 cash and surrender his passport as a condition of his bond. Smollett posts his bond and is released.

—Smollett’s legal team releases a statement maintaining Smollett’s innocence: “The presumption of innocence, a bedrock in the search for justice, was trampled upon at the expense of Mr. Smollett and notably, on the eve of a mayoral election. Mr. Smollett is a young man of impeccable character and integrity who fiercely and solemnly maintains his innocence and feels betrayed by a system that apparently wants to skip due process and proceed directly to sentencing.”

Feb. 25, 2019

— In an interview on a national morning television show,” Chicago Police Superintendent Eddie Johnson says that Smollett paid the two brothers money by check to stage the attack. Johnson disputes media reports that Smollett paid the two brothers for personal training and nutrition. Johnson said there is more evidence against Smollett that hasn’t been disclosed yet.

March 8, 2019

— A Cook County grand jury indicts Smollett on 16 counts of disorderly conduct for allegedly lying to police about being the victim of a racist and homophobic attack. Smollett’s attorney said the new charges, which came a little more than two weeks after Smollett was charged with a single felony count, are overkill.

March 13, 2019

—Text and emails provided to the media show that State’s Attorney Foxx had asked Chicago Police Superintendent Johnson to turn over the investigation of Smollett’s reported attack to the FBI at the urging of a politically connected lawyer. The exchanges began Feb. 1, three days after Smollett claimed he was attacked near his Streeterville apartment building. The

released texts stopped on Feb. 13, the same day a memo was sent out by Foxx's office saying that she "is recused" from the Smollett investigation.

March 14, 2019

— Smollett pleads not guilty to the 16 counts of disorderly conduct.

March 24, 2019

-- Foxx says on a radio station, "Every day... there are people who get similar arrangements ... people who get sentences that are probably not what some people would want. Every single day."

March 26, 2019

—The Cook County State's Attorney's Office drops all charges against Smollett in court. The case is not on the Court Clerk's regular calendar. No notice was given to the Chicago Police Department nor the media. The Court file is sealed. The Clerk's file is erased.

--The Cook County State's Attorney's Office issues a statement, "After reviewing all of the facts and circumstances of the case, including Mr. Smollett's volunteer service in the community and agreement to forfeit his bond to the City of Chicago, we believe this outcome is a just disposition and appropriate resolution to this case."

--Smollett's attorneys issued a statement after the announcement, saying their client had been "vilified." Smollett says he is thankful for the support from friends and family, and that he was glad the state was "attempting to do what's right." "I have been truthful and consistent from day one."

--The Mayor of the City of Chicago publicly calls the dismissal a "whitewash of justice".

--Intense national media coverage continues.

March 27, 2019

—The Chicago Police Department releases a redacted file containing some of their investigative materials. The Cook County State's Attorney's Office informs the police not to release any additional information.

--Foxx tells the Chicago Sun-Times, "I believe based on the information that was presented before the grand jury, based on what I've seen, the office had a strong case ... that would have convinced a trier of fact."

--The Office of the State's Attorney says that Foxx's recusal was only informal.

--Foxx says the court file should remain public.

--By the afternoon, the Clerk of the Circuit Court has no record of the case. The file has been moved to the Clerk's storage. The file is not accessible to the public.

--The National District Attorneys Association, which bills itself as the country's biggest organization of prosecutors, releases a statement saying that Foxx's entire office should have been recused. The group also condemned the case as being resolved without a finding of guilt or innocence, and said it illustrated that "the rich are treated differently [and] the politically connected receive favorable treatment."

March 28, 2019

—The President of the United States sends a tweet saying the FBI and Department of Justice would review the handling of the Jussie Smollett case in Chicago, calling it "outrageous" and "an embarrassment to our Nation!"

— Smollett's attorney appears on national televisions and suggests that the African-American brothers in the case wore white make-up around their eyes, under ski masks, to disguise themselves while attacking her client, which would explain why Smollett identified his attackers as white or pale-skinned.

— Attorneys for the Chicago Tribune and other news organizations go to Cook County court to block records from being destroyed if Jussie Smollett's legal team seeks to expunge his criminal case.

--The Illinois Prosecutors Bar Association issues a critique of how Cook County prosecutors went about dropping all the charges against Mr. Smollett. A statement says that Foxx and her representatives "have fundamentally misled the public on the law and circumstances surrounding the dismissal." It says the approach was "abnormal and unfamiliar" to those in criminal law in Illinois. The Association points to the secrecy around the hearing where the charges were dropped, saying that it added to an "appearance of impropriety."

March 29, 2019

— Foxx writes in the Chicago Tribune that she welcomes an “an outside, nonpolitical review of how we handled this matter” and says that the evidence against the TV star turned out to be weaker than was initially presented when the state sought charges.

April 4, 2019

The North Suburban Chiefs of Police issue a no-confidence statement in Kim Foxx as the Cook County State’s Attorney.

DISCUSSION

Section 3-9008 of the Counties Code (55 ILCS 5/3-9008 (West 2018)) is clear on its face, not subject to interpretation and requires the Court to appoint a special prosecutor where, as here, the State's Attorney is unable to fulfill her duties, has an actual conflict of interest or has recused herself.

The Court can and must appoint a special prosecutor without an evidentiary hearing where, as here, the facts as known warrant it.

First, this Court must appoint a special prosecutor pursuant to section 3-9008 (a-5) because **Kim Foxx was unable to fulfill her duties in the Jussie Smollett case.** Section 3-9008(a-5) states:

"The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney is sick, absent, or unable to fulfill his or her duties. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties. If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties, the court may appoint some competent attorney to prosecute or defend the cause or proceeding."

By her own admission, Foxx was unable to fulfill her duties in the Jussie Smollett case. On Feb. 19, 2019, Foxx says she decided to recuse herself from the Jussie Smollett case "out of an abundance of caution" because of her "familiarity with potential witnesses in the case." This statement alone indicates her acknowledgment of a potential conflict of interest such that she could not fulfill her duties in this case, whether she filed a formal recusal or not. Thus, the Court could have appointed a special prosecutor if it had been brought to the Court's attention and should appoint a special prosecutor now.

Second, this Court must appoint a special prosecutor pursuant to section 3-9008 (a-15) (55 ILCS 5/3-9008(a-15)(West 2018)) because **Kim Foxx recused herself in the Jussie Smollett case**. Section 3-9008(a-15) states:

“Notwithstanding subsections (a-5) and (a-10) of this Section, the State’s Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court *shall* appoint a special prosecutor as provided in this Section.”

On February 19, Foxx *said* she recused herself; she used the word “recuse” and issued statements to the public indicating that she recused herself. On March 27, after the charges against Mr. Smollett had been dropped and she faced withering criticism of her handling of the case, Foxx’s office said she did not formally recuse herself “in a legal sense” but only in a “colloquial” sense. However, an internal memo sent on February 13 by Foxx’s chief ethics officer, did not describe the move as colloquial at all. Instead, Foxx’s chief ethics officer sent a two-sentence email informing staff that Foxx “is recused” from the Smollett investigation. We are unable to see if she filed a formal recusal because the file has been sealed.

The public should be able to rely upon Foxx’s use of the word “recuse” as indicia of a recusal although there are no cases dealing with this issue. She is our lawyer. We are her clients. We should be able to rely upon our lawyer’s word. To find that Foxx’s clear statement of recusal was something other than a recusal would indicate that she was being less than truthful in her handling of the Smollett case and in her statements to the public. Because she recused

herself, the Court *shall* appoint a special prosecutor as provided in this Section.

In the alternative, Foxx's use of the word "recuse" indicates her subjective belief that she had a conflict with prosecuting Jussie Smollett and thus, was unable to fulfill her duties as defined.

Third, this Court can appoint a special prosecutor because State's Attorney Kim Foxx has publicly stated on March 29, 2019 that she welcomes "an outside, nonpolitical review of how we handled this matter" and thus, the State's Attorney has publicly waived any objection to this petition. *See Gallagher v. Lenart*, 226 Ill. 2d 208 (2007) (*waiver is the intentional relinquishment of a known right*).

Fourth, this Court must appoint a special prosecutor because justice demands it. The State's Attorney's actions in this case, recounted above, create an appearance of impropriety, a perception that justice was not served here, that Mr. Smollett received special treatment due to his fame and privilege and political connections. A public view of the court file in this case could potentially partially remedy this perception, but the file has been sealed from the public view. The public has no remedy other than to petition this Court for the appointment of an independent special prosecutor to investigate how this case was handled by the Office of the State's Attorney and whether the actions were consistent with the handling of similar cases. An independent special prosecutor is necessary to renew public confidence in our system of justice. The rule of law, fair and impartial justice, and fundamental fairness are threatened by the actions described in this petition.

The people deserve the truth. The whole truth. Help us get the truth.

This petition is not about personalities. This petition is about equal justice under the law for all - the bedrock of our nation.

Fifth, this Court must appoint a special prosecutor if only for procedural reasons. The evidence for this petition is what is reported in the press, not traditional evidence under oath. A special prosecutor needs to be appointed to gather a complete record of the facts under oath. Those facts could then be presented to this Court on a further hearing on this motion to determine whether further consideration of the People of the State of Illinois v. Jussie Smollett is warranted.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioner requests that this Court grant Petitioner's Motion instanter or that this Court, on its own motion, appoint a special prosecutor instanter to:

1. investigate and prosecute the People of the State of Illinois v. Jussie Smollett, filed in the Circuit Court of Cook County and dismissed on March 26, 2019.
2. investigate the actions of any person and/or office involved in

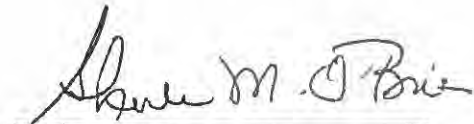
the investigation, prosecution and dismissal of People of the State of Illinois v. Jussie Smollett

3. investigate the recusal procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett
4. investigate the deferred prosecution procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett
5. investigate the non-violent offenders procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett
6. investigate the charging procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett
7. investigate the pre-trial/bond procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett.

8. investigate whether criminal charges should be brought against any person in connection with the investigation, prosecution and dismissal of the People of the State of Illinois v. Jussie Smollett and to file and prosecute those criminal charges.
9. hold regularly scheduled press conferences, open to the public, to inform the public of the progress of these investigations.
10. comply with the laws of the State of Illinois in People of the State of Illinois v. Jussie Smollett filed in the Circuit Court of Cook County. And, further that this Court, pursuant to 55 ILCS 5/3-9008:
11. contact the State Agencies named in 55 ILCS 5/3-9008 to find the appropriate person to act as a special prosecutor and in addition/alternative,
12. that this Court consider receiving written proposals – to be filed in this file and open to the public - from any and all attorneys licensed in the State of Illinois who believe they are qualified to serve as a special prosecutor, that such proposals contain the qualifications of the attorney, the expected time needed by the attorney to investigate adequately, the fee to be paid to the attorney and his/her staff and that such proposals not exceed three pages single spaced and that such proposals be filed within ten (10) business days from a date set by this court, all for this

court's consideration of the best person to be appointed as the
special prosecutor in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sheila M. O'Brien", written over a horizontal line.

Sheila M. O'Brien, *pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904


CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she served the foregoing Notice of Motion and Petition to Appoint a Special Prosecutor in the Matter of the People of the State of Illinois v. Jussie Smollett, by hand delivery before the hour of 5:00 p.m. on Friday, April 5, 2019:

Kim Foxx
Cook County State's Attorney
2650 S. California
Chicago, Illinois 60608

50 W. Washington St., Suite 500
Chicago, Illinois 60602

Patricia Holmes
Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602



Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

(55 ILCS 5/3-9008) (from Ch. 34, par. 3-9008)

Sec. 3-9008. Appointment of attorney to perform duties.

(a) (Blank).

(a-5) The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney is sick, absent, or unable to fulfill his or her duties. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties. If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-10) The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney has an actual conflict of interest in the cause or proceeding. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney has an actual conflict of interest in the cause or proceeding. If the court finds that the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-15) Notwithstanding subsections (a-5) and (a-10) of this Section, the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

(a-20) Prior to appointing a private attorney under this Section, the court shall contact public agencies, including, but not limited to, the Office of Attorney General, Office of the State's Attorneys Appellate Prosecutor, or local State's Attorney's Offices throughout the State, to determine a public prosecutor's availability to serve as a special prosecutor at no cost to the county and shall appoint a public agency if they are able and willing to accept the appointment. An attorney so appointed shall have the same power and authority in relation to the cause or proceeding as the State's Attorney would have if present and attending to the cause or proceedings.

(b) In case of a vacancy of more than one year occurring in any county in the office of State's attorney, by death, resignation or otherwise, and it becomes necessary for the transaction of the public business, that some competent attorney act as State's attorney in and for such county during the period between the time of the occurrence of such vacancy and the election and qualification of a State's attorney, as provided by law, the vacancy shall be filled upon the written request of a majority of the circuit judges of the circuit in which is located the county where such vacancy exists, by appointment

as provided in The Election Code of some competent attorney to perform and discharge all the duties of a State's attorney in the said county, such appointment and all authority thereunder to cease upon the election and qualification of a State's attorney, as provided by law. Any attorney appointed for any reason under this Section shall possess all the powers and discharge all the duties of a regularly elected State's attorney under the laws of the State to the extent necessary to fulfill the purpose of such appointment, and shall be paid by the county he serves not to exceed in any one period of 12 months, for the reasonable amount of time actually expended in carrying out the purpose of such appointment, the same compensation as provided by law for the State's attorney of the county, apportioned, in the case of lesser amounts of compensation, as to the time of service reasonably and actually expended. The county shall participate in all agreements on the rate of compensation of a special prosecutor.

(c) An order granting authority to a special prosecutor must be construed strictly and narrowly by the court. The power and authority of a special prosecutor shall not be expanded without prior notice to the county. In the case of the proposed expansion of a special prosecutor's power and authority, a county may provide the court with information on the financial impact of an expansion on the county. Prior to the signing of an order requiring a county to pay for attorney's fees or litigation expenses, the county shall be provided with a detailed copy of the invoice describing the fees, and the invoice shall include all activities performed in relation to the case and the amount of time spent on each activity.
(Source: P.A. 99-352, eff. 1-1-16.)

Kim Foxx defends Jussie Smollett decision as office says she 'did not formally recuse herself'

Megan Crepeau and Jason Meisner Chicago Tribune

Cook County State's Attorney Kim Foxx, facing intense criticism after her office dropped all charges against Jussie Smollett, stood by the decision but said she regretted dealing with one of Smollett's relatives in the early phases of the investigation.

Foxx said she would never have gotten involved if she knew that Smollett would later be deemed a suspect and not a victim.

"I've never had a victim that turned into a suspect," she told the Tribune on Wednesday. "... In hindsight as we see (how) all of it has played out, you know, is there regret that I engaged with the family member? Absolutely."

Due to her contact with that family member, Foxx withdrew from involvement in the case when investigators started casting suspicion on Smollett, who had reported to police that he was the victim of a hate crime.

Smollett was later indicted on 16 counts of disorderly conduct on charges he staged the attack on himself, but in a sudden reversal Tuesday, prosecutors dropped all the charges at an unannounced court hearing. The move drew breathless international news coverage and harsh words from police brass and City Hall.

Foxx maintained that she had no role in the dismissal but defended the move, saying her office often handles cases in a similar fashion for defendants with nonviolent backgrounds — an assertion that a number of Chicago attorneys contacted by the Tribune disputed.

"It's frustrating to me that the reliability of the work of the people of this office has been challenged," she said. "What happened with Jussie Smollett and having this type of diversion is something we offer to people who do not have his money or his fame."

Foxx had said she recused herself from the case last month after revealing she had contact with Smollett's representatives early on in the investigation. She declined to provide

details at the time, but on Wednesday, her office quibbled over the terminology, saying Foxx did not formally recuse herself "in a legal sense."

Communications released to the Tribune earlier this month showed Foxx had asked police Superintendent Eddie Johnson to turn over the investigation to the FBI after she was approached by a politically connected lawyer about the case.

Foxx reached out to Johnson after Tina Tchen, former chief of staff to first lady Michelle Obama, emailed Foxx saying the actor's family had unspecified "concerns about the investigation." Tchen, a close friend of Mayor Rahm Emanuel's wife, said she was acting on behalf of the "Empire" actor and his family. A relative later exchanged texts with Foxx. A spokeswoman for the office said at the time that Smollett's relative was concerned about leaks from Chicago police to the media.

Tchen released a brief emailed statement Wednesday, long after her involvement in the case came to light, saying she approached Foxx as a family friend of the Smolletts. She also noted knowing Foxx from unspecified "prior work together."

"My sole activity was to put the chief prosecutor in the case in touch with an alleged victim's family who had concerns about how the investigation was being characterized in public," the statement read.

In her approximately 20-minute interview Wednesday, Foxx said she suggested to Johnson that turning the case over to the FBI would clamp down on the leaks and be more efficient. The FBI was already investigating a threatening letter that Smollett had claimed to receive just days before the attack.

During their conversation, Foxx said, Johnson also told her to assure Smollett's family that the actor was a victim. He also expressed frustration with the leaks, she said.

"Perhaps we could ... kill two birds with one stone, if you will, and let the FBI, who's already working on this, (take it) over," she said. "And (Johnson) said he would think about it. ... I asked him later what happened. And he said ... they weren't interested in it. And I said that's fine."

Illinois law allows for a state's attorney to "file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate." If the petition is granted, the law calls for

the judge to appoint a special prosecutor either through the attorney general's office, another county prosecutor's office or a private attorney.

But Foxx, who stepped away from the Smollett case before charges were ever filed, didn't file a recusal petition or remove her office from the investigation. Instead, she handed the responsibility for the case to her first assistant, Joseph Magats, a 29-year veteran of the office.

After questions arose this week whether she had followed state law, Foxx's office appeared to back off whether she ever officially recused herself in the first place.

While the term "recusal" was used when it was announced she was stepping away from the Smollett case, a Foxx spokeswoman said, "it was a colloquial use of the term rather than in its legal sense."

"The state's attorney did not formally recuse herself or the office based on any actual conflict of interest," Tandra Simonton said in a statement. "As a result, she did not have to seek the appointment of a special prosecutor under (state law)."

An internal memo sent on Feb. 13 by Foxx's chief ethics officer, April Perry, however, did not describe the move as colloquial at all. Instead, Perry sent a two-sentence email informing staff that Foxx "is recused" from the Smollett investigation. It did not say why.

Foxx on Wednesday said that office employees, including Perry, use the word "recusal" internally to describe when the state's attorney ropes herself off from a case.

"We used the word internally," she said. "We also use the phrase 'wall-off.' ... Build a wall, do not talk to the state's attorney about this case."

Those precautions were enough to meet ethical standards without withdrawing the entire office from the case, Foxx told the Tribune.

She said she has similarly withdrawn herself from involvement in other cases without recusing the entire office, including one case in which the alleged victim was a distant family member.

In Smollett's case, Foxx made the informal recusal a week before the charges were filed. At that point, formally recusing the office — or announcing publicly that she was personally withdrawing — would have tipped off Smollett to the fact that he was being considered a suspect, she said.

"Me saying publicly and me moving our office out of it while the investigation was ongoing would signal that (the) investigation had changed outwardly," Foxx said.

Prosecutors gave little detail in court Tuesday about why the charges were dismissed and did not discuss the terms of any arrangements. Later that day, Magats told the Tribune that prosecutors at some point in the last month made a verbal agreement with the defense: They would dismiss charges in exchange for Smollett performing community service and giving his bond of \$10,000 to the city of Chicago.

Meanwhile, Smollett's defense team adamantly denied that any deal was made at all.

The sudden dismissal of charges stunned regulars at the Leighton Criminal Court Building, both defense lawyers and rank-and-file prosecutors. Attorneys grumbled privately that defendants will now expect similar deals, and some joked about getting a "Smolle pros" — a reference to "nolle pros," the shortened version of the Latin term for dropping charges.

When asked to provide examples of cases that concluded in a similar fashion, a spokeswoman for the prosecutors' office gave two.

Prosecutors reached an agreement to drop a felony marijuana charge in January after the defendant performed community service, according to the spokeswoman and court records.

The other case involved felony theft charges that were dismissed in October when the defendant paid off restitution he owed, court records show.

Former Cook County Judge Daniel Locallo told the Tribune that prosecutors' conduct in the Smollett case raised serious questions, particularly given the lack of public detail about the purported agreement and the little, if any, notice the office appeared to give to police.

"Why the secrecy?" he said. "You believe you have enough evidence to go to the grand jury and you actually indict him, and then without any notice to anybody, you decide to drop the charges?"

"What about other defendants? Why aren't they afforded the same courtesy?" he said. "The bottom line is that this guy got the biggest break. He walks out of court, no charges. His bond goes to the city of Chicago, and he walks out as if nothing happened."

The outcome also surprised veteran criminal defense attorney Dawn Projansky.

"Most people usually have to apologize, pay full restitution, do community service and then maybe their case is dismissed. Maybe. Or it's reduced to a misdemeanor," she said. "It's just too fast and ... it didn't follow the proper procedures of any case."

But Gal Pissetzky, another veteran criminal defense attorney, said prosecutors and defense attorneys don't conduct the nuts and bolts of negotiations in public. Besides, there was no reason to brand Smollett a felon, he said.

Pissetzky also said he has reached similar results in similar cases and hopes the high-profile nature of Smollett's case encourages Foxx's office to continue resolving cases in that fashion.

"Kim Foxx and her office set a precedent, and with that precedent, hopefully she will continue to work towards crime reform and make this case as an example of how she's willing to work with the community, not only with people like Smollett to resolve cases amicably."

Chicago Tribune's Jeremy Gorner contributed.

mcrepeau@chicagotribune.com



Sheila M. O'Brien

Retired Justice Illinois Appellate Court

Education Althoff Catholic High School – Belleville, Illinois 1973
 University of Notre Dame BA 1977 JD 1980
 St. Mary-of-the-Woods College MA 2007 Theology

Licenses Supreme Courts of Illinois, Missouri and the United States

Profession Trial Attorney and Law Professor 1980-1985
 Asst. Public Defender - St. Clair County
 Attorney - Moser & Marsalek, St. Louis
 Adjunct Professor - St. Louis University Law School
 Judge - Circuit Court
 St. Clair County 1985-1991
 Cook County 1991-1994
 Justice - Illinois Appellate Court Elected Nov. 8, 1994 1994-2011
 Retired Jan. 2011

Awards Including:
 University of Notre Dame - Women of Achievement Award June 1995
 Edward F. Sorin Award June 2007
 Outstanding Women in America 1985 - 1990
 Women's Bar Association of Illinois 2007

Boards Women's Bar Foundation

Former Boards

Children First, Inc. YMCA League of Women Voters of St. Clair County
 Illinois Judicial Education Coordinating Committee
 Illinois Judges Association Juvenile Task Force – Solovy Commission

Gubernatorial Commissions

Illinois Juvenile Justice Commission Illinois Drug Task Force for East St. Louis
 Illinois Child Fatality Task Force Illinois Arts Council Agency - present

Arts Former Member - Chicago Symphony Chorus
 Former Member - St. Louis Symphony Chorus

Active in civic, charitable and church affairs

Bio Exhibit 3

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

IN RE: APPOINTMENT OF A SPECIAL) No. 19 MR 00014
PROSECUTOR)
) Hon. LeRoy Martin, Jr.

**OPPOSITION TO (1) PETITION TO APPOINT A SPECIAL PROSECUTOR,
AND (2) MOTION TO PETITION THE SUPREME COURT TO APPOINT AN
OUT-OF-COUNTY JUDGE TO HEAR PETITION TO APPOINT A SPECIAL
PROSECUTOR AND CONDUCT FURTHER PROCEEDINGS**

Jussie Smollett, by his attorneys, Geragos & Geragos, APC, specially appears to oppose the (1) Petition to Appoint a Special Prosecutor, and (2) Instant Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear Petition to Appoint a Special Prosecutor and Conduct Further Proceedings.

1. On March 7, 2019, a felony indictment was filed against Mr. Smollett in the Circuit Court of Cook County, case number 19 CR 3104, alleging 16 counts of disorderly conduct, namely filing a false police report in violation of Chapter 720, Act 5, Section 26-1(a)(4) of the Illinois Compiled Statutes Act of 1992 as amended.

2. On March 26, 2019, the State Attorney's Office moved to *nolle prosequi* all 16 counts. The Court granted the motion and dismissed the case against Mr. Smollett. The Court also ordered the records in this matter sealed.

3. On April 5, 2019, movant Sheila M. O'Brien, in *pro se*, filed a (1) Petition to Appoint a Special Prosecutor to preside over all further proceedings in the matter of the People of the State of Illinois v. Jussie Smollett, filed in the Circuit Court of Cook County (hereafter "Petition"); (2) Instant Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear Petition to Appoint a Special Prosecutor and

Conduct Further Proceedings; and (3) Request of Kim Foxx State's Attorney of Cook County to Admit Facts.

4. While Mr. Smollett's counsel has no objection to and would cooperate with any investigation of the Cook County State Attorney's Office and its handling of criminal cases in general, including its handling of the case against Mr. Smollett, the instant Petition by Ms. O'Brien is procedurally flawed and should be denied.¹

5. Ms. O'Brien's Petition is made pursuant to Section 3-9008 of the Counties Code (55 ILCS 5/3-9008), which authorizes the appointment of a special prosecutor if the State's Attorney "is interested in any cause or proceeding, civil or criminal, which it is or may be his duty to prosecute or defend." However, this statute, by its terms, authorizes such appointments only in pending cases. See *In re Appointment of Special State's Attorneys*, 42 Ill. App. 3d 176, 182 (1976) (noting that 55 ILCS 5/3-9008 "authorizes appointment of special State's Attorneys only in pending cases"); *Wilson v. Cty. of Marshall*, 257 Ill. App. 220, 225 (Ill. App. Ct. 1930) ("It would seem that so far as this suit is concerned, section 6 has no application, because the section applies only to pending causes.").²

¹ Mr. Smollett also objects to the Fact Timeline contained in pages 5 through 12 of the Petition, as this information is based on press reports and is inaccurate in many instances. Ms. O'Brien herself admits that "[t]he evidence for this petition is what is reported in the press, not traditional evidence under oath." Petition at 16.

² Although the law has since been settled that circuit courts possess the inherent power to also appoint special attorneys "when the regular officer is absent or disqualified, in order to prevent a failure of justice" even before a suit or proceeding has commenced, see *In re Appointment of Special State's Attorneys*, 42 Ill. App. 3d 176, 182 (1976); *People ex rel. York v. Downen*, 119 Ill. App. 3d 29, 31 (1983), our research discloses no cases in which a court has authorized the appointment of a special prosecutor *after* a case has been dismissed and the records sealed.

6. Illinois courts have clearly held that they “do not review cases merely to guide future litigation or set precedent.” *See People v. Dunmore*, 2013 IL App (1st) 121170, ¶ 12 (internal citations omitted); *see also In re Appointment of Special Prosecutor*, 253 Ill. App. 3d 218, 224 (1993) (“Courts, however, should not render advisory opinions or declaratory judgments in the absence of an actual controversy.”). Illinois courts have also stated that they “will not decide abstract questions or render advisory opinions.” *See Dunmore, supra*, 2013 IL App (1st) 121170, ¶ 12 (citing *People v. Campa*, 217 Ill. 2d 243, 269 (2005)); *see also Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 157 (2002) (“Advisory opinions are to be avoided.”).

7. At the time Ms. O'Brien filed her Petition and accompanying documents, there was no longer a criminal case pending against Mr. Smollett, as this Court had already dismissed the case and sealed the records appropriately. As such, the Petition for the Appointment of a Special Prosecutor should be dismissed as moot. *See In re Special Prosecutor*, 126 Ill. 2d 208, 209 (1988) (“Since the issues are moot, we vacate the judgments of the appellate and circuit courts and remand the cause to the circuit court of Hamilton County with directions to dismiss the petition for the appointment of a special prosecutor.”); *In re Appointment of Special Prosecutor*, 253 Ill. App. 3d 218, 225 (1993) (“Since we have not been presented with any good reason to decide the merits of this case and since the case law dictates that we exercise judicial restraint, we accordingly are dismissing this appeal [as moot] without expressing any view on the merits of trial judge's order.”); *see also Dunmore, supra*, 2013 IL App (1st) 121170, ¶¶ 12-13 (declining

to address the constitutionality of *nol-prossed* charges despite the State's ability to hypothetically reinstate the charges).

8. Furthermore, the appointment of a special prosecutor would result in a duplication of effort at the expense of taxpayers, since the Cook County Inspector General's Office is already investigating the handling of the Smollett case by the State Attorney's Office.

9. The Office of Inspector General of Cook County is an independent office created by Ordinance 07-O-52 of the Code of Ordinances of Cook County, Illinois. *See* Cook County, Ill., Ordinances 07-O-52 (2007).

10. Section 2-283 of the Code of Ordinances outlines the purpose of the Inspector General "to detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government." Specifically, Section 2-284 includes the power "to investigate corruption, fraud, waste, mismanagement, unlawful political discrimination and misconduct in operations of County Government ... or in the proper case, to refer complaints and information to an outside law enforcement agency."

11. In accordance with this ordinance, on or about April 12, 2019, the Inspector General initiated an investigation into the handling of the Jussie Smollett case by the Cook County State Attorney's Office.³ *See, e.g.,* <https://www.chicagotribune.com/news/local/politics/ct-met-kim-foxx-jussie-smollett-20190412-story>.

³ The FBI is also reportedly reviewing the circumstances surrounding the dismissal of the criminal charges against Smollett.

html; <https://abcnews.go.com/US/investigation-launched-handling-jussie-smollett-case/story?id=62361868>.

12. Any investigation by a special prosecutor would be entirely duplicative of the investigation already ongoing by the Inspector General's Office. Such an investigation would constitute a waste of judicial time and resources. And a judicial investigation by a special prosecutor can be extremely costly for taxpayers. *See, e.g.,* Brad Heath, Taxpayers Pay to Defend Prosecutors in Ted Stevens Case, USA Today, Feb. 2, 2012, *available at* <http://usatoday30.usatoday.com/news/washington/story/2012-02-06/ted-stevens-prosecutors-justice-department/52922922/1> (reporting that special prosecutor's investigation in Ted Stevens' case cost taxpayers approximately \$1.8 million); *see also* Tim Marcin, How Much Did Robert Mueller's Investigation Cost? Report Cost Millions But Not As Much As Trump Has Claimed, Newsweek, Mar. 22, 2019, *available at* <https://www.newsweek.com/how-much-robert-mueller-investigation-cost-report-1372575> (reporting that special counsel Robert Mueller's investigation of President Donald Trump cost taxpayers between \$31 and \$35 million and special prosecutor Kenneth Starr's probe of President Bill Clinton cost taxpayers about \$70 million).

13. Finally, the records in the Smollett matter were ordered sealed properly by the Court on March 26, 2019. The Criminal Identification Act authorizes the immediate sealing of certain criminal records. *See* 20 ILCS 2630/5.2(g). Ms. O'Brien's Petition fails to present a compelling reason or even good cause to justify the unsealing of confidential, sealed records.

WHEREFORE, Jussie Smollett, by his attorneys, Geragos & Geragos, requests that this Court deny the (1) Petition to Appoint a Special Prosecutor, and (2) Instant Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear Petition to Appoint a Special Prosecutor and Conduct Further Proceedings.

Dated: April 18, 2019

Respectfully submitted,

/s/ Mark J. Geragos
 Mark J. Geragos, Rule 707 Admitted
 Tina Glandian, Rule 707 Admitted
 Geragos & Geragos, APC
 644 South Figueroa Street
 Los Angeles, CA 90017-3411
 (213) 625-3900
 &
 Geragos & Geragos, APC
 256 5th Avenue
 New York, NY 10010
 mark@geragos.com
 tina@geragos.com

CERTIFICATE OF SERVICE

The undersigned attorney certifies on April 18, 2019, these papers were served to the attorneys of record.

Risa Lanier
Cook County State's Attorney's Office
2650 S. California Avenue, 11D40
Chicago, IL 60608
risa.lanier@cookcountyil.gov

Sheila M. O'Brien
360 E. Randolph #1801
Chicago, Illinois 60601
Sobrien368@aol.com

/s/ Brian O. Watson
Brian O. Watson

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

| | | |
|---------------------------------|---|------------------------|
| IN RE: APPOINTMENT OF A SPECIAL |) | No. 19 MR 00014 |
| PROSECUTOR |) | |
| |) | Hon. LeRoy Martin, Jr. |

ORDER

This cause coming before the Court on a (1) Petition to Appoint a Special Prosecutor ("Petition"), and (2) Instant Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear Petition to Appoint a Special Prosecutor and Conduct Further Proceedings ("Motion"), due notice having been given and the Court being fully advised in the premises, IT IS HEREBY ORDERED that the Petition and Motion are denied.

IT IS SO ORDERED.

ENTERED:

Circuit Court of Cook County
Criminal Division

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

IN RE APPOINTMENT OF
SPECIAL PROSECUTOR

)
)
)
)
)
)
)

19 MR 00014
Hon. LeRoy Martin, Jr.

NOTICE OF FILING

To: Patricia Holmes (pholmes@rshc-law.com)
Brian O'Connor Watson (bwatson@rshc-law.com)
Raley Safer Holmes & Cancila, LLP.
70 West Madison Street, Suite 2900
Chicago, Illinois 60602

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on April 30, 2019, I caused to be filed with the Clerk of the Circuit Court, Criminal Division, **COOK COUNTY STATE'S ATTORNEY'S OBJECTION TO THE PETITION TO APPOINT A SPECIAL PROSECUTOR**, a copy of which is attached and hereby served upon you.

KIMBERLY M. FOXX
State's Attorney of Cook County

By: /s/ Cathy McNeil Stein
Cathy McNeil Stein
Assistant State's Attorney
Chief, Civil Actions Bureau
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-5365
cathymcneil.stein@cookcountyil.gov

CERTIFICATE OF SERVICE

I, Cathy McNeil Stein, Assistant State's Attorney, hereby certify that I caused an exact copy of the above notice, together with the document referenced herein, to be sent via email to Patricia Holmes and Brian O'Connor Watson and to be hand delivered to Sheila M. O'Brien on April 30, 2019 before 5:00 p.m.

/s/ Cathy McNeil Stein
Cathy McNeil Stein, ASA

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

**IN RE APPOINTMENT OF A
SPECIAL PROSECUTOR**

)
)
)
)
)

**No. 19 MR 00014
The Hon. Leroy Martin, Jr.**

**COOK COUNTY STATE'S ATTORNEY'S OBJECTION TO
THE PETITION TO APPOINT A SPECIAL PROSECUTOR**

Now comes KIMBERLY M. FOXX, State's Attorney of Cook County, Illinois, through her Assistant, Cathy McNeil Stein, to object to the petition for the appointment of a special prosecutor. In support of her objection, the State's Attorney states as follows:

The petition fails because the standard for the appointment of a special prosecutor – the existence of an *actual conflict of interest*, as demonstrated by “sufficient facts and evidence,” has not been met. Further, petitioner is not an “interested person” under the special prosecutor statute and therefore lacks standing to file this petition. Fundamentally, what petitioner seeks is an inquiry into the State's Attorney's Office's handling of the matter. While such an inquiry is an improper basis for a special prosecutor appointment, that does not mean it will not occur, because the very type of review that petitioner seeks is already being conducted by the Cook County Office of the Independent Inspector General, at the State's Attorney's request. The appointment of a special prosecutor would only duplicate or interfere with that review.

For these reasons, the petition should be denied.

BACKGROUND

1. Petitioner Sheila O'Brien seeks the appointment of a special prosecutor purportedly to "investigate and prosecute [the case of] the People of the State of Illinois v. Jussie Smollett;" to "investigate the actions of any person and/or office involved in the investigation, prosecution and dismissal of [the case of the] People of the State of Illinois v. Jussie Smollett;" and to investigate the procedures of the Cook County State's Attorney's Office regarding charging decisions, bond, deferred prosecution and recusals. (Petition at 16-18) Specifically, petitioner claims that State's Attorney Foxx should be disqualified under 55 ILCS 5/3-9008(a-5) because she was "unable to fulfill her duties" in the Smollett matter due to a potential conflict of interest (Petition at 13) and because she announced she had recused herself from the matter, indicating a subjective belief that she had a disabling conflict and was therefore unable to fulfill her duties, but never filed a formal motion of recusal with the court or sought the appointment of a special prosecutor. (Petition at 14-15) Petitioner also claims that the appointment of a special prosecutor is necessary because State's Attorney Foxx herself has called for an "outside, nonpolitical review" of the State's Attorney's Office's conduct in handling the Smollett matter. (Petition at 15-16) Finally, petitioner claims that she has sufficient standing to bring the petition because she is "a resident of the State of Illinois, the County of Cook and the City of Chicago and is a taxpayer in each jurisdiction," and because she is a former Cook County Circuit Court Judge and Illinois Appellate Court Justice who "has been associated with the Illinois justice system for her entire career" and whose "personal reputation as a member of that system is being harmed and questioned" based what occurred in the Smollett case. (Petition at 3-4)

ARGUMENT

2. Petitioner does not – and cannot – meet the standard for the appointment of a special prosecutor, because the State’s Attorney had no actual conflict in this case, nor has petitioner brought forth any facts or evidence of such a conflict. What petitioner truly seeks – an independent inquiry into the decisions that were made by the State’s Attorney’s Office in this matter – has already been called for by the State’s Attorney herself, and is underway.

3. As the Illinois Supreme Court has long recognized, “the State’s Attorney is a constitutional officer who represents the people in matters affected with a public interest.” *County of Cook ex rel. Rifkin v. Bear Stearns & Co.*, 215 Ill. 2d 466, 475 (2005) (quoting *In re C.J.*, 166 Ill. 2d 264, 269 (1995)); *see also* Ill. Const. 1970, Art. VI, § 19. Thus, each elected or appointed State’s Attorney is vested with constitutional and common law authority which cannot be transferred to another attorney. *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶¶ 26-30; *People ex rel. Kuntsman v. Nagano*, 389 Ill. 231, 249-50 (1945). Inherent in this constitutional and common law authority is “the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all.” *People v. Jamison*, 197 Ill. 2d 135, 161-62 (2001). *See also* *People v. Novak*, 163 Ill.2d 93, 113 (1994) (“It is settled ‘that the State’s Attorney, as a member of the executive branch of government, is vested with exclusive discretion in the initiation and management of a criminal prosecution. That discretion includes the decision whether to prosecute at all, as well as to choose which of several charges shall be brought.’”) (quoting *People ex rel. Daley v. Moran*, 94 Ill. 2d 41, 45-46 (1983)). *See also* 55 ILCS 5/3-9005(a)(1) (“The duty of each State’s attorney shall be . . . [t]o commence and prosecute all

actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for [her] county, in which the people of the State or county may be concerned.”)

4. Furthermore, it has long been recognized that a State’s Attorney’s authority to prosecute, or not prosecute, necessarily encompasses the ability “to nol-pros a charge when, in his judgment, the prosecution should not continue.” *People v. DeBlieck*, 181 Ill. App. 3d 600, 603 (2nd Dist. 1989). *See also People v. Norris*, 214 Ill. 2d 92, 104 (2005) (“A *nolle prosequi* is the formal entry of record by the prosecuting attorney which denotes that he or she is unwilling to prosecute a case.”); *People v. Baes*, 94 Ill. App. 3d 741, 746 (3rd Dist. 1981) (“The prosecutor has broad discretion to file a *nolle prosequi*, and the court is required to enter same absent a clear abuse of discretion.”).

5. Finally, because “the State’s Attorney has always enjoyed a wide discretion in both the initiation and the management of criminal litigation,” it is well settled that a prosecutor cannot “be required by a court to justify its discretionary decision[.]” *In re Derrico G.*, 2014 IL 114463, ¶¶ 62-63 (quoting *People ex rel. Carey v. Cousins*, 77 Ill. 2d 531, 539 (1979)). *See also People v. Stewart*, 121 Ill. 2d 93, 111 (1988) (“[T]he policy considerations behind a prosecutor’s traditionally ‘wide discretion’ suggest the impropriety of our requiring prosecutors to defend their decisions . . . [T]he capacity of prosecutorial discretion, to provide individualized justice is “firmly entrenched in American law.”) (quoting *McCleskey v. Kemp*, 481 U.S. 279, 296, 311-12 (1987)).

6. Nevertheless, because there are circumstances when a duly-elected State’s Attorney is incapable of performing her duties, the legislature has provided a limited mechanism

for the appointment of a special prosecutor. Specifically, Section 3-9008 provides in pertinent part:

(a-5) The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney is sick, absent, or unable to fulfill his or her duties. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties. If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-10) The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney has an actual conflict of interest in the cause or proceeding. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney has an actual conflict of interest in the cause or proceeding. If the court finds that the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-15) Notwithstanding subsections (a-5) and (a-10) of this Section, the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

55 ILCS 5/3-9008 (West 2016).

7. Under the plain language of this provision — which was extensively rewritten by the Illinois General Assembly in 2015 (see Public Act 99-352, eff. Jan. 1, 2016) — it is clear that a duly-elected State's Attorney may only be removed from a particular matter over her objection if she is “sick, absent, or otherwise unable to fulfill his or her duties” (Subsection (a-5)), or “has an *actual conflict of interest* in the cause or proceeding.” (Subsection (a-10) (emphasis added)).

8. None of the statutory prerequisites for removal exist in this case. As the Appellate Court recently held, a special prosecutor can only be appointed over the State's Attorney's objection under Section 3-9008 if she is physically unable to appear on a particular matter or she suffers from an "actual conflict of interest." *Farmer v. Cook County State's Attorney's Office (In re Appointment of Special Prosecutor)*, 2019 IL App (1st) 173173, ¶¶ 33, 39. Importantly, petitioner here does not claim that State's Attorney Foxx is physically unable to appear. As such, there is no basis for appointment under section 3-9008(a-5). *Id.* at ¶ 31 ("Because [the petitioner] makes no argument that the state's attorney is physically unable to fulfill her duties in this case due to sickness, absence, or otherwise, the circuit court did not err in denying the petition under subsection (a-5).").

9. Moreover, although petitioner claims that appointment of a special prosecutor was required under subsection (a-15) because the State's Attorney's Office publicly announced that State's Attorney Foxx was recusing herself from the Smollett matter out of an "abundance of caution," it is clear that that statutory provision places the decision to file (or not file) a formal recusal motion squarely within her exclusive discretion.

10. Even if there were an appearance of impropriety, it would not provide a valid basis to grant the petition because the Appellate Court has made clear that such an appearance is not sufficient to meet the requisite burden under subsection (a-10) of establishing that an "actual conflict of interest" exists. *Farmer*, 2019 IL App (1st) 173173, ¶ 36 (noting that earlier appellate court decisions allowing for the appointment of a special prosecutor in the absence of proof of an actual conflict of interest are inconsistent with the language of the newly amended statute and accepting with approval the argument that "the insertion of the term 'actual conflict of interests'

forecloses the possibility of a special prosecutor being appointed where there is merely ‘the appearance of impropriety’”). *See also In re Marriage of O’Brien*, 2011 IL 109039, ¶ 43 (holding that a motion for substitution of judge must be granted upon a showing of “actual prejudice,” but rejecting the argument that a showing of an appearance of impropriety is sufficient because “[t]o so hold would mean that the mere *appearance* of impropriety would be enough to force a judge’s removal from a case.”) (emphasis in original)).

11. Further, as the *Farmer* court recognized, an “actual conflict” under the statute *only* exists where the State’s Attorney is “interested [in the matter] as a private individual or as an actual party to the proceedings.” *Id.* at ¶ 39 (citing *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394, 400-01 (1977)). This has long been the rule in Illinois. *See e.g., People v. Moretti*, 415 Ill. 398, 402-03 (1953) (special prosecutor properly appointed to investigate and prosecute a double murder because the elected State’s Attorney was a potential witness before the grand jury); *People v. Doss*, 384 Ill. 400, 404-05 (1943) (appointment of special prosecutor proper in a criminal libel case where the libelous and defamatory statements were directed at the elected State’s Attorney); *People v. Courtney*, 288 Ill. App. 3d 1025, 1031-34 (3rd Dist. 1997) (special prosecutor necessary where the defendant in an aggravated criminal sexual assault case was represented by a lawyer for 14 months who was subsequently elected State’s Attorney while his trial was still pending); *People v. Morley*, 287 Ill. App. 3d 499, 503-04 (2nd Dist. 1997) (appointment of special prosecutor not required in an attempt first degree murder case even though the victim was an employee of the State’s Attorney’s Office).

12. As petitioner offers no evidence that State's Attorney Foxx is a party to the litigation or was personally interested in the Smollett matter as a private individual, the petition must be denied.

13. Moreover, petitioner's status as a taxpayer and an "active member of her community" (Petition at 3) is not sufficient to render her an "interested person" under Section 3-9008. If taxpayer status were sufficient to confer standing, anyone could demand the appointment of special prosecutor. However, Section 3-9008(a-10) limits standing only to "interested persons." Petitioner is merely a casual observer and should not be permitted, absent some showing of particularized interest, to intervene here. In this sense, the question of standing here melds with the burden of proof. Appointment of a special prosecutor is only appropriate when "the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest." 55 ILCS 5/3-9008. Petitioner has not brought forth any facts or evidence of an actual conflict, because she has none.

14. Finally, even if petitioner's abstract concern for the "Illinois justice system" were sufficient to confer standing to seek a special prosecutor in this case -- which it is not -- petitioner's concerns were already being proactively addressed by the State's Attorney herself. As soon as questions were raised regarding the handling of the Smollett case, State's Attorney Foxx issued a public call for an "outside nonpolitical review of how [the Office] handled this matter." ("Kim Foxx: I welcome an outside review of how we handled the Jussie Smollett case," Chicago Tribune, March 29, 2019, <https://www.chicagotribune.com/news/opinion/commentary/ct-perspec-kim-foxx-jussie-smollett-20190329-story.html>.) The State's Attorney requested that the Cook County Office of the

Independent Inspector General conduct a review of “the circumstances surrounding the resolution of criminal charges formerly pending against Jussie Smollett,” and on April 11, 2019, Inspector General Patrick Blanchard agreed to do so. (4/17/19 letter from Patrick M. Blanchard, Inspector General, attached hereto as Ex. A).

15. Because the Independent Inspector General is already investigating the State’s Attorney’s Office’s actions in the Smollett case, it is clear that the appointment of a special prosecutor for the purpose of conducting a similar investigation would be not only duplicative, but might even interfere with Mr. Blanchard’s efforts. Specifically, the Inspector General’s statutory mandate is “to detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government.” Cook County Ordinance § 2-283.

16. Further, upon completion of his investigation, the Inspector General is required to submit a report summarizing his findings to both the State’s Attorney and the President of the County Board (Cook County Ordinance § 2-288), and to notify an “appropriate law enforcement authority” if he “determines or suspects that possible criminal conduct has occurred” (Cook County Ordinance § 2-284(6)). This is precisely the type of investigation that petitioner anticipates would be conducted by a special prosecutor. As such, there is no need for this Court to make such an appointment. *See Farmer*, 2019 IL App (1st) 173173, ¶ 20 (noting that Section 3-9008 permits the court “to exercise its discretion in reviewing the circumstances to determine the need for such [an appointment]”) (quoting *Sommer v. Goetze*, 102 Ill. App. 3d 117, 120 (3rd Dist. 1981)).

CONCLUSION

For the foregoing reasons, it is clear that petitioner cannot meet her burden under Section 3-9008 to establish a basis for disqualifying the State's Attorney or for appointing a special prosecutor. As such, this Court should deny the petition.

Respectfully submitted,

KIMBERLY M. FOXX
State's Attorney of Cook County

By: /s/ Cathy McNeil Stein
Cathy McNeil Stein
Assistant State's Attorney
Chief, Civil Actions Bureau
500 Richard J. Daley Center
Chicago, IL 60602
(312) 603-5365
cathymcneil.stein@cookcountyil.gov

EXHIBIT A

THE BOARD OF COMMISSIONERS

TONI PRECKWINKLE
PRESIDENT

| | | | |
|-----------------|-----------------------|---------------------|------------------------|
| BRANDON JOHNSON | 1 st Dist. | PETER N. SILVESTRI | 9 th Dist. |
| DENNIS DEER | 2 nd Dist. | BRIDGET GAINER | 10 th Dist. |
| BILL LOWRY | 3 rd Dist. | JOHN P. DALEY | 11 th Dist. |
| STANLEY MOORE | 4 th Dist. | BRIDGET DEGNEN | 12 th Dist. |
| DEBORAH SIMS | 5 th Dist. | LARRY SUFFREDIN | 13 th Dist. |
| DONNA MILLER | 6 th Dist. | SCOTT R. BRITTON | 14 th Dist. |
| ALMAE ANAYA | 7 th Dist. | KEVIN B. MORRISON | 15 th Dist. |
| LUIS AKROY JR. | 8 th Dist. | JEFFREY R. TOBOLSKI | 16 th Dist. |
| | | SEAN M. MORRISON | 17 th Dist. |



OFFICE OF THE INDEPENDENT INSPECTOR GENERAL

PATRICK M. BLANCHARD
INSPECTOR GENERAL69 West Washington Street
Suite 1160
Chicago, Illinois 60602
PHONE (312) 603-0350
FAX (312) 603-9948

April 11, 2019

Confidential Via Electronic Mail

Honorable Toni Preckwinkle
and Honorable Members of the Cook County
Board of Commissioners
118 North Clark Street
Chicago, Illinois 60602

Re: OIIG SAO Review

Dear President Preckwinkle and Members of the Board of Commissioners:

This letter is written to inform you that this office has received a request by State's Attorney Kim Foxx to conduct an Office of the Independent Inspector General (OIIG) review of the circumstances surrounding the resolution of criminal charges formerly pending against Jussie Smollet. As you may recall, the Office of the Cook County State's Attorney (SAO) has previously objected to the exercise of jurisdiction by this office over the SAO in relation to other unrelated issues. State's Attorney Foxx has stated that her office will cooperate during the course of this review notwithstanding prior objections to OIIG jurisdiction. Accordingly, this office will proceed with this review in accordance with the terms of the Independent Inspector General Ordinance, Cook County, Ill., Ordinances 07-O-52 (2007).

Thank you for your time and attention to these issues. Should you have any questions or wish to discuss this letter further, please do not hesitate to contact me.

Very truly yours,

Patrick M. Blanchard
Independent Inspector General

cc: Honorable Kim Foxx
Ms. Lanetta Haynes Turner, Chief of Staff, Office of the President
Ms. Laura Lechowicz Felicione, Special Legal Counsel to the President

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

IN RE APPOINTMENT OF SPECIAL PROSECUTOR

)
)
) **No. 19 MR 00014**
)
)
)

) **Michael P. Toomin**
) **Judge Presiding**
)
)
)

ORDER

Petitioner, Sheila O'Brien, seeks the appointment of a special prosecutor to reinstate and further prosecute the case of the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, to investigate the actions of any person or office involved in the investigation, prosecution and dismissal of that matter, and to also investigate the procedures of the Cook County State's Attorney's Office regarding charging decisions, bonds, deferred prosecutions and recusals. Respondent, Kim Foxx, State's Attorney of Cook County, denies that the Smollett prosecution was compromised, impeded or undermined by any illegal or improper action and further contends that petitioner cannot meet the standards for appointment of a special prosecutor. Accordingly, respondent maintains the petition should be denied.

The issues have been joined by the pleadings and exhibits and following oral argument the matter was taken under advisement. The court will now address the merits of the petition.

BACKGROUND

The instant petition has its genesis in a story unique to the annals of the Criminal Court. The principal character, Jussie Smollett, is an acclaimed actor known to the public from his performances in the television series, “Empire.” But his talents were not destined to be confined to that production. Rather, in perhaps the most prominent display of his acting potential, Smollett conceived a fantasy that propelled him from the role of a sympathetic victim of a vicious homophobic attack to that of a charlatan who fomented a hoax the equal of any twisted television intrigue.

Petitioner’s factual allegations stem from a number of articles published in the Chicago Tribune, the Chicago Sun-times and other newspapers as well as local broadcasts, together with redacted Chicago Police Department reports and materials recently released by the State’s Attorney’s Office. Although the court recognizes that portions of these sources may contain hearsay rather than “facts” within the semblance of a trial record, the materials provide a backdrop for consideration of the legal issues raised by the petition.¹

The story begins on January 22, 2019, when Smollett first sought the aid of the Chicago Police Department. Smollett reported that he was the recipient of an envelope delivered to the “Empire” studio on Chicago’s West Side. Inside, was an unsettling note with letters apparently cut out from an unidentifiable publication, forming what appeared to be a racial and homophobic message that Smollett perceived as a threat. His fear was further heightened by the stick figure

¹ Hearsay is an out-of-court statement offered for the truth of the matter asserted therein, its value depending upon the credibility of the declarant. *People v. Murphy*, 157 Ill. App. 3d 115, 118, (1987); see also Ill. R. Evid. 801 (a)-(c) (eff. Jan. 1, 2011). Yet, certain of such statements may be admissible for other purposes (*People v. Davis*, 130 Ill. App. 3d 41, 53, (1984), including to simply show that a statement was made, to characterize an act, to show its effect on the listener, or to explain the steps in an investigation. See M. Graham, *Graham’s Handbook of Illinois Evidence* § 801.5, at 763-78 (10th ed. 2010); and Ill. R. Evid. 803 and 804. Admissions and prior inconsistent statements, which appear prominently in the parties’ submissions, are likewise not considered hearsay. Graham, §§ 801.9 and 801.14; and Ill. R. Evid. 801(d)(1), (2).

displayed on the note, holding a gun pointed at the figure's head. Additionally, the envelope contained a white powder substance that the police later determined to be aspirin.

A week later, on January 29, 2019, Smollett's production manager called 911 to report that Jussie had been attacked by two men outside a local sandwich shop at two o'clock that morning. Smollett, who is black and gay, later told the police he was physically attacked as he returned home from an early morning stop at the nearby Subway store. Smollett claimed that two masked men shouted homophobic and racial slurs, and as they beat him yelled "This is MAGA country." After looping a rope around his neck, the offenders who reportedly were white, poured "an unknown substance" on him before running away.

When news of the attack was released to the public, members of the United States Congress, television talk show hosts and other public figures expressed outrage. This included even the President of the United States who after viewing this story declared, "It doesn't get worse, as far as I'm concerned."

Acting on the belief that what had transpired was potentially a hate crime, the response of law enforcement was swift and certain. On the day following the attack, at least a dozen detectives combed hundreds of hours of surveillance camera footage in the area Smollett designated as the scene of the attack. None of the footage revealed anything resembling the attack. However, detectives did observe images of two people in the area, but their faces were indistinguishable.

As the investigation progressed the police began to focus on two brothers who soon came to be viewed as suspects. On February 13, 2019, as they returned from Nigeria, the brothers were taken into custody and questioned. The following day their apartment was searched.

Smollett's story then began to unravel. Detectives eventually concluded that he had lied about the attack. The investigation shifted to whether Smollett orchestrated the scenario, paying the Nigerians to stage the event. The police learned that both brothers had actually worked with Smollett at his television studio. Smollett had now become a suspect, well on his way to becoming an accused.

On February 21, 2019, in the early morning, Smollett turned himself in to custody at Chicago Police Headquarters where he was arrested and charged with filing a false police report, a form of disorderly conduct. The offense is a Class 4 felony, carrying a potential sentence of up to three years imprisonment. That same day, Police Superintendent, Eddie Johnson, held a press conference where he essentially confirmed what anonymous sources had been leaking to the media; that Smollett had staged the attack because he was dissatisfied with his "Empire" salary and that he had sent the threatening letter to himself.

On March 8, 2019, a Cook County grand jury indicted Smollett on 16 felony counts of disorderly conduct. A plea of not guilty was entered at his arraignment and the cause was continued to April 17, 2019. However, that date never materialized; rather, at an emergency court appearance on March 26, 2019, the case was *nolle prosequi*, a disposition that shocked officialdom as well as the community. The State's Attorney's Office then issued the following statement:

"After reviewing all the facts and circumstances of the case including Mr. Smollett's volunteer service in the community and his agreement to forfeit his bond to the City of Chicago, we believe the outcome is a just disposition and appropriate resolution of this case"

The State's Attorney's revelation was widely condemned. The secrecy shrouding the disposition prompted a backlash from both Superintendent Johnson as well as Mayor Rahm Emanuel, who derided the decision as a "whitewash of justice." President Trump again weighed in, announcing that the F.B.I and the Department of Justice would review the case, which he called "an embarrassment to our nation."

Internal documents recently released by the State's Attorney's Office and the Chicago Police Department contradict the impression that the sudden disposition was only recently conceived. In reality, negotiations extended back to February 26, 2019, a date close to the initial charges when First Assistant Magats wrote:

"We can offer the diversion program and restitution. If we can't work something out, then we can indict him and go from there."

On February 28, 2019, the Chief of the Criminal Division, Risa Lanier, told detectives that they could no longer investigate the crime; she felt the case would be settled with Smollett paying \$10,000 in restitution and doing community service. Although the detectives assumed the disposition would include a guilty plea, there was no admission of guilt or plea when the agreement was consummated. The public also found unsettling that the prosecutors had left open the question of Smollett's wrongdoing.

As with many unwinding plots, this case has a back story offering further insight into the workings behind the scenes. The details of that story became public over the course of the prosecution and was supplemented on May 31, 2019 through the release of reports, text messages and other internal documents released by the State's Attorney's Office and the Chicago Police Department and reported by the media.

On February 1, 2019, two days after Jussie Smollett reported his staged hate crime, State's Attorney Kim Foxx was contacted by Tina Tchen, a local attorney who previously served

as Michelle Obama's Chief of Staff. Tchen, a Smollett family friend, informed Foxx of the family's concern over the investigation and particularly, leaks from the police department to the media.

In turn, Foxx reached out to Superintendent Johnson, seeking to have the investigation taken over by the F.B.I. She later exchanged text messages with a member of the Smollett family who was grateful for Foxx's efforts.

The same day, Ms. Foxx discussed the likelihood of the F.B.I. taking over the investigation with her Chief Ethics Officer, April Perry. On February 3, 2019, Foxx told Perry to "impress upon them [the FBI] this is good." Perry later responded that she had spent 45 minutes giving her "best sales pitch" to the F.B.I., but they would likely want to hear more from Superintendent Johnson.

In another text, Ms. Foxx wondered if it was worth the effort and the transfer never materialized:

"I don't want to waste any capital on a celebrity case that doesn't involve us. I'm just trying to move this along, since it's a distraction and people keep calling me."

On February 13, 2019, Foxx quietly announced that she was leaving the case. April Perry sent an internal email informing staff:

"Please note that State's Attorney Foxx is recused from the investigation involving Jussie Smollett. First Assistant State's Attorney, Joe Magats is serving as the Acting State's Attorney for this matter."

Six days later, the recusal was confirmed by Foxx's spokeswoman, Tandra Simonton:

"Out of an abundance of caution, the decision to recuse herself was made to address potential questions of impropriety based upon familiarity with potential witnesses in the case."

Additionally, an ABC 7-I-Team press release recounted that Alan Spellberg, supervisor of the State's Attorney's Appeals Division, had sent a four-page memo to office brass indicating that the appointment of Magats was against legal precedent:

"My conclusion from all of these authorities is that while the State's Attorney has the complete discretion to recuse herself from the matter, she cannot simply direct someone (even the First Assistant) to act in her stead"

Mounting questions over Foxx's withdrawal prompted various responses from her office. Foxx, they explained, did not legally recuse herself from the Smollett case; she did so only "colloquially." According to Foxx's spokeswoman, Keira Ellis:

"Foxx did not formally recuse herself or the [State's Attorney] Office based on any actual conflict of interest. As a result she did not have to seek the appointment of a special prosecutor"

The confusion continued, as well as the widespread doubt. On May 31, 2019, the State's Attorney added yet another explanation for her recusal:

"False rumors circulated that I was related or somehow connected to the Smollett family, so I removed myself from all aspects of the investigation and prosecution...so as to avoid even the perception of a conflict."

ANALYSIS

Petitioner, Sheila O'Brien, seeks the appointment of a special prosecutor to reinstate and further prosecute the charges in the matter entitled the People of the State of Illinois v. Jussie Smollett, dismissed by the Cook County State's Attorney on March 26, 2019, and *inter alia*, to investigate the actions of any person or office involved in the investigation, prosecution and dismissal of that matter. Petitioner asserts that appointment of a special prosecutor is appropriate where, as here, the State's Attorney is unable to fulfill her duties, has an actual conflict of interest or has recused herself in the proceedings.

State's Attorney, Kim Foxx, denies that petitioner has the requisite standing to bring this action, Ms. Foxx further maintains that petitioner cannot meet the standard for the appointment of a special prosecutor as she had no actual in conflict in this case, and at no time filed a formal recusal motion as the law requires. Additionally, the State's Attorney posits that appointment of a special prosecutor would be duplicative of the inquiry she requested into her handling of the matter, currently being conducted by the Cook County Inspector General.

Any analysis must be prefaced by reference to governing legal principles. As a threshold matter it is generally recognized that section 3-9005 of the Counties Code, 55 ILCS 5/3-9005 (West 2018), cloaks the State's Attorney with the duty to commence and prosecute all actions, civil or criminal, in the circuit court for the county in which the people of the State or county may be concerned. *People v. Pankey*, 94 Ill. 2d 12, 16 (1983). As a member of the executive branch of government, the public prosecutor is vested with exclusive discretion in the initiation and management of a criminal prosecution. *People v. Novak*, 163 Ill. 2d 93, 113 (1994). Essentially, it is the responsibility of the State's Attorney to evaluate the evidence and other pertinent factors to determine what offenses, if any, can and should properly be charged. *People*

ex rel. Daley v. Moran, 94 Ill. 2d 41, 51 (1983).

It is well-settled that prosecutorial discretion is an essential component of our criminal justice system. As noted, the State's Attorney is cloaked with broad prosecutorial power in decisions to bring charges or decline prosecution. *Novak*, 163 Ill. 2d at 113. Control of criminal investigations is the prerogative of the executive branch, subject only to judicial intervention to protect rights. *Dellwood Farms, Inc. v. Cargill, Inc.*, 128 F. 3d 1122, 1125 (1997).

In derogation of these long-standing principles, our legislature has codified certain limitations on the powers and duties of our elected State's Attorneys. Thus, the current iteration of Section 3-9008 of the Counties Code, 55 ILCS 5/3-9008 (West 2018) provides in relevant parts:

(a- 5) The court on its own motion, or an interested person in a cause or proceeding,...may file a petition alleging that the State's Attorney is sick, absent, or unable to fulfill his or her duties. The court shall consider the petition, any documents filed in response, and ... If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-10) The court on its own motion, or an interested person in a cause or proceeding,...may file a petition alleging that the State's Attorney has an actual conflict of interest in the cause or proceeding. The court shall consider the petition, any documents filed in response, and... If the court finds that the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-15) Notwithstanding subsections (a-5) and (a-10) of this Section, the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

This limitation upon the public prosecutor's statutory powers has endured for more than 170 years, providing the sole standards for determining when a State's Attorney should be disqualified from a particular cause or proceeding. See Laws 1847, §1, p. 18; *People v. Lang*, 346 Ill. App. 3d 677, 680 (2004). The abiding purpose of the enactment is to "prevent any influence upon the discharge of the duties of the State's Attorney by reason of personal interest." *In re Harris*, 335 Ill. App. 3d 517, 520 (2002), quoting *People v. Morley*, 287 Ill. App. 3d 499, 503-04 (1997). The term "interested" as used in the former statute was interpreted by our supreme court to mean that the State's Attorney must be interested as: (1) a private individual; or (2) an actual party to the action. *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394, 400-01 (1977).

Over time, the reach of Section 3-9008 was expanded to include situations in which the State's Attorney has a *per se* conflict of interest in the case. Guidance as to what may constitute a *per se* conflict may be found in an unbroken line of precedent. In *People v. Doss*, 382 Ill. 307 (1943) and *People v. Moretti*, 415 Ill. 398 (1953), where the State's Attorneys were potential witnesses before the grand jury, appointment of a special prosecutor was the regular and proper procedure to be followed. Likewise, in *Sommer v. Goetze*, 102 Ill. App. 3d 117 (1981), a special prosecutor was mandated in a civil proceeding where an assistant State's Attorney was both the complainant and key witness. See also *People v. Lanigan*, 353 Ill. App. 3d 422 (2004) (State's Attorney's representation of deputy sheriffs on their fee petitions contemporaneously with their prosecution created a *per se* conflict of interest).

Prevailing precedent dictates that the decision to appoint a special prosecutor under section 3-9008 is not mandatory, but rather within the sound discretion of the circuit court. *In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220, 232, (2009); *Harris*, 335 Ill. App. 3d at

520 and *People v. Arrington*, 297 Ill. App. 3d 1, 3 (1998). Even where a disqualifying ground is found, “the appointment of a special state’s attorney is not mandatory, the statute only requiring that such an appointment may be made.” *Lanigan*, 353 Ill. App. 3d at 429-30, quoting *Sommer*, 102 Ill. App. 3d at 120.

Moreover, the authority of a special state’s attorney is strictly limited to the special matter for which he was appointed. *Franzen v. Birkett (In re Special State’s Attorney)*, 305 Ill. App. 3d 749, 761 (1999). His powers are restricted to those causes or proceedings in which the State’s Attorney is disqualified. (“As to all other matters the State’s Attorney continues to exercise all of the duties and enjoys all of the emoluments of his office.”) *Aiken v. County of Will*, 321 Ill. App. 171, 178 (1943). Additionally, the appointment of a special prosecutor is appropriate only where the petitioner pleads and proves specific facts showing that the State’s Attorney would not zealously represent the People in a given case. *Harris*, 335 Ill. App. 3d at 522, citing *Baxter v. Peterlin*, 156 Ill. App. 3d 564, 566 (1987).

Standing to seek appointment of a special prosecutor may also be at issue. Under two provisions of the current statute, commencement of actions to disqualify the State’s Attorney are limited to motions brought by the court or by an interested person in a cause or proceeding. Section 3-9008 (a-5) and (a-10).

The issue was earlier addressed by our supreme court in *People v. Howarth*, 415 Ill. 499, 513 (1953), where the court concluded that citizens associated with the Good Government Council could properly invoke the court’s jurisdiction. See also, *Lavin v. Board of Commissioners of Cook County*, 245 Ill. 496, 502 (1910), where the court recognized that “the filing of a petition by the State’s attorney setting up facts... to appoint a special State’s attorney gave the court jurisdiction of the subject matter....” Similarly, in *People ex rel. Baughman v. Eaton*, 24 Ill. App. 3d 833, 834 (1974), the Fourth District found it was appropriate for a private

citizen to seek a special prosecutor to call the court's attention to circumstances that may warrant that appointment. Nor is it necessary that a private citizen petitioning to invoke the disqualification statute be a party to the action. *In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220, 229 (2009); *Franzen*, 305 Ill. App. 3d at 758.

With these principles in mind, consideration will be given to the merits of the case at hand. Petitioner first asserts that she is an "interested person" within the purview of Section 3-9008 by reason of her professional background and personal attributes. As a member of the judiciary from 1985 to 2011, petitioner alleges that she has sustained personal harm from the derogatory manner in which the Smollett case was handled; that she and all residents of the community have been subjected to ridicule and disparaging media commentary to the extent that her ability to live peacefully has been diminished.

The State's Attorney denies that petitioner's status as a taxpayer and active member of her community is sufficient to confer standing. Rather, petitioner is merely a casual observer who should not be allowed to invoke the jurisdiction of Section 3-9008 absent some showing of particular pecuniary interest to intervene.

Although the State's Attorney's argument has a degree of merit, the authorities previously discussed do not foreclose the application of petitioner's personal attributes and feelings in determining her status as an interested person. There is no requirement that she be a party to the action nor need she have any financial interest in this cause. Her assertion of standing will be sustained.

Petitioner next contends that State's Attorney Foxx was unable to fulfill her duties in the Smollett case because Foxx's recusal indicated her acknowledgement of a potential conflict of interest stemming from her "familiarity with potential witnesses in the case." Petitioner's argument appears to be grounded on the first basis for appointment of a special prosecutor

providing that an interested person in a cause or proceeding may file a petition where the State's Attorney is sick, absent or unable to fulfill his or her duties. 55 ILCS 5/3-9008 (a-5).

An identical argument was recently rejected in *In re Appointment of Special Prosecutor (Emmett Farmer)*, 2019 IL App. (1st) 173173, where the First District determined that subsection (a-5) is limited to situations where the State's Attorney is physically unable to perform due to sickness, absence or similar circumstances beyond her control:

“By grouping ‘sick, absent or unable to fulfill his or her duties’ together in subsection (a-5), the legislature indicated that the inability to fulfill one’s duties is of a kind with sickness and absence” ¶28

Accordingly, petitioner's argument on subsection (a-5) must fail.

In her second ground of disqualification, petitioner submits that Ms. Foxx's use of the word “recuse” reflects her subjective belief that “she had a conflict with prosecuting Jussie Smollett and thus was unable to perform her duties as defined.” Although the existence of an actual conflict of interest is indeed a recognized ground of disqualification under subsection (a-10), petitioner essentially fails to plead and prove specific facts identifying the interest or the conflict.

In petitioner's “Fact Timeline” one might perhaps discern that the conflicting interest of which petitioner speaks was a manifest desire to aid and assist Mr. Smollett. If so, adherence to that motive would certainly intersect with and be in derogation of the State's Attorney's statutory duties and responsibilities. Petitioner's Timeline, together with other facts established during the course of the proceedings, might offer some support for a claim of interest. First, Ms. Foxx's receipt of text messages requesting her assistance when Smollett was a purported victim in the early stages of the case, coupled with the series of conversations with Smollett's family could be indicative of a desire to help. Likewise, Foxx's request that Police Superintendent, Eddie

Johnson facilitate the transfer of the case to the F.B.I. could manifest a desire to aid. Again, after Smollett had been indicted, Foxx's approval of the dismissal on an unscheduled court date in return for the favorable disposition Smollett received might also be indicative of bias. Finally, Foxx's public statements, first upholding the strength of the State's case, then justifying the agreement because the evidence turned out to be weaker than was initially presented were additional factors showing favor.

Although petitioner's allegations raise some disquieting concerns they do not rise to a clear showing of interest. To be sure, other facts such as the initial charging of Smollett, the engagement of the grand jury, the return of the indictment, the arraignment and ongoing prosecution of Smollett are opposing facts that tend to undermine a claim of interest. Petitioner has failed to show the existence of an actual conflict of interest in the Smollett proceeding.

Finally, petitioner posits that this court must appoint a special prosecutor because Kim Foxx recused herself in the Smollett case. Petitioner grounds this assertion on staff's public statement on February 19, 2019 that Foxx had decided to recuse herself "out of an abundance of caution" because of her "familiarity with potential witnesses in the case." The announcement mirrored the internal acknowledgement, of February 13, 2019 that Foxx "is recused" from the Smollett investigations.

Although the statutory authority relied upon by Ms. Foxx was not articulated, a reasonable assumption exists that it was bottomed on subsection 3-9003 (a-15), authority for the proposition that permissive recusals can be invoked by the State's Attorney for "any other reason he or she deems appropriate." However, Foxx did not file a petition for recusal, nor did she alert the court of her recusal, thereby depriving the court of notice that appointment of a special prosecutor was mandated. Instead, she simply turned the Smollett case over to her First Assistant, Joseph Magats. As will be shown, her ability to bypass the mandate of the statute was

in opposition to well-established authority.

Curiously, public announcements that flowed from the State's Attorney's Office offered the rather novel view that the recusal was not actually a recusal. Rather, in an exercise of creative lawyering, staff opined that Foxx did not formally recuse herself *in a legal sense*; that the recusal was only in a *colloquial sense*. Under that rubric, Foxx could carry on as public prosecutor, unhampered by her contradictory statements. However, discerning members of the public have come to realize that the "recusal that really wasn't" was purely an exercise in sophistry. In this regard, the court takes judicial notice of the recently released memo penned by Chief Ethics Officer, April Perry, under the title, State's Attorney Recusal, dated February 13, 2019:

"Please note that State's Attorney Kim Foxx is recused from the investigation involving victim Jussie Smollett. First Assistant Joe Magats is serving as the Acting State's Attorney for this matter.

Experience confirms that the term "recusal" is most often used to signify a voluntary action to remove oneself as a judge. Black's Law Dictionary, 4th Ed. p.1442 (1951). However, recusals are not the sole province of the judiciary, but may be invoked by most public officials. Thus, recusals are a species of the disqualification process courts typically encounter in processing motions for substitution of judges or change of venue. In *Brzowski v. Brzowski*, 2014 IL. App. 3d 130404, the Third District held that the same rules should apply when a judge is disqualified from a case, either by recusal or through a petition for substitution:

"...it is a generally accepted rule in both state and federal courts that once a judge recuses, that judge should have no further involvement in the case outside of certain ministerial acts." ¶19.

A review of the record confirms our understanding that what was intended by Ms. Foxx,

and what indeed occurred, was an unconditional legal recusal. Her voluntary act evinced a relinquishment of any future standing or authority over the Smollett proceeding. Essentially, she announced that she was giving up all of the authority or power she possessed as the duly elected chief prosecutor; she was no longer involved.

The procedure invoked by the State's Attorney necessarily raises problematic concerns. Particularly so, as they relate to the prosecution of Jussie Smollett and the ultimate disposition of his case. Under subsection 3-9008 (a-15), there is no doubt Ms. Foxx was vested with the authority to recuse herself from any cause or proceeding for "any other reason" than those enumerated in subsection (a-5) and (a-10). Notably, this statutory grant appearing as it does in the Counties Code, is the sole legislative authority that enables a duly elected State's Attorney to voluntarily step down from a particular case for any reason.

Given Ms. Foxx's earlier involvement with the Smollett family when Jussie occupied the status of victim, her decision to recuse was understandable. But once that decision became a reality, section 3-9008 was the only road she could traverse and that statute unequivocally requires that a special prosecutor be appointed by the court. Yet, for reasons undisclosed even to this day, Foxx instead chose to detour from that mandated course, instead appointing Mr. Magats as "the Acting State's Attorney for this matter."

The State's Attorney's decision not only had far reaching consequences but also, quite likely, unintended results. Not because of her choice of Joe Magats, an experienced and capable prosecutor, but rather because his appointment was to an entity that did not exist. There was and is no legally cognizable office of Acting State's Attorney known to our statutes or to the common law. Its existence was only in the eye or imagination of its creator, Kim Foxx. But, she was possessed of no authority, constitutionally or statutorily, to create that office. That authority reposes solely in the Cook County Board pursuant to section 4-2003 of the Counties Code, 55

ILCS 5/4-2003 (2018), *People v. Jennings*, 343 Ill. App. 3d 717, 724 (2003), *People ex rel. Livers v. Hanson*, 290 Ill. 370, 373 (1919).

The State's Attorney is a constitutional officer, (Ill. Const. 1970, Art. 6, §19). Although reposing in the judicial article, the office is a part of the executive branch of State Government and the powers exercised by that office are executive powers. *People v. Vaughn*, 49 Ill. App. 3d 37, 39 (1977);

It is axiomatic that the State's Attorney is endowed with considerable authority under the Counties Code, 55 ILCS 5/3-9005 (a) (West 2018), yet none of the 13 enumerated powers and duties vests her with the power to create subordinate offices or to appoint prosecutors following disqualification or recusal. Pursuant to the statute, in addition to those enumerated duties, the State's Attorney has the power:

- 1) To appoint special investigators to serve subpoenas, make returns... and conduct and make investigations which assist the State's Attorney. 55 ILCS 5/3-9005(b);
- 2) To secure information concerning putative fathers and non-custodial parents for the purpose of establishing...paternity or modifying support obligation; 55 ILCS 5/3-9005 (c);
- 3) To seek appropriations.... for the purpose of providing assistance in the prosecution of capital cases...in post-conviction proceedings and in ...petitions filed under section 2-1401 of the Code of Civil Procedure. 55 ILCS 5/3-9005(d); and,
- 4) To enter into ...agreements with the Department of Revenue for pursuit of civil liabilities under the Illinois Criminal Code. 55 ILCS 5/3-9005 (e).

Nor do decisions of our reviewing courts offer any hint of approval for the unprecedented exercise of power witnessed in the Smollett prosecution. Rather, attention is directed to a series

of cases arising from the practice in downstate counties whereby agency attorneys appeared to assist county prosecutors in specific cases pursuant to section 4-01 of the State's Attorneys Appellate Prosecutors Act, 725 ILCS 210/4.01 (West 2018). Indeed, this was a common practice in counties containing less than 3,000,000 inhabitants. In each instance, the common thread connecting the cases involved appearances on crimes not specifically enumerated in the enabling Act, coupled with the absence of court orders authorizing the appointments mandated under 55 ILCS 5/3-9008.

In *People v. Jennings*, 343 Ill. App. 3d 717 (2003), the record showed that appointed counsel actually displaced the elected State's Attorney, with total responsibility for the prosecution. Counsel acted pursuant to the State's Attorney's order naming him as a special assistant State's Attorney and an oath of office was taken. Yet, no order was entered by the trial court appointing him as a duly authorized prosecutor in the case. In disapproving this procedure, the *Jennings* court stated: "This type of appointment cannot be condoned. State's Attorneys are clearly not meant to have such unbridled authority in the appointment of special prosecutors." *Jennings*, 343 Ill. App. 3d at 724.

Similarly, in *People v. Woodall*, 333 Ill. App. 3d 1146 (2002), the court having found no legitimate basis for any of the agency attorneys to conduct the prosecution on the State's behalf cautioned:

"The use of special assistants is limited by statute. They can be appointed by circuit court order only after a judicial determination that the elected State's Attorney is 'sick or absent, or [is] unable to attend, or is interested in any cause or proceeding' 55 ILCS 5/3-9008 (West 1998)." *Woodall*, 333 Ill. App. 3d at 1154

The *Woodall* court was also troubled by the State's Attorneys effrontery in professing they were at liberty to create the assistant State's Attorney positions in derogation of the

authority of the County Board:

The position of “special assistant State’s Attorney” is a position unknown to our laws. The State asks us to recognize an appointment process that would create a new hybrid office, an assistant State’s Attorney who is special in several ways, but not in the way that the adjective ‘special’ normally defines the office of special prosecutor...the assistant would hold a special position never authorized by the county board.” See 55 ILCS 5/4-2003 (West 1998).” *Woodall*, 333 Ill. App. 3d at 1153-54.

Earlier, in *People v. Ward*, 326 Ill. App. 3d 897 (2002), the Fifth District sounded the death knell for prosecutions conducted by attorneys who lacked legitimacy:

“If a case is not prosecuted by an attorney properly acting as an assistant State’s Attorney, the prosecution is void and the cause should be remanded so that it can be brought by a proper prosecutor. *Ward*, 326 Ill. App. 3d at 902

The specter of a void prosecution is surely not confined to *Ward*. Our jurisprudence speaks to many cases, civil and criminal, where the nullity or voidness rule has caused judgements to be vacated on collateral review. Most prominent perhaps are challenges directed to the standing of unlicensed attorneys to attend or conduct the proceedings. For example, In *People v. Munson*, 319 Ill. 596 (1925), the supreme court considered the effect of participation in the securing of an indictment by one elected as State’s Attorney but not licensed to practice law. In quashing the indictment, the court reasoned:

“If one unauthorized to practice law or appear in courts of record may assist the grand jury in returning an indictment merely because he has been elected to the office of State’s Attorney, no reason is seen why one not so elected and not otherwise qualified may not do the same. *Munson*, 319 Ill. App. 3d at 605.”

An identical result obtained in *People v. Dunson*, 316 Ill. App. 3d 760 (2000), where the defendant, who was prosecuted by an unlicensed attorney, sought post-conviction relief from two disorderly conduct convictions. Although the court recognized the prejudice that inured to the

defendant, it likewise condemned the deception practiced upon the court and upon the public. Relying on *Munson*, the court held that “the participation in the trial by a prosecuting assistant State’s Attorney who was not licensed to practice law under the laws of Illinois requires that the trial be deemed null and void *ab initio* and that the resulting final judgment is also void” *Dunson*, 316 Ill. App. 3d at 770.

CONCLUSION

In summary, Jussie Smollett’s case is truly unique among the countless prosecutions heard in this building. A case that purported to have been brought and supervised by a prosecutor serving in the stead of our duly elected State’s Attorney, who in fact was appointed to a fictitious office having no legal existence. It is also a case that deviated from the statutory mandate requiring the appointment of a special prosecutor in cases where the State’s Attorney is recused. And finally, it is a case where based upon similar factual scenarios, resulting dispositions and judgments have been deemed void and held for naught.

Here, the ship of the State ventured from its protected harbor without the guiding hand of its captain. There was no master on the bridge to guide the ship as it floundered through uncharted waters. And it ultimately lost its bearings. As with that ship, in the case at hand:

There was no duly elected State’s Attorney when Jussie Smollett was arrested;

There was no State’s Attorney when Smollett was initially charged;

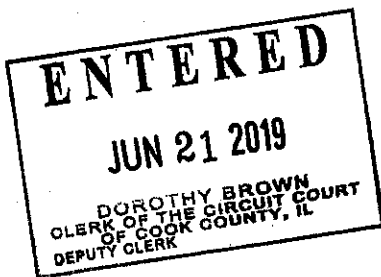
There was no State’s Attorney when Smollett’s case was presented to the grand jury, nor when he was indicted;

There was no State’s Attorney when Smollett was arraigned and entered his plea of not guilty; and

There was no State’s Attorney in the courtroom when the proceedings were *nolle prossed*.

Adherence to the long-standing principles discussed herein mandates that a special prosecutor be appointed to conduct an independent investigation of the actions of any person or office involved in all aspects of the case entitled the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, and if reasonable grounds exist to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result. Additionally, in the event the investigation establishes reasonable grounds to believe that any other criminal offense was committed in the course of the Smollett matter, the special prosecutor may commence the prosecution of any crime as may be suspected.

Although disqualification of the duly elected State's Attorney necessarily impacts constitutional concerns, the unprecedented irregularities identified in this case warrants the appointment of independent counsel to restore the public's confidence in the integrity of our criminal justice system.



ENTERED

Michael P. Toomin,
Judge of the
Circuit Court of Cook County

DATE: JUNE 21, 2019

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014
)
) Hon. _____
) Judge Presiding

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on July 26, 2019 at 9 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Thomas, or any judge sitting in his or her stead, in the courtroom usually occupied by him or her, located at the George N. Leighton Criminal Court Building, 2600 South California Avenue, Room 101, Chicago, Illinois, 60608, and then and there present (1) **JUSSIE SMOLLETT'S MOTION TO INTERVENE INSTANTER**, (2) **MOTION FOR SUBSTITUTION OF JUDGE FOR CAUSE AND APPOINTMENT OF ANOTHER COOK COUNTY JUDGE TO HEAR CONCURRENTLY FILED MOTIONS**, (3) **MOTION FOR RECONSIDERATION OF THE JUNE 21, 2019 ORDER GRANTING THE APPOINTMENT OF A SPECIAL PROSECUTOR**, and (4) **MOTION TO DISCLOSE TRANSCRIPTS OF GRAND JURY TESTIMONY**, a copy of which is hereby served upon you.

Dated: July 19, 2019

Respectfully submitted,

/s/ Tina Glandian

Tina Glandian, Rule 707 Admitted
Mark J. Geragos, Rule 707 Admitted
Geragos & Geragos, APC
256 5th Avenue
New York, NY 10010
&
Geragos & Geragos, APC
644 South Figueroa Street
Los Angeles, CA 90017-3411
(213) 625-3900
tina@geragos.com
mark@geragos.com

Attorneys for Jussie Smollett

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on July 19, 2019, the foregoing papers were served on the following parties and/or attorneys of record by electronic means:

Sheila M. O'Brien, *Pro Se*
360 E. Randolph #1801
Chicago, IL 60601
sobrien368@aol.com

Risa Lanier
Assistant State's Attorney
Cook County State's Attorney's Office
2650 S. California Avenue, 11D40
Chicago, IL 60608
risa.lanier@cookcountyil.gov

Cathy McNeil Stein
Assistant State's Attorney
Chief, Civil Actions Bureau
500 Richard J. Daley Center
Chicago, IL 60602
cathymcneil.stein@cookcountyil.gov

Valerie L. Hletko
Buckley LLP
353 N. Clark St., Suite 3600
Chicago, IL 60654
vhletko@buckleyfirm.com

/s/ Tina Glandian
Tina Glandian

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014

)

) Hon. _____

) Judge Presiding

**MOTION FOR SUBSTITUTION OF JUDGE FOR CAUSE
AND FOR APPOINTMENT OF ANOTHER COOK COUNTY JUDGE
TO HEAR CONCURRENTLY FILED MOTIONS**

NOW COMES Jussie Smollett, by and through his attorneys, Geragos & Geragos, APC, pursuant to 725 ILCS 5/114-5(d), and respectfully moves for the Substitution for Cause of the Honorable Michael P. Toomin, Judge Presiding, and for the appointment of another Cook County judge to hear Mr. Smollett's (1) Motion to Intervene Instantly, (2) Motion for Reconsideration of the June 21, 2019 Order, and (3) Motion to Disclose Transcripts of Grand Jury Testimony, filed concurrently herewith. In support of this Motion, Mr. Smollett respectfully states as follows:

Background

1. On March 7, 2019, a felony indictment was filed against Mr. Smollett in the Circuit Court of Cook County, case number 19 CR 3104, alleging 16 counts of disorderly conduct, namely filing a false police report in violation of Chapter 720, Act 5, Section 26-1(a)(4) of the Illinois Compiled Statutes Act of 1992, as amended.

2. On March 26, 2019, the State's Attorney's Office moved to *nolle pros* all 16 counts. The Honorable Steven G. Watkins granted the motion and dismissed the case against Mr. Smollett. Judge Watkins also ordered the records in this matter sealed.

3. On April 5, 2019, movant Sheila M. O'Brien, in *pro se*, filed a (1) Petition to Appoint a Special Prosecutor to preside over all further proceedings in the matter of the People of the State of Illinois v. Jussie Smollett, filed in the Circuit Court of Cook County (hereafter "Petition"); (2) Instant Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear Petition to Appoint a Special Prosecutor and Conduct Further Proceedings; and (3) Request of Kim Foxx State's Attorney of Cook County to Admit Facts.

4. Ms. O'Brien thereafter also served a number of subpoenas to various parties for their appearance and production of documents. Mr. Smollett and Kim Foxx both separately opposed Ms. O'Brien's Petition to Appoint a Special Prosecutor and they each filed motions to quash Ms. O'Brien's attempts to compel their appearance at the next hearing.

5. On May 2, 2019, the parties appeared before Judge LeRoy Martin, Jr. on the various motions that had been filed. During the hearing, Ms. O'Brien filed a suggestion of recusal based on recent media reports that Judge Martin's son worked for the Cook County State's Attorney's Office as an Assistant State's Attorney. After argument by Ms. O'Brien and counsel, the court adjourned the hearing until May 10, 2019 so Judge Martin could read and consider Ms. O'Brien's suggestion of recusal and any response the State's Attorney's Office chose to file.

6. On May 10, 2019, Judge Martin ruled that recusal was unnecessary, but in the interest of justice "transferred" the matter to Judge Michael Toomin of the Juvenile Justice Division. On May 17, 2019, the parties appeared before Judge Toomin for a status hearing. The matter was thereafter adjourned until May 31, 2019 for oral argument before Judge Toomin, which proceeded as scheduled on that date.

7. On June 21, 2019, Judge Toomin issued a written order (hereafter "Order") granting the appointment of a special prosecutor "to conduct an independent investigation of any person or office involved in all aspects of the case entitled the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, and if reasonable grounds exist to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result. Additionally, in the event the investigation establishes reasonable grounds to believe that any other criminal offense was committed in the course of the Smollett matter, the special prosecutor may commence the prosecution of any crime as may be suspected." Order at 21.

8. From the outset of the Order, Judge Toomin unequivocally and improperly expresses his opinion that Mr. Smollett is guilty of the charges to which he pled not guilty and which were subsequently dismissed (prior to hearing) against him. For instance, in the first paragraph describing the background of the case, Judge Toomin writes:

[I]n perhaps the most prominent display of his acting potential, Smollett conceived a fantasy that propelled him from the role of a sympathetic victim of a vicious homophobic attack to that of a charlatan who fomented a hoax the equal of any twisted television intrigue.

Order at 2. Later, Judge Toomin refers to Mr. Smollett's guilt in filing a false police report as a foregone conclusion, noting:

On February 1, 2019, *two days after Jussie Smollett reported his staged hate crime*, State's Attorney Kim Foxx was contacted by Tina Tchen, a local attorney who previously served as Michelle Obama's Chief of Staff.

Order at 5-6 (emphasis added). There are several other references alluding to Mr. Smollett's guilt throughout the Order, demonstrating Judge Toomin's unfair bias and prejudice against Mr. Smollett. *See, e.g.*, Order at 5 (referencing the "staged hate crime").

9. The presumption of innocence is guaranteed by both the Illinois and United States Constitutions. Judge Toomin was not required nor allowed to make a determination as to Mr. Smollett's guilt or innocence in ruling on the Petition for the Appointment of a Special Prosecutor; rather, the court was required to determine whether the evidence in support of the Petition established the statutory criteria for the appointment of a special prosecutor. Moreover, there was no evidence in the record on which the court could have even made factual findings regarding Mr. Smollett's guilt

10. At the time Ms. O'Brien filed her petition on April 5, 2019, Mr. Smollett's records in this matter had been ordered sealed.¹ In fact, Ms. O'Brien admitted in her Petition for the Appointment of a Special Prosecutor that "[t]he evidence for this petition is what is reported in the press, not traditional evidence under oath." Petition at 16.

11. Judge Toomin recognized that much of the information presented by Petitioner was unreliable hearsay. In the Order, he notes: "Petitioner's factual allegations stem from a number of articles published in the Chicago Tribune, the Chicago Sun-Times and other newspapers as well as local broadcasts, together with Chicago Police Department reports and materials recently released by the State's Attorney's Office. Although the court recognizes that portions of these sources may contain hearsay rather than 'facts' within the semblance of a trial record, the materials provide a backdrop for consideration of the legal issues raised by the petition." Order at 2.

12. But notwithstanding his recognition of the unreliability of the factual allegations, Judge Toomin relied on this inadmissible information to "find" that Mr. Smollett staged the attack. The fact that Judge Toomin improperly reached a conclusion as to Mr. Smollett's guilt is

¹ On May 23, 2019, Judge Watkins granted the Media Intervenors' "Emergency Motion to Intervene for Purposes of Objecting to and Vacating the Sealing Order," which had been filed on April 1, 2019. Mr. Smollett's records were unsealed on a rolling basis following the Court's May 23, 2019 Order.

highlighted by the fact that his opinion is not even based on a review of the actual evidence in this case, but rather on press reports which are wholly inaccurate in many instances. Furthermore, at no time has Mr. Smollett had any opportunity to present a defense to the charges.

13. Judge Toomin's conclusion in the Order that a special prosecutor should be appointed is undoubtedly tainted by his improper opinion of Mr. Smollett's guilt based on media reports, not evidence. Thus, Judge Toomin must be substituted from this case for cause.

**There Is Cause for Substitution Because the Order Demonstrates that
Judge Toomin Is Biased and Prejudiced Against Mr. Smollett.**

14. It is well settled that "[a] fair trial under due process of law requires an impartial judge free from personal conviction as to the guilt or innocence of the accused." *People ex rel. Przyblinski v. Scott*, 23 Ill. App. 2d 167, 170 (1958), *aff'd sub nom. People ex rel. Przybylinski v. Scott*, 19 Ill. 2d 500 (1960).

15. Section 114-5(d) of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1991, ch. 38, par. 114-5(d)) provides that a defendant may move at any time for a substitution of judges for cause. 725 ILCS 5/114-5(d).

16. In determining whether a trial judge should be disqualified for cause, the concern is with a pervasive attitude of animosity, hostility, ill will, or distrust, which might affect the trial judge's performance of his or her judicial duties in a particular case. *People v. Blanck*, 263 Ill. App. 3d 224, 232 (1994).

17. "Prejudice," such as provides cause for the substitution of a judge, is a condition in the mind that imports the formation of a fixed anticipatory judgment as distinguished from opinions which yield to evidence. *People v. Robinson*, 18 Ill. App. 3d 804, 807 (1974). "Recognizing this fact, it is universally held that a judge who, before hearing a criminal case expresses conviction that the accused is guilty, cannot give that accused a fair and impartial

hearing, and is thereby disqualified to sit as a trial judge. *Id.* (internal citations omitted); *see, e.g., id.* at 808 (trial judge who, from the evidence he heard in the trial of the codefendant, concluded that the defendant was also guilty and who did not deny reaching those conclusions should have sustained defendants' motion for substitution of judge for cause). *See also People v. Chatman*, 36 Ill. 2d 305, 309 (1967) (Where trial judge, at conclusion of trial in first rape prosecution, had emphatically indicated disbelief of defendant and his alibi witness, and defendant felt that this judge was prejudiced against him for trial of second rape prosecution the next day, defendant had absolute right to substitute judge).

**There Is Cause for Substitution Because at the Very Least,
There Is an Appearance of Impropriety by Judge Toomin.**

18. "A trial judge further has an obligation of assuring the public that justice is administered fairly, because the appearance of bias or prejudice can be as damaging to public confidence as would be the actual presence of bias or prejudice. Therefore, there must be a concerned interest in ascertaining whether public impression will be favorable and the rights of an accused protected even though the judge is convinced of his own impartiality." *People v. Bradshaw*, 171 Ill. App. 3d 971, 975-76 (1988).

19. Illinois Supreme Court Rule 62A (Canon 2 of the Code of Judicial Conduct) provides that a judge "should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The Committee Commentary to the Rule further explains that "[a] judge must avoid all impropriety and appearance of impropriety."

20. Supreme Court Rule 63A(9) (Canon 3 of the Code of Judicial Conduct) provides that "[a] judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not

limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status . . ." Supreme Court Rule 63C(1)(a) further provides that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where . . . the judge has a personal bias or prejudice concerning a party."

21. Here, in light of Judge Toomin's unequivocally expressed opinions about Mr. Smollett's guilt, there is, at the very least, the appearance of impropriety. Therefore, Judge Toomin's continued participation in this matter, including hearing Mr. Smollett's concurrently filed motions, would harm not only Mr. Smollett, but also public confidence in the integrity of the judiciary.

**This Matter Must Be Transferred for a Hearing
Before a Different Judge as to the Substitution for Cause.**

22. 725 ILCS 5/114-5(d) provides that upon the filing of a motion for substitution of judge for cause, "a hearing shall be conducted as soon as possible after its filing *by a judge not named in the motion*; provided, however, that the judge named in the motion need not testify, but may submit an affidavit if the judge wishes." 725 ILCS 5/114-5(d) (emphasis added). Accordingly, Mr. Smollett's motion for substitution of judge for cause must be transferred for a hearing before a different judge.

**Another Cook County Judge Should Be Appointed
to Hear Mr. Smollett's Concurrently Filed Motions.**

23. In light of Judge Toomin's improper opinion and assertions about Mr. Smollett's guilt, public confidence in the integrity of the judiciary will best be served if another Cook County judge hears Mr. Smollett's concurrently filed motions, including (1) Jussie Smollett's Motion to Intervene Instantly, (2) Motion for reconsideration of the June 21, 2019 Order, and (3)

Motion to Disclose Transcripts of Grand Jury Testimony, and to preside over any further proceedings in this matter.

WHEREFORE, Jussie Smollett, by his attorneys, Geragos & Geragos, respectfully requests that this Court grant the Motion for Substitution for Cause of Judge Toomin and appoint another judge from Cook County to hear (1) Jussie Smollett's Motion to Intervene Instantly, (2) Motion for Reconsideration of the June 21, 2019 Order, and (3) Motion to Disclose Transcripts of Grand Jury Testimony, filed concurrently herewith.

Dated: July 19, 2019

Respectfully submitted,

/s/ Tina Glandian

Tina Glandian, Rule 707 Admitted
 Mark J. Geragos, Rule 707 Admitted
 Geragos & Geragos, APC
 256 5th Avenue
 New York, NY 10010
 &
 Geragos & Geragos, APC
 644 South Figueroa Street
 Los Angeles, CA 90017-3411
 (213) 625-3900
 tina@geragos.com
 mark@geragos.com

Attorneys for Jussie Smollett

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014

)

) Hon. _____

ORDER

This cause coming before the Court on a Motion for the Substitution for Cause of the Honorable Michael P. Toomin, Judge Presiding, and for the appointment of another Cook County judge to hear (1) Jussie Smollett's Motion to Intervene Instantly, (2) Motion for Reconsideration of the June 21, 2019 Order, and (3) Motion to Disclose Transcripts of Grand Jury Testimony, filed concurrently herewith ("Motion"), due notice having been given and the Court being fully advised in the premises, IT IS HEREBY ORDERED that the Motion is granted.

IT IS SO ORDERED.

ENTERED:

Circuit Court of Cook County
Criminal Division

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014

)

) Hon. _____
) Judge Presiding

JUSSIE SMOLLETT'S MOTION TO INTERVENE INSTANTER

NOW COMES Jussie Smollett, by and through his attorneys, Geragos & Geragos, APC, and respectfully moves this Honorable Court, pursuant to 735 ILCS 5/2-408(a)(2) and (3), for leave to intervene as of right in this cause. In support of this Motion, Mr. Smollett respectfully states as follows:

Background

1. On March 7, 2019, a felony indictment was filed against Mr. Smollett in the Circuit Court of Cook County, case number 19 CR 3104, alleging 16 counts of disorderly conduct, namely filing a false police report in violation of Chapter 720, Act 5, Section 26-1(a)(4) of the Illinois Compiled Statutes Act of 1992, as amended.

2. On March 26, 2019, the State's Attorney's Office moved to *nolle pros* all 16 counts. The Honorable Steven G. Watkins granted the motion and dismissed the case against Mr. Smollett. Judge Watkins also ordered the records in this matter sealed.

3. On April 5, 2019, movant Sheila M. O'Brien, in *pro se*, filed a (1) Petition to Appoint a Special Prosecutor to preside over all further proceedings in the matter of the People of the State of Illinois v. Jussie Smollett, filed in the Circuit Court of Cook County (hereafter "Petition"); (2) Instanter Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear Petition to Appoint a Special Prosecutor and Conduct Further Proceedings; and (3)

Request of Kim Foxx State's Attorney of Cook County to Admit Facts.

4. Ms. O'Brien thereafter also served a number of subpoenas to various parties for their appearance and production of documents. Mr. Smollett and Kim Foxx both separately opposed Ms. O'Brien's Petition to Appoint a Special Prosecutor and they each filed motions to quash Ms. O'Brien's attempts to compel their appearance at the next hearing.

5. On May 2, 2019, the parties appeared before Judge LeRoy Martin, Jr. on the various motions that had been filed. During the hearing, Ms. O'Brien filed a suggestion of recusal based on recent media reports that Judge Martin's son worked for the Cook County State's Attorney's Office as an Assistant State's Attorney. After argument by Ms. O'Brien and counsel, the court adjourned the hearing until May 10, 2019 so Judge Martin could read and consider Ms. O'Brien's suggestion of recusal and any response the State's Attorney's Office chose to file.

6. On May 10, 2019, Judge Martin ruled that recusal was unnecessary, but in the interest of justice "transferred" the matter to Judge Michael Toomin of the Juvenile Justice Division. On May 17, 2019, the parties appeared before Judge Toomin for a status hearing. The matter was thereafter adjourned until May 31, 2019 for oral argument before Judge Toomin, which proceeded as scheduled on that date.

7. On June 21, 2019, Judge Toomin issued a written order (hereafter "Order") granting the appointment of a special prosecutor "to conduct an independent investigation of any person or office involved in all aspects of the case entitled the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, and if reasonable grounds exist to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result. Additionally, in the event the investigation establishes

reasonable grounds to believe that any other criminal offense was committed in the course of the Smollett matter, the special prosecutor may commence the prosecution of any crime as may be suspected." Order at 21.

Legal Standard

The general rule for intervention is found in section 2-408 of the Code of Civil Procedure, which allows, in certain circumstances, nonparties to intervene in proceedings. *See* 735 ILCS 5/2-408. Generally, a person directly affected by proceedings will be permitted to intervene. *People ex rel. Harty v. Gulley*, 2 Ill. App. 2d 321, 324 (1954). While a party petitioning for intervention as of right need not have a direct interest in the pending suit, he or she must have an interest beyond that of the general public. *In re Bailey*, 2016 IL App (5th) 140586, ¶ 21, 58 N.E.3d 646, 653.

"A person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he or she proposes to file." 735 ILCS 5/2-408(e). Here, Mr. Smollett is concurrently filing a (1) Motion for Substitution of Judge for Cause and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions, (2) Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor, and (3) Motion to Disclose Transcripts of Grand Jury Testimony.

Argument

A. Mr. Smollett Is Entitled to Intervene as a Matter of Right Because Mr. Smollett Is and Will Be Inadequately Represented and He Will Be Bound by an Order in the Action.

Section 2-408(a)(2) of the Code of Civil Procedure provides that, "[u]pon timely application anyone shall be permitted as of right to intervene in an action . . . when the representation of the applicant's interest by existing parties is or may be inadequate and the

applicant will or may be bound by an order or judgment in the action” 735 ILCS 5/2-408(a)(2). Where intervention as of right is asserted, “the trial court’s discretion is limited to determining timeliness, inadequacy of representation and sufficiency of interest; once these threshold requirements have been met, the plain meaning of the statute directs that the petition be granted.” *City of Chicago v. John Hancock Mut. Life Ins. Co.*, 127 Ill. App. 3d 140, 144 (1984); *see also In re Marriage of Vondra*, 2013 IL App (1st) 123025, ¶ 14, 994 N.E.2d 105, 110 (Trial court must grant a petition to intervene as a matter of right if: (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit). Mr. Smollett satisfies all three requirements.

First, Mr. Smollett's motion is timely since it is filed in the initial phase of this proceeding and less than 30 days after the court's June 21, 2019 Order granting the appointment of a special prosecutor in this case. A petition filed under such circumstances is certainly timely. *See John Hancock Mut. Life Ins. Co.*, 127 Ill. App. 3d at 144 (petition filed within weeks of the commencement of the action, at the first hearing in the matter, “was timely beyond any doubt”).

Second, because Mr. Smollett's interests are different than the interests of the existing parties--Sheila O'Brien and State's Attorney Kim Foxx¹--Mr. Smollett is and will be inadequately represented. The test for adequacy of representation is whether the representation of the proposed intervenor’s interest by existing parties to the litigation “is or may be inadequate.” 735 ILCS 5/2-408(a)(2). “Applicants for intervention can establish inadequate representation by showing that their interests are different from those of the existing parties.” *Joyce v. Explosives Techs. Int’l, Inc.*, 253 Ill. App. 3d 613, 617 (1993).

¹ Tina Tchen also appeared in this action solely to move to quash a subpoena *duces tecum* served on her and for a protective order limiting further discovery.

Here, Mr. Smollett's interests are clearly different than those of Ms. O'Brien and Ms. Foxx. Unlike the other parties in this matter, the Order specifically references an individual criminal prosecution against Mr. Smollett, namely the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401. Moreover, the Order attempts to nullify those proceedings and appoint a special prosecutor to "further prosecute" Mr. Smollett. It cannot be disputed that Mr. Smollett has a direct and substantial interest in this proceeding and that his interests are different (and even in direct conflict) with the interests of the other parties.

Apart from a divergence of interests, there are other considerations that may affect the adequacy of existing representation, including "the commonality of legal and factual positions; the practical abilities, resources and expertise of the existing parties; and the existing parties' vigor in representing the absent applicant's interests." *Joyce*, 253 Ill. App. 3d at 617 (citing *John Hancock Mut. Life Ins. Co.*, 127 Ill. App. 3d at 145).

Here, there are numerous arguments which Mr. Smollett intends to advance which are unique to him, and which have not previously been asserted by the other parties in this proceeding. For example, as set forth in the Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor, filed concurrently herewith, "the right to be prosecuted by someone with proper prosecutorial authority is *a personal privilege* that may be waived if not timely asserted in the circuit court." *People v. Woodall*, 333 Ill. App. 3d 1146, 1159 (2002) (emphasis added). Thus, as Mr. Smollett argues, if there, in fact, had been a defect in the authority to prosecute him, the only person who could properly challenge the validity of the proceedings would be Mr. Smollett--and he has not done so.

In the Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor, Mr. Smollett also argues that any further prosecution of him for filing a

false report would violate the federal and state ban against double jeopardy because it would constitute double punishment. *See United States v. Benz*, 282 U.S. 304, 307-09 (1931); *People v. Milka*, 211 Ill. 2d 150, 170 (2004). This is another example of a legal position which is unique to Mr. Smollett in this proceeding. As such, there is not a “commonality of legal . . . positions” between Mr. Smollett and the other parties. *Joyce*, 253 Ill. App. 3d at 617.

For the foregoing reasons, Mr. Smollett submits that the representation of his interests by the existing parties to the litigation “is or may be inadequate.”

Third, Mr. Smollett should be permitted to intervene because he will be bound by an Order in the action. Section 2-408(a)(2) “requires only that a party seeking to intervene ‘will or may be bound’ . . . and it is settled that an enforceable right or tangible detriment fulfills the requirement.” *John Hancock Mut. Life Ins. Co.*, 127 Ill. App. 3d at 144 (quoting § 2-408(a)(2)) (emphasis in original). “An applicant [for intervention] ‘will or may be bound by a judgment’ when he stands to gain or lose by direct legal operation and effect of the judgment.” *Redmond v. Devine*, 152 Ill. App. 3d 68, 74 (1987) (quoting § 2-408(a)(2)).

Here, in the June 21, 2019 Order, the court appointed a special prosecutor “to conduct an independent investigation of any person or office involved in all aspects of the case entitled the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, ***and if reasonable grounds exist to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result.***” Order at 21 (emphasis added). If left unchallenged, the Order will bind Mr. Smollett and will obviously and indisputably affect Mr. Smollett’s fundamental constitutional rights.

As explained in the Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor, the court erred in the application of existing law in several

key respects. The court erred in granting the appointment of a special prosecutor under 55 ILCS 5/3- 9008 (a-15) because the statutory prerequisite for the appointment, namely the filing of a petition for recusal by the State's Attorney, was not met. The court also erred in ruling that the County State's Attorney lacked the power to delegate her authority to one individual, her first assistant, to be exercised in a particular, individual, criminal prosecution. The court further misapprehended the law when it ruled that Ms. Foxx's informal "recusal" rendered the entirety of the proceedings--from Mr. Smollett's arrest to the dismissal of the charges against him--null and void. Finally, the court misapplied the law because its appointment of a special prosecutor is vague and overbroad.

If the court's conclusions were to be accepted, the City of Chicago has committed an egregious violation of Mr. Smollett's civil rights by depriving him of his liberty and property without due process of law in violation of the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In fact, the City of Chicago is still in possession of the \$10,000 bail that was paid on Mr. Smollett's behalf on February 21, 2019, and forfeited to the City of Chicago upon the dismissal of charges against him on March 26, 2019. Thus, in addition to the civil rights violations noted above, any further prosecution of Mr. Smollett for filing a false report would also violate the federal and state ban against double jeopardy because it would constitute double punishment. *See Benz*, 282 U.S. at 307-09; *Milka*, 211 Ill. 2d at 170.

Because Mr. Smollett "stands to . . . lose" by direct legal operation and effect of the Order granting the appointment of a special prosecutor, he should be allowed to intervene as a matter of right.

B. Mr. Smollet Is Entitled to Intervene as a Matter of Right Because He May Be Adversely Affected by a Distribution or Other Disposition of His Property Which Is Subject to the Control of the Court.

Section 2-408(a)(3) of the Code of Civil Procedure provides that, “[u]pon timely application anyone shall be permitted as of right to intervene in an action . . . when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or a court officer” 735 ILCS 5/2-408(a)(3).

Here, the City of Chicago is still in possession of the \$10,000 bail money that was paid on Mr. Smollett’s behalf on February 21, 2019, and forfeited to the City of Chicago upon the dismissal of charges against him on March 26, 2019. In the Order, the court concluded that because Ms. Foxx could not delegate her authority to her first assistant:

There was no duly elected State’s Attorney when Jussie Smollett was arrested;

There was no State’s Attorney when Smollett was initially charged;

There was no State’s Attorney when Smollett’s case was presented to the grand jury, nor when he was indicted;

There was no State’s Attorney when Smollett was arraigned and entered his plea of not guilty; and

There was no State’s Attorney in the courtroom when the proceedings were *nolle prossed*.

Order at 20.

Thus, if Mr. Smollett is not permitted to intervene and move the Court for reconsideration of the Order (wherein the court found that there was no valid authority to prosecute Mr. Smollett), the City of Chicago will need to return this money to Mr. Smollett. Because Mr. Smollett is so situated as to be adversely affected by a distribution or other disposition of his property which is subject to the control of the court, he must be permitted to intervene as of right.

WHEREFORE, Jussie Smollett, by his attorneys, Geragos & Geragos, respectfully requests that this Court grant his Motion for leave to intervene as of right in this cause, pursuant to 735 ILCS 5/2-408(a)(2) and (3).

Dated: July 19, 2019

Respectfully submitted,

/s/ Tina Glandian

Tina Glandian, Rule 707 Admitted
 Mark J. Geragos, Rule 707 Admitted
 Geragos & Geragos, APC
 256 5th Avenue
 New York, NY 10010
 &
 Geragos & Geragos, APC
 644 South Figueroa Street
 Los Angeles, CA 90017-3411
 (213) 625-3900
 tina@geragos.com
 mark@geragos.com

Attorneys for Jussie Smollett

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014

)

) Hon. _____

ORDER

This cause coming before the Court on Jussie Smollett's Motion to Intervene Instantly ("Motion"), due notice having been given and the Court being fully advised in the premises, IT IS HEREBY ORDERED that the Motion is granted.

IT IS SO ORDERED.

ENTERED:

Circuit Court of Cook County
Criminal Division

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014

)

) Hon. _____

) Judge Presiding

**MOTION FOR RECONSIDERATION OF THE JUNE 21, 2019 ORDER
GRANTING THE APPOINTMENT OF A SPECIAL PROSECUTOR**

NOW COMES Jussie Smollett, by and through his attorneys, Geragos & Geragos, APC, pursuant to 735 ILCS 5/2-1203, and respectfully moves for reconsideration of the Order entered on June 21, 2019 granting the appointment of a special prosecutor (hereafter "Order"). In support of this Motion, Mr. Smollett respectfully states as follows:

Introduction

This case has been a travesty of justice and an unprecedented deprivation of Mr. Smollett's constitutional rights, including the presumption of innocence and right to a fair trial. Not only have the media and the public failed to critically look at the evidence (and lack thereof) against Mr. Smollett, but now, the court has accepted false media reports to presume Mr. Smollett guilty of charges which he pled not guilty to and which were dismissed against him. Judge Toomin's conclusion in his June 21, 2019 Order that the appointment of a special prosecutor was warranted in this case was undoubtedly tainted by his improper presumption and assertion of Mr. Smollett's guilt. Moreover, he had no authority to unilaterally and horizontally reverse a trial court's dismissal of the case and to appoint a special prosecutor to "further prosecute" Mr. Smollett. A copy of the Order is attached hereto as Exhibit A.

As an initial matter, in ruling on the petition for the appointment of a special prosecutor, the court was not called upon to make a determination of Mr. Smollett's guilt or innocence.

Rather, the court was required to determine whether the evidence in support of the petition established the statutory criteria for the appointment of a special prosecutor. As explained below, it did not. To compound matters, there was no evidence in the record on which the court could have made factual findings regarding Mr. Smollett's guilt.¹ Indeed, the court admitted to relying heavily on media reports as support for the factual allegations in the petition. As Judge Toomin acknowledged, this information is unreliable hearsay² and is, in fact, inaccurate in many instances.

Aside from improperly and prejudicially asserting that Mr. Smollett is guilty of the charges that were dismissed against him, the court also misapprehended the law in several key respects. The court erred in granting the appointment of a special prosecutor under 55 ILCS 5/3-9008 (a-15) because the statutory prerequisite for the appointment, namely the filing of a petition for recusal by the State's Attorney, was not met. The court also erred in ruling that the County State's Attorney lacked the power to delegate her authority to one individual, her first assistant, to be exercised in a particular, individual, criminal prosecution. Kim Foxx was well within her rights to do so and such a delegation has previously been sanctioned by Illinois courts.

The court further misapprehended the law when it ruled that Ms. Foxx's informal "recusal" rendered the entirety of the proceedings--from Mr. Smollett's arrest to the dismissal of the charges against him--null and void. Indeed, even if there was no valid authority to prosecute Mr. Smollett, this would not nullify the prior proceedings because the right to be prosecuted by someone with proper prosecutorial authority is a personal privilege and Mr. Smollett has not

¹ Ms. O'Brien admitted that "[t]he evidence for this petition is what is reported in the press, not traditional evidence under oath." Exhibit B [Petition at 16].

² Judge Toomin noted that "Petitioner's factual allegations stem from a number of articles published in the Chicago Tribune, the Chicago Sun-Times and other newspapers as well as local broadcasts, together with Chicago Police Department reports and materials recently released by the State's Attorney's Office. Although the court recognizes that portions of these sources may contain hearsay rather than 'facts' within the semblance of a trial record, the materials provide a backdrop for consideration of the legal issues raised by the petition." Exhibit A [Order at 2].

challenged the allegedly defective commission to prosecute. On the contrary, the record supports the conclusion that the People of the State of Illinois were properly represented by an Assistant State's Attorney acting with the permission and authority of the State's Attorney at all times during the proceedings.

Finally, the court misapplied the law because its appointment of a special prosecutor is vague and overbroad. The Order fails to limit the investigation in any way or specify a date or event that would terminate the special prosecutor's appointment. Moreover, the broad prescription of authority to the special prosecutor, namely that the special prosecutor may "further prosecute" Mr. Smollett if reasonable grounds exist, is vague and overbroad.

Accordingly, this Court should (1) grant the Motion for Reconsideration, (2) vacate the June 21, 2019 Order, and (3) deny the Petition for the Appointment of a Special Prosecutor, or alternatively, schedule this cause for a full hearing for a determination as to whether there is sufficient cause to justify the appointment of a special prosecutor. In the event the Court is not inclined to grant the Motion, the Court should modify the Order to clarify that the special prosecutor may investigate and prosecute potential misconduct only, and may not further prosecute Mr. Smollett for charges that were previously brought and dismissed against him.

Procedural History

On March 7, 2019, a felony indictment was filed against Mr. Smollett in the Circuit Court of Cook County, case number 19 CR 3104, alleging 16 counts of disorderly conduct, namely filing a false police report in violation of Chapter 720, Act 5, Section 26-1(a)(4) of the Illinois Compiled Statutes Act of 1992, as amended.

On March 26, 2019, the State's Attorney's Office moved to *nolle pros* all 16 counts. The Honorable Steven G. Watkins granted the motion and dismissed the case against Mr. Smollett. Judge Watkins also ordered the records in this matter sealed.³

On April 5, 2019, movant Sheila M. O'Brien, in *pro se*, filed a (1) Petition to Appoint a Special Prosecutor to preside over all further proceedings in the matter of the People of the State of Illinois v. Jussie Smollett, filed in the Circuit Court of Cook County (hereafter "Petition"); (2) Instant Motion to Petition the Supreme Court to Appoint an Out-of-County Judge to Hear Petition to Appoint a Special Prosecutor and Conduct Further Proceedings; and (3) Request of Kim Foxx State's Attorney of Cook County to Admit Facts. A copy of the Petition is attached hereto as Exhibit B.

Ms. O'Brien thereafter also served a number of subpoenas to various parties for their appearance and production of documents. Mr. Smollett and Ms. Foxx both separately opposed Ms. O'Brien's Petition and they each filed motions to quash Ms. O'Brien's attempts to compel their appearance at the next hearing.

On May 2, 2019, the parties appeared before Judge LeRoy Martin, Jr. on the various motions that had been filed. During the hearing, Ms. O'Brien filed a suggestion of recusal based on recent media reports that Judge Martin's son works for the Cook County State's Attorney's Office as an Assistant State's Attorney. After argument by Ms. O'Brien and counsel, the court adjourned the hearing until May 10, 2019 so Judge Martin could read and consider Ms. O'Brien's suggestion of recusal and any response the State's Attorney's Office chose to file.

On May 10, 2019, Judge Martin ruled that recusal was unnecessary, but in the interest of justice, he "transferred" the matter to Judge Michael Toomin of the Juvenile Justice Division.

³ On May 23, 2019, Judge Watkins granted the Media Intervenors' "Emergency Motion to Intervene for Purposes of Objecting to and Vacating the Sealing Order," which had been filed on April 1, 2019. Mr. Smollett's records were unsealed on a rolling basis following the Court's May 23, 2019 Order.

On May 17, 2019, the parties appeared before Judge Toomin for a status hearing. The matter was thereafter adjourned until May 31, 2019 for oral argument before Judge Toomin, which proceeded as scheduled on that date.

On June 21, 2019, Judge Toomin issued a written order granting the appointment of a special prosecutor "to conduct an independent investigation of any person or office involved in all aspects of the case entitled the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, and if reasonable grounds exist to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result. Additionally, in the event the investigation establishes reasonable grounds to believe that any other criminal offense was committed in the course of the Smollett matter, the special prosecutor may commence the prosecution of any crime as may be suspected." Exhibit A [Order at 21].

The Evidence in this Case

Judge Toomin's reliance on inaccurate media reports to presume Mr. Smollett guilty of charges that were dismissed against him was wholly improper and prejudicial. Given his improper "factual findings" in the Order, it is necessary to set forth some of the actual evidence in this case to rebut the unfair presumption of guilt against Mr. Smollett imposed by the court.

The actual evidence demonstrates that Abimbola and Olabinjo Osundairo (hereafter collectively "the Osundairo brothers") attacked Mr. Smollett on January 29, 2019. The only "evidence" that the attack was a hoax and perpetrated at the behest of Mr. Smollett was the Osundairo brothers' statements made reportedly after at least 47 hours in police custody, in the face of overwhelming evidence of their involvement in the attack, and upon advice by their counsel. But other than the Osundairo brothers' self-serving statements which resulted in their release from custody with no criminal charges being filed against them, not a single piece of

evidence independently corroborates their claim that the attack was a hoax. Moreover, the actual evidence demonstrates that the Osundairo brothers lied to police and were acting with at least one other person who was not Mr. Smollett.

**All of the Key "Evidence" that Police Initially Claimed Existed
Have Been Shown to Be Demonstrably False.**

In the Order, Judge Toomin noted that on February 21, 2019, Police Superintendent Eddie Johnson "held a press conference where he essentially confirmed what anonymous sources had been leaking to the media; that Smollett had staged the attack because he was dissatisfied with his 'Empire' salary and that he had sent the threatening letter to himself." Exhibit A [Order at 4]. During that same press conference, Superintendent Johnson also claimed that the \$3,500 check from Smollett to Abimbola Osundairo was for the staged attack. (Press conference *available at* <https://finance.yahoo.com/video/chicago-police-press-conference-arrest-162040267.html>.) All three public statements by Johnson were proven to be false.

First, following Superintendent Johnson's press conference, Fox executives and producers explicitly rejected the notion that Mr. Smollett was unhappy with his pay. On the contrary, they explained that Mr. Smollett was in the middle of a long-term contract with Fox for the series, 'Empire,' and that neither he nor his agents had attempted to renegotiate his salary. *See* 'EMPIRE' EXECS DON'T BELIEVE 'Attack' Staged Over Salary Issues (Feb. 26, 2019), *available at* <https://www.tnz.com/2019/02/26/jussie-smollett-empire-money-contract-staged-attack/>.

Second, following the press conference, the FBI promptly disputed Superintendent Johnson's assertion that Mr. Smollett sent himself the threatening letter. Rather, federal agents noted that their investigation was still ongoing and that they had not yet determined who sent the letter. *See* FEDS DISPUTE POLICE SUPERINTENDENT... Not Certain Jussie Wrote Letter

(Feb. 22, 2019), *available at* <https://www.t TMZ.com/2019/02/22/jussie-smollett-letter-police-chief-superintendent-fbi/>.

Third, in a number of interviews a few weeks after the press conference, the Osundairo brothers' attorney, Gloria Schmidt, contradicted Superintendent Johnson and confirmed that the \$3,500 check paid by Mr. Smollett to Abimbola Osundairo, was in fact, for training and nutrition. *See, e.g.,* <https://abcnews.go.com/amp/news/story/osundairo-brothers-advantage-empire-actor-jussie-smollett-lawyer-61605822>. This was consistent with the memo line of the check, which read, "5 week Nutrition/Workout program (Don't Go Video),"⁴ and was corroborated by numerous text messages in which Mr. Smollett and Abimbola Osundairo discussed training and nutrition.

Moreover, a review of the recently unsealed discovery reveals further false and misleading statements by the police. As one article notes:

Eddie Johnson, the police superintendent, said after Mr. Smollett's arrest that one of the Osundairo brothers had spoken with the actor on the phone about an hour after the attack. But the search warrant records show their next phone call was actually about 18 hours later. (A police spokesman, Anthony Guglielmi, said last week that the superintendent had misspoken.)

Julia Jacobs, "Jussie Smollett Case: What Do We Know, and What's Left to Investigate?," **The N.Y. Times** (July 1, 2019), *available at* <https://www.nytimes.com/2019/07/01/arts/jussie-smollett-video-case.html>.

The Actual Evidence Demonstrates that the "Need Your Help on the Low" Text Was Taken Out of Context and Misconstrued.

As noted above, the State's case against Mr. Smollett was based entirely on the uncorroborated and self-serving statements of the Osundairo brothers. While the bulk of the text messages between Mr. Smollett and Abimbola ("Abel") during the relevant time period discuss

⁴ "Don't Go" was an upcoming music video shoot scheduled for February 23, 2019, in which Mr. Smollett had to be shirtless.

training and nutrition, there was a single text message which was susceptible of an incriminating interpretation, which the Osundairo brothers, and in turn prosecutors, seized on. The State's Bond Proffer, a copy of which is attached hereto as Exhibit C, provided:

Text messages generated by Defendant Smollett to Abel, specifically starting on the morning of January 25, 2019, reveal Defendant Smollett asking Abel when he would be leaving on his upcoming trip to Nigeria. This trip was scheduled to take place on the evening of January 29, 2019, and it had been planned by Abel and his brother Olabinjo "Ola" Osundairo (27 years old) two months prior. After Abel confirmed the date and time of his trip, Defendant Smollett texted Abel stating **"Might need your help on the low. You around to meet up and talk face to face?"**

Exhibit C [Proffer at 1].

The Proffer then goes on to state that when Mr. Smollett met with Abel that afternoon, he told Abel that he wanted to stage an attack where Abel and his brother would appear to batter him. *Id.* [Proffer at 1-2].

In a podcast on April 6, 2019--months before the defense had seen the newly unsealed discovery--Mr. Smollett's attorney, Tina Glandian, explained that the "need your help on the low" text was completely taken out of context and misconstrued. Ms. Glandian explained that when Mr. Smollett first spoke to Abel about the training/nutrition plan and his desire to lose about 20 pounds for his upcoming music video shoot, Abel told him that there are herbal steroids which are illegal in the United States but which he could get in Nigeria which would help Mr. Smollett shed weight fast. On January 25, 2019, during a text message conversation about Mr. Smollett's meal plan and his projected fat loss, Mr. Smollett asked Abel to meet face to face so that he could ask him to get him the herbal steroids while in Nigeria.

1/25/2019 2:19:17PM (UTC+0) - Abel texts Smollett: "This is the meal plan and the breakdown of macronutrients. Also includes projected fat loss."

1/25/2019 3:08:37PM (UTC+0) - Smollett responds to Abel: "Cool i can't pull up on phone so gotta check on my computer. When do you leave town?"

1/25/2019 3:18:47PM (UTC+0) - Abel responds to Smollett: "I leave Tuesday night." Abel also texts Smollett a chart with a meal plan.

1/25/2019 3:18:56PM (UTC+0) - Smollett responds to Abel: "What time Tuesday night?"

1/25/2019 3:19:14PM (UTC+0) - Abel responds to Smollett: "9:30pm"

1/25/2019 3:31:06PM (UTC+0) - Abel texts Smollett: "Why what's up?"

1/25/2019 3:34:44PM (UTC+0) - Smollett responds to Abel: "***Might need your help on the low. You around to meet up and talk face to face?***"

1/25/2019 3:34:52PM (UTC+0) - Smollett texts Abel: "Later like after 4"

1/25/2019 3:38:29PM (UTC+0) - Abel responds to Smollett: "Yea, I can do that."

Exhibit D (emphasis added).

On April 25, 2019, the Osundairo brothers sued Mr. Smollett's attorneys for defamation, false light, and *respondeat superior* based, in part, on the statements made during the *Reasonable Doubt* podcast on April 6, 2019. The civil complaint alleges, in pertinent part, that the Osundairo brothers' brand, "Team Abel," "advises and demonstrates how to strengthen and build muscle while maintaining a healthy, steroid-free diet and fitness regimen." Complaint, ¶ 45, *available at* <https://dig.abclocal.go.com/wls/documents/2019/042319-wls-smollett-suit.pdf>. The complaint further alleges that Ms. Glandian's statements have caused the Osundairo brothers substantial financial harm because such an offer to obtain steroids for a client would render "Team Abel" a sham enterprise, since they advertise that their business is "all natural." *Id.*, ¶ 73.

Newly released discovery contradicts the Osundairo brothers' position in their lawsuit and supports Mr. Smollett's explanation of the "need your help on the low" text message. Specifically, the web history of one of the Osundairo brothers obtained by the police shows the following relevant search history from January 25 and 27, 2019:

1/25/2019 5:48:48AM (UTC+0): "rad 140 landmark."

1/25/2019 5:49:12AM (UTC+0): "The Truth About RAD140 In 3 Minutes - Read before you buy Testolone," found at <https://www.mynvfi.org/testolone-rad140/>.

1/25/2019 5:55:11AM (UTC+0): "rad 140 labs."

1/25/2019 5:55:27AM (UTC+0): "RAD140 - U.S. Diesel Labs," found at <https://usdiesellabs.com/product/rad140/>.

1/25/2019 5:56:29AM (UTC+0): "ANDARINE - U.S. Diesel Labs," found at <https://usdiesellabs.com/product/andarine/>.

1/25/2019 5:57:52AM (UTC+0): "YK11 - U.S. Diesel Labs," found at <https://usdiesellabs.com/product/yk11/>.

1/25/2019 5:58:19AM (UTC+0): "Tamoxifen Citrate - U.S. Diesel Labs," found at <https://usdiesellabs.com/product/tamoxifen-citrate/>.

1/27/2019 at 12:28:02PM (UTC+0): "Banned Substances - Natural Bodybuilding.com" found at <https://naturalbodybuilding.com/banned-substances/>.

1/27/2019 at 12:28:38PM (UTC+0): "Prohibited List Documents | World Anti-Doping Agency," found at <https://www.wada-ama.org/en/resources/science-medicine/prohibited-list-documents>.

Exhibit E.

The web history above from the precise time period in question demonstrates that not only were the Osundairo brothers interested in steroids and steroid alternatives to aid in losing weight and increasing muscle mass, but they were also specifically interested in what substances were banned two days before their trip to Nigeria. And when considered in the context of the other text messages regarding macronutrients and projected fat loss, it is far more reasonable that Mr. Smollett's text message about meeting on the low was in regards to banned steroids which Abel could obtain for him in Nigeria, as opposed to soliciting his trainer, and his older brother who Mr. Smollett had only met a few times, to stage a hate crime on him three days later.⁵

⁵ The Osundairo brothers claimed the attack was originally scheduled for the night of January 28, 2019 but postponed until 2:00 a.m. on January 29, 2019 due to Mr. Smollett's flight delay.

**The Actual Evidence Demonstrates that the Osundairo Brothers Lied
When They Claimed They Are Not Homophobic.**

After admitting they were involved in the attack on Mr. Smollett, on February 19, 2019, the Osundairo brothers released the following statement: "We are not racist. We are not homophobic, and we are not anti-Trump. We were born and raised in Chicago and are American citizens." *See, e.g., Victor Morton, 'We are not anti-Trump': Brothers arrested in Jussie Smollett case break silence, The Washington Times* (Feb. 18, 2019), available at <https://www.washingtontimes.com/news/2019/feb/18/olabinjo-and-abimbola-osundairo-brothers-jussie-sm/>. However, the newly unsealed records flatly contradict the brothers' assertion that they are not homophobic. Specifically, text messages by both Olabinjo ("Ola") and Abel Osundairo demonstrate a strong homophobic sentiment by both brothers only a few weeks before the attack on Mr. Smollett.

Specifically, on January 12, 2019, Ola sent an individual identified as "OD" several images of what appear to be emails from a gay man, followed by a text message: "Your homeboy is mentally disturbed." This text exchange is attached hereto as Exhibit F. After OD responded by laughing at the emails, Ola texted: "Dude ass a fruit." Exhibit F. When asked by OD if "fruity folks ever say anything back," Ola responded: "I never replied to his fruity ass after that. I haven't been replying to him on ig⁶ either. I'm done with Gaylord ass." *Id.* After OD continued to laugh at Ola's remarks, Ola added: "I don't even care no more. Just tired of down low niggas tryna sneakily be on some gay shit like niggas is stupid." *Id.*

Ola also forwarded these emails to his brother, Abel, with a text stating: "This man is a sicko." This text exchange is attached hereto as Exhibit G. After commenting on the emails, Abel texted back, "Help the man" and "Lock him up," to which Ola responded, "Sicko." Exhibit

⁶ "Ig" is a reference to the social media application "Instagram."

G. Police apparently recognized the significance of these messages during their investigation, as evidenced by the marking of asterisks next to the homophobic text messages with handwritten notations on the top of these pages as to the "gay references." *See id.*

Furthermore, in their civil lawsuit filed against Mr. Smollett's attorneys on April 23, 2019, the Osundairo brothers, who are of Nigerian descent, have family in Nigeria, and enjoy visits to Nigeria, allege that "[s]ame-sex sexual activity is illegal in Nigeria, which can result in 14 years of imprisonment," and "99% of Nigerians believe homosexuality should not be tolerated." Complaint, ¶¶ 63-64, *available at* <https://dig.abclocal.go.com/wls/documents/2019/042319-wls-smollett-suit.pdf>. Thus, not only does the evidence demonstrate that the Osundairo brothers lied when they publicly professed that they are not homophobic, but their own court filing demonstrates a specific motive for their January 29, 2019 attack on Mr. Smollett hours before their scheduled trip to Nigeria.

The Actual Evidence Demonstrates that the Attack Was Not a Hoax.

The text messages released by the Chicago Police Department include one significant text message from Abel to Mr. Smollett sent around noon on January 29, 2019 (about 10 hours after the attack and after news of the attack had been made public) in which Abel writes: "Bruh say it ain't true, I'm praying for speedy recovery. Shit is wild." Exhibit D. It is significant that in none of their statements to police did the Osundairo brothers claim that Mr. Smollett told them to send such a text after the attack or otherwise claim that this text was pretextual. On the contrary, Abel texted Mr. Smollett feigning concern for him to conceal his involvement in the attack.

**The Actual Evidence Demonstrates that the Osundairo Brothers Lied to Police
and that They Were Not Acting Alone During the Attack on Smollett.**

Based on statements by the Osundairo brothers, the State took the position that Mr. Smollett instructed the Osundairo brothers not to bring their cell phones to the attack and that the brothers complied. The State's Bond Proffer provided:

On the late morning of Sunday January 27, 2019, Smollett drove his vehicle back to the Lakeview neighborhood to pick up the brothers and show them the scene where he wanted the staged attack to take place. Smollett then drove the brothers to the corner of New Street and North Water Street in Chicago where the staged attack was to take place. This was just outside Smollett's apartment building. . . *Smollett also instructed the brothers not to bring their cell phones with them.*⁷

Exhibit C [Proffer at 2] (emphasis added.)

However, two independent witnesses both contradict the Osundairo brothers' claim that they did not bring cell phones with them to the attack. Specifically, the Uber driver who picked up the Osundairo brothers from their home at around 1:00 a.m. on January 29, 2019 related the following to police:

R/D refreshed [REDACTED] memory of the 29th of Jan 2019 and stated he was working and pulled up his rides on his cell phone for that day. [REDACTED] stated he vividly remembers getting a ride where he picked up two African American Males at the location of 41[REDACTED] N Ashland. [REDACTED] pulled up the Ride ID Number [REDACTED.] The rider was ordered at 12:56 on the 29th of Jan and he arrived at 1:02 hours. [REDACTED] stated rider #1 (Male Black 30-32 Taller Dark Clothing) came to his vehicle at 1:02 and greeted the driver with "HEY BROTHER" as he entered on the curb side of the vehicle and then sat in the rear passenger seat. Rider #1 asked the driver to wait a minute that another passenger was coming. A minute later Rider #2 entered in the rear driver side door (Male Black 507/508 Larger build and 29/30 Dark Clothing). [REDACTED] thought that Rider #1 had placed the UBER order. [REDACTED] stated both riders had hoods under their jackets but neither had their hoods up. [REDACTED] thought one of the riders may have had a knit hat or maybe a baseball hat. *[REDACTED] stated Rider #1 received a phone call while inside his vehicle and stayed on the phone most of the ride.*

⁷ Concurrent with this Motion, Mr. Smollett is filing a Motion to Disclose the Transcripts of the Grand Jury Testimony of Abimbola and Olabinjo Osundairo.

[REDACTED] stated the two offenders did not make conversation with him and whispered to each other during the ride. The Uber application listed the drop off location was to be on the 1400 block of N WIELAND but has been shielded on [REDACTED] UBER application interface. ***Rider #1 was on his cell phone for most of the ride.***

Exhibit H at 5 (emphases added).

Similarly, the Yellow Cab driver who drove the Osundairo brothers after the attack specifically noted that at least one of the brothers had a cell phone that night:

On the morning of January 29th [REDACTED] had pulled up in front of the Hyatt Regency and stated that he got out of his car to clean the windows and then was sitting in his car waiting to see if a fare would show up. After a few minutes the doors opened startling [REDACTED.] He explained that he would lock the doors so he could get a look at a person before they entered his taxi. [REDACTED] thinks he forgot to lock his doors after cleaning the window. He said he could see the one that got in on the passenger side of the car pretty well and [REDACTED] described him as a dark skinned black male with a goatee 25 to 30 years old. This person said "Hey brother" when he got into the cab and was wearing all black with a big jacket and a hat pulled back. [REDACTED] said the person had a big build. [REDACTED] said he could not see the second person who sat behind him. When the second person got in he said "Hey boss". [REDACTED] felt the second person sounded "black". [REDACTED] stated that he was nervous and said "if they say they want to go south I tell them no" and then "but they say they want to go to Lake Shore Drive and Belmont so I think ok". ***[REDACTED] said he saw the person on the passenger side on a cell phone "only text no talk".***

Exhibit I at 6-7 (emphasis added).

Since Mr. Smollett's phone records demonstrate that he did not have any communication with the brothers during this time, it begs the question, **who were the Osundairo brothers communicating with right before and after the attack on Jussie Smollett?** In the newly unsealed discovery, one police report notes that "another phone number suspected of belonging to Olabinjo OSUNDAIRO was discovered [REDACTED] Phone records show this phone to be in communication with a phone number [REDACTED] belonging to [REDACTED] before and a phone number [REDACTED] belonging to [REDACTED] after the incident on 29-JAN-2019."

Exhibit J at 7. Who were these communications with and where are these pertinent phone records?

Moreover, in the State's Bond Proffer, the prosecutors argued that Mr. Smollett lied to police because he indicated that the one attacker who he got a glimpse of was white. Specifically, the Proffer provided:

Smollett also told the police that the initial and primary attacker (now known to be Abel Osundairo) was wearing a ski mask which covered his entire face, with the exception of his eyes and the area all around his eyes. Smollett stated to the police that he could see that the area around this person's eyes was white-skinned.

Exhibit C [Proffer at 4].

The newly unsealed discovery reveals that two independent witnesses both identified a young white male near the scene of the attack during the relevant time period. Specifically, the police reports recount a neighbor's statement as follows:

[REDACTED] was watching a movie with her friend in her residence. At around 0030 hours, she went outside to walk her dogs. As she walked her dogs, she observed a person which she described as a male, white, mid 30s, wearing glasses, having reddish-brown hair and slight facial hair, average height and build, wearing a blue and yellow stocking hat with a ball on top, a navy blue sweatshirt, blue jeans, gray and red socks, and brown laced shoes, which appeared wet to her. This man was smoking a cigarette and standing on New St. near Lower North Water St. (underneath the building as she described) near the loading dock between the resident entrance and resident garage door

[REDACTED] further related that the man looked at her, and upon doing so, turned away. *[REDACTED] described the man as appearing to be waiting for something. As the man turned away, [REDACTED] could see hanging out from underneath his jacket what appeared to be a rope.* [REDACTED] went back into her building and did not see the man afterwards. [REDACTED] had nothing further to add at this time.

Exhibit K at 12-13 (emphasis added).

In addition to the independent witness who saw a suspicious white male lingering outside Mr. Smollett's building **carrying a rope** shortly before the attack, another independent witness gave the exact same description of one of the attackers that Mr. Smollett gave to police:

On the night of the attack, 29 JAN 2019, [REDACTED] was working in his official capacity as a Loss Prevention Agent for the Sheraton Grand Hotel. [REDACTED] has been employed by the hotel for the past several months. [REDACTED] was conducting "tours" of the property, a normal function of his position. During his "tours", he scans bar codes located throughout the premise with a tablet in order to document that he checked on that particular location. At approximately 0200 hours, [REDACTED] was conducting a "tour" of the Chicago Burger Company restaurant, a restaurant located within the Sheraton Grand Hotel on the southeast corner of the ground floor level of the building. [REDACTED] walked outside the Chicago Burger Company restaurant exterior door onto the Riverwalk area where one of the bar codes was located. As soon as [REDACTED] exited the building, he heard the sounds of footsteps approaching quickly from the north, and then observed a male, approximately 6' tall, wearing all black with a hood or hat and a facemask. ***[REDACTED] could only see the skin area near the male's eyes where the facemask had cutouts, and believed the male to be white, in his 20s.*** [REDACTED] shined his flashlight towards the male and asked what he was doing. The male stated that it was cold out and continued running past [REDACTED] and then W/B along the Riverwalk. Immediately afterwards, a second male, stockier than the first and also wearing all dark clothing ran past [REDACTED] pointing to the first male as he ran. This second male laughed as he ran past [REDACTED] could not make out this male's race, as he had his arm up, covering his face, as he pointed and ran past [REDACTED] believed this male may have been in his 20s as well. [REDACTED] continued on his "tour", walking N/B on the west sidewalk of New St. to where one of the bar codes was located that he needed to scan. As [REDACTED] looked N/B up New St., he observed a third male at the bottom of the staircase that leads from lower to upper North Water St. [REDACTED] described this third male as a younger looking male, unknown race, bent over as if he was picking up something off the street. [REDACTED] completed his tour and went back inside the building.

[REDACTED] further related that the first male to run past him was not holding anything. [REDACTED] was unsure if the second male to run past him was holding anything or not. [REDACTED] believed that the three subjects may have just been goofing around, throwing snow balls at one another.

Exhibit L at 6 (emphasis added).

In a supplemental report written after a follow-up statement was taken from the Loss Prevention Agent at the police station, this witness again confirmed having seen *a white male in a ski mask* leaving the scene of the attack, after he shone a flashlight on the subject's face:

On 27 February, 2019 at 0747 hours, R/D Calle #20177 and Det. Campos #21017 met with [REDACTED] at Area Central. [REDACTED] related that on 29 January, 2019 he was working security and was making his rounds and was at CBC (Chicago Burger Company).

[REDACTED] related that while at CBC he heard footsteps and was startled by a subject. [REDACTED] described this subject as being tall and dressed in all black clothing which including a face mask. *[REDACTED] related that he shined a flashlight on the subject's face and was able to see white skin around the eye area.* [REDACTED] heard the subject say in essence it's cold it's cold as the subject continued away. A second subject was also observed. The second subject did not say anything but as the subject passed he was pointing at the first subject. [REDACTED] related that he was unable to get a look at the subjects face. [REDACTED] described the second subject as being shorter and stocky.

[REDACTED] related that he viewed a photo lineup. As he inspected the lineup his attention was drawn to one individual. This individual had the lightest colored skin compared to the other individuals in the lineup, but was not the individual at CBC.

Exhibit M at 6 (emphasis added).

Thus, the actual evidence in this case demonstrates that the Osundairo brothers lied to police and were acting with at least one other person (who was not Mr. Smollett).

Legal Standard

The purpose of a motion for reconsideration is to inform the trial court of (1) newly discovered evidence previously unavailable at the time of the original hearing, (2) changes that have occurred in the law since the original hearing, or (3) errors in the court's earlier application of the law. *Williams*, 273 Ill.App.3d 893, 903 (1995); *Farley Metals, Inc. v. Barber Colman Co.*, 269 Ill.App.3d 104, 116 (1994).

As the Seventh Circuit has explained, “in any given opinion, [a court] can misapprehend the facts . . . or even overlook important facts or controlling law.” *Olympia Equipment v. Western Union*, 802 F.2d 217, 219 (7th Cir.1986). Thus, “motions for reconsideration can serve a valuable function by helping, under appropriate circumstances, to ensure judicial accuracy.” *Mosley v. City of Chicago*, 252 F.R.D. 445, 447 (N.D. Ill. 2008); *see also Canning v. Barton*, 264 Ill. App. 3d 952, 956 (1994) (“The purpose of a motion for reconsideration is to inform the court of any errors it has made and to provide an opportunity for their correction.”).

Section 2-1203(a) allows any party, within 30 days after the entry of judgment, to file a motion for a rehearing, retrial, or modification of the judgment, to vacate the judgment, or for other relief. 735 ILCS 5/2-1203(a). This statute allows circuit courts in both criminal and civil cases to reconsider judgments and orders within 30 days of their entry. *See People v. Heil*, 71 Ill. 2d 458, 461 (1978); *Weilmuenster v. Ill. Ben Hur Const. Co.*, 72 Ill. App. 3d 101, 105 (1979). A timely filed motion for reconsideration stays enforcement of the order. *In re Marriage of Simard*, 215 Ill. App. 3d 647, 650 (1991).

Whether to grant a motion for reconsideration is a determination resting within the trial court's discretion, subject to reversal only upon an abuse of discretion. *Greer v. Yellow Cab Co.*, 221 Ill.App.3d 908, 915 (1991). Here, because the court erred in his application of existing law in several key respects, as explained below, it would be an abuse of discretion not to grant this motion for reconsideration.

Argument

A. The Court Erred in Finding that Kim Foxx Formally Recused Herself, Requiring the Appointment of a Special Prosecutor.

In the Order, the court first rejected Petitioner's argument that Kim Foxx was unable to fulfill her duties stemming from her “familiarity with potential witnesses in the case.” *See*

Exhibit A [Order at 12-13]. The court also recognized that "Petitioner has failed to show the existence of an actual conflict of interest in the Smollett proceeding." *Id.* [Order at 14]. However, based on public statements and an internal memorandum by her Chief Ethics Officer stating that Kim Foxx had "recused" herself from this matter, the court found that "a reasonable assumption exists" that Ms. Foxx had invoked a permissive recusal under 55 ILCS 5/3-9008 (a-15) which can be done for "any other reason he or she deems appropriate." *Id.* The court misapplied the law in so holding.

As the court notes in the Order, Kim Foxx never filed a petition for recusal or otherwise alerted the court of her recusal. *Id.* And in opposition to the Petition, Ms. Foxx unambiguously stated that she did not intend to formally or legally recuse herself. But the court nonetheless concluded that "[a] review of the record confirms our understanding that what was intended by Ms. Foxx, and what indeed occurred, was an unconditional legal recusal. Her voluntary act evinced a relinquishment of any future standing or authority over the Smollett proceeding. Essentially, she announced that she was giving up all of the authority or power she possessed as the duly elected chief prosecutor; she was no longer involved." Exhibit A [Order at 15-16]. The court cites no authority for its holding that the informal use of the term "recusal" in a public statement and internal memorandum was necessarily an unconditional legal recusal which stripped the County State's Attorney of any future standing or authority in the matter. The court's analysis is also deficient for the reasons outlined below.

1. The statutory prerequisite for the appointment of a special prosecutor was not met.

In granting the appointment of a special prosecutor, the court misapplied the law because the statutory prerequisite for the appointment of a special prosecutor was not met. Specifically,

the statute which the court relied on in granting the appointment of a special prosecutor, 55 ILCS 5/3-9008 (a-15), provides:

Notwithstanding subsections (a-5) and (a-10) of this Section, *the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding* for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

55 ILCS 5/3-9008 (a-15) (emphasis added). However, it is undisputed that State's Attorney Foxx never filed any such petition for recusal in this case.

In interpreting a statute, the primary rule of statutory construction to which all other rules are subordinate is to ascertain and give effect to the true intent and meaning of the legislature. *Village of Cary v. Trout Valley Ass'n*, 282 Ill. App. 3d 165, 169 (1996). In order to determine the legislative intent, courts must read the statute as a whole, all relevant parts must be considered, and each section should be construed in connection with every other section. *Id.* Courts should look to the language of the statute as the best indication of legislative intent, giving the terms of the statute their ordinary meaning. *Id.* A statute is to be interpreted and applied in the manner in which it is written, when it is permissible to do so under the Constitution, and is not to be rewritten by a court in an effort to render it consistent with the court's view of sound public policy. *Kozak v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 95 Ill. 2d 211, 220 (1983).

Here, 55 ILCS 5/3-9008 (a-15) provides that the State's Attorney *may* file a petition for recusal "for any other reason" he or she deems appropriate. The plain and unambiguous language of the statute indicates that the State's Attorney is not required to file such a petition but may do so in his or her discretion. In other words, the filing of such a petition is permissive, not mandatory. *See In re Estate of Ahmed*, 322 Ill. App. 3d 741, 746 (2001) ("As a rule of statutory construction, the word 'may' is permissive, as opposed to mandatory.").

Here, not only did State's Attorney Foxx not file such a petition, but she has expressly stated that she did not intend to formally and legally recuse herself. Judge Toomin's conclusion that notwithstanding her stated intent and the fact that a petition for recusal was not filed, "a reasonable assumption exists" that Ms. Foxx invoked a permissive recusal under section 3-9008 (a-15), Exhibit A [Order at 14], ignores the permissive language of the statute and violates principles of statutory construction. By deeming the use of the word "recusal" in a public statement and internal memorandum as the equivalent of filing a petition for recusal under section 3-9008 (a-15), Judge Toomin effectively re-wrote the statute and deprived Ms. Foxx the discretion which the statute expressly grants her. And contrary to the court's finding, any such informal statements did not effectuate a legal recusal by Ms. Foxx. *See, e.g., People v. Massarella*, 72 Ill. 2d 531, 538 (1978) ("At two separate arraignments, assistant State's Attorneys made noncommittal statements that the Attorney General was in charge of the case. These comments do not express, as the defendant urges, exclusion of or objection by the State's Attorney.").

The filing of a petition for recusal is a statutory prerequisite to the appointment of special prosecutor under 55 ILCS 5/3-9008 (a-15). Because the statutory prerequisite was not met here, the court misapprehended the law in granting the appointment of a special prosecutor.

2. Ms. Foxx had the power to delegate her authority to her first assistant.

Judge Toomin incorrectly asserts that by recusing herself and appointing Joe Magats as "the Acting State's Attorney for this matter," Ms. Foxx attempted to create an office which she did not have the authority to create. Exhibit A [Order at 16]. But Ms. Foxx did not attempt to create a new office nor did she appoint Joe Magats as a special prosecutor in this case. Rather, Ms. Foxx delegated her authority to one individual, her first assistant, to be exercised in a

particular, individual, criminal prosecution. Such a delegation has previously been sanctioned by Illinois courts. *See, e.g., People v. Marlow*, 39 Ill. App. 3d 177, 180 (1976) ("As illustrated by the evidence, the request procedure used in this case fully observed the 'strict scrutiny' admonition set forth in *Porcelli*. The State's Attorney of Cook County delegated his authority to one individual, his first assistant, to be used only when he himself was not available. This delegated power was exercised with discretion and care."); *see also Scott v. Ass'n for Childbirth at Home, Int'l*, 88 Ill. 2d 279, 299 (1981) ("Where a statute vests power in a single executive head, but is silent on the question of subdelegation, the clear majority view is that the legislature, 'understanding the impossibility of personal performance, impliedly authorized the delegation of authority to subordinates.'") (quoting 1 A. Sutherland, *Statutory Construction* § 4.14 (4th ed. 1972).)

None of the cases cited by Judge Toomin support his contention that Ms. Foxx could not delegate her authority to her first assistant. *People v. Munson*, 319 Ill. 596 (1925), and *People v. Dunson*, 316 Ill. App. 3d 760 (2000), are totally inapplicable, as these cases involve the delegation of authority to ***unlicensed*** prosecutors. Here, Ms. Foxx turned the Smollett case over to her first assistant, Joe Magats, who Judge Toomin describes as "an experienced and capable prosecutor." Exhibit A [Order at 16].

The court cites to *People v. Jennings*, 343 Ill. App. 3d 717 (2003), *People v. Ward*, 326 Ill. App. 3d 897 (2002), and *People v. Woodall*, 333 Ill. App. 3d 1146 (2002) as support for its position; however, those cases are also inapplicable. All of those cases involved the delegation of power to attorneys from the State's Attorneys Appellate Prosecutor's office--not the first assistant, as was the case here. Unlike assistant state attorneys, "[a]ttorneys hired by the [State Attorney's Appellate Prosecutor's Office] are not constitutional officers; their powers are derived

from the statute that created them, and those powers are strictly limited by the authority conferred upon the Agency by our state legislators." *Woodall*, 333 Ill. App. 3d at 1149 (citing *Siddens v. Industrial Comm'n*, 304 Ill. App. 3d 506, 510-11 (1999)). As one court explained, "the State's Attorneys Appellate Prosecutor's Act (Act) (725 ILCS 210/4.01 (West 1998)) provides specific instances in which attorneys employed by the State's Attorneys Appellate Prosecutor's office may represent the State, with the most obvious instance being when a case is on appeal." *Ward*, 326 Ill. App. 3d at 901. In each of these cases, attorneys from the appellate prosecutor's office exceeded their authority to prosecute **as prescribed by statute**. See, e.g., *id.* at 902 (because "[t]he Cannabis Control Act, under which defendant was prosecuted, is not expressly listed, . . . prosecution under this Act [was not] allowed by attorneys from the State's Attorneys Appellate Prosecutor's office"); *Jennings*, 343 Ill. App. 3d at 725 ("Section 4.01 of the Act does not specifically include a murder prosecution as an instance in which an employee of the appellate prosecutor's office may assist a county State's Attorney in the discharge of his or her duties."); *Woodall*, 333 Ill. App. 3d at 1149 (noting that the Act limits the types of cases in which attorneys from the State's Attorneys Appellate Prosecutor's office may assist local prosecutors in the discharge of their constitutionally based duties and concluding that the appointment process relied on by the State was flawed).

In contrast to attorneys hired by the State Attorney's Appellate Prosecutor's office, the Illinois Supreme Court has explained that Assistant State's Attorneys are "officers for the performance of the general duties of the offices of state's attorney." *People ex rel. Landers v. Toledo, St. L. & W.R. Co.*, 267 Ill. 142, 146 (1915). Accordingly, "[a]n Assistant State's Attorney is generally clothed with all the powers and privileges of the State's Attorney; and all acts done by him in that capacity must be regarded as if done by the state's attorney himself."

People v. Nahas, 9 Ill. App. 3d 570, 575-76 (1973) (citing 27 C.J.S. District and Pros. Attys. Sec. 30(1).) Indeed, "the legislative purpose in creating the office of Assistant State's Attorney (Sec. 18, c. 53, Ill.Rev.Stat.) was to provide an official who should have full power to act in the case of the absence or sickness of the State's Attorney, or in the case of his being otherwise engaged in the discharge of the duties of office, in the same manner and to the same extent that the State's Attorney could act, and we also believe that the General Assembly in using the term, 'a State's Attorney' did intend that an assistant could act." *Nahas*, 9 Ill. App. 3d at 576.

In *Office of the Cook County State's Attorney v. Ill. Local Labor Relations Bd.*, 166 Ill.2d 296 (1995), the Illinois Supreme Court specifically discussed the statutory powers and duties of the Cook County State's Attorney and Assistant Cook County State's Attorneys. The Court held that the assistants were vested with the authority to exercise the power of the State's Attorney, played a substantial part in discharging the statutory mission of the State's Attorney's office, and acted as "surrogates for the State's Attorney" in performing the statutory duties of the State's Attorney. *Id.* at 303.

The Illinois legislature intended, and the cases have long held, that an Assistant State's Attorney legally has the same power to act on behalf of the State's Attorney either by virtue of the office of Assistant State's Attorney, or as specifically authorized by the State's Attorney, pertaining to (1) initiating criminal prosecutions against a person; (2) intercepting private communications; and (3) procedures that may result in a person being deprived of his or her liberty for life. See, e.g., *People v. Audi*, 73 Ill. App. 3d 568, 569 (1979) (holding that an information signed by an Assistant State's Attorney rather than the State's Attorney himself was not defective); *People v. White*, 24 Ill. App. 2d 324, 328 (1960), *aff'd*, 21 Ill. 2d 373 (1961) (rejecting defendant's argument that an Assistant State's Attorney does not have the power or

authority to prosecute by information in his own name in the county court); *Nahas*, 9 Ill. App. 3d at 575-76 (holding that the authorization of an eavesdropping device by a First Assistant, rather than the State's Attorney, was proper because "[a]n Assistant State's Attorney is generally clothed with all the powers and privileges of the State's Attorney; and all acts done by him in that capacity must be regarded as if done by the State's Attorney himself"); *Marlow*, 39 Ill. App. 3d at 180 (holding that the State's Attorney can delegate his authority to give eavesdropping consent to a specifically indicated individual); *People v. Tobias*, 125 Ill. App. 3d 234, 242 (1984) (holding that an Assistant State's Attorney has the authority to sign a petition to qualify the defendant for a life sentence under the habitual criminal statute, which provides that such petition be "signed by the State's Attorney").

As such, the court misapplied the law in holding that Ms. Foxx did not have the power to delegate her authority in the Smollett matter to her first assistant, Joe Magats, and that by doing so, she invoked a permissive recusal under 55 ILCS 5/3-9008 (a-15), authorizing the appointment of a special prosecutor.

B. Even if There Was No Valid Commission to Prosecute Mr. Smollett, This Would Not Render the Prior Proceedings Null and Void Because Mr. Smollett Has Not Challenged the Allegedly Defective Commission to Prosecute.

The court misapprehended the law when it ruled that Kim Foxx's informal "recusal" rendered the entirety of the proceedings--from Mr. Smollett's arrest to the dismissal of the charges against him--null and void. In the Order, the court concludes that because Ms. Foxx could not delegate her authority to her first assistant:

There was no duly elected State's Attorney when Jussie Smollett was arrested;

There was no State's Attorney when Smollett was initially charged;

There was no State's Attorney when Smollett's case was presented to the grand jury, nor when he was indicted;

There was no State's Attorney when Smollett was arraigned and entered his plea of not guilty; and

There was no State's Attorney in the courtroom when the proceedings were *nolle prossed*.

Exhibit A [Order at 20].

In trying to nullify the arrest, prosecution, and dismissal of charges against Mr. Smollett, Judge Toomin relies on five cases: *People v. Jennings*, 343 Ill. App. 3d 717 (2003), *People v. Ward*, 326 Ill. App. 3d 897 (2002), *People v. Woodall*, 333 Ill. App. 3d 1146 (2002), *People v. Munson*, 319 Ill. 596 (1925), and *People v. Dunson*, 316 Ill. App. 3d 760 (2000). However, none of these cases support the court's conclusion that the prior proceedings against Mr. Smollett are null and void. In the Order, the court quoted the following passage from *Ward*:

If a case is not prosecuted by an attorney properly acting as an assistant State's Attorney, the prosecution is void and the cause should be remanded so that it can be brought by a proper prosecutor.

Ward, 326 Ill. App. 3d at 902. However, the court in *Woodall*, also relied upon by Judge Toomin, actually distinguished *Ward* and *Dunson* and held that the defective appointment of special assistant prosecutors **did not nullify** the defendant's judgment of conviction in that case. *Woodall*, 333 Ill. App. 3d at 1161.

The *Woodall* court began its analysis by explaining that "[t]here are only two things that render a judgment null and void. A judgment is void, and hence, subject to attack at any time, only when a court either exceeds its jurisdiction or has simply not acquired jurisdiction." *Id.* at 1156 (citing *People v. Johnson*, 327 Ill. App. 3d 252, 256 (2002)). The court also noted that it failed "to comprehend how the prosecutors' flawed station in this case could serve to deprive the court of jurisdiction and thus void the defendant's convictions, when the prosecutorial pursuit of people actually placed twice in jeopardy could not." *Woodall*, 333 Ill. App. 3d at 1157. The

court then went on to explain why neither *Ward* nor *Dunson* supports the proposition that a prosecution championed by attorneys who lacked the legal authority to act on the State's behalf would render the proceedings null and void. *Id.*

First, the *Woodall* court explained that *Ward* does not, in fact, stand for such a proposition: "The author of the *Ward* opinion cited the aged decision in a manner that warned that it did not exactly stand for the proposition stated. . . . [T]he term 'void' was not used in conjunction with a jurisdictional analysis, and a question over whether or not the trial court acquired jurisdiction was not raised." *Woodall*, 333 Ill. App. 3d at 1157. The court further noted:

Ward should not be read as the source of a novel jurisdictional rule that would void all convictions procured by licensed attorneys who, for whatever reason, mistakenly believe that they are authorized to act on the State's behalf and who are permitted to do so by those being prosecuted. Any defect in an attorney's appointment process or in his or her authority to represent the State's interests on a given matter is not fatal to the circuit court's power to render a judgment. The right to be prosecuted by someone with proper prosecutorial authority is a personal privilege that may be waived if not timely asserted in the circuit court.

Id. at 1159.

Second, the *Woodall* court distinguished *Dunson*, in which the court held that a prosecution by a prosecutor who did not hold an Illinois law license rendered the convictions void as a matter of common law. *Id.* at 1160. The *Woodall* court explained: "Our case is not one where the assistance rendered, even though it was beyond the statutory charter to assist, inflicted any fraud upon the court or the public. The State was represented competently by attorneys who earned the right to practice law in this state. There was no deception about their license to appear and represent someone else's interests in an Illinois courtroom." *Id.* at 1160-61.

The court in *Dunson* relied heavily on *Munson*, an older case from 1925. Although the *Woodall* court did not separately address *Munson*, that case also involved the unauthorized practice of law and is distinguishable for the same reasons as *Dunson*.

As noted above, the *Woodall* court held that "the right to be prosecuted by someone with proper prosecutorial authority is *a personal privilege* that may be waived if not timely asserted in the circuit court." *Woodall*, 333 Ill. App. 3d at 1159 (emphasis added). Thus, if there, in fact, had been a defect in the authority to prosecute Mr. Smollett, the only person who could properly challenge the validity of the proceedings would be Mr. Smollett--and he has not done so.

Although the *Woodall* court found that the State's Attorney did not have the authority to unilaterally create a special assistant office by appointing attorneys employed by State's Attorney's Appellate Prosecutor's office to conduct trial on his behalf without county board approval, it nonetheless found that the defective appointment of the special assistant prosecutors did not nullify the defendant's judgment of conviction. *Woodall*, 333 Ill. App. 3d at 1161. The court explained:

The defendant has not attempted to demonstrate the harm visited upon him by his prosecutors' defective commission to prosecute. For that matter, he does not even claim that anything evil or wrong occurred in the process to verdict other than that defect. To the extent that the Agency attorneys' lack of proper authority to prosecute somehow inflicted injury, it was a wound that the defendant invited by allowing their presence to go unchallenged. We find no reason to overturn the defendant's convictions.

Id. Here, like in *Woodall*, because any such defect has gone unchallenged by Mr. Smollett, there is no basis on which the court can void the proceedings in this case.

Similarly, in *Jennings*, relied on by Judge Toomin, the court held that although the attorney who tried the case for the State did not have the authority to prosecute the defendant, the defendant waived his right to challenge the defective commission of the attorney. *People v.*

Jennings, 343 Ill. App. 3d 717, 727 (2003). The *Jennings* court explained: "The defendant does not argue and the record does not indicate that he was harmed by Lolie's prosecution. At no time in the proceedings did the defendant object to the trial court's recognition of Lolie as a prosecutor. The defendant, therefore, waived his right to challenge Lolie's defective commission to prosecute." *Id.*

An analysis of the cases which the court relied on in its Order reveals that Judge Toomin misapplied the law in concluding that the entirety of the proceedings--from Mr. Smollett's arrest to the dismissal of the charges against him--are null and void. On the contrary, the record supports the conclusion that the People of the State of Illinois were properly represented by an Assistant State's Attorney acting with the permission and authority of the State's Attorney at all times during the proceedings.

If the court's conclusions were to be accepted, the City of Chicago has committed an egregious violation of Mr. Smollett's civil rights by depriving him of his liberty and property without due process of law in violation of the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In fact, the City of Chicago is still in possession of the \$10,000 bail that was paid on Mr. Smollett's behalf on February 21, 2019, and forfeited to the City of Chicago upon the dismissal of charges against him on March 26, 2019. Thus, in addition to the civil rights violations noted above, any further prosecution of Mr. Smollett for filing a false report would also violate the federal and state ban against double jeopardy because it would constitute double punishment. *See United States v. Benz*, 282 U.S. 304, 307-09 (1931); *People v. Milka*, 211 Ill. 2d 150, 170 (2004).

C. The Appointment Is Vague and Overbroad.

The Order's broad prescription of authority to the special prosecutor, namely that the special prosecutor may "further prosecute" Mr. Smollett if reasonable grounds exist, is vague and overbroad. Exhibit A [Order at 21]. If it was intended that such further prosecution could only be the result of some potential new discovery of wrongdoing by Mr. Smollett during the pendency of the case (which does not exist), this must be clarified in the Order. But if the court intended to authorize the special prosecutor to further prosecute Mr. Smollett for filing a false police report on January 29, 2019 (as alleged in the indictment that has since been dismissed), then the Order is overbroad. As noted above, among other issues, any future prosecution of Mr. Smollett for filing a false report about the January 29, 2019 attack would violate the ban against double jeopardy. In any event, the Order is vague as to this critical issue.

Furthermore, the Order does not limit the investigation in any way or specify a date or event that would terminate the special prosecutor's appointment. Illinois courts have held that such a deficiency renders the appointment vague and overbroad. *See, e.g., In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220, 233 (2009) ("The order's definition of the scope of the subject matter and the duration of Poncin's appointment is vague in that it does not specify an event for terminating the appointment or the injunction. The circuit court should not have issued the appointment without a specific factual basis, and the court should have more clearly limited the appointment to specific matters. Under the circumstances, we view the circuit court's prescription of Poncin's authority to be overbroad and, therefore, an abuse of discretion.").

WHEREFORE, Jussie Smollett, by his attorneys, Geragos & Geragos, respectfully requests that this Court grant his Motion, vacate the June 21, 2019 Order, and deny the Petition to Appoint a Special Prosecutor. In the alternative, Mr. Smollett, by his attorneys, Geragos &

Geragos, respectfully requests that this Court grant his Motion and schedule this cause for a full hearing for a determination as to whether there is sufficient cause to justify the appointment of a special prosecutor.

In the event the Court is not inclined to grant the Motion, Mr. Smollett, by his attorneys, Geragos & Geragos, respectfully requests that the Court modify the June 21, 2019 Order to clarify that the special prosecutor may investigate and prosecute potential misconduct only, and may not further prosecute Mr. Smollett for the charges that were previously brought and dismissed against him.

Dated: July 19, 2019

Respectfully submitted,

/s/ Tina Glandian

Tina Glandian, Rule 707 Admitted
 Mark J. Geragos, Rule 707 Admitted
 Geragos & Geragos, APC
 256 5th Avenue
 New York, NY 10010
 &
 Geragos & Geragos, APC
 644 South Figueroa Street
 Los Angeles, CA 90017-3411
 (213) 625-3900
 tina@geragos.com
 mark@geragos.com

Attorneys for Jussie Smollett

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

)
)
)

No. 19 MR 00014

Hon. _____

ORDER

This cause coming before the Court on a Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor (“Motion”), due notice having been given and the Court being fully advised in the premises, IT IS HEREBY ORDERED that the Motion is granted, the June 21, 2019 Order is vacated, and the Petition for the Appointment of a Special Prosecutor is denied.

IT IS SO ORDERED.

ENTERED:

Circuit Court of Cook County
Criminal Division

EXHIBIT A

BACKGROUND

The instant petition has its genesis in a story unique to the annals of the Criminal Court. The principal character, Jussie Smollett, is an acclaimed actor known to the public from his performances in the television series, "Empire." But his talents were not destined to be confined to that production. Rather, in perhaps the most prominent display of his acting potential, Smollett conceived a fantasy that propelled him from the role of a sympathetic victim of a vicious homophobic attack to that of a charlatan who fomented a hoax the equal of any twisted television intrigue.

Petitioner's factual allegations stem from a number of articles published in the Chicago Tribune, the Chicago Sun-times and other newspapers as well as local broadcasts, together with redacted Chicago Police Department reports and materials recently released by the State's Attorney's Office. Although the court recognizes that portions of these sources may contain hearsay rather than "facts" within the semblance of a trial record, the materials provide a backdrop for consideration of the legal issues raised by the petition.¹

The story begins on January 22, 2019, when Smollett first sought the aid of the Chicago Police Department. Smollett reported that he was the recipient of an envelope delivered to the "Empire" studio on Chicago's West Side. Inside, was an unsettling note with letters apparently cut out from an unidentifiable publication, forming what appeared to be a racial and homophobic message that Smollett perceived as a threat. His fear was further heightened by the stick figure

¹ Hearsay is an out-of-court statement offered for the truth of the matter asserted therein, its value depending upon the credibility of the declarant. *People v. Murphy*, 157 Ill. App. 3d 115, 118, (1987); see also Ill. R. Evid. 801 (a)-(c) (eff. Jan. 1, 2011). Yet, certain of such statements may be admissible for other purposes (*People v. Davis*, 130 Ill. App. 3d 41, 53, (1984), including to simply show that a statement was made, to characterize an act, to show its effect on the listener, or to explain the steps in an investigation. See M. Graham, *Graham's Handbook of Illinois Evidence* § 801.5, at 763-78 (10th ed. 2010); and Ill. R. Evid. 803 and 804. Admissions and prior inconsistent statements, which appear prominently in the parties' submissions, are likewise not considered hearsay. Graham, §§ 801.9 and 801.14; and Ill. R. Evid. 801(d)(1), (2).

displayed on the note, holding a gun pointed at the figure's head. Additionally, the envelope contained a white powder substance that the police later determined to be aspirin.

A week later, on January 29, 2019, Smollett's production manager called 911 to report that Jussie had been attacked by two men outside a local sandwich shop at two o'clock that morning. Smollett, who is black and gay, later told the police he was physically attacked as he returned home from an early morning stop at the nearby Subway store. Smollett claimed that two masked men shouted homophobic and racial slurs, and as they beat him yelled "This is MAGA country." After looping a rope around his neck, the offenders who reportedly were white, poured "an unknown substance" on him before running away.

When news of the attack was released to the public, members of the United States Congress, television talk show hosts and other public figures expressed outrage. This included even the President of the United States who after viewing this story declared, "It doesn't get worse, as far as I'm concerned."

Acting on the belief that what had transpired was potentially a hate crime, the response of law enforcement was swift and certain. On the day following the attack, at least a dozen detectives combed hundreds of hours of surveillance camera footage in the area Smollett designated as the scene of the attack. None of the footage revealed anything resembling the attack. However, detectives did observe images of two people in the area, but their faces were indistinguishable.

As the investigation progressed the police began to focus on two brothers who soon came to be viewed as suspects. On February 13, 2019, as they returned from Nigeria, the brothers were taken into custody and questioned. The following day their apartment was searched.

Smollett's story then began to unravel. Detectives eventually concluded that he had lied about the attack. The investigation shifted to whether Smollett orchestrated the scenario, paying the Nigerians to stage the event. The police learned that both brothers had actually worked with Smollett at his television studio. Smollett had now become a suspect, well on his way to becoming an accused.

On February 21, 2019, in the early morning, Smollett turned himself in to custody at Chicago Police Headquarters where he was arrested and charged with filing a false police report, a form of disorderly conduct. The offense is a Class 4 felony, carrying a potential sentence of up to three years imprisonment. That same day, Police Superintendent, Eddie Johnson, held a press conference where he essentially confirmed what anonymous sources had been leaking to the media; that Smollett had staged the attack because he was dissatisfied with his "Empire" salary and that he had sent the threatening letter to himself.

On March 8, 2019, a Cook County grand jury indicted Smollett on 16 felony counts of disorderly conduct. A plea of not guilty was entered at his arraignment and the cause was continued to April 17, 2019. However, that date never materialized; rather, at an emergency court appearance on March 26, 2019, the case was *nolle prossed*, a disposition that shocked officialdom as well as the community. The State's Attorney's Office then issued the following statement:

"After reviewing all the facts and circumstances of the case including Mr. Smollett's volunteer service in the community and his agreement to forfeit his bond to the City of Chicago, we believe the outcome is a just disposition and appropriate resolution of this case"

The State's Attorney's revelation was widely condemned. The secrecy shrouding the disposition prompted a backlash from both Superintendent Johnson as well as Mayor Rahm Emanuel, who derided the decision as a "whitewash of justice." President Trump again weighed in, announcing that the F.B.I and the Department of Justice would review the case, which he called "an embarrassment to our nation."

Internal documents recently released by the State's Attorney's Office and the Chicago Police Department contradict the impression that the sudden disposition was only recently conceived. In reality, negotiations extended back to February 26, 2019, a date close to the initial charges when First Assistant Magats wrote:

"We can offer the diversion program and restitution. If we can't work something out, then we can indict him and go from there."

On February 28, 2019, the Chief of the Criminal Division, Risa Lanier, told detectives that they could no longer investigate the crime; she felt the case would be settled with Smollett paying \$10,000 in restitution and doing community service. Although the detectives assumed the disposition would include a guilty plea, there was no admission of guilt or plea when the agreement was consummated. The public also found unsettling that the prosecutors had left open the question of Smollett's wrongdoing.

As with many unwinding plots, this case has a back story offering further insight into the workings behind the scenes. The details of that story became public over the course of the prosecution and was supplemented on May 31, 2019 through the release of reports, text messages and other internal documents released by the State's Attorney's Office and the Chicago Police Department and reported by the media.

On February 1, 2019, two days after Jussie Smollett reported his staged hate crime, State's Attorney Kim Foxx was contacted by Tina Tchen, a local attorney who previously served

as Michelle Obama's Chief of Staff. Tchen, a Smollett family friend, informed Foxx of the family's concern over the investigation and particularly, leaks from the police department to the media.

In turn, Foxx reached out to Superintendent Johnson, seeking to have the investigation taken over by the F.B.I. She later exchanged text messages with a member of the Smollett family who was grateful for Foxx's efforts.

The same day, Ms. Foxx discussed the likelihood of the F.B.I. taking over the investigation with her Chief Ethics Officer, April Perry. On February 3, 2019, Foxx told Perry to "impress upon them [the FBI] this is good." Perry later responded that she had spent 45 minutes giving her "best sales pitch" to the F.B.I., but they would likely want to hear more from Superintendent Johnson.

In another text, Ms. Foxx wondered if it was worth the effort and the transfer never materialized:

"I don't want to waste any capital on a celebrity case that doesn't involve us. I'm just trying to move this along, since it's a distraction and people keep calling me."

On February 13, 2019, Foxx quietly announced that she was leaving the case. April Perry sent an internal email informing staff:

"Please note that State's Attorney Foxx is recused from the investigation involving Jussie Smollett. First Assistant State's Attorney, Joe Magats is serving as the Acting State's Attorney for this matter."

Six days later, the recusal was confirmed by Foxx's spokeswoman, Tandra Simonton:

"Out of an abundance of caution, the decision to recuse herself was made to address potential questions of impropriety based upon familiarity with potential witnesses in the case."

Additionally, an ABC 7-I-Team press release recounted that Alan Spellberg, supervisor of the State's Attorney's Appeals Division, had sent a four-page memo to office brass indicating that the appointment of Magats was against legal precedent:

"My conclusion from all of these authorities is that while the State's Attorney has the complete discretion to recuse herself from the matter, she cannot simply direct someone (even the First Assistant) to act in her stead"

Mounting questions over Foxx's withdrawal prompted various responses from her office. Foxx, they explained, did not legally recuse herself from the Smollett case; she did so only "colloquially." According to Foxx's spokeswoman, Keira Ellis:

"Foxx did not formally recuse herself or the [State's Attorney] Office based on any actual conflict of interest. As a result she did not have to seek the appointment of a special prosecutor"

The confusion continued, as well as the widespread doubt. On May 31, 2019, the State's Attorney added yet another explanation for her recusal:

"False rumors circulated that I was related or somehow connected to the Smollett family, so I removed myself from all aspects of the investigation and prosecution...so as to avoid even the perception of a conflict."

ANALYSIS

Petitioner, Sheila O'Brien, seeks the appointment of a special prosecutor to reinstate and further prosecute the charges in the matter entitled the People of the State of Illinois v. Jussie Smollett, dismissed by the Cook County State's Attorney on March 26, 2019, and *inter alia*, to investigate the actions of any person or office involved in the investigation, prosecution and dismissal of that matter. Petitioner asserts that appointment of a special prosecutor is appropriate where, as here, the State's Attorney is unable to fulfill her duties, has an actual conflict of interest or has recused herself in the proceedings.

State's Attorney, Kim Foxx, denies that petitioner has the requisite standing to bring this action, Ms. Foxx further maintains that petitioner cannot meet the standard for the appointment of a special prosecutor as she had no actual in conflict in this case, and at no time filed a formal recusal motion as the law requires. Additionally, the State's Attorney posits that appointment of a special prosecutor would be duplicative of the inquiry she requested into her handling of the matter, currently being conducted by the Cook County Inspector General.

Any analysis must be prefaced by reference to governing legal principles. As a threshold matter it is generally recognized that section 3-9005 of the Counties Code, 55 ILCS 5/3-9005 (West 2018), cloaks the State's Attorney with the duty to commence and prosecute all actions, civil or criminal, in the circuit court for the county in which the people of the State or county may be concerned. *People v. Pankey*, 94 Ill. 2d 12, 16 (1983). As a member of the executive branch of government, the public prosecutor is vested with exclusive discretion in the initiation and management of a criminal prosecution. *People v. Novak*, 163 Ill. 2d 93, 113 (1994). Essentially, it is the responsibility of the State's Attorney to evaluate the evidence and other pertinent factors to determine what offenses, if any, can and should properly be charged. *People*

ex rel. Daley v. Moran, 94 Ill. 2d 41, 51 (1983).

It is well-settled that prosecutorial discretion is an essential component of our criminal justice system. As noted, the State's Attorney is cloaked with broad prosecutorial power in decisions to bring charges or decline prosecution. *Novak*, 163 Ill. 2d at 113. Control of criminal investigations is the prerogative of the executive branch, subject only to judicial intervention to protect rights. *Dellwood Farms, Inc. v. Cargill, Inc.*, 128 F. 3d 1122, 1125 (1997).

In derogation of these long-standing principles, our legislature has codified certain limitations on the powers and duties of our elected State's Attorneys. Thus, the current iteration of Section 3-9008 of the Counties Code, 55 ILCS 5/3-9008 (West 2018) provides in relevant parts:

(a- 5) The court on its own motion, or an interested person in a cause or proceeding,...may file a petition alleging that the State's Attorney is sick, absent, or unable to fulfill his or her duties. The court shall consider the petition, any documents filed in response, and ... If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-10) The court on its own motion, or an interested person in a cause or proceeding,...may file a petition alleging that the State's Attorney has an actual conflict of interest in the cause or proceeding. The court shall consider the petition, any documents filed in response, and... If the court finds that the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-15) Notwithstanding subsections (a-5) and (a-10) of this Section, the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

This limitation upon the public prosecutor's statutory powers has endured for more than 170 years, providing the sole standards for determining when a State's Attorney should be disqualified from a particular cause or proceeding. See Laws 1847, §1, p. 18; *People v. Lang*, 346 Ill. App. 3d 677, 680 (2004). The abiding purpose of the enactment is to "prevent any influence upon the discharge of the duties of the State's Attorney by reason of personal interest." *In re Harris*, 335 Ill. App. 3d 517, 520 (2002), quoting *People v. Morley*, 287 Ill. App. 3d 499, 503-04 (1997). The term "interested" as used in the former statute was interpreted by our supreme court to mean that the State's Attorney must be interested as: (1) a private individual; or (2) an actual party to the action. *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394, 400-01 (1977).

Over time, the reach of Section 3-9008 was expanded to include situations in which the State's Attorney has a *per se* conflict of interest in the case. Guidance as to what may constitute a *per se* conflict may be found in an unbroken line of precedent. In *People v. Doss*, 382 Ill. 307 (1943) and *People v. Moretti*, 415 Ill. 398 (1953), where the State's Attorneys were potential witnesses before the grand jury, appointment of a special prosecutor was the regular and proper procedure to be followed. Likewise, in *Sommer v. Goetze*, 102 Ill. App. 3d 117 (1981), a special prosecutor was mandated in a civil proceeding where an assistant State's Attorney was both the complainant and key witness. See also *People v. Lanigan*, 353 Ill. App. 3d 422 (2004) (State's Attorney's representation of deputy sheriffs on their fee petitions contemporaneously with their prosecution created a *per se* conflict of interest).

Prevailing precedent dictates that the decision to appoint a special prosecutor under section 3-9008 is not mandatory, but rather within the sound discretion of the circuit court. *In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220, 232, (2009); *Harris*, 335 Ill. App. 3d at

520 and *People v. Arrington*, 297 Ill. App. 3d 1, 3 (1998). Even where a disqualifying ground is found, “the appointment of a special state’s attorney is not mandatory, the statute only requiring that such an appointment may be made.” *Lanigan*, 353 Ill. App. 3d at 429-30, quoting *Sommer*, 102 Ill. App. 3d at 120.

Moreover, the authority of a special state’s attorney is strictly limited to the special matter for which he was appointed. *Franzen v. Birkett (In re Special State’s Attorney)*, 305 Ill. App. 3d 749, 761 (1999). His powers are restricted to those causes or proceedings in which the State’s Attorney is disqualified. (“As to all other matters the State’s Attorney continues to exercise all of the duties and enjoys all of the emoluments of his office.”) *Aiken v. County of Will*, 321 Ill. App. 171, 178 (1943). Additionally, the appointment of a special prosecutor is appropriate only where the petitioner pleads and proves specific facts showing that the State’s Attorney would not zealously represent the People in a given case. *Harris*, 335 Ill. App. 3d at 522, citing *Baxter v. Peterlin*, 156 Ill. App. 3d 564, 566 (1987).

Standing to seek appointment of a special prosecutor may also be at issue. Under two provisions of the current statute, commencement of actions to disqualify the State’s Attorney are limited to motions brought by the court or by an interested person in a cause or proceeding. Section 3-9008 (a-5) and (a-10).

The issue was earlier addressed by our supreme court in *People v. Howarth*, 415 Ill. 499, 513 (1953), where the court concluded that citizens associated with the Good Government Council could properly invoke the court’s jurisdiction. See also, *Lavin v. Board of Commissioners of Cook County*, 245 Ill. 496, 502 (1910), where the court recognized that “the filing of a petition by the State’s attorney setting up facts... to appoint a special State’s attorney gave the court jurisdiction of the subject matter....” Similarly, in *People ex rel. Baughman v. Eaton*, 24 Ill. App. 3d 833, 834 (1974), the Fourth District found it was appropriate for a private

citizen to seek a special prosecutor to call the court's attention to circumstances that may warrant that appointment. Nor is it necessary that a private citizen petitioning to invoke the disqualification statute be a party to the action. *In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220, 229 (2009); *Franzen*, 305 Ill. App. 3d at 758.

With these principles in mind, consideration will be given to the merits of the case at hand. Petitioner first asserts that she is an "interested person" within the purview of Section 3-9008 by reason of her professional background and personal attributes. As a member of the judiciary from 1985 to 2011, petitioner alleges that she has sustained personal harm from the derogatory manner in which the Smollett case was handled; that she and all residents of the community have been subjected to ridicule and disparaging media commentary to the extent that her ability to live peacefully has been diminished.

The State's Attorney denies that petitioner's status as a taxpayer and active member of her community is sufficient to confer standing. Rather, petitioner is merely a casual observer who should not be allowed to invoke the jurisdiction of Section 3-9008 absent some showing of particular pecuniary interest to intervene.

Although the State's Attorney's argument has a degree of merit, the authorities previously discussed do not foreclose the application of petitioner's personal attributes and feelings in determining her status as an interested person. There is no requirement that she be a party to the action nor need she have any financial interest in this cause. Her assertion of standing will be sustained.

Petitioner next contends that State's Attorney Foxx was unable to fulfill her duties in the Smollett case because Foxx's recusal indicated her acknowledgement of a potential conflict of interest stemming from her "familiarity with potential witnesses in the case." Petitioner's argument appears to be grounded on the first basis for appointment of a special prosecutor

providing that an interested person in a cause or proceeding may file a petition where the State's Attorney is sick, absent or unable to fulfill his or her duties. 55 ILCS 5/3-9008 (a-5).

An identical argument was recently rejected in *In re Appointment of Special Prosecutor (Emmett Farmer)*, 2019 IL. App. (1st) 173173, where the First District determined that subsection (a-5) is limited to situations where the State's Attorney is physically unable to perform due to sickness, absence or similar circumstances beyond her control:

“By grouping ‘sick, absent or unable to fulfill his or her duties’ together in subsection (a-5), the legislature indicated that the inability to fulfill one’s duties is of a kind with sickness and absence” ¶28

Accordingly, petitioner's argument on subsection (a-5) must fail.

In her second ground of disqualification, petitioner submits that Ms. Foxx's use of the word “recuse” reflects her subjective belief that “she had a conflict with prosecuting Jussie Smollett and thus was unable to perform her duties as defined.” Although the existence of an actual conflict of interest is indeed a recognized ground of disqualification under subsection (a-10), petitioner essentially fails to plead and prove specific facts identifying the interest or the conflict.

In petitioner's “Fact Timeline” one might perhaps discern that the conflicting interest of which petitioner speaks was a manifest desire to aid and assist Mr. Smollett. If so, adherence to that motive would certainly intersect with and be in derogation of the State's Attorney's statutory duties and responsibilities. Petitioner's Timeline, together with other facts established during the course of the proceedings, might offer some support for a claim of interest. First, Ms. Foxx's receipt of text messages requesting her assistance when Smollett was a purported victim in the early stages of the case, coupled with the series of conversations with Smollett's family could be indicative of a desire to help. Likewise, Foxx's request that Police Superintendent, Eddie

Johnson facilitate the transfer of the case to the F.B.I. could manifest a desire to aid. Again, after Smollett had been indicted, Foxx's approval of the dismissal on an unscheduled court date in return for the favorable disposition Smollett received might also be indicative of bias. Finally, Foxx's public statements, first upholding the strength of the State's case, then justifying the agreement because the evidence turned out to be weaker than was initially presented were additional factors showing favor.

Although petitioner's allegations raise some disquieting concerns they do not rise to a clear showing of interest. To be sure, other facts such as the initial charging of Smollett, the engagement of the grand jury, the return of the indictment, the arraignment and ongoing prosecution of Smollett are opposing facts that tend to undermine a claim of interest. Petitioner has failed to show the existence of an actual conflict of interest in the Smollett proceeding.

Finally, petitioner posits that this court must appoint a special prosecutor because Kim Foxx recused herself in the Smollett case. Petitioner grounds this assertion on staff's public statement on February 19, 2019 that Foxx had decided to recuse herself "out of an abundance of caution" because of her "familiarity with potential witnesses in the case." The announcement mirrored the internal acknowledgement, of February 13, 2019 that Foxx "is recused" from the Smollett investigations.

Although the statutory authority relied upon by Ms. Foxx was not articulated, a reasonable assumption exists that it was bottomed on subsection 3-9003 (a-15), authority for the proposition that permissive recusals can be invoked by the State's Attorney for "any other reason he or she deems appropriate." However, Foxx did not file a petition for recusal, nor did she alert the court of her recusal, thereby depriving the court of notice that appointment of a special prosecutor was mandated. Instead, she simply turned the Smollett case over to her First Assistant, Joseph Magats. As will be shown, her ability to bypass the mandate of the statute was

in opposition to well-established authority.

Curiously, public announcements that flowed from the State's Attorney's Office offered the rather novel view that the recusal was not actually a recusal. Rather, in an exercise of creative lawyering, staff opined that Foxx did not formally recuse herself *in a legal sense*; that the recusal was only in a *colloquial sense*. Under that rubric, Foxx could carry on as public prosecutor, unhampered by her contradictory statements. However, discerning members of the public have come to realize that the "recusal that really wasn't" was purely an exercise in sophistry. In this regard, the court takes judicial notice of the recently released memo penned by Chief Ethics Officer, April Perry, under the title, State's Attorney Recusal, dated February 13, 2019:

"Please note that State's Attorney Kim Foxx is recused from the investigation involving victim Jussie Smollett. First Assistant Joe Magats is serving as the Acting State's Attorney for this matter.

Experience confirms that the term "recusal" is most often used to signify a voluntary action to remove oneself as a judge. Black's Law Dictionary, 4th Ed. p.1442 (1951). However, recusals are not the sole province of the judiciary, but may be invoked by most public officials. Thus, recusals are a species of the disqualification process courts typically encounter in processing motions for substitution of judges or change of venue. In *Brzowski v. Brzowski*, 2014 IL. App. 3d 130404, the Third District held that the same rules should apply when a judge is disqualified from a case, either by recusal or through a petition for substitution:

"...it is a generally accepted rule in both state and federal courts that once a judge recuses, that judge should have no further involvement in the case outside of certain ministerial acts." ¶19.

A review of the record confirms our understanding that what was intended by Ms. Foxx,

and what indeed occurred, was an unconditional legal recusal. Her voluntary act evinced a relinquishment of any future standing or authority over the Smollett proceeding. Essentially, she announced that she was giving up all of the authority or power she possessed as the duly elected chief prosecutor; she was no longer involved.

The procedure invoked by the State's Attorney necessarily raises problematic concerns. Particularly so, as they relate to the prosecution of Jussie Smollett and the ultimate disposition of his case. Under subsection 3-9008 (a-15), there is no doubt Ms. Foxx was vested with the authority to recuse herself from any cause or proceeding for "any other reason" than those enumerated in subsection (a-5) and (a-10). Notably, this statutory grant appearing as it does in the Counties Code, is the sole legislative authority that enables a duly elected State's Attorney to voluntarily step down from a particular case for any reason.

Given Ms. Foxx's earlier involvement with the Smollett family when Jussie occupied the status of victim, her decision to recuse was understandable. But once that decision became a reality, section 3-9008 was the only road she could traverse and that statute unequivocally requires that a special prosecutor be appointed by the court. Yet, for reasons undisclosed even to this day, Foxx instead chose to detour from that mandated course, instead appointing Mr. Magats as "the Acting State's Attorney for this matter."

The State's Attorney's decision not only had far reaching consequences but also, quite likely, unintended results. Not because of her choice of Joe Magats, an experienced and capable prosecutor, but rather because his appointment was to an entity that did not exist. There was and is no legally cognizable office of Acting State's Attorney known to our statutes or to the common law. Its existence was only in the eye or imagination of its creator, Kim Foxx. But, she was possessed of no authority, constitutionally or statutorily, to create that office. That authority reposes solely in the Cook County Board pursuant to section 4-2003 of the Counties Code, 55

ILCS 5/4-2003 (2018), *People v. Jennings*, 343 Ill. App. 3d 717, 724 (2003), *People ex rel. Livers v. Hanson*, 290 Ill. 370, 373 (1919).

The State's Attorney is a constitutional officer, (Ill. Const. 1970, Art. 6, §19). Although reposing in the judicial article, the office is a part of the executive branch of State Government and the powers exercised by that office are executive powers. *People v. Vaughn*, 49 Ill. App. 3d 37, 39 (1977);

It is axiomatic that the State's Attorney is endowed with considerable authority under the Counties Code, 55 ILCS 5/3-9005 (a) (West 2018), yet none of the 13 enumerated powers and duties vests her with the power to create subordinate offices or to appoint prosecutors following disqualification or recusal. Pursuant to the statute, in addition to those enumerated duties, the State's Attorney has the power:

- 1) To appoint special investigators to serve subpoenas, make returns... and conduct and make investigations which assist the State's Attorney. 55 ILCS 5/3-9005(b);
- 2) To secure information concerning putative fathers and non-custodial parents for the purpose of establishing...paternity or modifying support obligation; 55 ILCS 5/3-9005 (c);
- 3) To seek appropriations.... for the purpose of providing assistance in the prosecution of capital cases...in post-conviction proceedings and in ...petitions filed under section 2-1401 of the Code of Civil Procedure. 55 ILCS 5/3-9005(d); and,
- 4) To enter into ...agreements with the Department of Revenue for pursuit of civil liabilities under the Illinois Criminal Code. 55 ILCS 5/3-9005 (e).

Nor do decisions of our reviewing courts offer any hint of approval for the unprecedented exercise of power witnessed in the Smollett prosecution. Rather, attention is directed to a series

of cases arising from the practice in downstate counties whereby agency attorneys appeared to assist county prosecutors in specific cases pursuant to section 4-01 of the State's Attorneys Appellate Prosecutors Act, 725 ILCS 210/4.01 (West 2018). Indeed, this was a common practice in counties containing less than 3,000,000 inhabitants. In each instance, the common thread connecting the cases involved appearances on crimes not specifically enumerated in the enabling Act, coupled with the absence of court orders authorizing the appointments mandated under 55 ILCS 5/3-9008.

In *People v. Jennings*, 343 Ill. App. 3d 717 (2003), the record showed that appointed counsel actually displaced the elected State's Attorney, with total responsibility for the prosecution. Counsel acted pursuant to the State's Attorney's order naming him as a special assistant State's Attorney and an oath of office was taken. Yet, no order was entered by the trial court appointing him as a duly authorized prosecutor in the case. In disapproving this procedure, the *Jennings* court stated: "This type of appointment cannot be condoned. State's Attorneys are clearly not meant to have such unbridled authority in the appointment of special prosecutors." *Jennings*, 343 Ill. App. 3d at 724.

Similarly, in *People v. Woodall*, 333 Ill. App. 3d 1146 (2002), the court having found no legitimate basis for any of the agency attorneys to conduct the prosecution on the State's behalf cautioned:

"The use of special assistants is limited by statute. They can be appointed by circuit court order only after a judicial determination that the elected State's Attorney is 'sick or absent, or [is] unable to attend, or is interested in any cause or proceeding' 55 ILCS 5/3-9008 (West 1998)." *Woodall*, 333 Ill. App. 3d at 1154

The *Woodall* court was also troubled by the State's Attorneys effrontery in professing they were at liberty to create the assistant State's Attorney positions in derogation of the

authority of the County Board:

The position of "special assistant State's Attorney" is a position unknown to our laws. The State asks us to recognize an appointment process that would create a new hybrid office, an assistant State's Attorney who is special in several ways, but not in the way that the adjective 'special' normally defines the office of special prosecutor...the assistant would hold a special position never authorized by the county board." See 55 ILCS 5/4-2003 (West 1998)." *Woodall*, 333 Ill. App. 3d at 1153-54.

Earlier, in *People v. Ward*, 326 Ill. App. 3d 897 (2002), the Fifth District sounded the death knell for prosecutions conducted by attorneys who lacked legitimacy:

"If a case is not prosecuted by an attorney properly acting as an assistant State's Attorney, the prosecution is void and the cause should be remanded so that it can be brought by a proper prosecutor. *Ward*, 326 Ill. App. 3d at 902

The specter of a void prosecution is surely not confined to *Ward*. Our jurisprudence speaks to many cases, civil and criminal, where the nullity or voidness rule has caused judgements to be vacated on collateral review. Most prominent perhaps are challenges directed to the standing of unlicensed attorneys to attend or conduct the proceedings. For example, In *People v. Munson*, 319 Ill. 596 (1925), the supreme court considered the effect of participation in the securing of an indictment by one elected as State's Attorney but not licensed to practice law. In quashing the indictment, the court reasoned:

"If one unauthorized to practice law or appear in courts of record may assist the grand jury in returning an indictment merely because he has been elected to the office of State's Attorney, no reason is seen why one not so elected and not otherwise qualified may not do the same. *Munson*, 319 Ill. App. 3d at 605."

An identical result obtained in *People v. Dunson*, 316 Ill. App. 3d 760 (2000), where the defendant, who was prosecuted by an unlicensed attorney, sought post-conviction relief from two disorderly conduct convictions. Although the court recognized the prejudice that inured to the

defendant, it likewise condemned the deception practiced upon the court and upon the public. Relying on *Munson*, the court held that "the participation in the trial by a prosecuting assistant State's Attorney who was not licensed to practice law under the laws of Illinois requires that the trial be deemed null and void *ab initio* and that the resulting final judgment is also void" *Dunson*, 316 Ill. App. 3d at 770.

CONCLUSION

In summary, Jussie Smollett's case is truly unique among the countless prosecutions heard in this building. A case that purported to have been brought and supervised by a prosecutor serving in the stead of our duly elected State's Attorney, who in fact was appointed to a fictitious office having no legal existence. It is also a case that deviated from the statutory mandate requiring the appointment of a special prosecutor in cases where the State's Attorney is recused. And finally, it is a case where based upon similar factual scenarios, resulting dispositions and judgments have been deemed void and held for naught.

Here, the ship of the State ventured from its protected harbor without the guiding hand of its captain. There was no master on the bridge to guide the ship as it floundered through uncharted waters. And it ultimately lost its bearings. As with that ship, in the case at hand:

There was no duly elected State's Attorney when Jussie Smollett was arrested;

There was no State's Attorney when Smollett was initially charged;

There was no State's Attorney when Smollett's case was presented to the grand jury, nor when he was indicted;


There was no State's Attorney when Smollett was arraigned and entered his plea of not guilty; and

There was no State's Attorney in the courtroom when the proceedings were *nolle prossed*.

Adherence to the long-standing principles discussed herein mandates that a special prosecutor be appointed to conduct an independent investigation of the actions of any person or office involved in all aspects of the case entitled the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, and if reasonable grounds exist to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result. Additionally, in the event the investigation establishes reasonable grounds to believe that any other criminal offense was committed in the course of the Smollett matter, the special prosecutor may commence the prosecution of any crime as may be suspected.

Although disqualification of the duly elected State's Attorney necessarily impacts constitutional concerns, the unprecedented irregularities identified in this case warrants the appointment of independent counsel to restore the public's confidence in the integrity of our criminal justice system.



ENTERED 
 Michael P. Toomin,
 Judge of the
 Circuit Court of Cook County

DATE: JUNE 21, 2019

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR

No. 2019 Misc. 80014

The Hon. Leroy Martin, Jr.

NOTICE OF MOTION

TO: Kim Foxx, Cook County State's Attorney
50 W Washington St., Suite 500
Chicago, Illinois 60602

2650 S. California
Chicago, Illinois 60608

Patricia Holmes, Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on *Thurs May 2* 2019 at 9:00 a.m. I will appear before The Honorable LeRoy Martin, Jr. in courtroom 101, at the Circuit Court of Cook County, Criminal Division, and will present the attached *Petition to Appoint a Special Prosecutor in the matter of the People of the State of Illinois v. Jussie Smollett*

Sheila M. O'Brien

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

19 APR -5 AM 10:46

FILED

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR

No. 2019 Misc. 00014

Hon. LeRoy Martin, Jr.

PETITION TO APPOINT A SPECIAL PROSECUTOR
In the Matter of
PEOPLE OF THE STATE OF ILLINOIS v. JUSSIE SMOLLETT

INTRODUCTION

This petition asks for the instant application of 55 ILCS 5/3-9008 (attached as Exhibit 1) to the investigation and prosecution of the People of the State of Illinois v. Jussie Smollett, filed in the Circuit Court of Cook County. The statute is clear on its face, not subject to interpretation and requires the Court to appoint a special prosecutor, where as here, the State's Attorney is unable to fulfill her duties, has an actual conflict of interest or has recused herself.

State's Attorney Kim Foxx has explicitly stated that she welcomes "an outside, nonpolitical review of how we handled this matter" and thus, has waived any objection to this petition.

THE PETITIONER

1. Sheila M. O'Brien, is a citizen of the United States, a resident of the State of Illinois, the County of Cook and the City of Chicago and is a taxpayer in each jurisdiction. Her bio (Exhibit 3) is attached to this pleading.
2. Petitioner is an "interested person" pursuant to 55 ILCS 5/3-9008.
 Petitioner has been associated with the Illinois justice system for her entire career and her personal reputation as a member of that system is being harmed and questioned based upon the facts pled in this petition.
 Petitioner served in the judiciary of the State of Illinois from 1985-2011.
3. Petitioner has been questioned by people across the country about the "Illinois Justice system" with derogatory labels about the Illinois courts, judges, prosecutors and personnel.
4. Petitioner has been harmed by these words and her ability to live peacefully has been diminished.
5. Petitioner is an active member of her community and has witnessed this case and its handling as a consistent and upsetting topic of concern for the people of Cook County.
6. Petitioner is concerned that without a special prosecutor that the public perception of Cook County and Chicago will be harmed, bringing harm to all the residents of Cook County.
7. Petitioner and all residents of Chicago and Cook County and our justice system, have been subject to ridicule and disparaging comments in the

- media and have been the subject of comedy routines on national television, all to our detriment.
8. Petitioner is not seeking any public office and has no intention to seek another public office during her lifetime.
 9. Petitioner has no agenda in this proceeding - other than seeking the truth and restoring public confidence in the Cook County State's Attorney's Office and the Circuit Court of Cook County.
 10. Petitioner was licensed to practice law in the State of Illinois in 1980 and in the State of Missouri in 1981. Upon her retirement in 2011, petitioner moved those licenses to the status of "retired". Petitioner has done some sporadic consulting during retirement.
 11. Petitioner has drafted, typed, filed, copied and will serve this petition herself and is not represented by any law firm, nor has she been assisted by any group. Petitioner apologizes for any typos or errors in formatting.
 12. Petitioner will not speak outside the courtrooms of Cook County about this petition while this case is pending. Everything petitioner will do concerning this petition will be in open court, for all to see, hear and witness.
 13. Petitioner does not know Kim Foxx, the State's Attorney of Cook County and has no vendetta against her or the State's Attorney's Office. Petitioner does not know Jussie Smollett, had never heard of him or his television show until this case was reported in the news media and has no vendetta against Jussie Smollett. Petitioner knows Patricia Holmes as an attorney

and has worked with her in the past, has no vendetta against Patricia Holmes and respects her ability as an attorney. Petitioner has not consulted with any of these people concerning this case or this petition.

**FACT TIMELINE IN THE
PEOPLE *of the* STATE of ILLINOIS v. JUSSIE SMOLLETT
INVESTIGATION AND PROSECUTION**

Jan. 22, 2019

-- Jussie Smollett is an actor appearing in a television series named "Empire". Jussie Smollett reports receiving an envelope addressed to him at his production studios on Chicago's West Side. The envelope is postmarked in southwest suburban Bedford Park four days earlier, on Jan. 18. The letters "MAGA" are written, in red ink, in the return address section of the envelope. Smollett tells police that he and the show's executive producer used gloves to open the envelope. Inside was a threat in cut-out letters: "You will die black (expletive)." There was white powder in the envelope, but it was determined to be crushed pain reliever, according to police.

Jan. 29, 2019

— Smollett reports he was attacked by two men while outside getting food from a Subway sandwich shop around 2 a.m. Smollett, African-American and openly gay, said he was walking back to his apartment in the 300 block of East North Water Street when two men walked up, yelled racial and homophobic slurs, declared "This is MAGA country," hit him and wrapped a noose around his neck. The men also poured an "unknown substance" on him.

Jan. 30, 2019

— The Chicago Police Department reports it has at least a dozen detectives reviewing hundreds of hours of surveillance camera footage, including of Smollett walking downtown,

but none of the videos show the attack. Police release images of two people in the area at the time. The two people were captured by a surveillance camera on New Street near Illinois Street between 1:30 and 1:45 a.m. Smollett said he was attacked about 15 to 30 minutes later around the corner. The images are dark and the faces indistinguishable.

—Members of the United States Congress, television talk show hosts and public figures express outrage by social media over Smollett's attack.

Jan. 31, 2019

—The President of the United States tells reporters that he saw a story the evening before about Smollett and that, "It doesn't get worse, as far as I'm concerned."

—Smollett's family issues a statement calling the attack a racial and homophobic hate crime. The family says he "has told the police everything" and "his story has never changed," disputing assertions on social media that he has been less than cooperative and has changed his story.

Feb. 1, 2019

— Smollett issues a statement telling people that he is OK and thanking them for their support. He says he is working with authorities and has been "100 percent factual and consistent on every level."

--Foxy receives and responds to texts from a private attorney requesting that Foxy refer the case to the federal authorities and communicate with Smollett's family. Foxy begins communications with Smollett's family.

Feb. 12, 2019

— The Chicago Police Department says Smollett turned over some, but not all, of the phone records that the detectives requested as part of their investigation. Smollett said his music manager was on the phone with him at the time of the attack and can corroborate this story. Police say the heavily redacted files aren't sufficient. Smollett says the information was redacted to protect the privacy of contacts and people not relevant to the attack.

Feb. 14, 2019

— Smollett says on a national television interview, “You do such a disservice when you lie about things like this.” He says he is convinced that the men in the surveillance images were his attackers. “I don’t have any doubt in my mind that that’s them. Never did.”

— The Chicago Police Department announce hours later that detectives are interviewing the two “persons of interest” captured on video. A law enforcement source said the two men, brothers in their 20s, were brought in for questioning Wednesday night from O’Hare International Airport after arriving from Nigeria. One of them worked as an extra on Smollett’s television show “Empire”, according to the media report.

— The Chicago Police Department later says that local media reports that the attack against Smollett was a hoax are unconfirmed.

Feb. 15, 2019

—The Chicago Police Department spokesman Anthony Guglielmi says the two “persons of interest” are now considered potential suspects. He says the men are brothers, are in custody but have not been charged with a crime.

— Twelve hours later, the Chicago Police Department releases the brothers, saying the brothers are no longer were considered suspects. “Due to new evidence as a result of today’s interrogations, the individuals questioned by police in the Empire case have now been released without charging and detectives have additional investigative work to complete,” Guglielmi said in a tweet.

Feb. 16, 2019

— Chicago newspapers report that a law enforcement source says the Chicago Police Department is investigating whether Smollett paid the two brothers to stage an attack, following up on information provided by the two brothers while they were in custody

— The attorney for the brothers, Gloria Schmidt, is asked whether Smollett set up the attack.

"There's still a lot of moving parts to this. ... I'm not part of Jussie's defense," she said. "I'm not part of what's going on with him. I can just tell you that my guys (are) innocent of the charge and they're going home."

—Smollett issues a statement saying, "Jussie Smollett is angered and devastated by recent reports that the perpetrators are individuals he is familiar with. He has been further victimized by claims attributed to these alleged perpetrators that Jussie played a role in his own attack. Nothing is further from the truth." The statement said one of the brothers was Smollett's personal trainer. Media reports say that the brothers worked with Smollett on his television show.

Feb. 19, 2019

— Foxx says recuses herself from the case. Foxx says she made the decision "out of an abundance of caution" because of her "familiarity with potential witnesses in the case."

(Exhibit 2 attached)

Feb. 20, 2019

—Smollett is charged with disorderly conduct for allegedly filing a false police report about the attack. The Chicago Police Department announces that Smollett is officially classified as a suspect in a criminal investigation for filing a false police report, which is a felony.

--One of Foxx's aides says that Foxx "had conversations with a family member of Jussie Smollett about the incident" after the initial report of the attack and "facilitated a connection to the Chicago Police Department who were investigating the incident."

— Former Cook County State's Attorney Anita Alvarez writes on a website, "Maybe I should have just recused myself from the difficult cases that came across my desk when I was state's attorney. I was under the impression that when the voters elected me and I took my oath of office it meant I had to do my job."

Feb. 21, 2019

— Smollett surrenders to Chicago police and is arrested in the early morning hours. He is booked and his mug shot is taken.

— Chicago police Superintendent Eddie Johnson says Smollett faked both the threatening

letter and the attack because “he was dissatisfied with his salary” on the television show. Johnson calls the alleged hoax “despicable” and says Smollett “dragged Chicago’s reputation through the mud.”

— Smollett appears in court, has his bond set at \$100,000. Smollett will have to post \$10,000 cash and surrender his passport as a condition of his bond. Smollett posts his bond and is released.

—Smollett’s legal team releases a statement maintaining Smollett’s innocence: “The presumption of innocence, a bedrock in the search for justice, was trampled upon at the expense of Mr. Smollett and notably, on the eve of a mayoral election. Mr. Smollett is a young man of impeccable character and integrity who fiercely and solemnly maintains his innocence and feels betrayed by a system that apparently wants to skip due process and proceed directly to sentencing.”

Feb. 25, 2019

— In an interview on a national morning television show,” Chicago Police Superintendent Eddie Johnson says that Smollett paid the two brothers money by check to stage the attack. Johnson disputes media reports that Smollett paid the two brothers for personal training and nutrition. Johnson said there is more evidence against Smollett that hasn’t been disclosed yet.

March 8, 2019

— A Cook County grand jury indicts Smollett on 16 counts of disorderly conduct for allegedly lying to police about being the victim of a racist and homophobic attack. Smollett’s attorney said the new charges, which came a little more than two weeks after Smollett was charged with a single felony count, are overkill.

March 13, 2019

—Text and emails provided to the media show that State’s Attorney Foxx had asked Chicago Police Superintendent Johnson to turn over the investigation of Smollett’s reported attack to the FBI at the urging of a politically connected lawyer. The exchanges began Feb. 1, three days after Smollett claimed he was attacked near his Streeterville apartment building. The

released texts stopped on Feb. 13, the same day a memo was sent out by Foxx's office saying that she "is recused" from the Smollett investigation.

March 14, 2019

— Smollett pleads not guilty to the 16 counts of disorderly conduct.

March 24, 2019

-- Foxx says on a radio station, "Every day... there are people who get similar arrangements ... people who get sentences that are probably not what some people would want. Every single day."

March 26, 2019

—The Cook County State's Attorney's Office drops all charges against Smollett in court. The case is not on the Court Clerk's regular calendar. No notice was given to the Chicago Police Department nor the media. The Court file is sealed. The Clerk's file is erased.

--The Cook County State's Attorney's Office issues a statement, "After reviewing all of the facts and circumstances of the case, including Mr. Smollett's volunteer service in the community and agreement to forfeit his bond to the City of Chicago, we believe this outcome is a just disposition and appropriate resolution to this case."

--Smollett's attorneys issued a statement after the announcement, saying their client had been "vilified." Smollett says he is thankful for the support from friends and family, and that he was glad the state was "attempting to do what's right." "I have been truthful and consistent from day one."

--The Mayor of the City of Chicago publicly calls the dismissal a "whitewash of justice".

--Intense national media coverage continues.

March 27, 2019

—The Chicago Police Department releases a redacted file containing some of their investigative materials. The Cook County State's Attorney's Office informs the police not to release any additional information.

--Foxx tells the Chicago Sun-Times, "I believe based on the information that was presented before the grand jury, based on what I've seen, the office had a strong case ... that would have convinced a trier of fact."

--The Office of the State's Attorney says that Foxx's recusal was only informal.

--Foxx says the court file should remain public.

--By the afternoon, the Clerk of the Circuit Court has no record of the case. The file has been moved to the Clerk's storage. The file is not accessible to the public.

--The National District Attorneys Association, which bills itself as the country's biggest organization of prosecutors, releases a statement saying that Foxx's entire office should have been recused. The group also condemned the case as being resolved without a finding of guilt or innocence, and said it illustrated that "the rich are treated differently [and] the politically connected receive favorable treatment."

March 28, 2019

—The President of the United States sends a tweet saying the FBI and Department of Justice would review the handling of the Jussie Smollett case in Chicago, calling it "outrageous" and "an embarrassment to our Nation!"

— Smollett's attorney appears on national televisions and suggests that the African-American brothers in the case wore white make-up around their eyes, under ski masks, to disguise themselves while attacking her client, which would explain why Smollett identified his attackers as white or pale-skinned.

— Attorneys for the Chicago Tribune and other news organizations go to Cook County court to block records from being destroyed if Jussie Smollett's legal team seeks to expunge his criminal case.

--The Illinois Prosecutors Bar Association issues a critique of how Cook County prosecutors went about dropping all the charges against Mr. Smollett. A statement says that Foxx and her representatives "have fundamentally misled the public on the law and circumstances surrounding the dismissal." It says the approach was "abnormal and unfamiliar" to those in criminal law in Illinois. The Association points to the secrecy around the hearing where the charges were dropped, saying that it added to an "appearance of impropriety."

March 29, 2019

— Foxx writes in the Chicago Tribune that she welcomes an “an outside, nonpolitical review of how we handled this matter” and says that the evidence against the TV star turned out to be weaker than was initially presented when the state sought charges.

April 4, 2019

The North Suburban Chiefs of Police issue a no-confidence statement in Kim Foxx as the Cook County State’s Attorney.

DISCUSSION

Section 3-9008 of the Counties Code (55 ILCS 5/3-9008 (West 2018)) is clear on its face, not subject to interpretation and requires the Court to appoint a special prosecutor where, as here, the State's Attorney is unable to fulfill her duties, has an actual conflict of interest or has recused herself.

The Court can and must appoint a special prosecutor without an evidentiary hearing where, as here, the facts as known warrant it.

First, this Court must appoint a special prosecutor pursuant to section 3-9008 (a-5) because **Kim Foxx was unable to fulfill her duties in the Jussie Smollett case.** Section 3-9008(a-5) states:

"The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney is sick, absent, or unable to fulfill his or her duties. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties. If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties, the court may appoint some competent attorney to prosecute or defend the cause or proceeding."

By her own admission, Foxx was unable to fulfill her duties in the Jussie Smollett case. On Feb. 19, 2019, Foxx says she decided to recuse herself from the Jussie Smollett case "out of an abundance of caution" because of her "familiarity with potential witnesses in the case." This statement alone indicates her acknowledgment of a potential conflict of interest such that she could not fulfill her duties in this case, whether she filed a formal recusal or not. Thus, the Court could have appointed a special prosecutor if it had been brought to the Court's attention and should appoint a special prosecutor now.

Second, this Court must appoint a special prosecutor pursuant to section 3-9008 (a-15) (55 ILCS 5/3-9008(a-15)(West 2018)) because **Kim Foxx recused herself in the Jussie Smollett case**. Section 3-9008(a-15) states:

“Notwithstanding subsections (a-5) and (a-10) of this Section, the State’s Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court *shall* appoint a special prosecutor as provided in this Section.”

On February 19, Foxx *said* she recused herself; she used the word “recuse” and issued statements to the public indicating that she recused herself. On March 27, after the charges against Mr. Smollett had been dropped and she faced withering criticism of her handling of the case, Foxx’s office said she did not formally recuse herself “in a legal sense” but only in a “colloquial” sense. However, an internal memo sent on February 13 by Foxx’s chief ethics officer, did not describe the move as colloquial at all. Instead, Foxx’s chief ethics officer sent a two-sentence email informing staff that Foxx “is recused” from the Smollett investigation. We are unable to see if she filed a formal recusal because the file has been sealed.

The public should be able to rely upon Foxx’s use of the word “recuse” as indicia of a recusal although there are no cases dealing with this issue. She is our lawyer. We are her clients. We should be able to rely upon our lawyer’s word. To find that Foxx’s clear statement of recusal was something other than a recusal would indicate that she was being less than truthful in her handling of the Smollett case and in her statements to the public. Because she recused

herself, the Court *shall* appoint a special prosecutor as provided in this Section.

In the alternative, Foxx's use of the word "recuse" indicates her subjective belief that she had a conflict with prosecuting Jussie Smollett and thus, was unable to fulfill her duties as defined.

Third, this Court can appoint a special prosecutor because State's Attorney Kim Foxx has publicly stated on March 29, 2019 that she welcomes "an outside, nonpolitical review of how we handled this matter" and thus, the State's Attorney has publicly waived any objection to this petition. *See Gallagher v. Lenart*, 226 Ill. 2d 208 (2007) (*waiver is the intentional relinquishment of a known right*).

Fourth, this Court must appoint a special prosecutor because justice demands it. The State's Attorney's actions in this case, recounted above, create an appearance of impropriety, a perception that justice was not served here, that Mr. Smollett received special treatment due to his fame and privilege and political connections. A public view of the court file in this case could potentially partially remedy this perception, but the file has been sealed from the public view. The public has no remedy other than to petition this Court for the appointment of an independent special prosecutor to investigate how this case was handled by the Office of the State's Attorney and whether the actions were consistent with the handling of similar cases. An independent special prosecutor is necessary to renew public confidence in our system of justice. The rule of law, fair and impartial justice, and fundamental fairness are threatened by the actions described in this petition.

The people deserve the truth. The whole truth. Help us get the truth.

This petition is not about personalities. This petition is about equal justice under the law for all - the bedrock of our nation.

Fifth, this Court must appoint a special prosecutor if only for procedural reasons. The evidence for this petition is what is reported in the press, not traditional evidence under oath. A special prosecutor needs to be appointed to gather a complete record of the facts under oath. Those facts could then be presented to this Court on a further hearing on this motion to determine whether further consideration of the People of the State of Illinois v. Jussie Smollett is warranted.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioner requests that this Court grant Petitioner's Motion instanter or that this Court, on its own motion, appoint a special prosecutor instanter to:

1. investigate and prosecute the People of the State of Illinois v. Jussie Smollett, filed in the Circuit Court of Cook County and dismissed on March 26, 2019.
2. investigate the actions of any person and/or office involved in

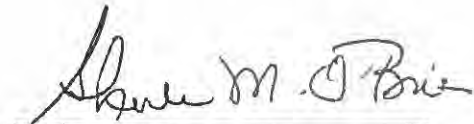
the investigation, prosecution and dismissal of People of the State of Illinois v. Jussie Smollett

3. investigate the recusal procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett
4. investigate the deferred prosecution procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett
5. investigate the non-violent offenders procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett
6. investigate the charging procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett
7. investigate the pre-trial/bond procedures of the Office of the State's Attorney of Cook County, whether and when those procedures were changed and whether those procedures were applied in People of the State of Illinois v. Jussie Smollett.

8. investigate whether criminal charges should be brought against any person in connection with the investigation, prosecution and dismissal of the People of the State of Illinois v. Jussie Smollett and to file and prosecute those criminal charges.
9. hold regularly scheduled press conferences, open to the public, to inform the public of the progress of these investigations.
10. comply with the laws of the State of Illinois in People of the State of Illinois v. Jussie Smollett filed in the Circuit Court of Cook County. And, further that this Court, pursuant to 55 ILCS 5/3-9008:
11. contact the State Agencies named in 55 ILCS 5/3-9008 to find the appropriate person to act as a special prosecutor and in addition/alternative,
12. that this Court consider receiving written proposals – to be filed in this file and open to the public - from any and all attorneys licensed in the State of Illinois who believe they are qualified to serve as a special prosecutor, that such proposals contain the qualifications of the attorney, the expected time needed by the attorney to investigate adequately, the fee to be paid to the attorney and his/her staff and that such proposals not exceed three pages single spaced and that such proposals be filed within ten (10) business days from a date set by this court, all for this

court's consideration of the best person to be appointed as the
special prosecutor in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sheila M. O'Brien", written over a horizontal line.

Sheila M. O'Brien, *pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904


CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she served the foregoing Notice of Motion and Petition to Appoint a Special Prosecutor in the Matter of the People of the State of Illinois v. Jussie Smollett, by hand delivery before the hour of 5:00 p.m. on Friday, April 5, 2019:

Kim Foxx
Cook County State's Attorney
2650 S. California
Chicago, Illinois 60608

50 W. Washington St., Suite 500
Chicago, Illinois 60602

Patricia Holmes
Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602



Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

(55 ILCS 5/3-9008) (from Ch. 34, par. 3-9008)

Sec. 3-9008. Appointment of attorney to perform duties.

(a) (Blank).

(a-5) The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney is sick, absent, or unable to fulfill his or her duties. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties. If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-10) The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney has an actual conflict of interest in the cause or proceeding. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney has an actual conflict of interest in the cause or proceeding. If the court finds that the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-15) Notwithstanding subsections (a-5) and (a-10) of this Section, the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

(a-20) Prior to appointing a private attorney under this Section, the court shall contact public agencies, including, but not limited to, the Office of Attorney General, Office of the State's Attorneys Appellate Prosecutor, or local State's Attorney's Offices throughout the State, to determine a public prosecutor's availability to serve as a special prosecutor at no cost to the county and shall appoint a public agency if they are able and willing to accept the appointment. An attorney so appointed shall have the same power and authority in relation to the cause or proceeding as the State's Attorney would have if present and attending to the cause or proceedings.

(b) In case of a vacancy of more than one year occurring in any county in the office of State's attorney, by death, resignation or otherwise, and it becomes necessary for the transaction of the public business, that some competent attorney act as State's attorney in and for such county during the period between the time of the occurrence of such vacancy and the election and qualification of a State's attorney, as provided by law, the vacancy shall be filled upon the written request of a majority of the circuit judges of the circuit in which is located the county where such vacancy exists, by appointment

as provided in The Election Code of some competent attorney to perform and discharge all the duties of a State's attorney in the said county, such appointment and all authority thereunder to cease upon the election and qualification of a State's attorney, as provided by law. Any attorney appointed for any reason under this Section shall possess all the powers and discharge all the duties of a regularly elected State's attorney under the laws of the State to the extent necessary to fulfill the purpose of such appointment, and shall be paid by the county he serves not to exceed in any one period of 12 months, for the reasonable amount of time actually expended in carrying out the purpose of such appointment, the same compensation as provided by law for the State's attorney of the county, apportioned, in the case of lesser amounts of compensation, as to the time of service reasonably and actually expended. The county shall participate in all agreements on the rate of compensation of a special prosecutor.

(c) An order granting authority to a special prosecutor must be construed strictly and narrowly by the court. The power and authority of a special prosecutor shall not be expanded without prior notice to the county. In the case of the proposed expansion of a special prosecutor's power and authority, a county may provide the court with information on the financial impact of an expansion on the county. Prior to the signing of an order requiring a county to pay for attorney's fees or litigation expenses, the county shall be provided with a detailed copy of the invoice describing the fees, and the invoice shall include all activities performed in relation to the case and the amount of time spent on each activity.
(Source: P.A. 99-352, eff. 1-1-16.)

Kim Foxx defends Jussie Smollett decision as office says she 'did not formally recuse herself'

Megan Crepeau and Jason Meisner Chicago Tribune

Cook County State's Attorney Kim Foxx, facing intense criticism after her office dropped all charges against Jussie Smollett, stood by the decision but said she regretted dealing with one of Smollett's relatives in the early phases of the investigation.

Foxx said she would never have gotten involved if she knew that Smollett would later be deemed a suspect and not a victim.

"I've never had a victim that turned into a suspect," she told the Tribune on Wednesday. "... In hindsight as we see (how) all of it has played out, you know, is there regret that I engaged with the family member? Absolutely."

Due to her contact with that family member, Foxx withdrew from involvement in the case when investigators started casting suspicion on Smollett, who had reported to police that he was the victim of a hate crime.

Smollett was later indicted on 16 counts of disorderly conduct on charges he staged the attack on himself, but in a sudden reversal Tuesday, prosecutors dropped all the charges at an unannounced court hearing. The move drew breathless international news coverage and harsh words from police brass and City Hall.

Foxx maintained that she had no role in the dismissal but defended the move, saying her office often handles cases in a similar fashion for defendants with nonviolent backgrounds — an assertion that a number of Chicago attorneys contacted by the Tribune disputed.

"It's frustrating to me that the reliability of the work of the people of this office has been challenged," she said. "What happened with Jussie Smollett and having this type of diversion is something we offer to people who do not have his money or his fame."

Foxx had said she recused herself from the case last month after revealing she had contact with Smollett's representatives early on in the investigation. She declined to provide

details at the time, but on Wednesday, her office quibbled over the terminology, saying Foxx did not formally recuse herself "in a legal sense."

Communications released to the Tribune earlier this month showed Foxx had asked police Superintendent Eddie Johnson to turn over the investigation to the FBI after she was approached by a politically connected lawyer about the case.

Foxx reached out to Johnson after Tina Tchen, former chief of staff to first lady Michelle Obama, emailed Foxx saying the actor's family had unspecified "concerns about the investigation." Tchen, a close friend of Mayor Rahm Emanuel's wife, said she was acting on behalf of the "Empire" actor and his family. A relative later exchanged texts with Foxx. A spokeswoman for the office said at the time that Smollett's relative was concerned about leaks from Chicago police to the media.

Tchen released a brief emailed statement Wednesday, long after her involvement in the case came to light, saying she approached Foxx as a family friend of the Smolletts. She also noted knowing Foxx from unspecified "prior work together."

"My sole activity was to put the chief prosecutor in the case in touch with an alleged victim's family who had concerns about how the investigation was being characterized in public," the statement read.

In her approximately 20-minute interview Wednesday, Foxx said she suggested to Johnson that turning the case over to the FBI would clamp down on the leaks and be more efficient. The FBI was already investigating a threatening letter that Smollett had claimed to receive just days before the attack.

During their conversation, Foxx said, Johnson also told her to assure Smollett's family that the actor was a victim. He also expressed frustration with the leaks, she said.

"Perhaps we could ... kill two birds with one stone, if you will, and let the FBI, who's already working on this, (take it) over," she said. "And (Johnson) said he would think about it. ... I asked him later what happened. And he said ... they weren't interested in it. And I said that's fine."

Illinois law allows for a state's attorney to "file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate." If the petition is granted, the law calls for

the judge to appoint a special prosecutor either through the attorney general's office, another county prosecutor's office or a private attorney.

But Foxx, who stepped away from the Smollett case before charges were ever filed, didn't file a recusal petition or remove her office from the investigation. Instead, she handed the responsibility for the case to her first assistant, Joseph Magats, a 29-year veteran of the office.

After questions arose this week whether she had followed state law, Foxx's office appeared to back off whether she ever officially recused herself in the first place.

While the term "recusal" was used when it was announced she was stepping away from the Smollett case, a Foxx spokeswoman said, "it was a colloquial use of the term rather than in its legal sense."

"The state's attorney did not formally recuse herself or the office based on any actual conflict of interest," Tandra Simonton said in a statement. "As a result, she did not have to seek the appointment of a special prosecutor under (state law)."

An internal memo sent on Feb. 13 by Foxx's chief ethics officer, April Perry, however, did not describe the move as colloquial at all. Instead, Perry sent a two-sentence email informing staff that Foxx "is recused" from the Smollett investigation. It did not say why.

Foxx on Wednesday said that office employees, including Perry, use the word "recusal" internally to describe when the state's attorney ropes herself off from a case.

"We used the word internally," she said. "We also use the phrase 'wall-off.' ... Build a wall, do not talk to the state's attorney about this case."

Those precautions were enough to meet ethical standards without withdrawing the entire office from the case, Foxx told the Tribune.

She said she has similarly withdrawn herself from involvement in other cases without recusing the entire office, including one case in which the alleged victim was a distant family member.

In Smollett's case, Foxx made the informal recusal a week before the charges were filed. At that point, formally recusing the office — or announcing publicly that she was personally withdrawing — would have tipped off Smollett to the fact that he was being considered a suspect, she said.

"Me saying publicly and me moving our office out of it while the investigation was ongoing would signal that (the) investigation had changed outwardly," Foxx said.

Prosecutors gave little detail in court Tuesday about why the charges were dismissed and did not discuss the terms of any arrangements. Later that day, Magats told the Tribune that prosecutors at some point in the last month made a verbal agreement with the defense: They would dismiss charges in exchange for Smollett performing community service and giving his bond of \$10,000 to the city of Chicago.

Meanwhile, Smollett's defense team adamantly denied that any deal was made at all.

The sudden dismissal of charges stunned regulars at the Leighton Criminal Court Building, both defense lawyers and rank-and-file prosecutors. Attorneys grumbled privately that defendants will now expect similar deals, and some joked about getting a "Smolle pros" — a reference to "nolle pros," the shortened version of the Latin term for dropping charges.

When asked to provide examples of cases that concluded in a similar fashion, a spokeswoman for the prosecutors' office gave two.

Prosecutors reached an agreement to drop a felony marijuana charge in January after the defendant performed community service, according to the spokeswoman and court records.

The other case involved felony theft charges that were dismissed in October when the defendant paid off restitution he owed, court records show.

Former Cook County Judge Daniel Locallo told the Tribune that prosecutors' conduct in the Smollett case raised serious questions, particularly given the lack of public detail about the purported agreement and the little, if any, notice the office appeared to give to police.

"Why the secrecy?" he said. "You believe you have enough evidence to go to the grand jury and you actually indict him, and then without any notice to anybody, you decide to drop the charges?"

“What about other defendants? Why aren’t they afforded the same courtesy?” he said. “The bottom line is that this guy got the biggest break. He walks out of court, no charges. His bond goes to the city of Chicago, and he walks out as if nothing happened.”

The outcome also surprised veteran criminal defense attorney Dawn Projansky.

“Most people usually have to apologize, pay full restitution, do community service and then maybe their case is dismissed. Maybe. Or it’s reduced to a misdemeanor,” she said. “It’s just too fast and ... it didn’t follow the proper procedures of any case.”

But Gal Pissetzky, another veteran criminal defense attorney, said prosecutors and defense attorneys don’t conduct the nuts and bolts of negotiations in public. Besides, there was no reason to brand Smollett a felon, he said.

Pissetzky also said he has reached similar results in similar cases and hopes the high-profile nature of Smollett’s case encourages Foxx’s office to continue resolving cases in that fashion.

“Kim Foxx and her office set a precedent, and with that precedent, hopefully she will continue to work towards crime reform and make this case as an example of how she’s willing to work with the community, not only with people like Smollett to resolve cases amicably.”

Chicago Tribune’s Jeremy Gerner contributed.

mcrepeau@chicagotribune.com



Sheila M. O'Brien

Retired Justice Illinois Appellate Court

| | | |
|------------------|---|------------------|
| Education | Althoff Catholic High School – Belleville, Illinois | 1973 |
| | University of Notre Dame | BA 1977 JD 1980 |
| | St. Mary-of-the-Woods College | MA 2007 Theology |

Licenses Supreme Courts of Illinois, Missouri and the United States

| | | |
|-------------------|---|----------------------|
| <i>Profession</i> | Trial Attorney and Law Professor | 1980-1985 |
| | Asst. Public Defender - St. Clair County | |
| | Attorney - Moser & Marsalek, St. Louis | |
| | Adjunct Professor - St. Louis University Law School | |
| | Judge - Circuit Court | |
| | St. Clair County | 1985-1991 |
| | Cook County | 1991-1994 |
| | Justice - Illinois Appellate Court | Elected Nov. 8, 1994 |
| | | Retired Jan. 2011 |

| | | |
|---------------|---|-------------|
| <i>Awards</i> | Including: | |
| | University of Notre Dame - Women of Achievement Award | June 1995 |
| | Edward F. Sorin Award | June 2007 |
| | Outstanding Women in America | 1985 - 1990 |
| | Women's Bar Association of Illinois | 2007 |

Boards Women's Bar Foundation

Former Boards

Children First, Inc. YMCA League of Women Voters of St. Clair County
Illinois Judicial Education Coordinating Committee
Illinois Judges Association Juvenile Task Force -- Solovy Commission

Gubernatorial Commissions

| | |
|--------------------------------------|---|
| Illinois Juvenile Justice Commission | Illinois Drug Task Force for East St. Louis |
| Illinois Child Fatality Task Force | Illinois Arts Council Agency - present |

Arts Former Member - Chicago Symphony Chorus
 Former Member - St. Louis Symphony Chorus

Active in civic, charitable and church affairs

Bio Exhibit 3

EXHIBIT C

BOND PROFFER

Defendant: Jussie Smollett (DOB 6/21/82) - 36 years old
Charge: Disorderly Conduct-False Report (Class 4 Felony)

The Defendant Jussie Smollett is an Actor and Singer-Songwriter, who currently appears as a character on the Fox television show "Empire." Defendant Smollett currently resides in an Apartment in Chicago's Streeterville neighborhood.

The People expect the evidence to show that:

On Tuesday, January 22, 2019, Defendant Smollett received a written letter at the Cinespace Chicago Film Studios, which is a facility on the Southwest Side of Chicago where the Empire Television Show is filmed. This letter contained written threats directed toward Defendant Smollett, and contained a then unknown white powdery substance. The letter also contained cut out letters pieced together which stated "Smollett Jussie you will die black f--", and the word "MAGA" was hand written on the envelope where the return address is typically located. This powdery substance has since been determined to be crushed ibuprofen tablets. The letter also contained a drawing of a stick figure, which appears to have a rope around the neck and a gun pointed at it. Law enforcement authorities were contacted, and the letter was turned over to the Federal Bureau of Investigation, which is currently conducting forensic analysis of the letter.

In January of 2019, and at all times relevant hereto, Defendant Smollett was close friends with an individual by the name of Abimbola "Abel" Osundairo, who is 25 years old. Smollett and Abel initiated their friendship in the fall of 2017. During the course of this friendship, Defendant Smollett and Abel socialized together, exercised together, as well as worked together on the Fox television series Empire. Within that working relationship, Abel was a stand-in for a character named "Kai", who is a love interest of Defendant Smollett's character on the Empire TV Show. Additionally, text messages between Defendant Smollett and Abel revealed that Abel was a source of designer drugs for Defendant Smollett. Specifically, since the spring of 2018, on several occasions, Defendant Smollett requested Abel to provide him with "Molly", which is a street name for the narcotic Ecstasy.

Text messages generated by Defendant Smollett to Abel, specifically starting on the morning of January 25, 2019, reveal Defendant Smollett asking Abel when he would be leaving on his upcoming trip to Nigeria. This trip was scheduled to take place on the evening of January 29, 2019, and it had been planned by Abel and his brother Olabinjo "Ola" Osundairo (27 years old) two months prior.

After Abel confirmed the date and time of his trip, Defendant Smollett texted Abel stating **"Might need your help on the low. You around to meet up and talk face to face?"** The two then made arrangements to meet at the Cinespace Studios that afternoon, where Defendant Smollett subsequently drove Abel home to Abel's apartment in the Lakeview neighborhood. During the ride, Defendant Smollett indicated to Abel his displeasure with

the Empire Studio's handling of the racist and homophobic letter he received three days prior. Defendant Smollett then stated that he wanted to stage an attack where Abel would appear to batter him. Defendant Smollett also suggested that Abel's older brother Ola assist him with the attack. Defendant Smollett had met Ola on several previous occasions through Abel. Additionally, Ola had also appeared as an extra of the Empire TV show. Abel and Ola are both dark skinned, black males, born in the United States, with Nigerian decent.

When Defendant Smollett and Abel reached Abel's apartment at approximately 5:00 PM on January 25, 2019, Ola, who was then living with Abel, was summoned into Defendant Smollett's vehicle. Once inside, Smollett asked Ola if he could trust him. When Ola said he could, Smollett detailed his plans of the attack to the brothers. Defendant Smollett stated that he wanted them to appear to attack him on the evening of January 28, 2019 near his apartment building in Streeterville. Defendant Smollett also stated that he wanted the brothers to catch his attention by calling him an "Empire F----- Empire N-----." Defendant Smollett further detailed that he wanted Abel to attack him, but not hurt him too badly and give him a chance to appear to fight back. Defendant Smollett also included that he wanted Ola to place a rope around his neck, pour gasoline on him and yell "This is MAGA country." Prior to the brothers getting out of Smollett's car, Smollett provided Abel with a \$100 bill to purchase the rope, gasoline, ski masks, gloves and red baseball caps which resemble the ones that say "Make America Great Again." The ride from Cinescape Studios to the Osundairo brothers' home and the meeting between Smollett and the brothers is corroborated by CPD POD videos and cellular phone tower data of Smollett's phone number.

On the late morning of Sunday January 27, 2019, Smollett drove his vehicle back to the Lakeview neighborhood to pick up the brothers and show them the scene where he wanted the staged attack to take place. Smollett then drove the brothers to the corner of New Street and North Water Street in Chicago where the staged attack was to take place. This was just outside Smollett's apartment building. Further details were provided by Smollett which included that the staged attack was to take place near the stairs on the southwest corner of New and North Water Streets at 10:00PM the following night. Smollett also instructed the brothers not to bring their cell phones with them. Smollett directed the brothers' attention toward a surveillance camera on the corner, which he believed would capture the incident. There was a change in the plan that bleach was going to be used rather than gasoline during the simulated attack. Smollett then drove the brothers home and provided them with a \$3500 personal check made payable to Abel, which was backdated to January 23, 2019.

On the morning of January 28, 2019, the date of the planned incident, the brothers purchased the clothing items at a local beauty supply store and the rope at a nearby hardware store, using the \$100 bill that Smollett had given them. These purchases were corroborated by surveillance video and a receipt. Abel also deposited Smollett's check that same day in his own bank account. Later that evening, the plan had changed and the time of the attack had to be pushed back because Smollett's flight into O'Hare Airport from New York had been delayed by four hours. Smollett's plane eventually landed at O'Hare at 12:30 AM on January 29, 2019. At 12:49 AM, there was a phone call between Smollett and Abel which lasted three minutes. During this call, Smollett told Abel the attack would take place at exactly 2:00 AM at the preset location. Minutes later Ola ordered an Uber ride share to his

home to leave for the crime scene. Cell phone records and Uber records confirm this call and the Uber ride.

The brothers then took the Uber to the 1400 block of North Wells where they exited the Uber and flagged down a taxi which took them to within three blocks of the arranged scene at approximately 1:22 AM. The taxi's in-car video captures the brothers flagging the cab and riding in the back seat.

From approximately 1:22A.M. until approximately 2:03A.M., video evidence showed the brothers on foot in an area bordered by Lake Shore Drive on the east, Columbus Drive on the west, Illinois Street to the north, and the Chicago River to the south. Video evidence also showed that Smollett returned back to his apartment from the airport at approximately 1:30 AM. At 1:45 AM, Smollett left his building to walk to a nearby Subway restaurant at Illinois Street and McClurg Court. At 2:00 AM, the brothers were at the intersection of New St. and North Water Street; however, Defendant Smollett did not arrive exactly at the preset time. The brothers then proceeded a quarter block north and waited near a bench until Smollett arrived, which was four minutes later. Surveillance cameras captured the brothers waiting at this location just prior to the staged attack. During Smollett's interview on ABC's Good Morning America which aired on February 14, 2019, he identified the people shown in a still of this surveillance video as his attackers. Also, during this interview, Smollett indicated that he was positive that these were his attackers. The two men in this video are in fact that Osundairo brothers.

It was at this time, that the brothers staged the attack of Defendant Smollett just how Smollett had instructed them. While the staged attack was occurring, a witness, who is an employee of NBC News Chicago, had just parked and exited her vehicle just around the corner from the location of the staged attack. This witness indicated that she heard nothing at the time the staged attack was occurring, despite the fact that Defendant Smollett told CPD detectives that his attackers were "yelling" racial and homophobic slurs at him, and he in turn was "yelling" back at them. The staged attack lasted 45 seconds, and it was just outside the view of the desired nearby camera that Smollett had pointed out to the brothers approximately 15 hours earlier.

Approximately one minute later, video evidence showed the brothers run from the location, southbound toward the Chicago River and westbound toward Columbus Drive. Video evidence also captured the brothers entering a taxi at the Hyatt Regency Hotel across the river at 02:10 A.M.

Video evidence then showed that at 2:25 AM, the brothers exit the taxi on the 3600 block of North Marshfield Ave. and walk northbound. This was only a few blocks from the brothers' Lakeview apartment, which was also the original Uber pick up location to the staged crime scene. Video shows the brothers walking from where they were dropped off toward their home. Two minutes after the brothers exited the taxi, at 2:27 A.M., Defendant Smollett's manager called the police to report the incident. At approximately 2:42 A.M., Chicago Police arrived at Smollett's apartment. Chicago Police Officers observed that Smollett had a rope draped around his neck. This was captured on police body worn camera. Seconds later,

Smollett asked the Police to shut off the cameras. Smollett then made a police report where he claimed he was the victim of an attack in which the offenders struck him while yelling racial and homophobic slurs. Smollett also reported that the offenders placed a rope around his neck, poured a liquid chemical on him, and told him this is "MAGA Country."

Defendant Smollett also reported for the first time, that three days prior, on January 26, 2019, he received a phone call from an unidentified phone number in which an unidentified male caller stated, "Hey you little F----" before ending the call. Smollett also told police that the incident happened near a camera, which he stated should have captured the attack. This is the same camera that Defendant Smollett pointed out to the Osundairo brothers in preparation of this staged attack. Smollett also told police that the initial and primary attacker (now known to be Abel Osundairo) was wearing a ski mask which covered his entire face, with the exception of his eyes and the area all around his eyes. Smollett stated to the police that he could see that the area around this person's eyes was white-skinned. As stated earlier in this proffer, the Osundairo brothers are dark skinned male blacks. During the Good Morning America interview referenced earlier, Smollett stated "And it feels like if I had said it was a Muslim, or a Mexican, or someone black, I feel like the doubters would have supported me much more. A lot more..." These statements by Smollett further misled the police and the public to believe that his attackers were white.

On January 29, 2019 at 7:45 PM, just less than 18 hours following reported attack, Defendant Smollett placed a phone call to Abel and the duration of the call was five seconds. Two minutes later, Abel called back Smollett and the call lasted 1 minute and 34 seconds. The brothers then boarded their flight to Nigeria and left the country. On January 30, 2019 at 10:46 AM, Defendant Smollett called Abel, who was in Istanbul Turkey, and the duration of the call lasted 8 minutes and 48 seconds.

For the next two weeks, the Chicago Police Department investigated this matter as a Hate Crime. Chicago police were able to identify the Osundairo brothers as the alleged attackers through an extensive investigation using Surveillance Videos, Police Pod Videos, in-car taxi camera videos, rideshare records, credit card records, bank records, and a store receipt. On February 13, 2019, the brothers returned from Nigeria, landing at Chicago O'Hare International Airport, and they were detained by US Customs. Members of the Chicago Police Department then placed them into custody. That same evening, the Chicago Police executed a Search Warrant upon the Osundairo brothers' residence where they recovered evidence which linked Abel to the Empire TV show. Chicago Police already had determined that Ola was affiliated with the show as well.

Following their arrest and through consultation with their attorneys, the brothers agreed to cooperate in the investigation. As more evidence, such as text messages, phone records, social media records, bank records, surveillance video and the receipt from the purchase of the rope was obtained by investigators, the investigation shifted from a Hate Crime to a Disorderly Conduct investigation. The Cook County State's Attorney's Office approved charges of Disorderly Conduct against Defendant Smollett at 6:10 PM on February 20, 2019. At 5:00 AM this morning (January 21, 2019), Defendant Smollett was placed into custody at Area Central Chicago Police Headquarters.

EXHIBIT D

1/20/2019 4:56:49 PM(UTC+0)Direction:Incoming, +[REDACTED] (Jule Smol)
Like twice

Status: Read
Read: 1/20/2019 4:56:55 PM(UTC+0)

1/20/2019 4:58:41 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
Anything you can't eat? Allergies?

Status: Sent
Delivered: 1/20/2019 4:58:41 PM(UTC+0)

1/20/2019 5:08:38 PM(UTC+0)Direction:Incoming, +[REDACTED] (Jule Smol)
Not that i know of but i did an allergy test with my throat Dr and will have results in a week. I don't eat pork or beef tho

Status: Read
Read: 1/20/2019 5:07:07 PM(UTC+0)

1/20/2019 5:07:42 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
Ok . So you're alright for now with dairy?

Status: Sent
Delivered: 1/20/2019 5:07:42 PM(UTC+0)

1/20/2019 5:08:02 PM(UTC+0)Direction:Incoming, +[REDACTED] (Jule Smol)
Oh sorry. Yeah no dairy. Horrible for my vocal

Status: Read
Read: 1/20/2019 5:08:09 PM(UTC+0)

1/20/2019 5:10:07 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
Alright.

Status: Sent
Delivered: 1/20/2019 5:10:07 PM(UTC+0)

1/20/2019 8:00:31 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
This is your grocery list. Are you good with everything on here?

Attachments:

[IMG_5566.PNG](#)

Status: Sent
Delivered: 1/20/2019 8:00:33 PM(UTC+0)

1/22/2019 8:38:50 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
When is your music video shoot?

Status: Sent
Delivered: 1/22/2019 8:38:51 PM(UTC+0)

1/25/2019 2:17:52 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
[https://docs.google.com/document/\[REDACTED\]](https://docs.google.com/document/[REDACTED])

Attachments:



Status: Sent
Delivered: 1/25/2019 2:17:53 PM(UTC+0)

1/25/2019 2:18:09 PM(UTC+0)Direction:Outgoing, +17739468716 (#King Abimbola)
<https://docs.google.com/document/d/18N2qJHnLm8MSNglyhPJjIhDs7QuTbIFTyIbKwqEpF-s>

Attachments:



[4FEED16C-4490-4163-8128-E49EB643483F.pluginPayloadAttachment](#)

Status: Sent
Delivered: 1/25/2019 2:18:10 PM(UTC+0)

1/25/2019 2:19:17 PM(UTC+0)Direction:Outgoing, +17739468716 (#King Abimbola)
This is the meal plan and the breakdown of macronutrients. Also includes projected fat loss.

Status: Sent
Delivered: 1/25/2019 2:19:19 PM(UTC+0)

1/25/2019 3:08:37 PM(UTC+0)Direction:Incoming, +13106002810 (Jule Smol)
Cool i can't pull up on phone so gotta check on my computer. When do you leave town?

Status: Read
Read: 1/25/2019 3:08:56 PM(UTC+0)

1/25/2019 3:18:47 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)

Attachments:

[IMG_5635.PNG](#)

Status: Sent
Delivered: 1/25/2019 3:18:49 PM(UTC+0)

1/25/2019 3:18:56 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
What time Tuesday night?

Status: Read
Read: 1/25/2019 3:19:30 PM(UTC+0)

1/25/2019 3:19:14 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
9:30pm

Status: Sent
Delivered: 1/25/2019 3:19:25 PM(UTC+0)

1/25/2019 3:31:06 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Why what's up?

Status: Sent
Delivered: 1/25/2019 3:31:07 PM(UTC+0)

1/25/2019 3:34:44 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Might need your help on the low. You around to meet up and talk face to face?

Status: Read
Read: 1/25/2019 3:34:51 PM(UTC+0)

1/25/2019 3:34:52 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Later like after 4

Status: Read
Read: 1/25/2019 3:34:52 PM(UTC+0)

1/25/2019 3:36:29 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Yea, I can do that.

Status: Sent
Delivered: 1/25/2019 3:36:29 PM(UTC+0)

1/25/2019 8:13:08 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Vya?

Status: Read
Read: 1/25/2019 8:19:47 PM(UTC+0)

1/25/2019 8:20:00 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
I'm at the gym finishing up

Status: Sent
Delivered: 1/25/2019 8:20:00 PM(UTC+0)

1/25/2019 8:20:31 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Where? I'll take like 20 mins.

Status: Read
Read: 1/25/2019 8:21:52 PM(UTC+0)

1/25/2019 8:21:53 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
[REDACTED]

Status: Sent
Delivered: 1/25/2019 8:21:55 PM(UTC+0)

1/25/2019 8:22:34 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
You gonna come here or should I come to you?

Status: Sent
Delivered: 1/25/2019 8:22:36 PM(UTC+0)

1/25/2019 8:22:50 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
How far are you from the stages?

Status: Read
Read: 1/25/2019 8:23:45 PM(UTC+0)

1/25/2019 8:24:18 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
30 mins

Status: Sent
Delivered: 1/25/2019 8:24:18 PM(UTC+0)

1/25/2019 8:28:23 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Ok can you meet me there? We can ride and talk.

Status: Read
Read: 1/25/2019 8:28:47 PM(UTC+0)

1/25/2019 8:29:00 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Yea I can come

Status: Sent
Delivered: 1/25/2019 8:29:00 PM(UTC+0)

1/25/2019 9:23:12 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Here

Status: Sent
Delivered: 1/25/2019 9:23:14 PM(UTC+0)

1/25/2019 9:33:33 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Come outside breezeway

Status: Read
Read: 1/25/2019 10:04:20 PM(UTC+0)

1/26/2019 10:50:57 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
You still down to train tomorrow?

Status: Sent
Delivered: 1/26/2019 10:50:58 PM(UTC+0)

1/26/2019 10:51:35 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Yeah. Meet me at 7:15am?

Status: Read
Read: 1/26/2019 10:52:52 PM(UTC+0)

1/26/2019 10:54:48 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
I have a ceremony and won't be done until 9 am.

Status: Sent
Delivered: 1/26/2019 10:54:49 PM(UTC+0)

1/26/2019 10:56:21 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Alright I'm picking up my creative director [REDACTED] at 8:30am or something dork the airport. Just hit me after you're done with your ceremony. I have a flight to east coast tomorrow at 3pm

Status: Read
Read: 1/26/2019 10:56:17 PM(UTC+0)

1/26/2019 11:00:21 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Alright. Will do.

Status: Sent
Delivered: 1/26/2019 11:00:21 PM(UTC+0)

1/27/2019 3:18:24 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Wya?

Status: Read
Read: 1/27/2019 3:22:31 PM(UTC+0)

1/27/2019 3:22:59 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
I'm On my way back to Chicago

Status: Sent
Delivered: 1/27/2019 3:23:00 PM(UTC+0)

1/27/2019 3:24:11 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
How long?

Status: Read
Read: 1/27/2019 3:28:19 PM(UTC+0)

1/27/2019 3:31:04 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
An hr.

Status: Sent
Delivered: 1/27/2019 3:31:04 PM(UTC+0)

1/27/2019 4:53:43 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Here

Status: Read
Read: 1/27/2019 4:53:46 PM(UTC+0)

1/27/2019 4:53:51 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Ight

Status: Sent
Delivered: 1/27/2019 4:53:51 PM(UTC+0)

1/27/2019 4:58:48 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Where you at

Status: Sent
Delivered: 1/27/2019 4:58:48 PM(UTC+0)

1/27/2019 4:58:59 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Out front i think

Status: Read
Read: 1/28/2019 12:36:44 AM(UTC+0)

1/28/2019 5:35:16 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Gotcha. Did it this morning.

Status: Read
Read: 1/28/2019 5:42:31 PM(UTC+0)

1/28/2019 5:44:08 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Bruh say it ain't true. I'm praying for speedy recovery. Shit is wild.

Status: Sent
Delivered: 1/29/2019 5:44:07 PM(UTC+0)

EXHIBIT E

| | | | | | | |
|-----|---|---|------------------------------------|---|---|-----|
| 375 | Google | https://www.google.com/?client=safari&channel=iphone_bm | 1/30/2019 4:38:20 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 376 | Turkish Airlines Wi-Fi Access Portal | https://portal.turktelekomwifify.com/apsPortal/loginPage?0 | 1/30/2019 11:47:57 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 377 | Turkish Airlines Wi-Fi Access Portal | https://portal.turktelekomwifify.com/apsPortal/msLoginPage?1 | 1/30/2019 11:47:21 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 378 | | https://portal.turktelekomwifify.com/apsPortal/loginPage;sessionid=e94262b8hc086658d5fb711c57a870-1.iLinkListener-rootContainer-milesAndSmilesLink | 1/30/2019 11:47:21 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 379 | | https://portal.turktelekomwifify.com/apsPortal/loginPage | 1/30/2019 11:45:39 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 380 | Turkish Airlines Wi-Fi Access Portal | https://portal.turktelekomwifify.com/apsPortal/loginPage;sessionid=e94262b8hc086658d5fb711c57a870 | 1/30/2019 11:45:39 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 381 | Turkish Airlines: Home | http://www.tkwifi.net/#/12019/01/29/empire-star-jussie-smollett-attacked-hospitalized-homophobic-hate-crime/ | 1/30/2019 11:45:21 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 382 | 'Empire' Star Jussie Smollett Beaten in Homophobic Attack By MAGA Supporters TMZ.com | http://m.tmz.com/#/12019/01/29/empire-star-jussie-smollett-attacked-hospitalized-homophobic-hate-crime/ | 1/29/2019 5:20:41 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 383 | TMZ | http://m.tmz.com/2019/01/29/empire-star-jussie-smollett-attacked-hospitalized-homophobic-hate-crime/ | 1/29/2019 5:20:39 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 384 | | https://www.tmz.com/2019/01/29/empire-star-jussie-smollett-attacked-hospitalized-homophobic-hate-crime/ | 1/29/2019 5:20:39 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 385 | #PrayersUp: Jussie Smollett Hospitalized After Reportedly Being Injured In A Homophobic Attack - The Shade Room | https://theshaderoom.com/prayersup-jussie-smollett-hospitalized-after-reportedly-being-injured-in-a-homophobic-attack/ | 1/29/2019 5:20:00 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 386 | The Shade Room - Celebrity & Entertainment News - All Trending Topics | https://theshaderoom.com/ | 1/29/2019 5:19:51 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 387 | | http://theshaderoom.com/ | 1/29/2019 5:19:51 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 388 | The Shade Room (@theshaderoom) • Instagram photos and videos | https://www.instagram.com/theshaderoom/?hl=en | 1/29/2019 5:19:33 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 389 | The Shade Room (@theshaderoom) • Instagram photos and videos | https://www.instagram.com/theshaderoom/?hl=en | 1/29/2019 5:19:32 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 390 | Savage Race - The Best Obstacles. The Perfect Distance. | https://savagerace.com/ | 1/29/2019 4:30:21 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 391 | shirts illustrated - Google Search | https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&oeq=TXRPXKJ2MKS6jwTCx4LwDQ&q=shirts+illustrated&oq=shirts&ga_l=mobile-gws-wiz-hp.1.0.35i39i2j0i3.3543.5673..7121..1.0.0.230.920.0j5j1.....0.....1.....5.46i131j0i131j0i87.DcWDSTI6qTY | 1/28/2019 9:29:58 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 392 | Google | https://www.google.com/?client=safari&channel=iphone_bm | 1/28/2019 9:29:49 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 393 | | https://www.wada-ama.org/sites/default/files/wada_2019_english_prohibited_list.pdf | 1/27/2019 12:28:51 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 394 | Prohibited List Documents World Anti-Doping Agency | https://www.wada-ama.org/en/resources/science-medicine/prohibited-list-documents | 1/27/2019 12:28:38 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 395 | | https://www.wada-ama.org/en/resources/science-medicine/prohibited-list | 1/27/2019 12:28:38 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 396 | Banned Substances NaturalBodybuilding.com | https://naturalbodybuilding.com/banned-substances/ | 1/27/2019 12:28:02 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |

TCF BANK SEARCH

| | | | | | | |
|-----|--|---|-----------------------------|---|----------------------------------|-----|
| 454 | Tamoxifen Citrate – U.S. Diesel Labs | https://usdieselabs.com/product/tamoxifen-citrate/ | 1/25/2019 5:58:19 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 455 | YK11 – U.S. Diesel Labs | https://usdieselabs.com/product/yk11/ | 1/25/2019 5:57:52 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 456 | ANDARINE – U.S. Diesel Labs | https://usdieselabs.com/product/andarine/ | 1/25/2019 5:56:29 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 457 | RAD140 – U.S. Diesel Labs | https://usdieselabs.com/product/rad140/ | 1/25/2019 5:55:27 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 458 | rad 140 labs - Google Search | https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&ei=sqRKXOGwPI-8ggfWpVWgCg&q=rad+140+labs&eq=rad+140+labs&gs_l=mobile-gws-wiz-hp_3_0i22i30i5,2288,8464,10824,1,0,0,159,1576,0j12,0,1,5,35i39,0i67j46i67,0i131i67j46i20i263j0i20i283j0i22i10i30,PALEYs6vYag | 1/25/2019 5:55:11 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 459 | Google | https://www.google.com/?client=safari&channel=iphone_bm | 1/25/2019 5:54:59 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 460 | The Truth About RAD140 In 3 Minutes - Read before you buy Testolone | https://www.mynvt.org/testolone-rad140/ | 1/25/2019 5:48:12 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 461 | rad 140 landmark - Google Search | https://www.google.com/search?client=safari&channel=iphone_bm&ei=nS1KXL7dGQWVaigX2xpeoAQ&q=rad+140+landmark&eq=rad+140+landmark&gs_l=mobile-gws-wiz-serp_1.0.0i22i30j33i22i29i30j33i160,30105865,30112481,30113557,2,0,0,164,174,4,0j12,0,1,5,35i39,0i67j0i131j0j46i67,0i22i10i30,D401Uxm5ppc | 1/25/2019 5:48:48 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 462 | bow legged - Google Search | https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&ei=li1KXPPNlcbKsQWj6fAAw&q=bow+legged&eq=bow+legged&gs_l=mobile-gws-wiz-hp_1.3.46i275j0i4,2867,4242,8331,1,0,0,307,880,0j2j1j1,0,1,5,35i39j46egp9XrHOFLM | 1/24/2019 9:28:53 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 463 | Google | https://www.google.com/?client=safari&channel=iphone_bm | 1/24/2019 9:26:46 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 464 | How Do I Reach a Real Person at the IRS? - Amy Northard, CPA - The Accountant for Creatives® | https://amynorthardcpa.com/how-do-i-reach-a-real-person-at-the-irs/ | 1/24/2019 8:57:43 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 465 | Digital Banking Timeout | https://www.tcfbank.com/digital-banking-timeout | 1/24/2019 8:57:40 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 466 | | https://digitalbanking.tcfbank.com/d3rest/auth/logout?reason=session-expired&csrf=a6f5bef62dde2c611ee9292885ca10f6 | 1/24/2019 8:57:40 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 467 | TCF Bank | https://digitalbanking.tcfbank.com/?userna me=00sundairo#dashboard/manage | 1/24/2019 8:37:17 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 468 | TCF Bank | https://digitalbanking.tcfbank.com/?userna me=00sundairo#login | 1/24/2019 8:37:17 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 469 | TCF Bank | https://digitalbanking.tcfbank.com/?userna me=00sundairo# | 1/24/2019 8:37:17 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 470 | TCF Bank | https://digitalbanking.tcfbank.com/?userna me=00sundairo#login | 1/24/2019 8:36:46 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 471 | TCF Bank | https://digitalbanking.tcfbank.com/?userna me=00sundairo | 1/24/2019 8:36:41 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 472 | Bank at TCF – Business, Personal, Online Banking TCF Bank | https://www.tcfbank.com/ | 1/24/2019 8:36:29 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 473 | Google | https://www.google.com/?client=safari&channel=iphone_bm | 1/24/2019 8:36:15 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 474 | | https://tunein.com/radio/Chicago-Public-Radio-915-527410/ | 1/24/2019 4:15:46 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |

EXHIBIT F

1/12/2019 6:22:34 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
The team has to pay for the flight

Status: Read
Read: 1/12/2019 9:01:11 AM(UTC+0)

1/12/2019 6:22:40 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Lol so they gonna do just that

Status: Read
Read: 1/12/2019 9:01:11 AM(UTC+0)

1/12/2019 10:32:07 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)

Attachments:
IMG_0173.PNG

Status: Sent
Delivered: 1/12/2019 10:32:10 PM(UTC+0)

1/12/2019 10:32:51 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)

Attachments:
IMG_0175.PNG

Status: Sent
Delivered: 1/12/2019 10:32:52 PM(UTC+0)

1/12/2019 10:33:25 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)

Attachments:
Image-1.jpg

Status: Sent
Delivered: 1/12/2019 10:33:26 PM(UTC+0)

1/12/2019 10:33:42 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
Your homeboy is mentally disturbed

Status: Sent
Delivered: 1/12/2019 10:33:42 PM(UTC+0)

1/13/2019 6:16:57 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Hahahahaha bruh

Status: Read
Read: 1/13/2019 6:17:19 AM(UTC+0)

1/13/2019 6:17:05 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
I'm really laughing at the emails man

Status: Read
Read: 1/13/2019 6:17:19 AM(UTC+0)

1/13/2019 6:17:08 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)

Status: Read
Read: 1/13/2019 6:17:19 AM(UTC+0)

1/13/2019 6:17:31 AM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
Dude ass a fruit

Status: Sent
Delivered: 1/13/2019 6:17:32 AM(UTC+0)

1/14/2019 7:01:58 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Did fruity folks ever say anything back

Status: Read
Read: 1/14/2019 7:04:54 PM(UTC+0)

1/14/2019 7:05:49 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
I never replied to his fruity ass after that. I haven't been replying to him on ig either. I'm done with Gaylord ass

Status: Sent
Delivered: 1/14/2019 7:05:50 PM(UTC+0)

1/14/2019 7:12:28 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Lmaooooo bruh you don't know how weak I am right now

Status: Read
Read: 1/14/2019 8:10:48 PM(UTC+0)

1/14/2019 7:12:49 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Bruh I just want to see folks to admit to that shit

Status: Read
Read: 1/14/2019 8:10:48 PM(UTC+0)

1/14/2019 7:13:07 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Like what's the name of the agency? Whose [REDACTED]?

Status: Read
Read: 1/14/2019 8:10:48 PM(UTC+0)

1/14/2019 7:13:09 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)

Status: Read
Read: 1/14/2019 8:10:48 PM(UTC+0)

1/14/2019 8:48:40 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
I don't even care no more. Just tired of down low niggas tryna sneakily be on some gay shit like niggas is stupid *

Status: Sent
Delivered: 1/14/2019 8:48:41 PM(UTC+0)

Gay Reference
ASS A
"Fruit"
"Gaylord"

EXHIBIT G

Status: Sent
Delivered: 1/12/2019 10:36:39 PM(UTC+0)

1/12/2019 10:34:19 PM(UTC+0) Direction: Outgoing, + [REDACTED] (Ola)
This man is a sicko

*GAY reference
in emails from D.O*

Status: Sent
Delivered: 1/12/2019 10:36:39 PM(UTC+0)

1/12/2019 10:48:47 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)
Wtf

Status: Read
Read: 1/12/2019 10:57:26 PM(UTC+0)

1/12/2019 10:48:50 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)
Hahahahahahahahaah

Status: Read
Read: 1/12/2019 10:57:26 PM(UTC+0)

1/12/2019 10:48:53 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)

Status: Read
Read: 1/12/2019 10:57:26 PM(UTC+0)

1/12/2019 10:48:59 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)
Help the man

Status: Read
Read: 1/12/2019 10:57:26 PM(UTC+0)

1/12/2019 10:58:04 PM(UTC+0) Direction: Outgoing, + [REDACTED] (Ola)
[REDACTED] said he sent him the same exact email 2 years ago

Status: Sent
Delivered: 1/12/2019 10:58:04 PM(UTC+0)

1/12/2019 10:58:18 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)
Are you serious?

Status: Read
Read: 1/12/2019 10:58:23 PM(UTC+0)

1/12/2019 10:58:27 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)
Same email address?

Status: Read
Read: 1/12/2019 10:58:34 PM(UTC+0)

1/12/2019 10:58:44 PM(UTC+0) Direction: Outgoing, + [REDACTED] (Ola)
Same exact one

Status: Sent
Delivered: 1/12/2019 10:58:45 PM(UTC+0)

1/12/2019 10:58:59 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)
Lock him up

Status: Read
Read: 1/12/2019 11:25:46 PM(UTC+0)

1/12/2019 11:25:51 PM(UTC+0) Direction: Outgoing, + [REDACTED] (Ola)
Sicko

Status: Sent
Delivered: 1/12/2019 11:25:52 PM(UTC+0)

1/12/2019 11:48:15 PM(UTC+0) Direction: Outgoing, + [REDACTED] (Ola)
What's [REDACTED] address

Status: Sent
Delivered: 1/12/2019 11:48:17 PM(UTC+0)

1/12/2019 11:53:40 PM(UTC+0) Direction: Outgoing, + [REDACTED] (Ola)
Yoooooooo

Status: Sent
Delivered: 1/12/2019 11:53:42 PM(UTC+0)

1/12/2019 11:57:05 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)

Status: Read
Read: 1/12/2019 11:57:11 PM(UTC+0)

1/12/2019 11:57:19 PM(UTC+0) Direction: Outgoing, + [REDACTED] (Ola)
Thanks

Status: Sent
Delivered: 1/12/2019 11:57:20 PM(UTC+0)

1/12/2019 11:57:31 PM(UTC+0) Direction: Incoming, + [REDACTED] (Bola Bon Jova)
Thank G-D

Status: Read
Read: 1/13/2019 12:46:01 AM(UTC+0)

1/13/2019 1:01:23 AM(UTC+0) Direction: Outgoing, + [REDACTED] (Ola)
What's password to [REDACTED]

Status: Sent
Delivered: 1/13/2019 1:01:24 AM(UTC+0)

EXHIBIT H

**CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT**

 3510 S. Michigan Avenue, Chicago, Illinois 60653
 (For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

 Case id : 11580050
 Sup id : 13027789 CASR339

| PROGRESS | | DETECTIVE SUP. APPROVAL COMPLETE | | | |
|---|--------------------------|---|-----------------|----------------------------|-------------------|
| Last Offense Classification/Re-Classification | IUCR Code | Original Offense Classification | | | IUCR Code |
| BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | 0440 | BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | | | 0440 |
| Address of Occurrence | Beat of Occur | No of Victims | No of Offenders | No of Arrested | SCR No |
| 341 E LOWER NORTH WATER ST | 1834 | 1 | 2 | 0 | |
| Location Type | Location Code | Secondary Location | | | Hate Crime |
| Street | 304 | | | | No |
| Date of Occurrence | Unit Assigned | Date RO Arrived | Fire Related? | Gang Related? | Domestic Related? |
| 29-JAN-2019 02:00 | 1823R | 29-JAN-2019 02:42 | NO | NO | NO |
| | | | | | |
| Reporting Officer | Star No | Approving Supervisor | Star No | Primary Detective Assigned | Star No |
| HENEGHAN, William | 21312 | BLAS, Ronald | 1248 | MURRAY, Kimberly | 20808 |
| Date Submitted | Date Approved | | Assignment Type | | |
| 08-FEB-2019 20:56 | 09-FEB-2019 12:35 | | FIELD | | |

THIS IS A FIELD INVESTIGATION PROGRESS REPORT
VICTIM(S):

[REDACTED]

TYPE: Individual

Male / Black / 36 Years

DOB: [REDACTED] 1982

RES: [REDACTED]

BIRTH PL: California

DESCRIPTION: 5'11, 175, Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular [REDACTED]

Phone: [REDACTED]

SSN: [REDACTED]

DLN/ID: [REDACTED] CA

OTHER IDENTIFICATIONS: Type - State Id # [REDACTED]

State - California

Type - Other Id # Fbi# [REDACTED]

ACTIONS: The Victim Outside Street

SUSPECT(S)
UNK

Male / White

ACTIONS: The Offender Fled From Sidewalk

RELATIONSHIP OF VICTIM TO OFFENDER:
JC133190

JC133190

DETECTIVE SUP. APPROVAL COMPLETE

- No Relationship

UNK

Male / White

DESCRIPTION: 5'10-6'00, 180-200,**ACTIONS:** The Offender Fled From Sidewalk**WEARING:** Black Mask With Open Eyes Only, Dark Jacket/Top, Dark Pants**RELATIONSHIP OF VICTIM TO OFFENDER:**

- No Relationship

ITEM USED:

Weapon

VICTIM INJURIESType

Abrasions

Weapon Used

Hand/Feet/Teeth/Etc.

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital**INJURY TREATMENT:** Treated And Released**PHYSICIAN NAME:** Dr Turelli**TRANSPORTED TO:**

(Victim)

Transported To Northwestern Hospital

WEAPON(S):**INV#:** 14363589**Evidence****PROPERTY TYPE:** OTHER

White Rope

OWNER: Unk**POSSESSOR/USER:****QUANTITY:** 1**LOCATION FOUND:****LOCATION OF INCIDENT:**

341 E Lower North Water St

Chicago IL 60611

304 - Street

DATE & TIME OF INCIDENT:

29-JAN-2019 02:00

MOTIVE CODE(S):

Undetermined

CAUSE CODE(S):

Other

METHOD CODE(S):

Dna

CAU CODE(S):

Dna

OTHER PROPERTY RECOVERED:**INV #:** 14363588**Evidence**

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]**POSSESSOR/USER:** [REDACTED]**PHONE#:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**INV #:** 14363589**Evidence****PROPERTY TYPE: OTHER**

White Rope

OWNER: Unk**POSSESSOR/USER:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**OTHER PROPERTY
DAMAGED:****INV #:** 14363588**Evidence****PROPERTY TYPE: CLOTHES/FURS**

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]**POSSESSOR/USER:** [REDACTED]**PHONE#:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**PERSONNEL
ASSIGNED:**Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R**OTHER INDIVIDUALS
INVOLVED:**

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED]-1958**DESCRIPTION:** 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium

Complexion

RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular [REDACTED]
Phone: [REDACTED]

DLN/ID: [REDACTED] - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

| | | |
|------------|------------|-------------|
| [REDACTED] | (Victim) | |
| UNK | | (Suspect) |
| [REDACTED] | (Victim) | |
| UNK | | (Suspect) |

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

PROGRESS SUP NARRATIVE

R/D and Det. Stoll#20701 were asked to assist in the [REDACTED] investigation on 6 Feb 2019 at 1200 hours by Area Central Detective Division Commander Ed Wodnicki.

R/Ds attended a debriefing session and were made aware of potential leads in the investigation and were asked to locate and interview a Uber Driver [REDACTED]

R/D and Det. Stoll met with UBER Driver [REDACTED] at [REDACTED] in Chicago IL on 6 Feb 2019 at 1640 hours. [REDACTED] is a Male Black 56 yoa. [REDACTED] is 601 / 230 LBS. [REDACTED]

lives with his wife at the location and stated he has driven a Taxi for several years in Chicago but now only drives for UBER. [REDACTED] stated he mostly drives at night and the early morning hours.

R/D refreshed [REDACTED] memory of the 29th of Jan 2019 and stated he was working and pulled up his rides on his cell phone for that day. [REDACTED] stated he vividly remembers getting a ride where he picked up two African American Males at the location of 41 [REDACTED] N Ashland. [REDACTED] pulled up the Ride ID Number [REDACTED]. The rider was ordered at 12:56 on the 29th of Jan and he arrived at 1:02 hours. [REDACTED] stated rider #1 (Male Black 30-32 Taller Dark Clothing) came to his vehicle at 1:02 and greeted the driver with "HEY BROTHER " as he entered on the curb side of the vehicle and then sat in the rear passenger seat. Rider #1 asked the driver to wait a minute that another passenger was coming. A minute later Rider #2 entered in the rear driver side door (Male Black 507/508 Larger build and 29/30 Dark Clothing). [REDACTED] thought that Rider #1 had placed the UBER order. [REDACTED] stated both riders had hoods under their jackets but neither had their hoods up. [REDACTED] thought one of the riders may have had a knit hat or maybe a baseball hat. [REDACTED] stated Rider #1 received a phone call while inside his vehicle and stayed on the phone most of the ride.

[REDACTED] stated the two offenders did not make conversation with him and whispered to each other during the ride. The Uber application listed the drop off location was to be on the 1400 block of N WIELAND but has been shielded on [REDACTED] UBER application interface. Rider #1 was on his cell phone for most of the ride. [REDACTED] stated he heard rider #2 tell #1 that he should change the location for drop off on his UBER application, somewhere in the "100's", suggesting the south side of Chicago. Shortly thereafter, the rider #2 demanded they get dropped prior to the listed drop off location. At 1400 N Wells rider #2 demanded he stop and he jumped out of the vehicle and then waived down a Taxi. [REDACTED] stated from the time the 2 riders entered his Uber vehicle, a Toyota Highlander, he thought he was going to be robbed. [REDACTED] stated the riders refused to communicate with him which led to his fear of being robbed. [REDACTED] stated he found it very odd that the pair discussed changing the drop off location and then entering a Taxi prior to their final destination. [REDACTED] stated he may be able to make an identification of Rider Number 1, but was unsure about rider #2.

[REDACTED] indicated that the riders may have been of African decent, based on the way Rider #1 called him "brother" with an African Accent. [REDACTED] stated he has NO VIDEO RECORDING system inside his vehicle. [REDACTED] stated both riders had a very dark complexion. [REDACTED] stated he will be available in the future if R/D has any further questions or needs to re-interview him.

Det. Heneghan#21312

Det. Stoll #20701

EXHIBIT I

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id 11580050
Sup id 13084938 CASR339

| PROGRESS | | | | DETECTIVE SUP. APPROVAL COMPLETE | | | |
|--|--|-------------------|--|--|--|-------------------|--|
| Last Offense Classification/Re-Classification | | IUCR Code | | Original Offense Classification | | IUCR Code | |
| BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | | 0440 | | BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | | 0440 | |
| Address of Occurrence | | Beat of Occur | | No of Victims | | No of Offenders | |
| 341 E LOWER NORTH WATER ST | | 1834 | | 1 | | 2 | |
| Location Type | | Location Code | | No of Arrested | | SCR No | |
| Street | | 304 | | 2 | | | |
| Date of Occurrence | | Unit Assigned | | Secondary Location | | Hate Crime | |
| 29-JAN-2019 02:00 | | 1823R | | | | No | |
| | | | | Date RO Arrived | | Fire Related? | |
| | | | | 29-JAN-2019 02:42 | | NO | |
| | | | | Gang Related? | | Domestic Related? | |
| | | | | NO | | NO | |
| Reporting Officer | | Star No | | Approving Supervisor | | Star No | |
| THEIS, Michael | | 21217 | | HALEEM, Morad | | 1280 | |
| Date Submitted | | Date Approved | | Primary Detective Assigned | | Star No | |
| 19-MAR-2019 15:21 | | 19-MAR-2019 15:29 | | MURRAY, Kimberly | | 20808 | |
| | | | | Assignment Type | | | |
| | | | | FIELD | | | |

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular
Phone:

SSN:

DLN/ID: CA

OTHER IDENTIFICATIONS: Type - State Id #
State - California
Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

OFFENDER(S)

OSUNDAIRO, Olabinjo

-- In Custody--

Male / Black / 27 Years

DOB: 1991

DESCRIPTION: 5'08, 175, Black Hair, Short Hair Style, Brown Eyes, Dark Complexion

JC133190

RES: [REDACTED]

DLN/ID: [REDACTED]

ACTIONS: The Offender Fled From Sidewalk

IR#: [REDACTED] CB #: 19768424

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED]

- No Relationship

-- In Custody--

OSUNDAIRO, Abimbola

Male / Black / 25 Years

DOB: [REDACTED]-1993

DESCRIPTION: 6'00, 185, Black Hair, Fade Hair Style, Brown Eyes, Dark Complexion

RES: [REDACTED]

DLN/ID: [REDACTED] - IL

ACTIONS: The Offender Fled From Sidewalk

IR#: [REDACTED] CB #: 19768414

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED]

- No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

[REDACTED]

TypeWeapon Used

Abrasions

Hand/Feet/Teeth/Etc.

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED]

(Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

LOCATION OF

341 E Lower North Water St

Chicago IL 60611

INCIDENT: 304 - Street
DATE & TIME OF INCIDENT: 29-JAN-2019 02:00
MOTIVE CODE(S): Undetermined
CAUSE CODE(S): Other
METHOD CODE(S): Dna
CAU CODE(S): Dna

**OTHER PROPERTY
RECOVERED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With
Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

INV #: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**OTHER PROPERTY
DAMAGED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With
Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**PERSONNEL
ASSIGNED:**

Assisting Detective/Youth Inv.

VOGENTHALER, Michael W

20390

THEIS, Michael J

21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R

OTHER INDIVIDUALS
INVOLVED:(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED] 1958

DESCRIPTION: 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium
Complexion

RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular [REDACTED]
Phone: [REDACTED]

DLN/ID: [REDACTED] - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

[REDACTED] (Victim)

OSUNDAIRO, Olabinjo (Offender)

[REDACTED] (Victim)

OSUNDAIRO, Abimbola (Offender)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:**PROGRESS SUP NARRATIVE**

This is an Area Central PROGRESS Supplementary Case Report. This report should be read in conjunction with RD number JC133190.

TYPE OF INCIDENT:

Aggravated Battery - Hands, Fist, Feet / Minor Injury (0440)

RD NUMBER:

JC-133190

LOCATION:

341 E Lower North Water St
Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:

Tuesday, 29 Jan 19, 0200 hours

DATE, TIME ASSIGNED:

31 January 2019 at 1230 hours

VICTIM:

M/1/36 [REDACTED] 82
6'0" 170
[REDACTED]

MANNER / MOTIVE:

The victim was walking to his residence when he was approached by two offenders who engaged in racial and homophobic slurs directed at the victim. The offenders then struck the victim about the face and body causing minor injuries / undetermined motive, possible hate crime

INVESTIGATION:

1 February 2019

The contents of this report, including interviews, are in essence and not verbatim unless otherwise noted by quotation marks.

At the start of the day R/D and P.O. Gilbert #15552 went to the Hyatt Regency Hotel. R/D picked up a disk that was being held by security. The disk contained the video footage from Hyatt Regency Hotel security cameras and a player for some of the video. The video had been viewed and marked

for export by R/D, Det. Calle, Det. Haro, and Det. Vogenthaler the day before, 31 Jan 2019. The selected video was from outside cameras that showed Stetson Ave, East South Water Street, and East Wacker drive. This disk was inventoried under #14367663.

R/D and P.O. Gilbert then relocated to the Chicago Regional Computer Forensics Laboratory (CGRCFL) to submit the 32 Gigabyte (GB) Secure Digital Memory Card (SD Card) that was retrieved from Yellow Cab #1394 the night before. At the CGRCFL, R/D spoke with [REDACTED] who took custody of the 32GB SD card and assigned it to CGRCFL inventory number CGRCFL128664 and assigned it to CGRCFL case number 19-CGRCFL-0108.

R/D and P.O. Gilbert met up with Task Force Agent(TFA) Special Agent(SA)Wing and Det. Jasica #20420 at the 3600 block of North Marshfield. R/D and Det. Jasica went to the 3600 block of N. Marshfield and retrieved video from a house that had been viewed the day before. This video showed the two subjects getting out of the yellow cab, proceed to the west side of the street and walk north bound on the west sidewalk of N. Marshfield Ave. The video footage showed the two subjects walking across Waveland Ave and continue down the west sidewalk of N. Marshfield Ave. This video was inventoried under this case number and sent to CPD's Evidence and Recovered Property Section (ERPS).

R/D, P.O. Gilbert, TFA SA Wing, and Det. Jasica conducted a canvass which started starting at the 3700 block of Marshfield and headed north bound on Marshfield. Any house that appeared to have a video camera or a video doorbell was knocked on and the team requested to view the video. At approximately 1400 hrs the team was joined by Det. Calle #20177 and at approximately 1500hrs Det. Jasica returned to the Area. The last location the subjects were seen on video was near the intersection of W. Grace St. and N. Marshfield Ave. The team searched both directions on Grace St. as well as further north on Marshfield Ave. and the subjects were not seen on any other video located at this time.

R/D, P.O. Gilbert, TFA SA Wing, and Det. Calle relocated to Area Central Detective Division. Once at the Area, Det. Hill #20889 and Det. Haro #20159 joined the team and there was a briefing with command personnel and the team. At the completion of the briefing R/D received a call from [REDACTED] phone number [REDACTED] the driver of Yellow Cab #1394, who stated he would be willing to come in and be interviewed but he had no way of getting to Area Central. In order to facilitate the interview Det. Calle and P.O. Gilbert took a department vehicle and went to pick up [REDACTED]

[REDACTED] arrived at Area Central at approximately 2300hrs. [REDACTED] was interviewed by R/D, Det. Calle, and TFA SA Wing. [REDACTED] explained that he shared the Yellow cab with a partner, [REDACTED] would usually start driving around 0400hrs since he had the cab during the day shift but on the morning of January 29th, 2019 [REDACTED] had parked the car early. [REDACTED] decided to start his shift early since the cab was available. On most mornings [REDACTED] goes to the HYATT regency and will wait there for about 15 minutes or so to see if any fares are available. On the morning of January 29th [REDACTED] had pulled up in front of the Hyatt Regency and stated that he got out of his car to clean the windows and then was sitting in his car waiting to see if a fare would show up. After a few minutes the doors opened startling [REDACTED] He explained that he would lock the doors so he could get a look at a person before they entered his taxi. [REDACTED] thinks he forgot to lock his doors after cleaning the window. He said he could see the one that got in on the passenger side of the car pretty well and [REDACTED] described him as a dark skinned black male with a goatee 25 to 30 years old. This person said "Hey brother" when he got into the cab and

was wearing all black with a big jacket and a hat pulled back. [REDACTED] said the person had a big build. [REDACTED] said he could not see the second person who sat behind him. When the second person got in he said "Hey boss". [REDACTED] felt the second person sounded "black". [REDACTED] stated that he was nervous and said "if they say they want to go south I tell them no" and then "but they say they want to go to Lake Shore Drive and Belmont so I think ok". [REDACTED] said he saw the person on the passenger side on a cell phone "only text no talk". [REDACTED] drove to Lake Shore Drive and went north to the Belmont exit. The person on the passenger side told [REDACTED] to make a series of right and left turns in rapid succession and then said stop. [REDACTED] was not sure where he was located. [REDACTED] was pretty sure one of the first turns he was told to make was to make a right on Sheffield but he could not be sure of any of the turns after getting off on Belmont. Once [REDACTED] stopped the taxi the person on the passenger side of the car gave him twenty dollars and said "keep the change." [REDACTED] told R/D the fare was nineteen dollars. The two passengers then walked to the "left" side of the street and [REDACTED] said he drove away. [REDACTED] stated he remembered the event clearly because he thought he was going to get robbed. [REDACTED] felt he would be able to identify the person on the passenger side of the car if he saw him again.

Once the interview was complete, Det. Calle and P.O. Gilbert drove [REDACTED] back home. [REDACTED] was dropped off at approximately 0015hrs on 2 February 2019.

R/D and TFA SA Wing discussed the interview and progressed the administrative work.

The investigation continues.

Report of:

Detective Theis #21217

Detective Vogenthaler #20390

Area Central

Detective Division

EXHIBIT J

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id: 11580050
Sup id: 13059447 CASR339

PROGRESS

DETECTIVE SUP. APPROVAL COMPLETE

| | | | |
|--|---------------|--|-------------------|
| Last Offense Classification/Re-Classification | IUCR Code | Original Offense Classification | IUCR Code |
| BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | 0440 | BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | 0440 |
| Address of Occurrence | Beat of Occur | No of Victims | No of Offenders |
| 341 E LOWER NORTH WATER ST | 1834 | 1 | 2 |
| Location Type | Location Code | No of Arrested | SCR No |
| Street | 304 | 2 | |
| Date of Occurrence | Unit Assigned | Secondary Location | Hate Crime |
| 29-JAN-2019 02:00 | 1823R | | No |
| | | Date RO Arrived | Fire Related? |
| | | 29-JAN-2019 02:42 | NO |
| | | Gang Related? | Domestic Related? |
| | | NO | NO |

| | | | | | |
|----------------------|-------------------|----------------------|---------|----------------------------|---------|
| Reporting Officer | Star No | Approving Supervisor | Star No | Primary Detective Assigned | Star No |
| VOGENTHALER, Michael | 20390 | HALEEM, Morad | 1280 | MURRAY, Kimberly | 20808 |
| Date Submitted | Date Approved | Assignment Type | | | |
| 18-MAR-2019 09:15 | 19-MAR-2019 14:59 | FIELD | | | |

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11, 175, Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular

Phone:

SSN:

DLN/ID: - CA

OTHER IDENTIFICATIONS: Type - State Id #

State - California

Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

OFFENDER(S)

OSUNDAIRO, Olabinjo

-- In Custody--

Male / Black / 27 Years

DOB: 1991

DESCRIPTION: 5'08, 175, Black Hair, Short Hair Style, Brown Eyes, Dark Complexion

JC133190

RES: [REDACTED]

DLN/ID: [REDACTED] IL

ACTIONS: The Offender Fled From Sidewalk

IR#: [REDACTED] CB #: 19768424

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED]

- No Relationship

-- In Custody--

OSUNDAIRO, Abimbola

Male / Black / 25 Years

DOB: [REDACTED] 1993

DESCRIPTION: 6'00, 185, Black Hair, Fade Hair Style, Brown Eyes, Dark Complexion

RES: [REDACTED]

DLN/ID: [REDACTED] IL

ACTIONS: The Offender Fled From Sidewalk

IR#: [REDACTED] CB #: 19768414

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED]

- No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

[REDACTED]

Type

Abrasions

Weapon Used

Hand/Feet/Teeth/Etc.

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED]

(Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

LOCATION OF

341 E Lower North Water St
Chicago IL 60611

INCIDENT: 304 - Street
DATE & TIME OF INCIDENT: 29-JAN-2019 02:00
MOTIVE CODE(S): Undetermined
CAUSE CODE(S): Other
METHOD CODE(S): Dna
CAU CODE(S): Dna

**OTHER PROPERTY
RECOVERED:**

INV #: 14363588
Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With
Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

INV #: 14363589
Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**OTHER PROPERTY
DAMAGED:**

INV #: 14363588
Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With
Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**PERSONNEL
ASSIGNED:**

Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R

OTHER INDIVIDUALS
INVOLVED:(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED] 1958

DESCRIPTION: 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium
Complexion

RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular [REDACTED]

Phone:

DLN/ID: [REDACTED] - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

[REDACTED] (Victim)

OSUNDAIRO, Olabinjo (Offender)

[REDACTED] (Victim)

OSUNDAIRO, Abimbola (Offender)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

This is an Area Central PROGRESS Supplementary Case Report. This report should be read in conjunction with RD number JC133190.

TYPE OF INCIDENT:

Aggravated Battery - Hands, Fist, Feet / Minor Injury (0440)

RD NUMBER:

JC-133190

LOCATION:

341 E Lower North Water St
Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:

Tuesday, 29 Jan 19, 0200 hours

DATE, TIME ASSIGNED:

31 January 2019 at 1230 hours

VICTIM:

M/1/36 [REDACTED] 82
6'0" 170

IN CUSTODY:

OSUNDAIRO, Olabinjo

M/1 [REDACTED] 1991
CB# 19768424
IR# [REDACTED]
DLN [REDACTED]

OSUNDAIRO, Abimbola

M/1 [REDACTED] 1993
CB# 19768414
IR# [REDACTED]
DLN [REDACTED]

MANNER / MOTIVE:

The victim was walking to his residence when he was approached by two offenders who engaged in racial and homophobic slurs directed at the victim. The offenders then struck the victim about the face and body causing minor injuries / undetermined motive, possible hate crime

INVESTIGATION:

On 06-Feb-2019

The contents of this report, including interviews, are in essence and not verbatim unless otherwise noted by quotation marks.

A review of the UBER subpoena return for Olabinjo OSUNDAIRO showed a ride from 41 [REDACTED] N. Ashland leaving at 1918 hours and arriving at OHARE International Airport (ORD) at 2000 hours on 29-JAN-2019. A search of open source social media by Det. Jasica then showed Olabinjo OSUNDAIRO to possibly be in Nigeria.

Task Force S/A Wing then contacted Josue MURPHY with the US Customs and Border Protection Office (CBP) located at OHARE Airport. Agent MURPHY then performed a search of airline records which showed Olabinjo OSUNDAIRO and his brother, Abimbola OSUNDAIRO, to have left OHARE Airport, ultimately traveling to Nigeria on 29-JAN-2019 and scheduled to return from Nigeria to OHARE Airport on 13-FEB-2019. This information was then provided to Task Force S/A Wing. Still photographs of Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO at OHARE Airport were also included. This information was transferred to a DVD disc and inventoried under INV# 14390225.

Over the next several days, searches were conducted and photographs captured of Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO from Chicago Police Databases, the Illinois Secretary of State database, open source social media accounts and open source internet searches (progress reports and inventories for this information will be forthcoming). A comparison was made between these images, the still photographs from OHARE Airport and the video recovered from the Sun Taxi Cab #904 (Refer to the PROGRESS report of Det. Paragas for details of the Sun taxi Cab Video recovery). This comparison showed a strong resemblance between Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO and the subjects on the video recovered from Sun Taxi Cab #904.

R/D was aware of the fact that [REDACTED] received a threatening letter which was documented under CPD RD#JC125614 and that [REDACTED] received a phone threat on Saturday, [January 26, 2019] at an unknown time, where an unidentified male caller stated, "Hey you little Faggot" which was documented in JC133190. After reviewing evidence available at the time, a plan was put into place to take Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO into custody at OHARE Airport along with conducting a simultaneous search warrant (19SW4998) at the residence [REDACTED] belonging to Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO. This was being done to minimize the chance for loss of evidence and alerting Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO (See Progress Supplementary report for the specifics of 19SW4998).

11-FEB-2019

Information was received by order of the United States District Court, Northern District of Illinois, where Acting Chief Judge Rebecca Pallmeyer released phone records pertaining to federal case 19GJ152 to be used by members of the Chicago Police Department and Cook County States

Attorney's office. During a search of these records, another phone number suspected of belonging to Olabinjo OSUNDAIRO was discovered [REDACTED]. Phone records show this phone to be in communication with a phone number [REDACTED] belonging to [REDACTED] before and a phone number [REDACTED] belonging to [REDACTED] after the incident on 29-JAN-2019. This information was transferred to a DVD disc and inventoried under INV# 14390225.

12-FEB-2019

A search of CPD used databases revealed information showing a direct link in ownership between [REDACTED] and [REDACTED]. It is to be noted that the number [REDACTED] was found on an original GPR created by Det. Kim MURRAY #20808 and described as belonging to a physical trainer named "Bon". Based on this information, a search warrant for phone records for [REDACTED] was authored by Det. Kevin Stoll (for facts relevant to this portion of the investigation, refer to a Progress Supplementary report prepared by Det. Stoll) this search warrant and related documents were inventoried under INV #14385993.

Based on the facts available at this time, Det. Theis prepared a search warrant for the person and possessions for Olabinjo OSUNDAIRO (19SW5000) along with a search warrant for a buccal swab, hair sample and fingerprints and palm prints for Olabinjo OSUNDAIRO (19SW5009). These warrants were then sent to ASA Bill Reardon who reviewed and approved these warrants and assigned the numbers listed above. Based on the facts available at this time, Det. Theis prepared a search warrant for the person and possessions for Abimbola OSUNDAIRO (19SW5004) along with a search warrant for a buccal swab, hair sample and fingerprints and palm prints for Abimbola OSUNDAIRO (19SW5011). These warrants were then sent to ASA Bill Reardon who reviewed and approved these warrants and assigned the numbers listed above. Det. Theis then took search warrants 19SW5000 and 19SW5004 to the residence of Judge Elizabeth Ciaccia-Lezza #2228, who reviewed and approved the listed warrants.

13-FEB-2019

Det. Theis left Area Central and relocated to 26th and California where he went to the Chief Judges office for approval of search warrants 19SW5009 and 19SW5011. The Chief Judge assigned Judge Diane Cannon #1689. Det. Theis went to court room 600 and presented search warrants 19SW5009 and 19SW5011 to Judge Cannon who reviewed and approved the listed warrants.

R/D along with Commander Wodnicki #356, TFO SA Wing, Sgt. Blas #1248, Det. Theis #21217, Det. Jasica #20420, Det. Zambrano #21178, Det. Parages #20775 and Det. Hill #20889 went to the US Customs and Border Protection Office (CBP) room number LL369, located in Terminal 5 at OHARE International Airport. R/D was in contact with Josue MURPHY and associates with the U.S. Customs and Border Protection Office (CBP), who informed R/D of the flight status of Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO. At 1818 hours, Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO exited the plane and were sent by CBP to primary and secondary customs screening and were kept separated. As Customs Officers were preparing to release Abimbola OSUNDAIRO, R/D and Det. Theis then relocated near the exit for the CBP area inside OHARE Airport. Once released by CBP, Abimbola OSUNDAIRO approached the exit to the Customs and Border Protection area, (at approximately 1950 hours) R/D and Det. Theis approached Abimbola OSUNDAIRO, identified themselves as Chicago Police Detectives, and requested to have a conversation with Abimbola OSUNDAIRO. Abimbola OSUNDAIRO agreed and followed R/D and Det. Theis to an interview area located inside the CBP office inside OHARE Airport. As detectives approached the CBP interview area, Abimbola OSUNDAIRO asked to use the restroom. It was at this point R/D felt the necessity to execute search warrant number 19SW5004 for the person of

Abimbola OSUNDAIRO. R/D provided Abimbola OSUNDAIRO a copy of the search warrant which Abimbola OSUNDAIRO then read. Abimbola OSUNDAIRO complied with the search and R/D secured the personal property, including a cell phone [REDACTED] belonging to Abimbola OSUNDAIRO. This was done to prevent any loss of evidence once Abimbola OSUNDAIRO entered the restroom. Abimbola OSUNDAIRO was then allowed to use the restroom. After, Abimbola OSUNDAIRO was taken to an interview area located inside the CBP office. At 1954 hours, Abimbola OSUNDAIRO consented to being audio and video recorded and was then read his MIRANDA warnings from a pre-printed card by Det. Theis. Abimbola OSUNDAIRO declined to speak with R/D and Det. Theis. At this point the interview was terminated.

After being released by CBP (at approximately 1959 hours), Det. Jasica and Task Force S/A Wing met Olabinjo OSUNDAIRO near the exit to the Customs and Border Protection area. Det. Jasica identified himself as a Chicago Police Detective and requested to have a conversation with Olabinjo OSUNDAIRO. Olabinjo OSUNDAIRO agreed and followed Det. Jasica and Task Force S/A Wing to an interview area located inside the CBP office. R/D stayed with Abimbola OSUNDAIRO inside the interview room, as Det. Theis met with Det. Jasica and Task Force S/A Wing, who accompanied Olabinjo OSUNDAIRO to a separate interview room located inside the CBP office. Det. Theis entered the interview room with Olabinjo OSUNDAIRO. Det. Jasica then relieved R/D and stayed with Abimbola OSUNDAIRO. R/D then joined Det. Theis and Olabinjo OSUNDAIRO.

At 2002 hours, Olabinjo OSUNDAIRO consented to being audio and video recorded and was then read his MIRANDA warnings from a pre-printed card by Det. Theis. Olabinjo OSUNDAIRO declined to speak with R/D and Det. Theis. At this point the interview was terminated.

R/D elected to execute search warrant number 19SW5000 for the person of Olabinjo OSUNDAIRO. R/D provided Olabinjo OSUNDAIRO a copy of the search warrant which Olabinjo OSUNDAIRO then read. Olabinjo OSUNDAIRO complied with the search and R/D secured the personal property, including three cell phones [REDACTED] and [REDACTED] belonging to Olabinjo OSUNDAIRO. Olabinjo OSUNDAIRO provided R/D with the unlock codes to the three phones he had in his possession.

R/D then elected to return to Area Central with Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO. While keeping both subjects separated, Olabinjo OSUNDAIRO was placed into 016th District beat car 1642 and Abimbola OSUNDAIRO was placed into 016th District beat car 1651. Both subjects were then transported to Area Central for further processing. Both beat cars had in car camera and in car audio activated.

(All times are approximate and based on ERI video)

When Olabinjo OSUNDAIRO arrived at Area Central, he was placed in interview room number 1 by beat car 1642. At 2208 hours, the camera was activated by Sgt. Blas #1248 with Olabinjo OSUNDAIRO in the room. At 2221 hours, R/D and Det. Theis entered the room and Olabinjo OSUNDAIRO consented to audio and video recording of the room. Olabinjo OSUNDAIRO was then read his MIRANDA warnings from the CPD FOP book. Olabinjo OSUNDAIRO declined to speak with R/D or Det. Theis. At 2232 hours, search warrant #19SW5009 was executed by CPD ET Glowacki #15452, who recovered a hair and a buccal sample. The ET was unable to take prints at this time as the ink tray for fingerprinting was frozen. At 2256 hours, Olabinjo OSUNDAIRO asked about his charges and asked R/D to speak to an attorney. At 2329 hours, ET Glowacki returned to take fingerprints and palm prints. At 2352 hours, Olabinjo OSUNDAIRO was given alcohol wipes to clean the ink off of his hands. At 0131 hours, on 14-FEB-2019, Olabinjo OSUNDAIRO was brought

down to the 002nd District lockup for the evening. Several times during the course of the evening, Olabinjo OSUNDAIRO was offered food, water and use of the restroom.

When Abimbola OSUNDAIRO arrived at Area Central, ERI camera was activated by Sgt. Blas for interview room number 7 and at 2212 hours, beat car 1651 placed Abimbola OSUNDAIRO in the room. At 2247 hours, R/D and Det. Theis entered the room and Abimbola OSUNDAIRO consented to audio and video recording of the room. Abimbola OSUNDAIRO was then read his MIRANDA warnings from the CPD FOP book. Abimbola OSUNDAIRO declined to speak with R/D or Det. Theis. Det. Theis then attempted to serve search warrant 19SW5011. Abimbola OSUNDAIRO was given a copy of the warrant and found that the birthdate was incorrect and refused to participate in the warrant. R/D and Det. Theis then had a conversation with ASA Bill Reardon and ASA Nick Trutenko, who looked at said warrant and stated that all of the information in regards to the identity of Abimbola OSUNDAIRO was correct with the exception of the month of birth. ASA Bill Reardon and ASA Nick Trutenko advised that this was known as a "scriveners error" and the warrant should be enforceable. ASA Bill Reardon and ASA Nick Trutenko also stated the warrant could be rewritten and the error corrected. At 2251 hours, Abimbola OSUNDAIRO was given a bottle of water. At 2307 hours, Abimbola OSUNDAIRO was advised the discrepancy on the warrant was a "scriveners error" and the warrant was enforceable. Again, Abimbola OSUNDAIRO refused to cooperate without his lawyer. At 2325 hours, R/D requested Abimbola OSUNDAIRO to open his phone in an attempt to find his lawyers phone number. Abimbola OSUNDAIRO refused and asked R/D to call [REDACTED] at [REDACTED]. At 2350 hours, R/D informed Abimbola OSUNDAIRO that he would rewrite the warrant and attempt to have a lawyer present when search warrant 19SW5011 was enforced. At 0144 hours, on 14-FEB-2019, Abimbola OSUNDAIRO was brought down to the 002nd District lockup for the evening. Several times during the course of the evening, Abimbola OSUNDAIRO was offered food, water and use of the restroom. (See ERI Video for a more detailed account of the listed events)

Det. McKendry then rewrote 19SW5011, correcting the "scriveners error". This warrant was then given to ASA Bill Reardon, who reviewed and approved the warrant and assigned search warrant number 19SW5073.

14-FEB-2019

At approximately 0200 hours R/D elected to complete search warrant 19SW5000 (search of the personal property-luggage of Olabinjo OSUNDAIRO recovered at OHARE Airport) and 19SW5004 (search of the personal property-luggage of Abimbola OSUNDAIRO recovered at OHARE Airport). This search was conducted in the SOMEX office at Area Central. R/D performed a search of luggage and personal property belonging to Olabinjo OSUNDAIRO. R/D then inventoried the luggage and person property belonging to Olabinjo OSUNDAIRO under CPD INV# 14375402. R/D then performed a search of luggage and personal property belonging to Abimbola OSUNDAIRO. R/D recovered a spiral notebook from the luggage belonging to Abimbola OSUNDAIRO and inventoried said notebook under INV #14375433. R/D then inventoried the luggage and person property belonging to Abimbola OSUNDAIRO under CPD INV# 14375362, 14375375 and 14375417.

The investigation continues.

Report of:
Det. Vogenthaler #20390

Det. Theis #21217

EXHIBIT K

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id 11560050
Sup id 13016654 CASR339

PROGRESS-VIOLENT(SCENE)

DETECTIVE SUP. APPROVAL COMPLETE

| | | | | | | | |
|--|--|---------------|--|--|--|-------------------|--|
| Last Offense Classification/Re-Classification | | IUCR Code | | Original Offense Classification | | IUCR Code | |
| BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | | 0440 | | BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | | 0440 | |
| Address of Occurrence | | Beat of Occur | | No of Victims | | No of Offenders | |
| 341 E LOWER NORTH WATER ST | | 1834 | | 1 | | 2 | |
| Location Type | | Location Code | | No of Arrested | | SCR No | |
| Street | | 304 | | 0 | | | |
| Date of Occurrence | | Unit Assigned | | Secondary Location | | Hate Crime | |
| 29-JAN-2019 02:00 | | 1823R | | | | No | |
| | | | | Date RO Arrived | | Fire Related? | |
| | | | | 29-JAN-2019 02:42 | | NO | |
| | | | | Gang Related? | | Domestic Related? | |
| | | | | NO | | NO | |

| | | | | | |
|-------------------|---------|----------------------|---------|----------------------------|---------|
| Reporting Officer | Star No | Approving Supervisor | Star No | Primary Detective Assigned | Star No |
| GRAVES, Robert | 20007 | RYAN, Sean | 1401 | MURRAY, Kimberly | 20808 |
| Date Submitted | | Date Approved | | Assignment Type | |
| 06-FEB-2019 05:30 | | 06-FEB-2019 05:32 | | FIELD | |

THIS IS A FIELD INVESTIGATION PROGRESS-VIOLENT(SCENE) REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular

Phone:

SSN:

DLN/ID: - CA

OTHER IDENTIFICATIONS: Type - State Id #

State - California

Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

SUSPECT(S)

UNK

Male / White

ACTIONS: The Offender Fled From Sidewalk

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED] - No Relationship

UNK

Male / White

DESCRIPTION: 5'10-6'00, 180-200,

ACTIONS: The Offender Fled From Sidewalk

WEARING: Black Mask With Open Eyes Only, Dark Jacket/Top, Dark Pants

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED] - No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

Type

Weapon Used

Abrasions

Hand/Feet/Teeth/Etc.

EXTENT: Minor
Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED] (Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

LOCATION OF INCIDENT:

341 E Lower North Water St

Chicago IL 60611

304 - Street

DATE & TIME OF INCIDENT:

29-JAN-2019 02:00

MOTIVE CODE(S):

Undetermined

CAUSE CODE(S):

Other

METHOD CODE(S):

Dna

CAU CODE(S):

Dna

OTHER PROPERTY RECOVERED:

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design

Stain To Back Of Navy Hoodie

OWNER: [REDACTED]**POSSESSOR/USER:** [REDACTED]**PHONE#:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**INV #:** 14363589**Evidence****PROPERTY TYPE: OTHER**

White Rope

OWNER: Unk**POSSESSOR/USER:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**OTHER PROPERTY
DAMAGED:****INV #:** 14363588**Evidence****PROPERTY TYPE: CLOTHES/FURS**

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design

Stain To Back Of Navy Hoodie

OWNER: [REDACTED]**POSSESSOR/USER:** [REDACTED]**PHONE#:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**PERSONNEL
ASSIGNED:**Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R**OTHER INDIVIDUALS
INVOLVED:**

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED] 1958**DESCRIPTION:** 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium

Complexion

RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular [REDACTED]
Phone: [REDACTED]

DLN/ID: [REDACTED] - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

**CRIME CODE
SUMMARY:**

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

| | | |
|------------|------------|-------------|
| [REDACTED] | (Victim) | |
| UNK | | (Suspect) |
| [REDACTED] | (Victim) | |
| UNK | | (Suspect) |

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

THIS IS THE ASSIGNED UNIT PROGRESS-VIOLENT (SCENE) REPORT

This report should be read in conjunction with all other case reports related to RD Number JC-133190

TYPE OF INCIDENT:

Aggravated Battery - Hands, Fist, Feet / Minor Injury (0440)

RD NUMBER:

JC-133190

LOCATION:

341 E Lower North Water St
Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:

Tuesday, 29 Jan 19, 0200 hours

WEATHER, LIGHTING:

Cold and Clear, 5 Degrees, Artificial Street Lamp Lighting

DATE, TIME ASSIGNED:

29 Jan 19, 0445 hours

VICTIM:

[REDACTED]
M/1/36 [REDACTED] 82
6'0" 170

[REDACTED]
CA DL# [REDACTED]

CA SID# [REDACTED]

FBI# [REDACTED]

Occupation: Actor

Clothing: Cream and multi colored knit sweater, navy hooded sweatshirt, light blue jeans, white gym shoes

ARREST HISTORY:

Total Arrests: 1

Total Convictions: 1

INJURIES:

Abrasions and redness to right and left cheeks

Injury to inner lower lip

Redness to neck

Soreness to back, shoulder, and rib area

TAKEN TO:

Northwestern Hospital

TAKEN BY:

[REDACTED] (Creative Director)

M/1/60 [REDACTED] 58
[REDACTED]

CA DL# [REDACTED]

TREATED BY:
Dr TURELLI

WANTED:

1)

M/2/unk

Approximate Height 5'10" - 6'0"

Approximate Weight 180-200

Black Mask with open eye area

Dark colored jacket/top

Dark colored pants

2)

No Description Given

MANNER / MOTIVE:

The victim was walking to his residence when he was approached by two offenders who engaged in racial and homophobic slurs directed at the victim. The offenders then struck the victim about the face and body causing minor injuries / undetermined motive, possible hate crime

EVIDENCE:

Inventory# 14363588

1 Blue Hooded Sweatshirt

1 Cream Sweater with Muti Color Pattern

Inventory# 14363589

1 White Rope

PHOTOGRAPHS:

Photo ID card

Street Signs at Intersection of New St and North Water St

Multiple Views of Southwest Corner of New St and North Water St

View of Victim [REDACTED] (M/1/36)

Identification Photo of Victim

Views of Injury to Victim's Left Cheek and Eye Area

Views of Injury to Victim's Right Cheek and Eye Area

Views of Injury to Victim's Neck

Views of Injury to Victim's Lower Lip

Views of Victim's Zippered Ivory Colored Sweater, Front and Back

Views of Victim's Navy Blue Hooded Sweatshirt with Suspect Bleach Stains, Front and Back

View of White Rope

VIDEO:

Loews Dock Area (Recovered)

340 E North Water St

Chicago, IL 60611


Contact:




Loews Building (To Be Recovered)
340 E North Water St
Chicago, IL 60611
Contact:




Subway Restaurant (Recovered)
511 N McClurg Ct
Chicago, IL 60611
Contact:




Target (Recovered)
401 E Illinois St
Chicago, IL 60611
Contact:




River East Center (Recovered)
322 E Illinois St
Chicago, IL 6611
Contact:



City View Condominiums (To Be Recovered)
Dock Cameras
440/480 N McClurg St
Chicago, IL 60611
Contact:



Walgreens (Recovered)
342 E Illinois St
Chicago, IL 60611
Contact:



Lizzy McNeil's Bar (To Be Recovered)

400 N McClurg Ct
Chicago, IL 60611
Contact:

Sheraton Hotel (To Be Recovered)
Chicago Burger Company
301 E North Water St
Chicago, IL 60611
Contact:

PODS:

6870 401 N New St (Ordered)
6879 500 N McClurg Ct (Ordered)
9079 343 E River Drive (Ordered)
9080 359 E River Drive (Ordered)
6786 301 E Lower North Water St (Ordered)
6779 399 N Columbus Dr (Unable To Order)

PERSONNEL ASSIGNED:

Beat 1823R Assigned Paper Unit
PO BAIG #14926
PO ALVAREZ #19689

Beat 1824R Assist Unit
PO GARCIA #8840
PO CARRASCO #7267

Beat 5833 Evidence Technicians
ET BATTAGLIA #11770
ET HEIN #14225

Beat 5124 Assigned Detectives
Det MURRAY #20808
Det GRAVES #20007

Beat 5114 Assisting Detectives
Det GUTIERREZ #21150
Det SANTOS #21429

Beat 5134 Assisting Detective
Det CORFIELD #20613

Beat 5157 Assisting Detectives
Det FYKES #20925
Det COOPER #20146

Beat 5164 Assisting Detective
Det FRAUSTO #20003

Beat 5162 Assisting Detective
Det BRENNAN #20316

INTERVIEWED:

[REDACTED] (Victim)

[REDACTED] (Creative Director)

[REDACTED] (Musical Agent)

[REDACTED] (Night Doorman)

F/47

71

INVESTIGATION:

R/D's were assigned this investigation by Sgt. WILLIAMS #847 of this command on 29 Jan 2019 at approximately 0445 hours. R/D's were informed that there was an Aggravated battery which occurred at the location of 341 E. Lower North Water street and the victim is an actor [REDACTED] on the "Empire" television show. R/D's were informed that the victim was at Northwestern Hospital and there was a possible crime scene at 341 E. Lower North Water street. The contents of this report, including interviews, are in essence and not verbatim unless otherwise noted by quotation marks.

R/D's immediately relocated to the scene 341 E. Lower North Water St. to begin the investigation. Upon arrival, at approximately 0515 hours, R/D's made the following observations. R/D's noted that there was no crime scene being protected and R/D's verified this VIA OEMC and beat 1832R stated that there was no evidence outside, at the location of the incident.

The address of 341. E. Lower North Water Street (400 north) is situated on the south side of Lower North Water Street which is a two Way Street with vehicular traffic flowing east and west bound. There is vehicular parking on the south side of Lower North Water Street. Lower North Water Street intersects with New Street (341 east). A staircase, allowing foot traffic access to upper and lower North Water Street was located on the southwest corner of the intersection. New street is a two Way Street with vehicular traffic flowing both north and south bound. New St. only extends for one (1) block and ends at Illinois street (500 north) at the north end. R/D's noted that New Street becomes a one way northbound only after the intersection of Lower North Water street and the Chicago river lies to the south of New Street. There is only vehicular parking on the west side of New Street.

Numerous garage and service doors line northbound New St. towards Illinois St. There are Multi-unit residential buildings located eastbound on Lower North Water Street. The lobby and entrance to [REDACTED] residence is on the north side of Upper North Water Street [REDACTED]. The Sheraton Hotel (301 E. North Water St.) is on the south side of the upper level of North Water Street and west of the aforementioned staircase.

R/D's arrived at Northwestern Hospital at 0545 hours to interview [REDACTED]

AT 0555 hours R/D's interviewed [REDACTED] in room #68 of the Emergency Room Mezzanine Level with [REDACTED] present. [REDACTED] agreed to be interviewed and related in essence not verbatim, that he flew into O'Hare Airport from New York's LaGuardia Airport at approximately midnight and was driven home to his apartment by [REDACTED] arriving at approximately 0130 hours. [REDACTED] was hungry so he left his apartment alone and exited the building through the lobby on upper North Water St. [REDACTED] used the staircase near the Sheraton Hotel (301 E. North Water St.) to make his way to Lower North Water street and New St. [REDACTED] began walking towards Walgreens located at 342 E. Illinois St. to grab some eggs, by walking north on New St., however Walgreens was closed. [REDACTED] proceeded to Subway Restaurant at 511 N. McClurg Ct. and purchased a tuna sub for [REDACTED] and a salad for himself. [REDACTED] left the Subway Restaurant with the purchased food in a bag and walked southbound on the west side of McClurg CT to walk home. While walking on McClurg CT [REDACTED] called his music agent, [REDACTED] and placed his cell phone in his pocket. [REDACTED] used a wired headphone earbud to speak with [REDACTED] while he walked home. [REDACTED] approached his building on Lower North Water St and walked towards the dock area to enter into the building via a garage access door. Before he reached the access door near the dock area [REDACTED] realized he forgot his key fob and then turned to walk towards the staircase to enter through the lobby entrance instead. While in the middle of the intersection of New St and Lower North Water St and walking southbound [REDACTED] heard one of the offenders state "Empire Faggot Empire Nigger." [REDACTED] replied "what the fuck you say to me?". One of the offenders stated "this is MAGA country Nigger". Immediately thereafter, [REDACTED] was punched to the left of his face. [REDACTED] began to fight back and all three individuals fell to the ground and were "tussling." [REDACTED] felt kicking to his back and a pulling on his neck. The physical altercation then stopped and the offenders fled on foot southbound on New St towards the river and towards the pub named Lizzies. [REDACTED] retrieved his phone from the ground and realized that [REDACTED] was still connected. [REDACTED] encouraged [REDACTED] not to chase after his attackers and go into his apartment for safety. As [REDACTED] was on the staircase, to retreat up towards his apartment building lobby, he noticed a rope, fashioned like a noose, around his neck. When [REDACTED] entered into the building lobby he told the door guy in passing "I just got jumped" then returned to his apartment. As he entered his apartment he felt something wet on his sweatshirt and smelled bleach. [REDACTED] did not initially want to notify the Police, but [REDACTED] encouraged him to report the incident. [REDACTED] subsequently called 911. [REDACTED] stated he was not robbed and was in possession of his property which consisted of his phone, credit card, ATM card, and ID. [REDACTED] gave the following description of offender #1 Male, white, unknown age, 5'10"-6'00" weighing between 180-200 pounds, black ski mask with open eye area, dark colored jacket/top, and dark pants. [REDACTED] related he was able to see the color of the skin through the open area of the mask. [REDACTED] was unable to provide a description of offender #2. [REDACTED] injuries consisted of scratches on both cheeks, redness to the neck and soreness to the back area [REDACTED] was expected to be treated and released. During the interview [REDACTED] revealed he was sent a threatening letter approximately a week prior that the FBI was currently investigating. He also revealed that he received a phone call on Saturday in which a male voice said "Hey you little faggot" when he

answered the phone and then promptly hung up. Lastly, [REDACTED] revealed that he was a guest on AL Sharpton Live Sunday at 4pm in which they were speaking about Trump and HBCU's (Historically Black Colleges and Universities). [REDACTED] had nothing further to relate to R/D's at this time and the interview concluded at 0645 hours.

At 0650 hours R/D's interviewed [REDACTED] alone in room #68 of the Emergency Room Mezzanine Level, while [REDACTED] was receiving medical treatment in a different area of the hospital. [REDACTED] agreed to be interviewed and related, in essence not verbatim, that he is [REDACTED] Creative Director and is staying at [REDACTED] apartment as a guest. [REDACTED] left apartment in [REDACTED] vehicle around 7pm to pick up [REDACTED] from O'Hare Airport. [REDACTED] waited over 4 hours for [REDACTED] to arrive at O'Hare due to many flight delays. They drove back to [REDACTED] apartment together arriving at approximately 1:30 am. [REDACTED] was frustrated regarding the flight delay, so he stayed in the apartment when [REDACTED] left to get food. [REDACTED] received 2 missed calls from [REDACTED] at 2:07 am and 2:08 am. Det. GRAVES verified said missed calls by viewing [REDACTED] phone. [REDACTED] had nothing further to relate to R/D's at this time and the interview was concluded at 0700 hours.

Evidence Technicians beat 5833 arrived at Northwestern Hospital at approximately 0630 hours to document the injuries of [REDACTED]. Beat 5833 photographed the visible injuries of [REDACTED]. R/D's were informed that beat 5833 went to the crime scene and photographed the area. R/D's informed beat 5833 that the reporting Officers beat 1823R had recovered the rope and the clothing that had been stained with apparent bleach. Beat 5833 relocated to 018 district to photograph and inventory the clothing and rope.

At 0615 hours Det. GUTIERREZ interviewed [REDACTED] the night doorman, working at the time [REDACTED] returned to the building after being attacked. [REDACTED] agreed to be interviewed and related, in essence not verbatim that he observed a male enter the lobby and state "I was jumped." The male then went upstairs. [REDACTED] also observed a cut/ scratch on the male's face and what appeared to be snow on his hood. [REDACTED] related that he was aware that [REDACTED] resided in the building and believed the male to be [REDACTED]. [REDACTED] had nothing further to relate to Det. GUTIERREZ at this time and the interview concluded at 0620 hours.

R/D's relocated back to the area of the crime scene in an attempt to recover video. R/D's observed a POD camera on the north east corner of New St. and Lower North Water St.

R/D's observed a POD camera at the end of New St. by the river.

R/D's observed surveillance cameras on Walgreens located at 342 E. Illinois St. (later recovered by Det. FYKES #20925 from [REDACTED]). The interior camera pointing towards the front doors does not appear to show the victim.

R/D's observed private surveillance cameras on the building at the corner of Illinois St and McClurg Ct. R/D's contacted the security for River East Center located at 322 E. Illinois. R/D's recovered said video from [REDACTED].

R/D's relocated to Subway at 511 N. McClurg Ct and was informed that the Video would be emailed to Det. MURRAY by the owner [REDACTED]. The video confirmed that the victim was inside the Subway ordering food.

R/D's observed surveillance cameras at Target located at 401 E. Illinois. R/D's recovered video from [REDACTED]. The video appears to show victim [REDACTED] walking on the west side of McClurg Ct carrying a bag.

R/D's observed cameras at City View Condos and [REDACTED] allowed R/D's to view the cameras. The cameras are situated in the rear of the property and are motion activated. The video does not appear to show victim [REDACTED] walking on McClurg Ct.

R/D's spoke with [REDACTED] of [REDACTED] (residence) who related that he would be able to provide the transponder times that the vehicle of the victim was leaving and entering into the garage. He would be able to provide this information on 30 Jan 2019 along with the building video.

Det. GUTIERREZ recovered video from the loading dock under the residence (Lower North Water St) of [REDACTED]. The video shows [REDACTED] walking towards the garage door then turns around to walk towards the stairs leading up to the lobby of his residence.

R/D's reviewed POD 6870 located at 401 N. New. The POD view is north on New street from Lower North Water St. The camera shows two subjects in dark clothes on the west side of New Street seated on the bench which is in the middle of New St. shortly before the incident. The subjects are then observed walking south, on the west side of New St., just moments before the incident. The subjects leave sight of the camera.

R/D's viewed POD #9079 located at 343 E. River drive. The camera is facing west looking towards the River walk. The camera shows the two individuals running southbound along the wall towards the river then running west down the river walk towards Columbus St. These subjects are observed running just moments after the incident occurred.

R/D's viewed the lobby video which shows the victim [REDACTED] walking into the lobby, passing by the doorman and briefly saying something [REDACTED] is observed with an object hanging around his neck and some white substance on his hood.

The body cameras of Officers BAIG #14926 and ALVAREZ #19689 was viewed and preserved. The cameras show the Officers being met by [REDACTED]. The Officers being brought up to the apartment and upon entering the apartment victim [REDACTED] is observed to have rope wrapped around his neck. Upon being informed that the interview is being recorded victim [REDACTED] requested the cameras be turned off.

Det. CORFIELD interviewed [REDACTED] (DOB [REDACTED] 1971, F/U/47, [REDACTED] via telephone at approximately 1820 hours. [REDACTED] lives at [REDACTED] the same building [REDACTED] lives in. [REDACTED] related the following in summary and not verbatim:

[REDACTED] was watching a movie with her friend in her residence. At around 0030 hours, she went outside to walk her dogs. As she walked her dogs, she observed a person which she described as a male, white, mid 30s, wearing glasses, having reddish-brown hair and slight facial hair, average height and build, wearing a blue and yellow stocking hat with a ball on top, a navy blue sweatshirt, blue jeans, gray and red socks, and brown laced shoes, which appeared wet to her. This man was smoking a cigarette and standing on New St. near Lower North Water St. (underneath the building as she described) near the loading dock between the resident entrance and resident garage door

████████ further related that the man looked at her, and upon doing so, turned away. ██████ described the man as appearing to be waiting for something. As the man turned away, ██████ could see hanging out from underneath his jacket what appeared to be a rope. ██████ went back into her building and did not see the man afterwards. ██████ had nothing further to add at this time.

At 1814 hours Det. GRAVES interviewed ██████ via telephone. ██████ agreed to be interviewed and related in essence and not verbatim, that he was on the phone with ██████ during the attack. ██████ related that at this time he was in Las Vegas and he was on the phone with ██████ at approximately 1200 Pacific Time (0200 central time). ██████ heard someone say something in the background, then heard someone ask if he was the "Empire faggot nigger". ██████ stated he did hear someone say "this is MAGA country". He stated the phone dropped and heard what he believed to be a struggle. ██████ then picked up the phone and said "I was jumped." ██████ told him not to go after the guys and call the Police. ██████ then hung up. ██████ stated that he called ██████ 2 times, but ██████ did not pick up. ██████ related that the times were at 0207 and 0208 hours (central time). ██████ related that he is ██████ musical Agent and stated that he believed SMOLLETT is in good standing with the show "Empire". ██████ believed ██████ signed a contract for another year maybe two. ██████ did confirm that ██████ is ██████ Creative Director. ██████ related that he did not have anything further to add at this time and the interview was concluded at approximately 1825 hours.

████████ was contacted and agreed to do a "walkthrough" of the incident to accurately document the incident. R/D's arrived at the residence of victim ██████ at 1915 hours. ██████ was placed in the back seat of an unmarked Police car. ██████ requested his two friends accompany him, which R/D's agreed.

████████ provided his flight information American Airlines flight number 336 from New York LaGuardia to Chicago O'Hare on 28 Jan 2019.

████████ then details the route he took as R/D's drove the area. ██████ stated that he left the apartment from Upper North Water St., walks down the stairs and walks down New street smoking a cigarette towards Walgreens (342 E. Illinois). He realizes Walgreens is closed then continues towards Subway (511 N. McClurg). ██████ calls ██████ at 0145 and asked if he wants anything from Subway he said a Tuna sandwich. ██████ stated that he orders food and takes the food to go. He leaves Subway, crosses the street and walks northbound on the west side of McClurg Ct. ██████ stated that he called ██████ and was talking with him while wearing the earbuds. He walks past the Target (401 E. Illinois) which is on the other side of the street. He then turns right on Lower North Water St. and walks on the north side of the street. He crossed New St. and was going to enter the residence through the lower level parking garage. He realized that he did not have his key fob because ██████ drove. He turns around and crosses south towards the stairwell. ██████ stated while in the street he hears the beginning of the altercation from behind him. Offenders approach southbound from New St, behind him. ██████ stated that the struggle occurred at the base of the stairwell where the snow was located. He stated that his phone fell to the ground and it was still connected with his manager, from 0201-0206 hours. ██████ stated that no property was taken he reiterated what was said prior to the altercation, "Empire Faggot Empire Nigger" and "this is MAGA country Nigger". ██████ stated they ran south towards the river, but doesn't know which way from there. ██████ then grabbed his phone, saw his food lying on the ground and he picked it up. ██████ stated "Look there is my water bottle that I bought from Subway it's still on the ground at the base of the stairs". ██████ was asked about the sweater not getting dirty to which he explained they were on the ice and snow. ██████ was asked if he would sign to release medical records, which he declined. ██████ was asked to submit to a buccal swab for

elimination for touching the rope which he stated he would ask [REDACTED] (to submit buccal also) and think about it. [REDACTED] was asked to turn over his phone to, which he declined. [REDACTED] stated that he did not have a broken rib as reported in the news, but he was sore in the rib area. R/D's concluded the walk through at 2000 hours and returned [REDACTED] to the front of his residence.

This investigation is ongoing. There is more video being gathered and reviewed. More reports will be generated detailing that progress.

This case remains in PROGRESS.

Report of:

Det. Robert GRAVES #20007

Det. Kimberly MURRAY #20808

Area Central Detective Division

EXHIBIT L

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id : 11580050
Sup id : 13058659 CASR339

| PROGRESS | | DETECTIVE SUP. APPROVAL COMPLETE | | | |
|--|-------------------|--|-----------------|----------------------------|-------------------|
| Last Offense Classification/Re-Classification | IUCR Code | Original Offense Classification | | IUCR Code | |
| BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | 0440 | BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | | 0440 | |
| Address of Occurrence | Beat of Occur | No of Victims | No of Offenders | No of Arrested | SCR No |
| 341 E LOWER NORTH WATER ST | 1834 | 1 | 2 | 0 | |
| Location Type | Location Code | Secondary Location | | Hate Crime | |
| Street | 304 | | | No | |
| Date of Occurrence | Unit Assigned | Date RO Arrived | Fire Related? | Gang Related? | Domestic Related? |
| 29-JAN-2019 02:00 | 1823R | 29-JAN-2019 02:42 | NO | NO | NO |
| Reporting Officer | Star No | Approving Supervisor | Star No | Primary Detective Assigned | Star No |
| CORFIELD, Robert | 20613 | HALEEM, Morad | 1280 | MURRAY, Kimberly | 20808 |
| Date Submitted | Date Approved | Assignment Type | | | |
| 01-MAR-2019 02:54 | 19-MAR-2019 14:41 | FIELD | | | |

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular

Phone:

SSN:

DLN/ID: CA

OTHER IDENTIFICATIONS: Type - State Id #
State - California
Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

SUSPECT(S)

UNK

Male / White

ACTIONS: The Offender Fled From Sidewalk

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED] - No Relationship

UNK

Male / White

DESCRIPTION: 5'10-6'00, 180-200,

ACTIONS: The Offender Fled From Sidewalk

WEARING: Black Mask With Open Eyes Only, Dark Jacket/Top, Dark Pants

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED] - No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

Type

Weapon Used

Abrasions

Hand/Feet/Teeth/Etc.

EXTENT: Minor
Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED] (Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

LOCATION OF INCIDENT:

341 E Lower North Water St
Chicago IL 60611
304 - Street

DATE & TIME OF INCIDENT:

29-JAN-2019 02:00

MOTIVE CODE(S):

Undetermined

CAUSE CODE(S):

Other

METHOD CODE(S):

Dna

CAU CODE(S):

Dna

OTHER PROPERTY RECOVERED:

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]**POSSESSOR/USER:** [REDACTED]**PHONE#:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**INV #:** 14363589**Evidence****PROPERTY TYPE: OTHER**

White Rope

OWNER: Unk**POSSESSOR/USER:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**OTHER PROPERTY
DAMAGED:****INV #:** 14363588**Evidence****PROPERTY TYPE: CLOTHES/FURS**

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]**POSSESSOR/USER:** [REDACTED]**PHONE#:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**PERSONNEL
ASSIGNED:**Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R**OTHER INDIVIDUALS
INVOLVED:**

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED]-1958**DESCRIPTION:** 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium

Complexion

RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular [REDACTED]
Phone: [REDACTED]

DLN/ID: [REDACTED] CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

| | | |
|------------|------------|-------------|
| [REDACTED] | (Victim) | |
| UNK | | (Suspect) |
| [REDACTED] | (Victim) | |
| UNK | | (Suspect) |

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

THIS IS AN AREA CENTRAL INVESTIGATIONS PROGRESS CASE SUPPLEMENTARY REPORT AND SHOULD BE READ IN CONJUNCTION WITH ALL REPORTS RELATED TO THIS RECORD DIVISION NUMBER.

RD NUMBER:
JC133190

TYPE OF INCIDENT:

Aggravated Battery - Hands, Fist, Feet / Minor Injury (0440)

LOCATION:

341 E Lower North Water St
Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:

Tuesday, 29 Jan 2019, 0200 hours

DATE, TIME ASSIGNED:

29 Jan 2019 at 0445 hours

VICTIM:

M/1/36 1982
6'0" 170

MANNER / MOTIVE:

The victim was walking to his residence when he was approached by two offenders who engaged in racial and homophobic slurs directed at the victim. The offenders then struck the victim about the face and body causing minor injuries / undetermined motive, possible hate crime

WITNESS:

Loss Prevention Officer Sheraton
DOB 1989 Grand Hotel
M/B/29

IN DL #

PERSON(S) INTERVIEWED:

Witness

INVESTIGATING DETECTIVES:

Det. R. CORFIELD # 20613
Det. J. SANTOS # 21429

INVESTIGATION:

In summary, on 01 FEB 2019 at 0030 hours, R/D CORFIELD # 20613 and Det. SANTOS # 21429 relocated to the Sheraton Grand Hotel located at 301 E North Water St. and interviewed Loss Prevention Agent related the following in summary and not verbatim:

On the night of the attack, 29 JAN 2019, was working in his official capacity as a Loss

Prevention Agent for the Sheraton Grand Hotel. [REDACTED] has been employed by the hotel for the past several months. [REDACTED] was conducting "tours" of the property, a normal function of his position. During his "tours", he scans bar codes located throughout the premise with a tablet in order to document that he checked on that particular location. At approximately 0200 hours, [REDACTED] was conducting a "tour" of the Chicago Burger Company restaurant, a restaurant located within the Sheraton Grand Hotel on the southeast corner of the ground floor level of the building. [REDACTED] walked outside the Chicago Burger Company restaurant exterior door onto the Riverwalk area, where one of the bar codes was located. As soon as [REDACTED] exited the building, he heard the sounds of footsteps approaching quickly from the north, and then observed a male, approximately 6' tall, wearing all black with a hood or hat and a facemask. [REDACTED] could only see the skin area near the male's eyes where the facemask had cutouts, and believed the male to be white, in his 20s. [REDACTED] shined his flashlight towards the male and asked what he was doing. The male stated that it was cold out and continued running past [REDACTED] and then W/B along the Riverwalk. Immediately afterwards, a second male, stockier than the first and also wearing all dark clothing, ran past [REDACTED] pointing to the first male as he ran. This second male laughed as he ran past [REDACTED] could not make out this male's race, as he had his arm up, covering his face, as he pointed and ran past [REDACTED] believed this male may have been in his 20s as well. [REDACTED] continued on his "tour", walking N/B on the west sidewalk of New St. to where one of the bar codes was located that he needed to scan. As [REDACTED] looked N/B up New St., he observed a third male at the bottom of the staircase that leads from lower to upper North Water St. [REDACTED] described this third male as a younger looking male, unknown race, bent over as if he was picking up something off the street. [REDACTED] completed his tour and went back inside the building.

[REDACTED] further related that the first male to run past him was not holding anything. [REDACTED] was unsure if the second male to run past him was holding anything or not. [REDACTED] believed that the three subjects may have just been goofing around, throwing snow balls at one another.

This investigation remains in PROGRESS.

REPORT OF:

Detective Robert CORFIELD # 20613

Area Central Detective Division

EXHIBIT M

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case Id: 11580050
Sup id: 13056454 CASR339

| PROGRESS | | DETECTIVE SUP. APPROVAL COMPLETE | | | |
|--|-------------------|--|-----------------|----------------------------|-------------------|
| Last Offense Classification/Re-Classification | IUCR Code | Original Offense Classification | | IUCR Code | |
| BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | 0440 | BATTERY / Agg: Hands/Fist/Feet No/Minor Injury | | 0440 | |
| Address of Occurrence | Beat of Occur | No of Victims | No of Offenders | No of Arrested | SCR No |
| 341 E LOWER NORTH WATER ST | 1834 | 1 | 2 | 0 | |
| Location Type | Location Code | Secondary Location | | Hate Crime | |
| Street | 304 | | | No | |
| Date of Occurrence | Unit Assigned | Date RO Arrived | Fire Related? | Gang Related? | Domestic Related? |
| 29-JAN-2019 02:00 | 1823R | 29-JAN-2019 02:42 | NO | NO | NO |
| | | | | | |
| Reporting Officer | Star No | Approving Supervisor | Star No | Primary Detective Assigned | Star No |
| CALLE, David | 20177 | HALEEM, Morad | 1280 | MURRAY, Kimberly | 20808 |
| Date Submitted | Date Approved | | Assignment Type | | |
| 13-MAR-2019 08:04 | 19-MAR-2019 14:48 | | FIELD | | |

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular
Phone:

SSN:

DLN/ID: CA

OTHER IDENTIFICATIONS: Type - State Id #
State - California
Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

SUSPECT(S)

UNK

Male / White

ACTIONS: The Offender Fled From Sidewalk

RELATIONSHIP OF VICTIM TO OFFENDER:

JC133190

[REDACTED] - No Relationship

UNK

Male / White

DESCRIPTION: 5'10-6'00, 180-200,

ACTIONS: The Offender Fled From Sidewalk

WEARING: Black Mask With Open Eyes Only, Dark Jacket/Top, Dark
Pants

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED] - No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

Type

Abrasions

Weapon Used

Hand/Feet/Teeth/Etc.

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED] (Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**LOCATION OF
INCIDENT:**

341 E Lower North Water St

Chicago IL 60611

304 - Street

**DATE & TIME OF
INCIDENT:**

29-JAN-2019 02:00

MOTIVE CODE(S):

Undetermined

CAUSE CODE(S):

Other

METHOD CODE(S):

Dna

CAU CODE(S):

Dna

**OTHER PROPERTY
RECOVERED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

INV #: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**OTHER PROPERTY
DAMAGED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**PERSONNEL
ASSIGNED:**

Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R

**OTHER INDIVIDUALS
INVOLVED:**

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED] 1958

DESCRIPTION: 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium

Complexion

RES:

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular
Phone:

DLN/ID: - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

**CRIME CODE
SUMMARY:**

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

UNK

(Victim)

(Suspect)

UNK

(Victim)

(Suspect)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

PROGRESS SUP NARRATIVE

TYPE OF INCIDENT:

Public Peace Violations / Other Violation (2890)

RD NUMBER:

JC-133190

LOCATION:

341 E Lower North Water St

Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:
Tuesday, 29 Jan 19, 0200 hours

WITNESSES:

[REDACTED]
M/1 [REDACTED] 1991
CB# [REDACTED]
IR# [REDACTED]
DLN [REDACTED] IL

[REDACTED]
M/1 [REDACTED] 1993
CB# [REDACTED]
IR# [REDACTED]
DLN [REDACTED] IL

OFFENDER:
SMOLLETT Jussie

[REDACTED]
M/1/36 [REDACTED] 1982
CB# 19771648
IR# [REDACTED]
DLN [REDACTED] CA

MANNER / MOTIVE:

Jussie SMOLLETT made false reports to police claiming to be the victim of an Aggravated battery/
Undetermined motive.

INTERVIEWED:

[REDACTED]
DLN: Indiana [REDACTED]

INVESTIGATION:

This investigation and the following is a summation and should not be considered verbatim unless noted. This Supplementary Case Report should be read in addition to and in conjunction with any other documentation in existence pertaining to this incident.

On 27 February, 2019 at 0747 hours, R/D Calle #20177 and Det. Campos #21017 met with [REDACTED] at Area Central. [REDACTED] related that on 29 January, 2019 he was working security and was making his rounds and was at CBC (Chicago Burger Company).

[REDACTED] related that while at CBC he heard footsteps and was startled by a subject. [REDACTED] described this subject as being tall and dressed in all black clothing which including a face mask. [REDACTED] related that he shined a flashlight on the subject's face and was able to see white skin around the eye area. [REDACTED] heard the subject say in essence it's cold it's cold as the subject continued away. A second subject was also observed. The second subject did not say anything but as the subject passed he was pointing at the first subject. [REDACTED] related that he was unable to get a look at the subjects face. [REDACTED] described the second subject as being shorter and stocky.

[REDACTED] related that he viewed a photo lineup. As he inspected the lineup his attention was drawn to one individual. This individual had the lightest colored skin compared to the other individuals in the lineup, but was not the individual at CBC.

Reporting Detective
David Calle #20177
Area Central

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014

)

) Hon. _____

) Judge Presiding

MOTION TO DISCLOSE TRANSCRIPTS OF GRAND JURY TESTIMONY

NOW COMES Jussie Smollett, by and through his attorneys, Geragos & Geragos, APC, pursuant to 725 ILCS 5/112-6(c)(3), and respectfully moves the Court to permit the immediate public disclosure of the transcripts of the grand jury testimony of Abimbola Osundairo and Olabinjo Osundairo. In support of this Motion, Mr. Smollett respectfully states as follows:

Background

Jussie Smollett was attacked by two masked men on January 29, 2019 outside his apartment building in the Streeterville neighborhood of Chicago. On February 14, 2019, the Chicago Police Department arrested Abimbola Osundairo and Olabinjo Osundairo (collectively the "Osundairo brothers") upon their arrival to O'Hare International Airport from Nigeria for perpetrating the attack on Mr. Smollett. After what has been reported as at least 47 hours in police custody, in the face of overwhelming evidence of their involvement in the attack, and upon advice by their counsel, the Osundairo brothers admitted to attacking Mr. Smollett but claimed that the attack was a hoax which Mr. Smollett had planned. As a result of their statements to police, the brothers were released from custody and not charged with any crimes.

It is important to note that well before the Osundairo brothers were questioned by the police in mid-February, the "hoax" narrative had been widely reported in the media. In fact, the search history of one of the Osundairo brothers shows that while they were in Nigeria, the

Osundairo brothers were reading dozens of news stories about the developments in the Smollett investigation, including the following pertinent articles:

2/8/2019 10:28:14PM (UTC+0) - Chicago PD Intend to Charge Jussie Smollett If a False Report Was Filed

2/10/2019 8:46:56PM (UTC +0) - Jussie Smollett noose news, by Steve Sailer - The Unz Review (discussing some "of the most publicized hate hoaxes")

2/10/2019 8:52:54PM (UTC +0) - Jussie Smollett To Be "Held Accountable" For Potential False Report, Police Claims

Exhibit A.

**Osundairo Brothers' Lawyer Helps Advance "Hoax" Narrative,
Resulting in Their Release from Custody Uncharged**

In numerous television and radio interviews, the Osundairo brothers' attorney, Gloria Schmidt, revealed that her clients' version of what happened on the night of January 29, 2019 was lawyer-driven, namely that after doing her own investigation of the timeline of events, she came up with a story that allowed her clients to be released from police custody uncharged. For instance, in a television interview on CNN on March 11, 2019, when asked by Anderson Cooper how she came to believe her clients' story, Ms. Schmidt told Anderson that it was actually her and her co-counsel who "pieced everything together." She explained:

Number one, I want to just put it out there that [the Osundairo brothers] fully cooperated with the police. Obviously that starts with cooperating with your attorney. And myself, my co-counsel, Jorge Rodriguez, we walked through the actual timeline. We pieced everything together. This took us a lot of time ourselves. So my own law firm doing our own private investigation. We were able to, to fish it out, if you will, and tell the Commander there's something that doesn't match with the narrative that had been put out by Mr. Smollett.

(Full interview *available at* <https://www.facebook.com/watch/?v=526875264504960>.)

Furthermore, in a radio interview on Chicago's Morning Answer (AM560), which aired on March 29, 2019, Ms. Schmidt admitted that she was the one who told the brothers the details of the attack (as Mr. Smollett had described in a televised interview the prior day) **and** she was

the one who convinced the brothers to tell police that the attack was a hoax. In the interview, Ms. Schmidt explained:

From beginning, we had, I went down to Area Central, which is where the guys were being held up after they were detained in, at customs in O'Hare. So it was Valentine's Day I remember. That first day the police were just kind of feeling me out, seeing what it is I was . . . you know, there is kind of always a little bit of a rift between a defense attorney and the police. And then I told them, "I'm sorry guys I can't work like this." They were giving me the room with the bulletproof glass and I could barely hear the clients and I spent basically the whole day just trying to get to meet them, having a very logistically difficult time. So that first day for me was a real throw away. But what I did after I met them, I did my own investigation. I drove the route. I got out of my car, I walked around where, you know, the alleged attack happened. I walked up the stairwell and I'm like, something does not smell right with this, there's just no way -- this was too planned, why would they be standing there, it's like polar vortex weather. So, and the guys, you know, like I said, it was very hard to hear them because we were in the lock up and I'm sitting through the glass. Okay so the next day that I go, which is Friday, I said to the police, "please can you let me have a contact visit," which means you get to sit in a room with your client and they don't usually do that. But the police in this case said, "you know what, it is noisy, it is hard to understand, so yes." *So, that's when I really got to, you know, got to talk to them and tell them about the details.* What had happened the day before that had infuriated everyone, really, was Robin Roberts' . . . the interview. Right. So that had aired I think on Thursday. And so they let me bring in my laptop, the police were like, "you know what, do what you need to do, we'll give you time." And so I started talking to them and told them: "Hey, they lawyered up, that's good for me, we'll have a trial on a hate crime." [Clears throat.] Excuse me. So the police were there really to just let me do my thing. I brought my co-counsel, Jorge, and umm, then once, once I told them that the interview had aired and this was a lot bigger than they probably had thought, *if you were helping your friend do a publicity stunt that you thought wouldn't go further than the Fox people on your show, then this is, this is your, you know, this is the time, if you're going to set the record straight, this is the time. Or you can stay lawyered up, and I'm happy to do that too, no problem, I can take this to trial.* I am confident that you didn't do a hate crime so stay lawyered up, it's completely up to you. And they both said to me, "Gloria, we don't want to be part of this fraud, like that's not, that's not how we were raised."

(Full interview available at <https://www.youtube.com/watch?v=CS8xuU4DxDM>) (emphasis added.)

In another radio interview, which aired on WGN Radio on March 27, 2019, Ms. Schmidt explicitly acknowledged that it was the statements to police that the Osundairo brothers were acting at Mr. Smollett's direction which shifted the trajectory of the investigation to Mr. Smollett and allowed the brothers to be released from police custody uncharged. Ms. Schmidt stated:

And at the end of the day, it was thanks to that cooperation that the trajectory of their investigation switched. Remember, my clients were persons of interest at the start. Then they became suspects. They were arrested. Then they went home. And obviously that shift is because of the evidence that came to light and it was because this was something that was at Mr. Smollett's direction. So I can't speak for Mr. Smollett but obviously that is the key difference in making the investigation shift towards Mr. Smollett.

(Full interview *available at* <https://wgnradio.com/2019/03/27/jussie-smollett-alleged-attackers-attorney-gloria-schmidt-im-quite-surprised-at-how-nefarious-people-think-this-case-is/>.)

Ms. Schmidt also took the untenable position that her clients' "cooperation" with police was entirely selfless and not motivated in any way by their desire to avoid criminal charges. In a television interview which aired on Fox32 Chicago on March 11, 2019, the following exchange took place with Ms. Schmidt:

HOST: Now when you say they cooperated with police, my sources are saying that the police threatened to charge them with assault and in the 47th hour they eventually agreed to help police in exchange for not being charged. You were in that room. What can you tell us about what happened during that interrogation?

SCHMIDT: I was in the room for all those 47, 48 hours with them and I can tell you the threat of being charged was not a concern to them. It really was not. What was a concern to them, what they realized in that entire process was how much this was going to affect people, not just them, their family . . . people across the board, people that have actually suffered hate crimes themselves. That is the impetus, not, not immunity, not a plea deal, that, that is the real focus for them.

(Full interview *available at* <https://www.facebook.com/Fox32Chicago/posts/gloria-schmidt-the-attorney-for-the-osundairo-brothers-who-allegedly-helped-juss/10157819710633797/>.)

No Independent Corroboration of the Osundairo Brothers' Statements

Following the dismissal of the criminal charges against Mr. Smollett and pursuant to a court order,¹ thousands of pages of discovery were unsealed and publicly disclosed as well as over 70 hours of video footage. The discovery reveals an overwhelming amount of evidence of the Osundairo brothers' involvement in the attack on Mr. Smollett. But critically, other than the Osundairo brothers' self-serving statements which resulted in their release from custody with no criminal charges being filed against them, not a single piece of evidence independently corroborates their claim that the attack was a hoax.

Continued False Reporting of the "Evidence" in this Case

Despite the lack of credible evidence against Mr. Smollett and the fact that all criminal charges have been dismissed against him, he has been presumed guilty of the charges due to the widespread false reporting of the "evidence" in this case, which began long before any such evidence was officially made public. And even after the discovery in this case was unsealed and publicly disclosed, reporters have continued to irresponsibly and falsely report on the evidence in the case. For instance, on June 25, 2019, CBS Chicago reported that Jussie Smollett's search history showed that in the days following the reported attack, Mr. Smollett Googled his name more than fifty times. However, after Mr. Smollett's attorney contacted the network and demanded a retraction because the information was inaccurate, CBS Chicago corrected its original story. *See* Charlie De Mar, "Jussie Smollett Correction: Records Show Osundairo Brother, Not Actor, Was Googling News Of Alleged Attack," **CBS Chicago** (June 25, 2019), *available at* <https://chicago.cbslocal.com/2019/06/25/jussie-smollett-update-actor-googled-him-self-more-than-50-times-in-days-after-alleged-attack/> ("CBS 2 initially reported that Smollett

¹ On May 23, 2019, Judge Steven G. Watkins granted the Media Intervenors' "Emergency Motion to Intervene for Purposes of Objecting to and Vacating the Sealing Order" which had been filed on April 1, 2019. The records in this case were unsealed on a rolling basis following the Court's May 23, 2019 Order.

searched himself. However, after questions were raised by Smollett's attorney, we have verified that the search results are from one of the Osundairo brothers."). But despite the fact that the original story was corrected by CBS Chicago, numerous other media outlets picked up the original story with the inaccurate reporting and did not correct their stories despite being made aware that the information they were reporting was incorrect. *See, e.g.,* Tim Pearce, "Jussie Smollett Googled himself over 50 times after reported hate crime: Report," **Washington Examiner** (June 26, 2019), *available at* <https://www.washingtonexaminer.com/news/jussie-smollett-googled-himself-over-50-times-after-reported-hate-crime>. This is only one example of the way in which false accounts of the "evidence" in this case have dominated the news cycle, tainted public opinion, and led to an unfair presumption of guilt against Mr. Smollett.

Need for Public Disclosure of the Grand Jury Transcripts

Now, in the face of ongoing investigations into this matter and two related pending civil lawsuits, Mr. Smollett is requesting that the Court allow the immediate public disclosure of the transcripts of the grand jury testimony of Abimbola and Olabinjo Osundairo so Mr. Smollett can defend against this ongoing media onslaught against him and the public can be informed of the actual evidence in this case. While the Osundairo brothers' attorney has held press conferences and done numerous television and radio interviews about her clients' account of what happened, their actual sworn testimony before the grand jury has not been disclosed to the public. To compound matters, despite having released over 70 hours of video footage, for some inexplicable reason, the Chicago Police Department has not released the videos of the February 15, 2019 interviews of Abimbola and Olabinjo Osundairo while they were in police custody. The public disclosure of the grand jury transcripts of the Osundairo brothers' testimony is therefore necessary to level the playing field and inform the public of the actual evidence in this case.

Argument

725 ILCS 5/112-6(c)(3) permits the court to disclose matters occurring before the grand jury in the interests of justice. The trial court has substantial discretion in deciding whether to release grand jury matters. *Bd. of Educ. v. Verisario*, 143 Ill. App. 3d 1000, 1009 (1986) (citing *Douglas Oil Co. of California v. Petrol Stops Nw.*, 441 U.S. 211, 223 (1979).) In deciding whether disclosure is required in the interests of justice, the court applies a three-prong particularized need test: "that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed." *Verisario*, 143 Ill. App. 3d at 1009 (internal quotation marks and citations omitted).

As explained below, Mr. Smollett and the citizens of Cook County are best served by the disclosure of the grand jury transcripts of the Osundairo brothers' testimony.

A. Secrecy Concerns Do Not Apply.

The veil of secrecy surrounding grand jury proceedings is not impenetrable, and "[w]here the ends of justice require it, the testimony of a grand jury witness may be disclosed." *People v. French*, 61 Ill. App. 2d 439, 443 (1965) (citing *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 234 (1940); *People v. Johnson*, 31 Ill.2d 602, 606 (1964)).

Here, the grand jury has concluded its proceedings, an indictment against Mr. Smollett was returned (and later dismissed), and the complete grand jury testimony at issue has already been disclosed to the parties in the criminal case. Thus, the primary reasons for grand jury secrecy no longer apply: there is no danger of undue influence or pressure being exerted on the grand jurors or on any witnesses appearing before the grand jury, and there is no danger of an escape by the person against whom an indictment may be returned. *See, e.g., Johnson*, 31 Ill. 2d

at 606; *People v. Goldberg*, 302 Ill. 559, 564 (1922); *Hoge v. People*, 117 Ill. 35, 49 (1886); *see also Ill. v. Sarbaugh*, 552 F.2d 768, 775 (7th Cir. 1977) ("When transcripts are shared, . . . the group of potential retaliators who do not know of the grand jury testimony is reduced and so is the importance of maintaining secrecy.").

Furthermore, the identity of the Osundairo brothers as grand jury witnesses has long been revealed and their own attorney has made numerous statements to the media, including statements specifically commenting on the Osundairo brothers' grand jury testimony. For instance, on February 20, 2019, Ms. Schmidt held a press conference at the courthouse in which she discussed the fact that the Osundairo brothers had just testified before the grand jury that day.

REPORTER: Were they before grand jurors at any point this week?

SCHMIDT: Today.

...

REPORTER: Were they under oath?

SCHMIDT: They were under oath.

...

REPORTER: How long did they testify for today?

SCHMIDT: Let's see. I'm trying to remember, honestly, I want to say about two and a half hours.

REPORTER: A piece? Together?

SCHMIDT: Together.

(Full press conference available at <https://www.facebook.com/FoxBusiness/videos/gloria-schmidt-the-attorney-for-two-brothers-associated-with-the-jussie-smollett/2247100895557118/>.)

Moreover, in the March 29, 2019 radio interview on Chicago's Morning Answer (AM560) referenced above, Ms. Schmidt further commented on the content of her clients' grand jury testimony: "In the grand jury, I remember, I think one of the questions was well you know, did Jussie not think he could pull a punch, or something like that. And Ola said 'no,' and the grand jury members started laughing. Umm, so Ola's job was simply just to hold the bleach and the noose and scream that this was MAGA country and, and it was, you know, Abel's job to kind of like play fight with him." (Full interview *available at* <https://www.youtube.com/watch?v=CS8xuU4DxDM>.)

The Osundairo brothers should not be able to use the media to advance their narrative on the one hand, but on the other hand, shield from the public statements they gave under oath to the grand jury. As the Illinois Supreme Court ruled almost a century ago, "[a] witness has no privilege to have his testimony treated as a confidential communication but must be considered as testifying under all the obligations of an oath in a judicial proceeding, and hence his testimony may be disclosed whenever it becomes material to the administration of justice." *Goldberg*, 302 Ill. at 564. Further, even if the Osundairo brothers may be embarrassed by public access to their testimony, that fact is "insufficient to bar public disclosure." *Culinary Foods, Inc. v. Raychem Corp.*, 151 F.R.D. 297, 301 (N.D. Ill. 1993).

Because grand jury secrecy concerns do not apply here and disclosure is necessary in the interests of justice, as further explained below, the Court should permit the immediate public disclosure of the transcripts of the grand jury testimony of Abimbola Osundairo and Olabinjo Osundairo.

B. Mr. Smollett Has Demonstrated a Particularized and Compelling Need for the Grand Jury Transcripts at Issue.

Because secrecy concerns do not apply in this case, the showing of need that is required to warrant disclosure of the transcripts is *de minimus*. See *In the Matter of Grand Jury Proceedings, Miller Brewing Co.*, 687 F.2d 1079, 1091 (7th Cir. 1982) ("As considerations justifying secrecy become less relevant, a party asserting a need for grand jury transcripts will have a lesser burden in showing justification for disclosure."). Here, Mr. Smollett has demonstrated a sufficiently particularized and compelling need for disclosure because the Osundairo brothers' grand jury testimony is material and necessary to the ongoing investigation of this matter as well as to two pending civil lawsuits, one of which was brought by the Osundairo brothers themselves. The Cook County Inspector General's Office is currently investigating the handling of the Smollett case by the State Attorney's Office. Furthermore, Judge Toomin's June 21, 2019 order granted the appointment of a special prosecutor to conduct an independent investigation of the actions of any person or office involved in the prosecution of Mr. Smollett and to further prosecute Mr. Smollett, if reasonable grounds exist.²

In addition to the ongoing investigations mentioned above, there are two pending civil lawsuits in which the grand jury testimony of the Osundairo brothers is material and necessary. Specifically, following the dismissal of the criminal charges against Mr. Smollett, on April 11, 2019, the City of Chicago filed a civil complaint in the Circuit Court of Cook County, Illinois, Law Division, styled *City of Chicago v. Smollett*, No. 2019L003898, in which the City is seeking to recover civil penalties, treble damages, and attorneys' fees and costs under the Municipal Code of Chicago for the alleged false statements made by Mr. Smollett to the City.³

² Concurrent with this Motion, Mr. Smollett is filing a Motion for Reconsideration of the June 21, 2019 Order.

³ On July 3, 2019, Mr. Smollett removed this case to federal court.

Additionally, on April 23, 2019, the Osundairo brothers filed a civil complaint in the United States District Court for the Northern District of Illinois, Eastern Division, styled *Olabinjo Osundairo, et al. v. Mark Geragos, et al.*, Case No. 19-cv-2727, against Mr. Smollett's attorneys Mark Geragos, Tina Glandian, and the Geragos & Geragos Law Firm for defamation, false light, and *respondeat superior* based on statements allegedly made in the course of their representation of Mr. Smollett. In the Complaint, the Osundairo brothers specifically allege that "[o]n February 20, 2019, Plaintiffs testified truthfully before a grand jury regarding the facts of what happened on or around January 29, 2019." Complaint, ¶ 17, *available at* <https://dig.abclocal.go.com/wls/documents/2019/042319-wls-smollett-suit.pdf>.

Mr. Smollett is in possession of the grand jury transcripts in question, which show inconsistencies between the Osundairo brothers' testimony under oath and public statements made about this matter, as well as certain other evidence that has now been publicly disclosed. Indeed, grand jury transcripts can be used for a variety of purposes during civil depositions and at trial for impeachment purposes. *See, e.g., Sarbaugh*, 552 F.2d at 776-77; *Ill. v. Harper & Row Publishers, Inc.*, 50 F.R.D. 37, 40 (N.D. Ill. 1969); *see, e.g., People v. Wurster*, 83 Ill. App. 3d 399, 407 (1980) (allowing the State to use a portion of defendant's grand jury testimony for purposes of impeachment during cross-examination of the defendant). Therefore, disclosure of the Osundairo brothers' testimony is material and necessary to Mr. Smollett's defense and the ascertainment of the truth. *See United States v. Procter & Gamble Co.*, 356 U.S. 677, 683 (1958) ("the use of the grand jury transcript at the trial to impeach a witness, to refresh his recollection, to test his credibility and the like [constitute] "particularized need").

Moreover, the public has expressed substantial concerns regarding the handling of this case. And the public still demands to know the facts and circumstances underlying the

investigation of this matter as well as the reasons for the dismissal of the charges against Mr. Smollett, as evidenced, in part, by the media's motion to unseal the records in this case as well as the petition for the appointment of a special prosecutor. Therefore, the disclosure of the sworn testimony of the two key witnesses against Mr. Smollett will also serve the public interest.

C. Mr. Smollett Is Seeking Disclosure of a Limited Amount of Material.

At the time the Osundairo brothers testified before a grand jury on February 20, 2019, the State Attorney's Office was not seeking an indictment against Mr. Smollett. Rather, on February 21, 2019, a felony complaint signed by Detective Michael Theis was filed against Mr. Smollett. Several weeks later, on March 7, 2019, an indictment was returned against Mr. Smollett based on the testimony of Detective Theis. Mr. Smollett is not seeking the disclosure of the grand jury transcripts of Detective Theis' testimony. His request, is therefore, narrowly structured to cover only the material needed.

D. Mr. Smollett Is Prejudiced by the Non-Disclosure of the Transcripts.

While there is no reason to maintain the secrecy of the grand jury transcripts in question, Mr. Smollett will be prejudiced by the continued non-disclosure of this information.

The media attention in this case has been staggering. Dozens of camera crews and reporters flooded the courthouse for Mr. Smollett's initial bond hearing on February 21, 2019. Police superintendent Eddie Johnson and assistant state's attorney Risa Lanier gave press conferences before and after the bond hearing, respectively, in which they extensively discussed the State's "evidence." Helicopters and news vans followed Mr. Smollett as he left the courthouse. The media subsequently requested extended media coverage for all proceedings in the case.

Furthermore, during the pendency of the criminal case against Mr. Smollett, police superintendent Eddie Johnson and then-mayor Rahm Emanuel each separately went on national television to discuss the evidence and improperly opine on Mr. Smollett's guilt. Days after an indictment was filed against Mr. Smollett, the Osundairo brothers' attorney, Gloria Schmidt, also made numerous TV appearances in which she discussed the expected testimony of her clients and continued to improperly opine on Mr. Smollett's guilt. Specifically, on March 11, 2019, Ms. Schmidt appeared on Good Morning America, CNN's Anderson Cooper, CBS News, and NBC's Access, repeatedly stating that Mr. Smollett abused his power and took advantage of the Osundairo brothers in asking them to participate in a hoax.⁴ The result of all these public statements has been massive and widespread misinformation, which has deprived Mr. Smollett of the presumption of innocence and deprived him of his constitutional right to a fair trial. This case has been tried to the media to the extent that Judge Toomin's June 21, 2019 Order Granting the Appointment of a Special Prosecutor was based in large part on information contained in inaccurate media reports, as opposed to actual evidence.

But as it turns out, much of what was widely reported as "evidence" in this case has already proven to be demonstrably false, including the police superintendent's public statements

⁴ Rule 3.6(a) of the Illinois Rules of Professional Conduct provides that "[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding in the matter." Comment 5 to the Rule explains that there are "certain subjects that would pose a serious and imminent threat to the fairness of a proceeding, particularly when they refer to . . . a criminal matter, or any other proceeding that could result in incarceration." Comment 5 lists the following subjects as ones that would pose a serious and imminent threat to the fairness of a proceeding:

- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness; ...
- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration.

Cmt. 5, Ill. R. Prof'l C. 3.6(a).

that (1) Mr. Smollett was dissatisfied with his salary on the Fox show 'Empire,' (2) the \$3,500 check from Mr. Smollett to Abimbola Osundairo was for the staged attack, and (3) Mr. Smollett had sent himself a threatening letter one week prior to the attack. Moreover, a review of the recently unsealed discovery reveals further false and misleading statements by the police:

Eddie Johnson, the police superintendent, said after Mr. Smollett's arrest that one of the Osundairo brothers had spoken with the actor on the phone about an hour after the attack. But the search warrant records show their next phone call was actually about 18 hours later. (A police spokesman, Anthony Guglielmi, said last week that the superintendent had misspoken.)

Julia Jacobs, "Jussie Smollett Case: What Do We Know, and What's Left to Investigate?," **The N.Y. Times** (July 1, 2019), *available at* <https://www.nytimes.com/2019/07/01/arts/jussie-smollett-video-case.html>.

The interests of justice require equalizing the playing field and allowing the public access to all the information in this case, not just the information the Chicago Police Department has selectively disclosed. As noted above, despite having released over 70 hours of video footage, for some inexplicable reason, the Chicago Police Department has not released the videos of the February 15, 2019 interviews of Abimbola and Olabinjo Osundairo while they were in police custody. The public disclosure of the grand jury transcripts of the Osundairo brothers' testimony is therefore in the interests of justice, both for Mr. Smollett individually as well as the citizens of Cook County generally, and is far outweighed by any privacy concerns the brothers may have in their grand jury testimony.

//

//

//

WHEREFORE, Jussie Smollett, by his attorneys, Geragos & Geragos, respectfully requests that this Court allow the immediate public disclosure of the grand jury transcripts of the testimony of Abimbola Osundairo and Olabinjo Osundairo.

Dated: July 19, 2019

Respectfully submitted,

/s/ Tina Glandian

Tina Glandian, Rule 707 Admitted
Mark J. Geragos, Rule 707 Admitted
Geragos & Geragos, APC
256 5th Avenue
New York, NY 10010
&
Geragos & Geragos, APC
644 South Figueroa Street
Los Angeles, CA 90017-3411
(213) 625-3900
tina@geragos.com
mark@geragos.com

Attorneys for Jussie Smollett

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014
)
) Hon. _____

ORDER

This cause coming before the Court on a Motion pursuant to 725 ILCS 5/112-6(c)(3) to permit the immediate public disclosure of the transcripts of the grand jury testimony of Abimbola Osundairo and Olabinjo Osundairo (“Motion”), due notice having been given and the Court being fully advised in the premises, IT IS HEREBY ORDERED that the Motion is granted.

IT IS SO ORDERED.

ENTERED:

Circuit Court of Cook County
Criminal Division

EXHIBIT A

Web Bookmarks (6)

| # | Title | URL | Last Visited | Visits | Path | Source | Time | Deleted |
|---|---------------------|---|--------------|--------|-------------------|---|------|---------|
| 1 | Apple | https://www.apple.com/ | | | Root/BookmarksBar | Safari Source Extraction: Legacy | | |
| 2 | Bing | https://www.bing.com/ | | | Root/BookmarksBar | Safari Source Extraction: Legacy | | |
| 3 | Google | https://www.google.com/?client=safari&channel=iphone_bm | | | Root/BookmarksBar | Safari Source Extraction: Legacy | | |
| 4 | iPhone User Guide | https://help.apple.com/iphone/guide/ | | | Root | Safari Source Extraction: Legacy | | |
| 5 | T-Mobile My Account | https://mas.t-mobile.com/ | | | Root | Safari Source Extraction: Legacy | | |
| 6 | Yahoo | https://yahoo.com/ | | | Root/BookmarksBar | Safari Source Extraction: Legacy | | |

Web History (641)

| # | Title | URL | Last Visited | Visits | Source | Deleted |
|----|--|--|------------------------------------|--------|---|---------|
| 1 | Cannot Open Page | https://www.google.com/?client=safari&channel=iphone_bm | 2/13/2019 10:48:33 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | |
| 2 | Current Local Time in Chicago, Illinois, USA | https://www.timeanddate.com/worldclock/usa/chicago | 2/13/2019 6:05:37 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 3 | what is time in chicago - Google Find | https://www.google.com/search?client=safari&channel=iphone_bm&ei=kWZjXJSaD4VWV1fAPgOChmAl&q=what+is+time+in+chicago&og=what+is+time+in+chicago&gs_l=mobile-gws-wiz-serp..1.0.0i203i2j0i22i30i2j33i22i29i30.442.86284.44301727..44302502..2.0..0.385.6362.2-7j13.....0...1.....5..0i71j35i39j0i19.XnUpzEjgW3f | 2/13/2019 6:05:28 AM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 4 | 146 kg to lbs - Google Find | https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&ei=hAZjXJPoF-GKiwSBs5nQAO&q=146+kg+to+lbs&og=146+kg+&gs_l=mobile-gws-wiz-hp..1.0.0i203i4j0i22i30.3243.11313..13497..2.0..0.745.3202.2-3j1j3j0j1.....0...1.....5..35i39j0i19.Cw4uTiGgBVM | 2/12/2019 5:47:08 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 5 | Google | https://www.google.com/?client=safari&channel=iphone_bm | 2/12/2019 5:46:51 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 6 | Jussie Smollett attack: New York Post reporters find bottle with bleach-smelling liquid along route taken by actor, police say | https://www.google.com/amp/s/abc7chicago.com/amp/bottle-with-bleach-sodor-found-near-site-of-jussie-smollett-attack%3b-empire-actor-submits-phone-records/5133055/ | 2/12/2019 1:51:58 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 7 | jussie smollett - Google Find | https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&ei=1WJgXPTpBoSkwOKvypbgDQ&q=jussie+smollett&og=&gs_l=mobile-gws-wiz-hp..1.1.35i39i5.0.0.2104..1.0.0.0.0.....0...5.045ocsRm0s0 | 2/10/2019 8:56:47 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 8 | Jussie Smollett To Be "Held Accountable" For Potential False Report, Police Claims | https://www.hotnewhiphop.com/jussie-smollett-to-be-held-accountable-for-potential-false-report-police-claims-news.71643.html?utm_source=reamp&utm_medium=link&utm_campaign=gotonhh&utm_term=&utm_content= | 2/10/2019 8:56:14 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 9 | Jussie Smollett To Be "Held Accountable" For Potential False Report, Police Claims | https://www.google.com/amp/s/www.hotnewhiphop.com/jussie-smollett-to-be-held-accountable-for-potential-false-report-police-claims-news.71643.html%3f_amp | 2/10/2019 8:52:54 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 10 | jussie smollett - Google Find | https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&ei=1WJgXPTpBoSkwOKvypbgDQ&q=jussie+smollett&og=&gs_l=mobile-gws-wiz-hp..1.1.35i39i5.0.0.2104..1.0.0.0.0.....0...5.045ocsRm0s0 | 2/10/2019 8:52:54 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |
| 11 | Jussie Smollett noose news, by Steve Sailer - The Unz Review | http://www.unz.com/steve/jussie-smollett-noose-news/ | 2/10/2019 8:46:56 PM(UTC+0) | 1 | Safari Source Extraction: Legacy | Yes |

✱ ✱ ✱ ✱ ✱ ✱ ✱ ✱ ✱ ✱

3446

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR

No. 19 MR 00014

RESPONSE OF PETITIONER
TO
MOTION FOR SUBSTITUTION OF JUDGE FOR CAUSE

Comes now Petitioner, Sheila O'Brien, *pro se*, and subject to and alternatively to the Information to Spread of Record filed July 25, 2019 and attached letter of July 24, 2019, and in response to the Motion for Substitution of Judge for Cause filed by Jussie Smollett, states:

Petitioner incorporates the Information to Spread of Record filed July 25, 2019 and attached letter of July 24, 2019 in this Response to the Motion for Substitution of Judge for Cause.

**Illinois Rules of Civil Procedure - not Illinois Rules of Criminal Procedure -
control this proceeding.**

Smollett is incorrect in stating that 725 ILCS 5/114-5 (d) of the Illinois Statutes controls in this proceeding. This is a civil proceeding – not a criminal proceeding. As such, 735 ILCS 5/2-1001 controls motions for substitution of judge in civil proceedings. Smollett and his attorneys rely upon the wrong statute and thus, this motion is not well taken.

Further, in both Illinois criminal and Illinois civil rules of procedure, motions for substitution of judge for cause must be supported by affidavit. Smollett's motion is not

supported by affidavit and as such, does not comply with the law of Illinois. Smollett has not met his burden on this Motion for Substitution of Judge.

Respectfully Submitted,

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she sent an exact copy of the above pleading/document **Response of Petitioner** to Motion for Substitution of Judge for Cause filed by Jussie Smollett by electronic mail to the following before the hour of 5:00 p.m. on Thursday, July 25, 2019 to:

Kim Foxx, Cook County State's Attorney

Cathy McNeil Stein, ASA

Amy Crawford, ASA

50 W Washington St., Suite 500

Chicago, Illinois 60602

risa.lanier@cookcountyil.gov,

AMY.CRAWFORD@cookcountyil.gov

CATHYMCNEILSTEIN@cookcountyil.gov

jose.trujillo@cookcountyil.gov

Patricia Holmes, Attorney for Jussie Smollett

Brian Watson, Attorney for Jussie Smollett

70 West Madison Street, Suite 2900

Chicago, Illinois 60602

pholmes@rshc-law.com

BWatson@rshc-law.com

Tina Glandian, Attorney for Jussie Smollett

Mark J. Geragos, Attorney for Jussie Smollett

Geragos & Geragos, APC

256 5th Avenue

New York, NY 10010

&

Geragos & Geragos, APC

644 South Figueroa Street

Los Angeles, CA 90017-3411

tina@geragos.com

mark@geragos.com

Valerie L. Hletko, Attorney for Tina Tchen

Scott Sakiyama, Attorney for Tina Tchen

Buckley LLP

2001 M Street NW, Suite 500

Washington, DC 20036

&

353 N Clark Street, Suite 3600

Chicago, IL 60654

vhletko@buckleyfirm.com

ssakiyama@buckleyfirm.com

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR No. 19 MR 00014

RESPONSE OF PETITIONER
TO
MOTION TO INTERVENE FILED BY JUSSIE SMOLLETT

Comes now Petitioner, Sheila O'Brien, *pro se*, and subject to and alternatively to the Information to Spread of Record filed July 25, 2019 and attached letter of July 24, 2019, and in response to the Motion to Intervene filed by Jussie Smollett, states:

Petitioner incorporates the Information to Spread of Record filed July 25, 2019 and attached letter of July 24, 2019 in this Response to the Motion to Intervene.

Illinois Statutes provide:

Sec. 2-408. Intervention. (a) Upon timely application anyone shall be permitted as of right to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or a court officer. 735 ILCS 5/2-408) (from Ch. 110, par. 2-408.

Smollett's Motion to Intervene is Untimely

Mr. Smollett is not surprised about these proceedings nor has he plead surprise. Smollett has known about these proceedings from the filing of the original Petition for Appointment of a

Special Prosecutor until this moment. Smollett and his attorneys from **two law firms** – the Geragos & Geragos California/NY law firm and the Riley Shafer Holmes & Cancila Chicago law firm received notice of these proceedings and received every pleading in this case. The certificates of service of every pleading in this cause show that Geragos & Geragos and Riley Safer received every pleading. (See attached Exhibits 1-10). Geragos & Geragos and Riley Safer have communicated with the petitioner and other counsel on this case in numerous emails. (See attached Exhibit 11 - 29).

Brian Watson of Riley Safer was present in court several times at hearings, stepped up to the bench when the case was called, appeared before the court and identified himself as being present for Mr. Smollett.

Smollett filed pleadings in this proceeding on April 30, 2019 styled **Objections and Motion to Quash Notice to Appear and Produce Pursuant to Supreme Court Rule 237 Directed to Jussie Smollett** in opposition to pleadings of the petitioner. In that pleading, Geragos & Geragos on behalf of Jussie Smollett, plead:

"Finally, there is no good cause to compel Mr. Smollett to appear at this hearing or at any future hearing in this matter, and doing so would cause him undue hardship. Even where a Rule 237 notice is proper, "[c]ompelling the appearance of a party at trial pursuant to Rule 237(b) is a matter of the court's discretion and not a mandatory requirement." *Pros Corp. Mgmt. Savs., Inc. v. Ashley S. Rose, Ltd.*, 228 Ill. App. 3d 573, 581, 592 N.E.2d 609, 614 (1992). "A court's power to order a party to appear should only be exercised for good cause and not to subject a party to harassment, oppression or hardship." *Id.* (citing *Pacemaker Food Stores, Inc. v. Seventh Mont Corp.*, 117 Ill. App. 3d 636, 648, 453 N.E.2d 806, 815 (1983)); *see also Oakview New Lenox School Dist. No. 122 v. Ford Motor Co.*, App. 3 Dist. 1978, 19 Ill. Dec. 43, 61 Ill. App. 3d 194, 378 N.E.2d 544.

On March 26, 2019, hours **after** the case against Mr. Smollett was dismissed and the records ordered sealed, the Chicago Police Department released a number of police reports pursuant to a Freedom of Information Act FOIA request. Although certain identifying information of witnesses was

redacted in these reports, Mr. Smollett's home address was not. As a result, to ensure his safety and privacy, Mr. Smollett immediately moved out of his apartment in Chicago.

As of March 27, 2019, Mr. Smollett has returned to California and he does not currently maintain a residence in Chicago. Therefore, requiring Mr. Smollett's appearance out of state in a matter in which he is not a party would be an undue burden, particularly given the additional security measures which would be required if he were compelled to travel to Chicago to attend such a hearing."

It is clear from this pleading of April 30, 2019 - filed by Smollett and Geragos & Geragos - that Smollett and his attorneys had knowledge of these proceedings, were conversant in the facts and status of the proceedings/pleadings and had formulated a legal theory about his participation in these proceedings.

It is also clear that Mr. Smollett was requested to appear by Petitioner and participate in these proceedings, could have appeared, could have been heard, but refused to appear and participate and indeed, fought hard NOT to participate in these proceedings.

Mr. Smollett and his attorneys chose NOT to appear and participate throughout the entirety of these proceedings, but approximately 55 days after the close of evidence at the trial and on the last day of the 30 day time period after judgment has been rendered, they appear in court and ask to be heard.

The original parties to this proceeding would be seriously prejudiced by allowing Mr. Smollett to intervene because the entire matter would have to be re-tried. A re-trial would take precious time away from the work of the courts, the work of the State's attorney and the time of the petitioner.

Smollett's Motion to Intervene is untimely and not well taken.

Smollett's interest was adequately represented by the Office of the State's Attorney at all stages of these proceedings.

Mr. Smollett and the State's Attorney have the same goal – **to prevent the appointment of a special prosecutor**. They may have *different reasons* for the same goal, but **their goal is the same - no special prosecutor**. The State's Attorney adequately represented that goal in court throughout these proceedings – moving to quash Rule 237 notices and subpoenas, filing motions and argument in open court. Ms. Stein – the lead counsel for the State's Attorney - is a graduate of Harvard Law School and a worthy opponent. The court can take judicial notice of Ms. Stein's performance and the adequacy of the State's attempts to deny the relief requested in the Petition to Appoint a Special Prosecutor.

Smollett's interests were adequately represented by the parties, specifically, the Office of the State's Attorney of Cook County; thus, Smollett has not prevailed in his burden on this Motion to Intervene.

Respectfully Submitted,

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she sent an exact copy of the above pleading/document **Response of Petitioner** to Motion to Intervene Filed by Jussie Smollett by electronic mail to the following before the hour of 5:00 p.m. on Thursday, July 25, 2019 to:

Kim Foxx, Cook County State's Attorney
Cathy McNeil Stein, ASA
Amy Crawford, ASA
50 W Washington St., Suite 500
Chicago, Illinois 60602
risa.lanier@cookcountyil.gov,
AMY.CRAWFORD@cookcountyil.gov
CATHYMCNEILSTEIN@cookcountyil.gov
jose.trujillo@cookcountyil.gov

Patricia Holmes, Attorney for Jussie Smollett
Brian Watson, Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602
pholmes@rshc-law.com
BWatson@rshc-law.com

Tina Glandian, Attorney for Jussie Smollett
Mark J. Geragos, Attorney for Jussie Smollett
Geragos & Geragos, APC
256 5th Avenue
New York, NY 10010
&
Geragos & Geragos, APC
644 South Figueroa Street
Los Angeles, CA 90017-3411
tina@geragos.com
mark@geragos.com

Valerie L. Hletko, Attorney for Tina Tchen
Scott Sakiyama, Attorney for Tina Tchen
Buckley LLP
2001 M Street NW, Suite 500
Washington, DC 20036
&
353 N Clark Street, Suite 3600
Chicago, IL 60654
vhletko@buckleyfirm.com
ssakiyama@buckleyfirm.com

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

19-MR-00014

In Re: Appointment of Special Prosecutor

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that in addition to hand delivery/service for the *Summons for Kim Foxx*, *Summons for Joseph Magats*, *Subpoena Duces Tecum for Kim Foxx*, *Subpoena Duces Tecum for Joseph Magats*, *Notice to Appear and Produce for Kim Foxx and Joseph Magats* and *Notice to Appear and Produce for Jussie Smollett* for Thursday, May 2, 2019 at 9:00 AM, Courtroom 101, 2600 S. California, Chicago, Illinois, she also delivered the above by email delivery before the hour of 5:00 p.m. on Friday, April 26, 2019 to:


Risa Lanier, Asst. State's Attorney Cook County
2650 S. California, 11D40
Chicago, Illinois 60608
Risa.lanier@cookecountvil.gov

Patricia Holmes
Attorney for Jussie
Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602
Pholmes@rshc-law.com

Brian O'Connor Watson
Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602
BWatson@rshc-law.com

Mark J. Geragos
Attorney for Jussie Smollett
Geragos & Geragos
644 South Figueroa Street
Los Angeles, California 90017
mark@geragos.com

Tina Glandian
Attorney for Jussie Smollett
Geragos & Geragos
644 South Figueroa Street
Los Angeles, California 90017
tina@geragos.com


Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she served the foregoing *Notice to Appear and Produce Pursuant to Supreme Court Rule 237* by hand delivery before the hour of 5:00 p.m. on Friday, April 26, 2019 to:

Kim Foxx

Cook County State's Attorney

50 W. Washington St., Suite 500

Chicago, Illinois 60602

Joseph Magats

Asst. Cook County State's Attorney

50 W. Washington St., Suite 500

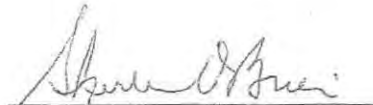
Chicago, Illinois 60602

Patricia Holmes

Attorney for Jussie Smollett

70 West Madison Street, Suite 2900

Chicago, Illinois 60602



Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien

Pro Se

360 E. Randolph #1801

Chicago, Illinois 60601

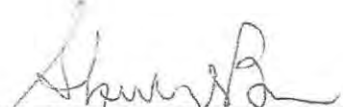
224.766.1904

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she sent an exact copy of the above pleading/document "Request to Admit" by electronic mail to the following before the hour of 5:00 p.m. on Tuesday, May 7, 2019 to:

Kim Foxx, Cook County State's Attorney
Cathy McNeil Stein, Asst. State's Attorney
50 W Washington St., Suite 500
Chicago, Illinois 60602

Patricia Holmes, Attorney for Jussie Smollett
Brian O'Connor Watson, Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602


Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

"WARNING: If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine."

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

In Re: Appointment of Special Prosecutor

19-MR-00014

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she served *Disclosure, Request to Supplement the Record and Request for Scheduling Information* by email delivery before the hour of 5:00 p.m. on Monday May 13, 2019 to:

Risa Lanier
Asst. State's Atty
Risa.lanier@cookcountvill.gov

Hon. LeRoy Martin, Jr.
Court email and/or fax

Cathy McNeil Stein
Asst. State's Atty
CATHYMCNEIL.STEIN@cookcountvill.gov

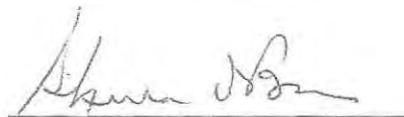
Hon. Michael Toomin
Court email and/or fax

Patricia Holmes
Attorney for Jussie
Smollett
Pholmes@rshc-law.com

Mark J. Geragos
Attorney for Jussie
Smollett
mark@geragos.com

Brian O'Connor Watson
Attorney for Jussie Smollett
BWatson@rshc-law.com

Tina Glandian
Attorney for Jussie
Smollett
tina@geragos.com


Sheila M. O'Brien, *pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

In Re: Appointment of Special Prosecutor

19-MR-00014

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she served:

1. *Emergency Motion to Reconsider Denial of Motion for Substitution of Judge as a Matter of Right*
2. *Emergency Motion for Substitution of Judge as a Matter of Right*
3. *Emergency Motion for Disqualification of Tax Supported Attorneys representing Kim Foxx*
4. *Emergency Motion for Discovery*
5. *Emergency Motion to Reconsider Denial for Out of County Judge*
6. *Emergency Motion for Continuance of Hearing on Merits of Petition*
7. *Rule 237 notice for Kim Foxx and Joseph Magats for Friday, May 31, 2019*

by email delivery before the hour of 5:00 p.m. on Tuesday, May 21, 2019 to:

Risa Lanier
Asst. State's Atty
Risa.lanier@cookcountvil.gov

Cathy McNeil Stein
Asst. State's Atty
CATHYMCNEIL.STEIN@cookcountvil.gov

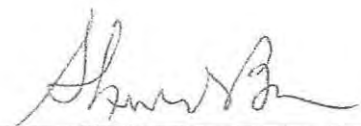
Patricia Holmes
Attorney for Jussie Smollett
Pholmes@rshc-law.com

Brian O'Connor Watson
Attorney for Jussie Smollett
BWatson@rshc-law.com

Hon. Michael Toomin
Diane.walsh@cookcountvil.gov

Mark J. Geragos
Attorney for Jussie Smollett
mark@geragos.com

Tina Glandian
Attorney for Jussie Smollett
tina@geragos.com


Sheila M. O'Brien, *pro se*

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

In Re: Appointment of Special Prosecutor

19-MR-00014

NOTICE OF EMERGENCY MOTIONS

Risa Lanier
Asst. State's Atty
Risa.Lanier@cookcountyil.gov

Cathy McNeil Stein
Asst. State's Atty
CATHYMCNEIL.STEIN@cookcountyil.gov

Patricia Holmes
Attorney for Jussie
Smollett
Pholmes@rshc-law.com

Brian O'Connor Watson
Attorney for Jussie Smollett
BWatson@rshc-law.com

Hon. Michael Toomin
Diane.walsh@cookcountyil.gov

Mark J. Geragos
Attorney for Jussie
Smollett
mark@geragos.com

Tina Glandian
Attorney for Jussie
Smollett
tina@geragos.com

Please take notice that on Tuesday, May 28, 2019 at 9:30 am, I will appear before the Honorable Michael Toomin, in Suite/Courtroom 8004, Juvenile Courts, 2245 West Ogden, Chicago, Illinois 60612 and present the

1. *Emergency Motion to Reconsider Denial of Motion for Substitution of Judge as a Matter of Right*
2. *Emergency Motion for Substitution of Judge as a Matter of Right*
3. *Emergency Motion for Disqualification of Tax Supported Attorneys representing Kim Foxx*
4. *Emergency Motion for Discovery*
5. *Emergency Motion to Reconsider Denial for Out of County Judge*
6. *Emergency Motion for Continuance of Hearing on Merits of Petition*

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on May 29, 2019, the foregoing was served on the below attorneys of record by email.

Sheila M. O'Brien
360 E. Randolph #1801
Chicago, Illinois 60601
sobrien368@aol.com

Cathy McNeil Stein
Assistant State's Attorney
Chief, Civil Actions Bureau
500 Richard J. Daley Center
Chicago, Illinois 60602
cathymcneil.stein@cookcountyil.gov

Mark J. Geragos
Tina Glandian
Geragos & Geragos, APC
644 S. Figueroa St.
Los Angeles, California 90017
mark@geragos.com
tina@geragos.com

Patricia Holms
Brian O'Conner Watson
Raley Safer Holmes & Cancila, LLP
70 W. Madison St., Suite 2900
Chicago, Illinois 60602
pholmes@rshc-law.com
bwatson@rshc-law.com

Risa Lanier
Cook County State's Attorney's Office
2650 S. California Ave., 11D40
Chicago, Illinois 60608
risa.lanier@cookcountyil.gov

/s/ Valerie L. Hletko
Valerie L. Hletko

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

IN RE APPOINTMENT OF
SPECIAL PROSECUTOR

19 MR 00014
Hon. Michael P. Toomin

NOTICE OF MOTION

To: Patricia Holmes (pholmes@rshc-law.com)
Brian O'Connor Watson (bwatson@rshc-law.com)
Raley Safer Holmes & Cancila, LLP.
70 West Madison Street, Suite 2900
Chicago, Illinois 60602

Sheila M. O'Brien (sobrien368@aol.com)
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601



PLEASE TAKE NOTICE that on Thursday, May 31, 2019, at 9:30 a.m., I will appear before The Honorable Michael P. Toomin in Courtroom 400, at the Circuit Court of Cook County, Criminal Division, and present the attached **MOTION TO STRIKE PETITIONER'S NOTICE TO APPEAR AND PRODUCE PURSUANT TO SUPREME COURT RULE 237**, which is hereby served upon you.

KIMBERLY M. FOXX

State's Attorney of Cook County

By: /s/ Cathy McNeil Stein
Cathy McNeil Stein
Assistant State's Attorney
Chief, Civil Actions Bureau
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-5365

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

Case No.: 19 MR 00014

Hon. Michael P. Toomin

NOTICE OF MOTION

TO: See Attached Certificate of Service

PLEASE TAKE NOTICE that on Friday, May 31, 2019, at 9:30 a.m., I will appear before The Honorable Michael P. Toomin in Courtroom 400, at the Circuit Court of Cook County, Criminal Division, 2600 South California Avenue, Chicago, Illinois 60608, and then and there present the attached Motion which is hereby served upon you.

Dated: May 29, 2019

Respectfully submitted:

/s/ Valerie L. Hletko
Valerie L. Hletko
Buckley LLP
353 N. Clark St., Suite 3600
Chicago, IL 60654
2001 M St. NW, Suite 500
Washington, D.C. 20036
(312) 924-9800 (Telephone)
(312) 924-9899 (Fax)
vhletko@buckleyfirm.com

Attorneys for Tina Tchen

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on May 29, 2019, the foregoing was served on the below attorneys of record by email.

Sheila M. O'Brien
360 E. Randolph #1801
Chicago, Illinois 60601
sobrien368@aol.com

Cathy McNeil Stein
Assistant State's Attorney
Chief, Civil Actions Bureau
500 Richard J. Daley Center
Chicago, Illinois 60602
cathymcneil.stein @cookcountyil.gov

Mark J. Geragos
Tina Glandian
Geragos & Geragos, APC
644 S. Figueroa St.
Los Angeles, California 90017
mark@geragos.com
tina@geragos.com

Patricia Holms
Brian O'Conner Watson
Raley Safer Holmes & Cancila, LLP
70 W. Madison St., Suite 2900
Chicago, Illinois 60602
pholmes@rshc-law.com
bwatson@rshc-law.com

Risa Lanier
Cook County State's Attorney's Office
2650 S. California Ave., 11D40
Chicago, Illinois 60608
risa.lanier@cookcountyil.gov

/s/ Valerie L. Hletko
Valerie L. Hletko

From: SHEILA OBRIEN <sobrien368@aol.com>
Date: April 18, 2019 at 4:09:49 PM CDT
To: Brian Watson <bwatson@rshc-law.com>
Cc: "risa.lanier@cookcountyl.gov" <risa.lanier@cookcountyl.gov>, Tina Glandian <tina@geragos.com>, "Mark J. Geragos" <mark@geragos.com>, Patricia Holmes <pholmes@rshc-law.com>
Subject: Re: In re Appointment of a Special Prosecutor, No. 19 MR 00014

Thank you. Acknowledge receipt.

Sheila M. O'Brien
Justice - retired
Illinois Appellate Court
Chicago

On Apr 18, 2019, at 5:03 PM, Brian Watson <bwatson@rshc-law.com> wrote:

Please see the attached papers. Thank you.

Brian O'Connor Watson
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W Madison St, Ste 2900
Chicago, Illinois 60602
(312) 471-8700 (main)
(312) 471-8776 (direct)
(312) 281-8801 (cell)
bwatson@rshc-law.com
www.rshc-law.com

CONFIDENTIALITY NOTE: This e-mail is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this e-mail message is not the intended recipient, or the employee or agent responsible for delivery of the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this e-mail in error, please notify us immediately by telephone at (312) 471-8700 and also indicate the sender's name. Thank you.

<_.pdf>

From: Sheila O'Brien <sobrien368@aol.com>

Date: April 26, 2019 at 4:23:03 PM CDT

To: bwatson@rshc-law.com, risa.lanier@cookcountyl.gov

Cc: tina@geragos.com, mark@geragos.com, pholmes@rshc-law.com

Subject: Pleadings - In re Appointment of a Special Prosecutor, No. 19 MR 00014

Good afternoon,

Please find attached - filed Friday, April 26, 2019:

Subpoena Duces Tecum for Kim Foxx

Subpoena Duces Tecum for Joseph Magats

Rule 237 Notice to Appear and Produce for Jussie Smollett

Rule 237 Notice to Appear and Produce for Kim Foxx and Joseph Magats

Summons for Kim Fox

Summons for Joseph Magats

Certificate of Service on all the above

This copy of the Rule 237 Notice for Jussie Smollett is not a filed stamped copy. Apologies. Thought I had another filed stamped copy. Each of you received a file stamped copy in the hand delivery.

I have not yet issued a subponea for Jussie Smollet.

Please acknowledge receipt. Thank you.

Best,

Sheila M. O'Brien

<04.26.19.Cert.Service.pdf>

<04.26.19.Rule237.Foxx.Magats.pdf>

<04.26.19.Rule237.Smollett.pdf>

<04.26.19.Subpoena.Foxx.pdf>

<04.26.19.Subpoena.Magats.pdf>

<04.26.19.Summons.Foxx.pdf>

<04.26.19.Summons.Magats.pdf>

From: SHEILA OBRIEN <sobrien368@aol.com>

Date: May 20, 2019 at 2:25:13 PM CDT

To: risa.lanier@cookcountyiil.gov, CATHYMCNEIL.STEIN@cookcountyiil.gov,
pholmes@rshc-law.com, BWatson@rshc-law.com, mark@geragos.com, tina@geragos.com,
Diane Walsh <Diane.Walsh@cookcountyiil.gov>, jose.trujillo@cookcountyiil.gov

Subject: Motion Days?

Hi Ms. Walsh,

Are there any days in the next week or two weeks we can set motions before Judge Toomin in 19-MR-00014?

Thank you for letting us know.

Best,

Sheila M. O'Brien
Justice - retired
Illinois Appellate Court
Chicago

www.rshc-law.com

From: JOSE TRUJILLO (States Attorney) <jose.trujillo@cookcountyl.gov>
Sent: Tuesday, April 30, 2019 10:46 AM
To: Patricia Holmes <pholmes@rshc-law.com>; Brian Watson <bwatson@rshc-law.com>
Cc: CATHYMCNEIL STEIN (States Attorney) <CATHYMCNEIL.STEIN@cookcountyl.gov>
Subject: IN RE APPOINTMENT OF SPECIAL PROSECUTOR - 19 MR 00014 - Filings

Sent on behalf of Chief Cathy McNeil Stein

Good Morning,

Please see the attached filings.

Jose D. Trujillo
Administrative Assistant to Cathy McNeil Stein
Chief, Civil Actions Bureau
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, IL 60602
P: 312.603.5365 E: jose.trujillo@cookcountyl.gov

This communication is private and confidential and may be subject to attorney-client and/or work product privileges. If you have received this message in error, please notify the sender and remove it from your system.

CONFIDENTIALITY NOTE: This e-mail is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this e-mail message is not the intended recipient, or the employee or agent responsible for delivery of the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this e-mail in error, please notify us immediately by telephone at (312) 471-8700 and also indicate the sender's name. Thank you.

From: Sheila O'Brien <sobrien368@aol.com>

Date: May 1, 2019 at 11:46:01 AM CDT

To: bwatson@rshc-law.com,

jose.trujillo@cookcountyl.gov, CATHYMCNEIL.STEIN@cookcountyl.gov,

risa.lanier@cookcountyl.gov

Cc: pholmes@rshc-law.com, tina@geragos.com, mark@geragos.com

Subject: Re: IN RE APPOINTMENT OF SPECIAL PROSECUTOR - 19 MR 00014 - Filings

Good morning,

Ms. Stein and Ms. Lanier,

Could you email a copy of the third pleading filed yesterday?

The motion for the State's Attorney and Inspector General to be able to look into the criminal file?

Thanks so much.

Best,

Sheila M. O'Brien

Justice - Retired

Illinois Appellate Court

Chicago

In a message dated 4/30/2019 2:56:12 PM Central Standard Time, bwatson@rshc-law.com writes:

See attached papers. Thanks.

Brian O'Connor Watson
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W Madison St, Ste 2900
Chicago, Illinois 60602
(312) 471-8700 (main)

(312) 471-8776 (direct)

(312) 281-8801 (cell)

bwatson@rshc-law.com

15

From: SHEILA OBRIEN <sobrien368@aol.com>

Date: May 16, 2019 at 11:22:55 AM CDT

To: risa.lanier@cookcountyl.gov, CATHYMCNEIL.STEIN@cookcountyl.gov,
pholmes@rshc-law.com, BWatson@rshc-law.com, mark@geragos.com, tina@geragos.com,
josec.trujillo@cookcountyl.gov

Subject: Tomorrow 5.17. Toomin

Good morning everyone,

Just FYI....called Judge Martin's office and staff said we are set for tomorrow at 9:30 am in Courtroom 400.

Did not ask if it is a status or something on the merits. Assuming status given where we are.

If anyone hears otherwise, could you please inform?

Thanks...

Sheila M. O'Brien

From: Sheila O'Brien <sobrien368@aol.com>

Date: May 8, 2019 at 4:40:10 PM CDT

To: bwatson@rshc-law.com, pholmes@rshc-law.com,
risa.lanier@cookcountvil.gov, CATHYMCNEIL.STEIN2cookcountvil.gov@aol.com, jose.trujillo@cookcountvil.gov,
tina@geragos.com, mark@geragos.com

Subject: O'Brien filing 5.8.19

Dear All,

Please see attached. Thank you.

Sheila M. O'Brien

Justice - Retired
Illinois Appellate Court
Chicago

<5.8.19O'Brien response.pdf>

From: Sheila O'Brien <sobrien368@aol.com>

Date: May 13, 2019 at 11:04:40 AM CDT

To: risa.lanier@cookcountyil.gov,

CATHYMCNEIL,STEIN@cookcountyil.gov, pholmes@rshc-law.com, BWatson@rshc-law.com, mark@geragos.com, tina@geragos.com

Subject: Special Prosecutor Pleadings 5.13.19

Dear All,

Attached please find pleadings I filed this morning.

I will fax them to Judge Martin and Judge Toomin.

Thank you.

Best,
Sheila O'Brien

<5.13.19 Request Supp..pdf>

<5.13.19 Req.Scheduling.pdf>

<5.13.19 Disclosure.pdf>

<5.13.19 Cert. of Service.pdf>

From: SHEILA OBRIEN <sobrien368@aol.com>
Date: May 20, 2019 at 4:46:07 PM CDT
To: "Diane Walsh (Chief Judge's Office)" <diane.walsh@cookcountyl.gov>
Cc: "RISA LANIER (States Attorney)" <risa.lanier@cookcountyl.gov>, "CATHYMCNEIL STEIN (States Attorney)" <CATHYMCNEIL.STEIN@cookcountyl.gov>, "pholmes@rshc-law.com" <pholmes@rshc-law.com>, "BWatson@rshc-law.com" <BWatson@rshc-law.com>, "mark@geragos.com" <mark@geragos.com>, "tina@geragos.com" <tina@geragos.com>, "JOSE TRUJILLO (States Attorney)" <jose.trujillo@cookcountyl.gov>
Subject: Re: Motion Days?

The motions are pre-trial motions.

Would he be available to hear them anytime before Friday May 31, the day of trial?

Thanks.

Sheila M. O'Brien
Justice - retired
Illinois Appellate Court
Chicago

On May 20, 2019, at 4:13 PM, Diane Walsh (Chief Judge's Office)
<diane.walsh@cookcountyl.gov> wrote:

Ms. O'Brien,

We have a date set within two weeks, May 31st. If you intend to file any motions, please do so with proper notice and be prepared to have those motions heard on Friday, May 31, 2019.

Diane N. Walsh
Legal Officer
Juvenile Justice Division
Circuit Court of Cook County
2245 West Ogden Avenue
Room 8004
Chicago, Illinois 60612
312-433-4333
Fax:312-433-6591
diane.walsh@cookcountyl.gov

From: SHEILA OBRIEN <sobrien368@aol.com>

Date: May 20, 2019 at 4:52:51 PM CDT

To: "Diane Walsh (Chief Judge's Office)" <diane.walsh@cookcountyil.gov>

Cc: "RISA LANIER (States Attorney)" <risa.lanier@cookcountyil.gov>, "CATHYMCNEIL STEIN (States Attorney)" <CATHYMCNEIL.STEIN@cookcountyil.gov>, "pholmes@rshc-law.com" <pholmes@rshc-law.com>, "BWatson@rshc-law.com" <BWatson@rshc-law.com>, "mark@geragos.com" <mark@geragos.com>, "tina@geragos.com" <tina@geragos.com>, "JOSE TRUJILLO (States Attorney)" <jose.trujillo@cookcountyil.gov>

Subject: Re: Motion Days?

Dear Ms Walsh,

Could you inform us where Judge Toomin will be holding court on this matter so proper notices can be prepared? Thanks much.

Sheila M. O'Brien
Justice - retired
Illinois Appellate Court
Chicago

From: Sheila O'Brien <sobrien368@aol.com>

Date: May 21, 2019 at 4:50:30 PM CDT

To: risa.lanier@cookcountyil.gov,

CATHYMCNEIL.STEIN@cookcountyil.gov, pholmes@rshc-law.com, bwatson@rshc-law.com, mark@geragos.com, tina@geragos.com,

Diane.walsh@cookcountyil.gov, jose.trujillo@cookcountyil.gov

Subject: Pleadings - 5.21.19 19-MR00014

Dear All,

Please find attached pleadings filed today in

19-MR-00014

In re: Appointment of Special Prosecutor

Please acknowledge receipt. Thanks!

Sheila O'Brien

From: SHEILA OBRIEN <sobrien368@aol.com>

Date: May 24, 2019 at 3:51:44 PM CDT

To: risa.lanier@cookcountyil.gov, CATHYMCNEIL.STEIN@cookcountyil.gov,
pholmes@rshc-law.com, bwatson@rshc-law.com, mark@geragos.com, tina@geragos.com,
Diane.walsh@cookcountyil.gov, jose.trujillo@cookcountyil.gov

Cc: bklubes@buckleyfirm.com, vhletko@buckleyfirm.com

Subject: Re: Pleadings - 5.21.19 19-MR00014

Dear All,

Am forwarding the most recent pleadings to Benjamin Klubes and Valerie Hletko - both in this email - who are representing Tina Tchen on my subpoena for her for May 31.

Because Ms. Tchen is mentioned in the motion for discovery set for Tuesday, May 28 at Juvenile Court before Judge Toomin, thought her counsel should have these pleadings and be informed.

Ben and Valerie - If you need all the pleadings, etc, happy to send to you.

Best to all...

Sheila M. O'Brien
Justice - retired
Illinois Appellate Court
Chicago
224.766.1904

From: Sheila O'Brien <sobrien368@aol.com>

Date: May 24, 2019 at 4:42:54 PM CDT

To: sobrien368@aol.com,

risa.lanier@cookcountyil.gov, CATHYMCNEIL.STEIN@cookcountyil.gov, [pholmes@rshc-](mailto:pholmes@rshc-law.com)

law.com, bwatson@rshc-law.com, mark@geragos.com,

tina@geragos.com, Diane.walsh@cookcountyil.gov, jose.trujillo@cookcountyil.gov

Cc: bklubes@buckleyfirm.com, vhletko@buckleyfirm.com

Subject: Re: Pleadings - 5.21.19 19-MR00014

Trying this again and attaching pleadings again...

Could the Buckley lawyers let me know you have received these?

Thanks. SMO

From: SHEILA OBRIEN <sobrien368@aol.com>
Date: May 24, 2019 at 5:51:52 PM CDT
To: "Hletko, Valerie" <vhletko@buckleyfirm.com>
Cc: "risa.lanier@cookcountytill.gov" <risa.lanier@cookcountytill.gov>,
"CATHYMCNEIL.STEIN@cookcountytill.gov" <CATHYMCNEIL.STEIN@cookcountytill.gov>,
"pholmes@rshc-law.com" <pholmes@rshc-law.com>, "bwatson@rshc-law.com"
<bwatson@rshc-law.com>, "mark@geragos.com" <mark@geragos.com>, "tina@geragos.com"
<tina@geragos.com>, "Diane.walsh@cookcountytill.gov" <Diane.walsh@cookcountytill.gov>,
"jose.trujillo@cookcountytill.gov" <jose.trujillo@cookcountytill.gov>, "Klubes, Benjamin B."
<BKlubes@buckleyfirm.com>
Subject: Re: Pleadings - 5.21.19 19-MR00014

Ms Hletko,

Could not tell if the witness fee and mileage was attached to subpoena.
If not, happy to send that over at your convenience.

Thanks.

Best,

Sheila M. O'Brien
Justice - retired
Illinois Appellate Court
Chicago
224.766.1904

On May 24, 2019, at 5:06 PM, Hletko, Valerie <vhletko@buckleyfirm.com> wrote:

Received—thank you.

Valerie L. Hletko

Buckley LLP

T: 202.349.8054

M: 202.207.6984

From: Hletko, Valerie

Sent: Wednesday, May 29, 2019 3:12 PM

To: 'sobrien368@aol.com' <sobrien368@aol.com>; 'cathymcneil.stein@cookcountytill.gov' <cathymcneil.stein@cookcountytill.gov>; 'mark@geragos.com' <mark@geragos.com>; 'tina@geragos.com' <tina@geragos.com>; 'pholmes@rshc-law.com' <pholmes@rshc-law.com>; 'bwatson@rshc-law.com' <bwatson@rshc-law.com>; 'risa.lanier@cookcountytill.gov' <risa.lanier@cookcountytill.gov>; Klubes, Benjamin B. <bklubes@buckleyfirm.com>; 'jose.trujillo@cookcountytill.gov' <jose.trujillo@cookcountytill.gov>; Miller, Adam <amiller@buckleyfirm.com>; 'diane.walsh@cookcountytill.gov' <diane.walsh@cookcountytill.gov>; 'AMY.CRAWFORD@cookcountytill.gov' <AMY.CRAWFORD@cookcountytill.gov>

Cc: Sakiyama, Scott <ssakiyama@buckleyfirm.com>; Klubes, Benjamin B. <bklubes@buckleyfirm.com>

Subject: IN RE APPOINTMENT OF SPECIAL PROSECUTOR - 19 MR 00014 – Filings

Good Afternoon,

Please see the attached filings. We will provide a follow-up email with a file-stamped version later this afternoon. Ms. Walsh, we plan to provide a courtesy copy to Judge Toomin's chambers tomorrow in addition to this electronic copy.

Valerie L. Hletko

Partner

Buckley LLP

2001 M Street NW, Suite 500

Washington, DC 20036

T (202) 349-8054

M (202) 207-6984

353 N Clark Street, Suite 3600

Chicago, IL 60654

T (312) 924-9854

vhletko@buckleyfirm.com

This email message (including any attachments) is only for use by the intended recipient(s) and is presumed confidential. It also may be subject to the attorney-client privilege or other confidentiality protections and may constitute inside information. If you are not an intended recipient, you may not review, copy, distribute, or otherwise use this message or its contents. If you received this message in error, please notify the sender and delete this message (including any attachments) from your system immediately. Any unauthorized reading, copying, distribution, or other use of this message or its contents is strictly prohibited and may be unlawful.

<2019.05.29 Tchen Notice of Motion and Motion to Quash.pdf>

25

SR298

From: SHEILA OBRIEN <sobrien368@aol.com>

Date: May 29, 2019 at 2:53:15 PM CDT

To: "Hletko, Valerie" <vhletko@buckleyfirm.com>

Cc: "cathymcneil.stein@cookcountyil.gov" <cathymcneil.stein@cookcountyil.gov>,
"mark@geragos.com" <mark@geragos.com>, "tina@geragos.com" <tina@geragos.com>,
"pholmes@rshc-law.com" <pholmes@rshc-law.com>, "bwatson@rshc-law.com"
<bwatson@rshc-law.com>, "risa.lanier@cookcountyil.gov" <risa.lanier@cookcountyil.gov>,
"Klubes, Benjamin B." <BKlubes@buckleyfirm.com>, "jose.trujillo@cookcountyil.gov"
<jose.trujillo@cookcountyil.gov>, "Miller, Adam" <amiller@buckleyfirm.com>,
"diane.walsh@cookcountyil.gov" <diane.walsh@cookcountyil.gov>,
"AMY.CRAWFORD@cookcountyil.gov" <AMY.CRAWFORD@cookcountyil.gov>,
"Sakiyama, Scott" <ssakiyama@buckleyfirm.com>

Subject: Re: IN RE APPOINTMENT OF SPECIAL PROSECUTOR - 19 MR 00014 –
Filings

Acknowledge receipt. Thank you.

Sheila M. O'Brien
Justice - retired
Illinois Appellate Court
Chicago

From: Sheila O'Brien <sobrien368@aol.com>

Date: May 30, 2019 at 4:21:23 PM CDT

To: vhletko@buckleyfirm.com, cathymcneil.stein@cookcountyil.gov, mark@geragos.com,
tina@geragos.com, pholmes@rshc-law.com, bwatson@rshc-law.com,
risa.lanier@cookcountyil.gov, BKlubes@buckleyfirm.com,
jose.trujillo@cookcountyil.gov, amiller@buckleyfirm.com,
diane.walsh@cookcountyil.gov, AMY.CRAWFORD@cookcountyil.gov,
ssakiyama@buckleyfirm.com

Subject: IN RE - 19 MR 00014 – Filings of 5.30.19

Good Afternoon,

Please find attached Petitioner's Response to Tina Tchen's motion to quash subpoena and State's Attorney's Motion to Quash 237 notice.

Please acknowledge receipt.

Thanks.

Sheila M. O'Brien

Justice - Retired
Illinois Appellate Court
Chicago

From: Sheila O'Brien <sobrien368@aol.com>

Date: May 31, 2019 at 4:49:37 PM CDT

To: Diane.Walsh@cookcountyil.gov,

CATHYMCNEIL.STEIN@cookcountyil.gov, AMY.CRAWFORD@cookcountyil.gov,

jose.trujillo@cookcountyil.gov, pholmes@rshc-law.co, bwatson@rshc-law.com,

Bklubes@buckleyfirm.com, amiller@buckleyfirm.com,

vhletko@buckleyfirm.com, ssakiyama@buckleyfirm.com, mark@geragos.com,

lina@geragos.com

Subject: Exhibits - Hearing 5.31.19 Special Prosecutor

Dear All,

Please find attached the exhibits 1-7 from the hearing of 5.31.19 which Judge Toomin admitted into evidence.

Exhibits 8 & 9 will be in another email.

Thanks.

Please acknowledge receipt.

Sheila O'Brien

<Ex. 1.pdf>

<Ex. 2.pdf>

<Ex. 3.pdf>

<Ex. 4.pdf>

<Ex. 5.pdf>

<Ex. 6.pdf>

<Ex. 7.pdf>

From: Sheila O'Brien <sobrien368@aol.com>

Date: May 31, 2019 at 4:55:51 PM CDT

To: Diane.Walsh@cookcountyil.gov,

CATHYMCNEIL.STEIN@cookcountyil.gov, AMY.CRAWFORD@cookcountyil.gov,

jose.trujillo@cookcountyil.gov, pholmes@rshc-law.com, bwatson@rshc-law.com,

bkjubes@buckleyfirm.com, amiller@buckleyfirm.com,

vhletko@buckleyfirm.com, ssakiyama@buckleyfirm.com, mark@geragos.com,

tina@geragos.com

Subject: Ex. 8 & 9 Hearing 5.31.19 Special Prosecutor

Dear All,

Please find attached camera pdf of Exhibits 8 & 9 which Judge Toomin admitted into evidence today.

Scanner went down.

Thanks.

Please acknowledge receipt.

Best,

Sheila O'Brien

<Ex.8a.jpg>

<Ex. 8b.jpg>

<Ex. 8c.jpg>

<Ex. 9a.jpg>

<Ex. 9b.jpg>

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR No. 19 MR 00014

RESPONSE OF PETITIONER
TO
MOTION FOR RECONSIDERATION

Comes now Petitioner, Sheila O'Brien, *pro se*, and subject to and alternatively to the Information to Spread of Record filed July 25, 2019 and attached letter of July 24, 2019, and in response to the Motion for Reconsideration filed by Jussie Smollett, states:

Petitioner incorporates the Information to Spread of Record filed July 25, 2019 and attached letter of July 24, 2019 in this Response to the Motion for Reconsideration.

Smollett's Rambling Thirty (30) page Motion for Reconsideration is Fatally Flawed.

735 ILCS 5/2-1203 states:

(735 ILCS 5/2-1203) (from Ch. 110, par. 2-1203)

Sec. 2-1203. Motions after judgment in non-jury cases.

(a) In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.

(b) Except as provided in subsection (a) of Section 413 of the Illinois Marriage and Dissolution of Marriage Act, a motion filed in apt time stays enforcement of the judgment except that a judgment granting injunctive or declaratory relief shall be stayed only by a court order that follows a separate application that sets forth just cause for staying the enforcement.

(Source: P.A. 95-902, eff. 1-1-09; 96-1072, eff. 1-1-11.)

Smollett is not a party and, thus this motion is not well taken.

Even if this Honorable Court were to grant Smollett's Motion to Intervene, Smollett's Motion to Reconsider is not well taken. This Honorable Court is aware of the record in this proceeding and evidence in this proceeding. Smollett's Motion to Reconsider is so replete with hearsay, misinformation, misconstruing of evidence and misstatements that it would take Petitioner at least 60 pages to attack each and every sentence; further, Smollett's Motion to Reconsider has not met the burden necessary to be granted.

This Honorable Court knows the record, the law and the history of this proceeding. Petitioner voices her objection to the Motion to Reconsider and trusts that this Honorable Court needs no further comment from Petitioner.

Respectfully Submitted,

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she sent an exact copy of the above pleading/document **Response of Petitioner** to Motion to Reconsider Filed by Jussie Smollett by electronic mail to the following before the hour of 5:00 p.m. on Thursday, July 25, 2019 to:

Kim Foxx, Cook County State's Attorney

Cathy McNeil Stein, ASA

Amy Crawford, ASA

50 W Washington St., Suite 500

Chicago, Illinois 60602

risa.lanier@cookcountyil.gov,

AMY.CRAWFORD@cookcountyil.gov

CATHYMCNEILSTEIN@cookcountyil.gov

jose.trujillo@cookcountyil.gov

Patricia Holmes, Attorney for Jussie Smollett

Brian Watson, Attorney for Jussie Smollett

70 West Madison Street, Suite 2900

Chicago, Illinois 60602

pholmes@rshc-law.com

BWatson@rshc-law.com

Tina Glandian, Attorney for Jussie Smollett

Mark J. Geragos, Attorney for Jussie Smollett

Geragos & Geragos, APC

256 5th Avenue

New York, NY 10010

&

Geragos & Geragos, APC

644 South Figueroa Street

Los Angeles, CA 90017-3411

tina@geragos.com

mark@geragos.com

Valerie L. Hletko, Attorney for Tina Tchen

Scott Sakiyama, Attorney for Tina Tchen

Buckley LLP

2001 M Street NW, Suite 500

Washington, DC 20036

&

353 N Clark Street, Suite 3600

Chicago, IL 60654

vhletko@buckleyfirm.com

ssakiyama@buckleyfirm.com

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR No. 19 MR 00014

RESPONSE OF PETITIONER
TO
MOTION TO DISCLOSE TRANSCRIPTS OF GRAND JURY TESTIMONY

Comes now Petitioner, Sheila O'Brien, *pro se*, and subject to and alternatively to the Information to Spread of Record filed July 25, 2019 and attached letter of July 24, 2019, and in response to the Motion to Disclose Transcripts of Grand Jury Testimony filed by Jussie Smollett, states:

Petitioner incorporates Information to Spread of Record filed July 25, 2019 and attached letter of July 24, 2019 into this Response to Motion to Disclose Transcripts.

Testimony before the Grand Jury is not the subject of this proceeding.

Although the Circuit Courts of Illinois are courts of general jurisdiction, the initial pleadings in any proceeding inform the court of the matter to be litigated. This petition was brought pursuant to 55 ILCS 5/3-9008 – a specific statute for a specific purpose. The secrecy of the grand jury is not before this court. There has been no motion for joinder of claims from other proceedings. Accordingly, this motion is not well taken.

Respectfully Submitted,

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she sent an exact copy of the above pleading/document **Response of Petitioner** to Motion to Disclose Transcripts of Grand Jury Testimony by electronic mail to the following before the hour of 5:00 p.m. on Thursday, July 25, 2019 to:

Kim Foxx, State's Attorney
Cathy McNeil Stein, ASA
Amy Crawford, ASA
50 W Washington St., Suite 500
Chicago, Illinois 60602
risa.lanier@cookcountyil.gov,
AMY.CRAWFORD@cookcountyil.gov
CATHYMCNEILSTEIN@cookcountyil.gov
jose.trujillo@cookcountyil.gov

Patricia Holmes, Attorney for Jussie Smollett
Brian Watson, Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602
pholmes@rshc-law.com
BWatson@rshc-law.com

Tina Glandian, Attorney for Jussie Smollett
Mark J. Geragos, Attorney for Jussie Smollett
Geragos & Geragos, APC
256 5th Avenue
New York, NY 10010
&
Geragos & Geragos, APC
644 South Figueroa Street
Los Angeles, CA 90017-3411
tina@geragos.com
mark@geragos.com

Valerie L. Hletko, Attorney for Tina Tchen
Scott Sakiyama, Attorney for Tina Tchen
Buckley LLP
2001 M Street NW, Suite 500
Washington, DC 20036
&
353 N Clark Street, Suite 3600
Chicago, IL 60654
vhletko@buckleyfirm.com
ssakiyama@buckleyfirm.com

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR No. 19 MR 00014

**Information to Spread of Record Concerning
Pleadings Filed on July 19, 2019**

Comes now Petitioner, Sheila M. O'Brien, *pro se*, and spreads of record the following information:

**Neither Glandian, Geragos or the Geragos law firm
are licensed to practice law in Illinois.**

Petitioner incorporates by reference into this Information to Spread of Record, and attaches here, the letter sent to the court on July 24, 2019.

**Glandian, Geragos and the Geragos law firm
have a conflict of interest with Smollett as alleged in their own pleadings.**

In Smollett's Motion to Disclose Transcripts of Grand Jury Testimony, Smollett through his attorneys Glandian, Geragos and Geragos & Geragos, asks this court to allow Smollett and his attorneys to disclose the grand jury testimony of the Osundairo brothers "for truth". His attorneys allege:

Additionally, on April 23, 2019, the Osundairo brothers filed a civil complaint in the United States District Court for the Northern District of Illinois, Eastern Division, styled *Olabinjo Osundairo, et al. v. Mark Geragos, et al.*, Case No. 19-cv-2727, against Mr. Smollett's attorneys Mark Geragos, Tina Glandian, and the Geragos & Geragos Law Firm for defamation, false light, and *respondeat superior* based on statements allegedly made in the course of their representation of Mr. Smollett. In the Complaint, the Osundairo brothers

specifically allege that "[o]n February 20, 2019, Plaintiffs testified truthfully before a grand jury regarding the facts of what happened on or around January 29, 2019." Complaint, ¶ 17, *available at* <https://dig.abclocal.go.com/wls/documents/2019/042319-wls-smollett-suit.pdf>.

Mr. Smollett is in possession of the grand jury transcripts in question, which show inconsistencies between the Osundairo brothers' testimony under oath and public statements made about this matter, as well as certain other evidence that has now been publicly disclosed. Indeed, grand jury transcripts can be used for a variety of purposes during civil depositions and at trial for impeachment purposes. *See, e.g., Sarbaugh*, 552 F.2d at 776-77; *Ill. v. Harper & Row Publishers, Inc.*, 50 F.R.D. 37, 40 (N.D. Ill. 1969); *see, e.g., People v. Wurster*, 83 Ill. App. 3d 399, 407 (1980) (allowing the State to use a portion of defendant's grand jury testimony for purposes of impeachment during cross-examination of the defendant). Therefore, disclosure of the Osundairo brothers' testimony is material and necessary to Mr. Smollett's defense and the ascertainment of the truth.

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by **a personal interest of the lawyer.**

Comments: Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.

Trial courts are instructed to engage in a two-step analysis to determine whether disqualifications of counsel is warranted. Initially the trial court must determine whether there is an actual conflict of interest or a showing of a "serious potential for conflict" between the interests of an attorney and his client. *People v. Ortega*, 2019 Ill.2d 354, 361 (2004). Then, if it is determined that a conflict or serious potential conflict exists, the trial court must determine whether the presumption in favor of defendant's chosen counsel is overcome by the conflict after considering the following factors: "(1) the defendant's interest in having the undivided loyalty of counsel; (2) the State's right to a fair trial in which defense counsel acts ethically and does not use confidential information to attack a State's witness; (3) the appearance of impropriety should the jury learn of the conflict; (4) the probability that continued representation by counsel of choice will provide grounds for overturning a conviction. *Ortega* 209 Ill.2d at 361-62.

Here, the conflict is obvious. Glandian, Geragos and Geragos & Geragos have a personal interest in the outcome of the Motion to Disclose Transcript of Grand Jury Testimony of the Osundairo brothers – Glandian and Geragos have been sued by the brothers and are opposing them and hope to put the veracity of the brothers at issue.

Are Glandian and Geragos filing this Motion to Disclose Transcript of Grand Jury Testimony to benefit their client Smollett or to benefit themselves? If there is any question, the conflict of Glandian and Geragos is at issue and they are precluded from representing Smollett in any proceedings involving the Osundairo brothers.

Petitioner spreads this information of record in this proceeding.

Respectfully Submitted,

Sheila M. O'Brien
Petitioner, *pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601
224.766.1904

CERTIFICATE OF SERVICE

Sheila M. O'Brien, the undersigned, *pro se*, certifies that she sent an exact copy of the above pleading/document **Information to Spread of Record** Concerning Pleadings Filed on July 19, 2019 by electronic mail to the following before the hour of 5:00 p.m. on Thursday, July 25, 2019 to:

Kim Foxx, Cook County State's Attorney
Cathy McNeil Stein, ASA

Amy Crawford, ASA
50 W Washington St., Suite 500
Chicago, Illinois 60602
risa.lanier@cookcountyil.gov,
AMY.CRAWFORD@cookcountyil.gov
CATHYMCNEILSTEIN@cookcountyil.gov
jose.trujillo@cookcountyil.gov

Patricia Holmes, Attorney for Jussie Smollett
Brian Watson, Attorney for Jussie Smollett
70 West Madison Street, Suite 2900
Chicago, Illinois 60602
pholmes@rshc-law.com
BWatson@rshc-law.com

Tina Glandian, Attorney for Jussie Smollett
Mark J. Geragos, Attorney for Jussie Smollett
Geragos & Geragos, APC
256 5th Avenue
New York, NY 10010
&
Geragos & Geragos, APC
644 South Figueroa Street
Los Angeles, CA 90017-3411
tina@geragos.com
mark@geragos.com

Valerie L. Hletko, Attorney for Tina Tchen
Scott Sakiyama, Attorney for Tina Tchen
Buckley LLP
2001 M Street NW, Suite 500
Washington, DC 20036
&
353 N Clark Street, Suite 3600
Chicago, IL 60654
vhletko@buckleyfirm.com
ssakiyama@buckleyfirm.com

Sheila M. O'Brien, *Pro se*

Sheila M. O'Brien
Pro Se
360 E. Randolph #1801
Chicago, Illinois 60601

224.766.1904

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014
)
) Hon. Michael P. Toomin
) Judge Presiding

**JUSSIE SMOLLETT'S JOINT REPLY TO
(1) INFORMATION TO SPREAD OF RECORD CONCERNING PLEADINGS FILED
ON JULY 19, 2019; (2) RESPONSE OF PETITIONER TO MOTION TO INTERVENE
BY JUSSIE SMOLLETT; (3) RESPONSE OF PETITIONER TO MOTION TO
SUBSTITUTION OF JUDGE FOR CAUSE; (4) RESPONSE OF PETITIONER TO
MOTION FOR RECONSIDERATION; AND (5) RESPONSE OF PETITIONER TO
MOTION TO DISCLOSE TRANSCRIPTS OF GRAND JURY TESTIMONY**

NOW COMES Jussie Smollett, by and through his attorneys, Geragos & Geragos, APC, and respectfully submits this Joint Reply to the (1) Information to Spread of Record Concerning Pleadings Filed on July 19, 2019, (2) Response of Petitioner to Motion to Intervene by Jussie Smollett, (3) Response of Petitioner to Motion to Substitution of Judge for Cause, (4) Response of Petitioner to Motion for Reconsideration, and (5) Response of Petitioner to Motion to Disclose Transcripts of Grand Jury Testimony (collectively "Responses").

Mr. Smollett hereby incorporates by reference the Letter filed on July 25, 2019 into his Joint Reply to the foregoing Responses. As an initial matter, Ms. O'Brien does not cite a single case in her July 24, 2019 Letter or in any of her five Responses to Mr. Smollett's Motions. Not a single case. Indeed, rather than address Mr. Smollett's legal arguments in any meaningful manner, Ms. O'Brien simply makes conclusory statements without any legal support whatsoever. Despite this glaring deficiency in her pleadings, this Joint Reply will nonetheless address the few unsupported issues raised by Ms. O'Brien in her Responses.

Alleged Unauthorized Practice of Law

To the extent Sheila O'Brien continues to allege the unauthorized practice of law by Mr. Smollett's attorneys, this is belied by her own actions in continuing to serve all pleadings, including the Responses, on Tina Glandian and Mark J. Geragos as "Attorneys for Jussie Smollett," as she has done since the inception of this proceeding. Moreover, the attached ARDC records confirm that both of the foregoing attorneys are permitted to practice pursuant to Rule 707. *See* Exhibit A.

Alleged Conflict of Interest

To the extent Ms. O'Brien alleges that Ms. Glandian and Mr. Geragos have a conflict of interest with Mr. Smollett, she does not have standing to raise any purported conflict of interest because she is not a client or former client of the attorneys and she cannot show that her own interests would be harmed by the continued representation. *See, e.g., Renard v. Columbia Broad. Sys., Inc.*, 126 Ill.App.3d 563, 568 (1984) ("Absent a complaint by the affected client, a party has no status to object to the representation of an adverse party by an attorney of his choice."); *In re Estate of Sewart*, 274 Ill. App. 3d 298, 307 n.2 (1995) ("We note that the plaintiff lacks standing to object to Synek's dual representation as she has not demonstrated how her interests have been adversely affected.")

Moreover, the existence of an alleged conflict of interest here is contrary to the facts and the law, as well as common sense. It is settled law that Mr. Smollett is entitled to his counsel of choice under the Sixth Amendment to the United States Constitution. *Luis v. United States*, 136 S. Ct. 1083, 1089 (2016). The Court may not deny Mr. Smollett his constitutional right to counsel of his choice absent an actual conflict of interest or a "serious potential for conflict." *People v. Buckhanan*, 2017 IL App (1st) 131097, ¶ 26, 70 N.E.3d 1278, 1284.

Here, Ms. O'Brien argues that since Mr. Smollett's attorneys are being sued by the Osundairo brothers for defamation and false light in a separate proceeding, Mr. Smollett's attorneys are seeking to disclose the transcripts of the Osundairo brothers' grand jury testimony because they "hope to put the veracity of the brothers at issue." Ms. O'Brien is absolutely correct that Mr. Smollett's attorneys intend to put the brothers' veracity at issue, both by the disclosure of the grand jury transcripts as well as in any future proceedings. But what Ms. O'Brien fails to appreciate is that this is the exact same goal that Mr. Smollett has. Since the Osundairo brothers are the only two witnesses against Mr. Smollett *and there is no independent corroboration of their self-serving account of the circumstances surrounding the January 29, 2019 attack on Mr. Smollett*, their veracity is central to Mr. Smollett's defense, both in any potential future prosecution of him (which we maintain is barred) as well as in the pending civil case against him by the City of Chicago. Since the lawsuit against Mr. Smollett's attorneys arises directly from statements made in defense of Mr. Smollett during their representation of him, their interests are directly aligned with those of Mr. Smollett.

Indeed, even if there was no separate lawsuit against them, Mr. Smollett's attorneys would seek to disclose the grand jury transcripts in question because that is what is in Mr. Smollett's best interest. Therefore, Ms. O'Brien's effort to manufacture a conflict of interest where none exists falls flat and certainly does not overcome the constitutional presumption in favor of Mr. Smollett's counsel of choice. *See Buckhanan*, 70 N.E.3d at 1289 (reversing trial court's disqualification order because there was not a serious potential for a conflict of interest that would overcome the presumption in favor of the defendant's right to counsel of choice).

Timeliness of Motion to Intervene

Ms. O'Brien argues that Mr. Smollett's Motion to Intervene Instante is untimely because he has been aware of her Petition for the Appointment of a Special Prosecutor since she filed it on April 5, 2019 and counsel for Mr. Smollett was present at the hearings on the Petition.¹ Yet until July 19, 2019, Mr. Smollett did not formally seek to intervene in the proceedings. This is because the need for Mr. Smollett to intervene arose only *after* the Court's June 21, 2019 Order in which the Court purported to make "factual findings" regarding Mr. Smollett's "guilt" and unexpectedly granted the appointment of a special prosecutor who was given broad authority to "further prosecute" Mr. Smollett. Under these circumstances, Mr. Smollett's motion to intervene is timely. *See, e.g., W.H. Lyman Const. Co. v. Vill. of Gurnee*, 131 Ill. App. 3d 87, 97-98 (1985) ("The fact that the Village's cross-claim had been litigated prior to trial in this case did not eliminate Baxter and Woodman's interest in the present litigation. To the contrary, Baxter and Woodman's interest was increased since it had already been determined that it would be held liable for any liability found on the part of the Village. Under these conditions, Baxter and Woodman . . . had a right to intervene pursuant to section 2-408(a) of the Code of Civil Procedure."); *see also* 735 ILCS 5/2-407 ("New parties may be added . . . by order of the court, at any stage of the cause, before or after judgment, as the ends of justice may require and on terms which the court may fix.").

Not only does Mr. Smollett have a right to intervene in these proceedings, but in fact, he is a necessary party. Illinois courts consider three factors that render a party necessary to a suit: "(1) to protect an interest which the absentee has in the subject matter of the controversy which would be materially affected by a judgment entered in his absence; (2) to reach a decision which

¹ Mr. Smollett's past objection to Ms. O'Brien's improper discovery requests, which this Court quashed, has no bearing on his right to intervene in this proceeding.

will protect the interests of those who are before the court; or (3) to enable the court to make a complete determination of the controversy.” *Lerner v. Zipperman*, 69 Ill. App. 3d 620, 623 (1979).

Here, the June 21, 2019 Order specifically references an individual criminal prosecution against Mr. Smollett, namely the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, and attempts to nullify those proceedings and appoint a special prosecutor to "further prosecute" Mr. Smollett. It cannot be disputed that Mr. Smollett has a direct and substantial interest in this proceeding and that his interests (including his fundamental constitutional rights) would be materially affected by a judgment entered in his absence. Even where no formal petition is filed, intervention will be permitted if an oral motion to intervene is made, an intervening pleading is filed, and the party seeking to intervene will clearly be affected by any judgment entered in the action. *W.H. Lyman Construction Co.*, 131 Ill.App.3d at 98.

Ms. O'Brien further argues that Mr. Smollett's interests are adequately represented by State's Attorney Kim Foxx because both Ms. Fox and Mr. Smollett do not want a special prosecutor to be appointed. Contrary to this assertion, Mr. Smollett's interests are different than those of Ms. Foxx, and her attorney, Cathy Stein, does not represent Mr. Smollett's interests.

Furthermore, as explained in his Motion to Intervene Instantly, there are other considerations that may affect the adequacy of existing representation, including “the commonality of legal and factual positions; the practical abilities, resources and expertise of the existing parties; and the existing parties’ vigor in representing the absent applicant’s interests.” *Joyce v. Explosives Techs. Int’l, Inc.*, 253 Ill. App. 3d 613, 617 (1993) (citing *City of Chicago v. John Hancock Mut. Life Ins. Co.*, 127 Ill. App. 3d 140, 145 (1984)). Here, the fact that Ms. Foxx did not file a motion for reconsideration of the Court's June 21, 2019 Order, nor did she move for

a substitution of judge for cause, demonstrates why Mr. Smollett's interests would be inadequately represented by the existing parties in this proceeding.

Adequacy of Motion for Substitution of Judge for Cause

Ms. O'Brien argues that Mr. Smollett's Motion for Substitution of Judge is flawed insofar as it relies on 725 ILCS 5/114-5 (d); she asserts that this is a civil proceeding and as such, 735 ILCS 5/2-1001 should apply. This proceeding directly arises from the *criminal* case against Mr. Smollett, all hearings on this matter have been held at the George N. Leighton *Criminal* Courthouse, and the June 21, 2019 Order appoints a special prosecutor to investigate whether any *criminal* offense was committed in the course of the Smollett matter, and to commence *criminal* prosecution as may be appropriate.

Here, whether the Court applies the civil or criminal statute regarding the substitution of judge for cause, the result should be the same, as substitution is warranted under both statutes.² Because the right to a fair and impartial trial judge is fundamental, Illinois courts have repeatedly held that the statute governing substitution of judge is to be construed liberally to promote rather than to defeat substitution; reversible error occurs where the statute is not so construed. *Bangaly Estate of Sissoko v. Baggiani*, 2017 IL App (1st) 152454, ¶ 53, 81 N.E.3d 558, 571; *People v. Harston*, 23 Ill.App.3d 279, 283 (1974).

A. An Affidavit Is Not Required Under the Facts of this Case Where Actual Prejudice Has Been Established.

Generally, an affidavit in support of a motion for substitution of judge for cause is required because "judicial rulings alone almost never constitute a valid basis for a bias or

² Under 735 ILCS 5/2-1001, Mr. Smollett is also entitled to a substitution as of right because Mr. Smollett has not formally made an appearance in the case yet (and he has not been found in default). See 735 ILCS 5/2-1001(a)(2)(iii).

partiality motion. In and of themselves (*i.e.*, apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved." *Liteky v. United States*, 510 U.S. 540, 555 (1994) (internal citation omitted). As the United States Supreme Court has explained:

[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion ***unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.*** Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. ***They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.***

Id. (emphases added). The Court cited as an example of the latter the following statement alleged to have been made by a district judge: "One must have a very judicial mind, indeed, not [to be] prejudiced against the German Americans" because their "hearts are reeking with disloyalty." *Id.* (quoting *Berger v. United States*, 255 U.S. 22, 28 (1921) (internal quotation marks omitted)). The Court distinguished "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as [] judges, sometimes display." *Liteky*, 510 U.S. at 555-56.

This is one of those rare circumstances where the June 21, 2019 Order itself constitutes a valid basis for a bias and partiality motion, absent an affidavit. Judge Toomin's statement describing Mr. Smollett as a "charlatan who fomented a hoax the equal of any twisted television intrigue" is comparable to the statement in *Berger*, and is not merely an expression of impatience, dissatisfaction, annoyance, or even anger. Rather, this statement, along with other assertions in the June 21, 2019 Order, displays a deep-seated antagonism against Mr. Smollett

that would make fair judgment impossible. Due to the unique circumstances of this case in which actual bias and prejudice can be established from the assertions in the Court's June 21, 2019 Order alone, an affidavit in support of the motion for substitution of judge for cause is not required.

In *People v. Harston*, the appellate court held that the trial court's failure to hold a hearing on defendant's motion for substitution of judge for cause was reversible error. *Id.* The State maintained that the motion was properly denied because the defendant failed to file a written motion supported by affidavit and therefore failed to bring himself within the scope of subsection (c). *Id.* The appellate court rejected this argument, noting:

Defendant's right cannot be frustrated by so tenuous an argument. Where a court is confronted at the earliest practical moment with a motion for substitution of a trial judge because of alleged prejudice, it is both arbitrary and erroneous to deny the motion without granting the defendant an opportunity to comply with the formal requirement of the statute. The trial court, by failing to afford the defendant an opportunity to comply with the formal requirements, in effect waived the necessity to meet these requirements and the defendant therefore came within the scope of subsection (c).

Id.

Other courts have similarly found that "sufficient compliance with the statute" is adequate. *See, e.g., People v. Ethridge*, 78 Ill. App. 2d 299, 303 (1966) (where "the defendant's motion was not supported by a separate affidavit but the motion was verified[. . .]his was a sufficient compliance with the statute"); *cf. People v. Covington*, 92 Ill. App. 3d 598, 602 (1981) (motion for substitution for cause was properly denied where "motion did not suggest any reason for the alleged prejudice of Judge Mosele, nor was it supported by an affidavit").

Here, Mr. Smollett sufficiently complied with the statute by filing his motion for substitution promptly after learning that Judge Toomin had unfairly prejudged him guilty of the crimes *which he pled not guilty to* and which had been dismissed against him; no affidavit was

necessary because the grounds for the motion were established from the assertions in the Court's June 21, 2019 Order. However, in an abundance of caution and for the avoidance of doubt, Mr. Smollett is submitting the Affidavit of Tina Glandian affirming the basis for the substitution of Judge Toomin for cause, as set forth in the Motion for Substitution of Judge for Cause and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions. *See* Exhibit B. In light of the liberal construction to be given to motions for substitution of judges and the fact that the right to a fair and impartial trial judge is fundamental, it would be "arbitrary and erroneous" to deny the motion based on the alleged failure to comply with the formal requirements of the statute, particularly when the grounds for the substitution are clear from the Court's own assertions in the June 21, 2019 Order.

B. The Challenge to Judge Toomin Was Timely Made.

As noted above, under 735 ILCS 5/2-1001, Mr. Smollett may still move for a substitution *as of right* because Mr. Smollett has not formally made an appearance in the case yet (and he has not been found in default). *See* 735 ILCS 5/2-1001(a)(2)(iii).

Furthermore, even where a substantive ruling has been made in a case, substitution is warranted under 735 ILCS 5/2-1001(a)(3) "[w]hen cause exists." 735 ILCS 5/2-1001(a)(3). Although the statute does not define "cause," Illinois courts have held that in such circumstances, actual prejudice is required to force removal of a judge from a case, that is, either prejudicial trial conduct or personal bias. *See Rosewood Corp. v. Transamerica Insurance Co.*, 57 Ill.2d 247, 311 N.E.2d 673 (1974); *In re Marriage of Kozloff*, 101 Ill.2d 526, 532 (1984).

Here, for the foregoing reasons and those set forth in the Motion for Substitution of Judge for Cause and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions and the Affidavit of Tina Glandian, Mr. Smollett has demonstrated actual prejudice by Judge Toomin, establishing "cause" under the statute. Accordingly, the Motion for Substitution

of Judge for Cause should be heard by another judge. *See* 735 ILCS 5/2-1001(a)(3)(iii) ("Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible *by a judge other than the judge named in the petition.*") (emphasis added).

In the event the Court were to find any timeliness issues or other technical defects with the Motion for Substitution of Judge for Cause, the interests of justice still require that another judge hear this matter. It cannot be disputed that this Court previously made improper "factual findings" regarding Mr. Smollett's "guilt" in the June 21, 2019 Order. In such a high-profile case in which the public has expressed great interest and which was transferred to Your Honor by Judge Martin *merely to avoid the appearance of impropriety*, it would not inspire confidence in the judiciary for Your Honor to continue to hear this matter after previously expressing such a strong opinion about Mr. Smollett's "guilt." *See, e.g., People v. Bradshaw*, 171 Ill. App. 3d 971, 976 (1988) (there "must be a concerned interest in ascertaining whether public impression will be favorable and the rights of an accused protected even though the judge is convinced of his own impartiality"). Accordingly, this matter should be heard by another judge.

Lack of Standing to Object to Disclosure of Grand Jury Transcripts

Although Ms. O'Brien once claimed she wanted transparency and was acting in the public interest, her attempt to prevent the disclosure of the Osundairo brothers' grand jury testimony, while simultaneously trying to prevent Mr. Smollett from participating in proceedings that directly impact him, reveals questionable motives on her part, and demonstrates a personal agenda rather than a search for the truth. As part of her stated desire to know why the charges were dropped against Mr. Smollett, doesn't Ms. O'Brien think the disclosure of the sworn testimony of the only two witnesses against Mr. Smollett is relevant and something the public should see?

The grand jury rule does not expressly state whether anyone is entitled to object to disclosure. However, only those persons who would be adversely affected by the disclosure of grand jury minutes have standing to object to disclosure. The Illinois Supreme Court has held that standing requires some injury in fact to a legally cognizable interest. *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). The standing doctrine assures that issues are raised only by those parties with a real interest in the outcome of the controversy. *Id.*

Here, Ms. O'Brien has no standing to object to the disclosure of the grand jury transcripts of the Osundairo brothers' testimony, as there would be no actual or threatened injury to her by disclosure. Accordingly, this Court should order the public disclosure of the transcripts for the reasons explained in the Motion to Disclose Transcripts of Grand Jury Testimony filed on July 19, 2019.

WHEREFORE, Jussie Smollett, by his attorneys, Geragos & Geragos, respectfully requests that this matter be transferred to another judge, and that the Court grant (1) Jussie Smollett's Motion to Intervene Instantly, (2) Motion for Substitution of Judge for Cause and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions, (3) Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor, and (4) Motion to Disclose Transcripts of Grand Jury Testimony.

Dated: July 30, 2019

Respectfully submitted,

/s/ Tina Glandian

Tina Glandian, Rule 707 Admitted
Mark J. Geragos, Rule 707 Admitted
Geragos & Geragos, APC
256 5th Avenue
New York, NY 10010
&
Geragos & Geragos, APC
644 South Figueroa Street

Los Angeles, CA 90017-3411
(213) 625-3900
tina@geragos.com
mark@geragos.com

Attorneys for Jussie Smollett

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on July 30, 2019, the foregoing papers were served on the following parties and/or attorneys of record by electronic means:

Sheila M. O'Brien, *Pro Se*
360 E. Randolph #1801
Chicago, IL 60601
sobrien368@aol.com


Risa Lanier
Assistant State's Attorney
Cook County State's Attorney's Office
2650 S. California Avenue, 11D40
Chicago, IL 60608
risa.lanier@cookcountyil.gov

Cathy McNeil Stein
Assistant State's Attorney
Chief, Civil Actions Bureau
500 Richard J. Daley Center
Chicago, IL 60602
cathymcneil.stein@cookcountyil.gov

Valerie L. Hletko
Buckley LLP
353 N. Clark St., Suite 3600
Chicago, IL 60654
vhletko@buckleyfirm.com

/s/ Tina Glandian
Tina Glandian

EXHIBIT A



**ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ILLINOIS**

[WEBSITE INFORMATION](#) | [SEARCH SITE](#) | [HOME](#)

[Lawyer Search](#)
[Lawyer Registration](#)
[How to Submit a Request For Investigation](#)
[Rules and Decisions](#)
[Ethics Inquiry Program](#)
[Publications](#)
[New Filings, Hearing Schedules and Clerk's Office](#)
[Client Protection Program](#)
[Resources & Links](#)
[ARDC Organizational Information](#)

LAWYER SEARCH: ATTORNEY'S REGISTRATION AND PUBLIC DISCIPLINARY RECORD

ARDC Individual Attorney Record of Public Registration and Public Disciplinary and Disability Information as of July 29, 2019 at 1:12:12 PM:

| | |
|--|---|
| Full Licensed Name: | Tina Glandian |
| Full Former name(s): | None |
| Date of Admission as Lawyer by Illinois Supreme Court: | |
| Registered Business Address: | Geragos & Geragos, APC 256 5th Avenue New York, NY 10001 |
| Registered Business Phone: | (213) 625-3900 |
| Illinois Registration Status: | Active out of state lawyer permitted to practice pursuant to Rule 707 in specific Illinois proceedings as documented in the record of each proceeding. Contact ARDC Registration Department for permitted proceedings. - Last Registered Year: 2019 |
| Malpractice Insurance: (Current as of date of registration; consult attorney for further information) | In annual registration, attorney reported that he/she has malpractice coverage. |


Public Record of Discipline and Pending Proceedings: None

Check carefully to be sure that you have selected the correct lawyer. At times, lawyers have similar names. The disciplinary results displayed above include information relating to any and all public discipline, court-ordered disability inactive status, reinstatement and restoration dispositions, and pending public proceedings. Investigations are confidential and information relating to the existence or status of any investigation is not available. For additional information regarding data on this website, please contact ARDC at (312) 565-2600 or, from within Illinois, at (800) 826-8625.

ARDC makes every effort to maintain the currency and accuracy of Lawyer Search. If you find any typographical errors in the Lawyer Search information, please email

registration@iadc.org. For changes to contact information, including address, telephone or employer information, we require that the attorney submit a change of address form. Please consult our [Address Change Requests](#) page for details. Name changes require the filing of a motion with the Supreme Court. Please consult our [Name Change Requests](#) page for details.

[Back to Search Results](#)[New Search](#)



**ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ILLINOIS**

[WEBSITE INFORMATION](#) | [SEARCH SITE](#) | [HOME](#)

[Lawyer Search](#)
[Lawyer Registration](#)
[How to Submit a Request For Investigation](#)
[Rules and Decisions](#)
[Ethics Inquiry Program](#)
[Publications](#)
[New Filings, Hearing Schedules and Clerk's Office](#)
[Client Protection Program](#)
[Resources & Links](#)
[ARDC Organizational Information](#)

LAWYER SEARCH: ATTORNEY'S REGISTRATION AND PUBLIC DISCIPLINARY RECORD

ARDC Individual Attorney Record of Public Registration and Public Disciplinary and Disability Information as of July 29, 2019 at 1:12:12 PM:

| | |
|--|---|
| Full Licensed Name: | Mark John Geragos |
| Full Former name(s): | None |
| Date of Admission as Lawyer by Illinois Supreme Court: | |
| Registered Business Address: | Geragos & Geragos, APC 644 South Figueroa Street Los Angeles, CA 90017-3411 |
| Registered Business Phone: | (213) 625-3900 |
| Illinois Registration Status: | Active out of state lawyer permitted to practice pursuant to Rule 707 in specific Illinois proceedings as documented in the record of each proceeding. Contact ARDC Registration Department for permitted proceedings. - Last Registered Year: 2019 |
| Malpractice Insurance: (Current as of date of registration; consult attorney for further information) | In annual registration, attorney reported that he/she has malpractice coverage. |

Public Record of Discipline and Pending Proceedings: None

Check carefully to be sure that you have selected the correct lawyer. At times, lawyers have similar names. The disciplinary results displayed above include information relating to any and all public discipline, court-ordered disability inactive status, reinstatement and restoration dispositions, and pending public proceedings. Investigations are confidential and information relating to the existence or status of any investigation is not available. For additional information regarding data on this website, please contact ARDC at (312) 565-2600 or, from within Illinois, at (800) 826-8625.

ARDC makes every effort to maintain the currency and accuracy of Lawyer Search. If you find any typographical errors in the Lawyer Search information, please email

registration@iadc.org. For changes to contact information, including address, telephone or employer information, we require that the attorney submit a change of address form. Please consult our [Address Change Requests](#) page for details. Name changes require the filing of a motion with the Supreme Court. Please consult our [Name Change Requests](#) page for details.

[Back to Search Results](#)[New Search](#)

EXHIBIT B

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014
)
) Hon. Michael P. Toomin
) Judge Presiding

**AFFIDAVIT OF TINA GLANDIAN IN SUPPORT OF MOTION FOR SUBSTITUTION
OF JUDGE FOR CAUSE AND FOR APPOINTMENT OF ANOTHER COOK COUNTY
JUDGE TO HEAR CONCURRENTLY FILED MOTIONS**

I, Tina Glandian, hereby certify and state under oath:

1. At all relevant times, I have been the attorney for Jussie Smollett. I have personal knowledge of the facts and circumstances herein, and if called as a witness, I could and would competently testify thereto. I respectfully submit this affidavit in support of the Motion for Substitution of Judge for Cause and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions, filed on July 19, 2019.

2. On March 7, 2019, a felony indictment was filed against Mr. Smollett in the Circuit Court of Cook County, case number 19 CR 3104, alleging 16 counts of disorderly conduct, namely filing a false police report in violation of Chapter 720, Act 5, Section 26-1(a)(4) of the Illinois Compiled Statutes Act of 1992, as amended. Mr. Smollett pled not guilty to all charges.

3. On March 26, 2019, the State's Attorney's Office moved to *nolle pros* all 16 counts. The Honorable Steven G. Watkins granted the motion and dismissed the case against Mr. Smollett.

4. Throughout the previous proceedings and until today, neither Mr. Smollett nor I have ever personally appeared before Judge Michael P. Toomin.

5. On June 21, 2019, Judge Toomin issued a written order (hereafter "Order") granting the appointment of a special prosecutor "to conduct an independent investigation of any person or office involved in all aspects of the case entitled the People of the State of Illinois v. Jussie Smollett, No. 19 CR 0310401, and if reasonable grounds exist to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result. Additionally, in the event the investigation establishes reasonable grounds to believe that any other criminal offense was committed in the course of the Smollett matter, the special prosecutor may commence the prosecution of any crime as may be suspected." Order at 21.

6. Upon reading the Order, I was astonished by Judge Toomin's "factual findings" therein. From the outset of the Order, Judge Toomin expresses his opinion that Mr. Smollett is guilty of the charges *to which he pled not guilty* and which were subsequently dismissed (prior to hearing) against him. For instance, in the first paragraph describing the background of the case, Judge Toomin writes:

[I]n perhaps the most prominent display of his acting potential, Smollett conceived a fantasy that propelled him from the role of a sympathetic victim of a vicious homophobic attack to that of a charlatan who fomented a hoax the equal of any twisted television intrigue.

Order at 2. Later, Judge Toomin refers to Mr. Smollett's "guilt" in filing a false police report as a foregone conclusion, noting:

On February 1, 2019, *two days after Jussie Smollett reported his staged hate crime*, State's Attorney Kim Foxx was contacted by Tina Tchen, a local attorney who previously served as Michelle Obama's Chief of Staff.

Order at 5-6 (emphasis added). There are several other references alluding to Mr. Smollett's "guilt" throughout the Order, demonstrating Judge Toomin's unfair bias and prejudice against him. *See, e.g.*, Order at 5 (referencing the "staged hate crime").

7. It is my opinion that Judge Toomin's assertions of Mr. Smollett's "guilt" in the June 21, 2019 Order demonstrate Judge Toomin's actual bias and prejudice against him. Specifically, it is my opinion that Judge Toomin's statements in the June 21, 2019 Order demonstrate a deep-seated antagonism against Mr. Smollett that would make fair judgment impossible. It is also my opinion that Judge Toomin's presumptions about Mr. Smollett's "guilt" stem from extrajudicial sources including the media coverage in this case.

8. As a result, it is my opinion that Mr. Smollett cannot have a fair and impartial hearing and trial if Judge Toomin presides over the case, including hearing the following motions filed on Mr. Smollett's behalf on July 19, 2019: (1) Jussie Smollett's Motion to Intervene Instantly, (2) Motion for Substitution of Judge for Cause and for Appointment of Another Cook County Judge to Hear Concurrently Filed Motions, (3) Motion for Reconsideration of the June 21, 2019 Order Granting the Appointment of a Special Prosecutor, and (4) Motion to Disclose Transcripts of Grand Jury Testimony.

9. 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 affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

10. Further affiant sayeth not.


TINA GLANDIAN

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

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

4 THE PEOPLE OF THE STATE)
5 OF ILLINOIS,)
)
6 Plaintiff,)
) No. 19 MR 00014-01
7 vs.)
)
8 JUSSIE SMOLLETT,)
)
9 Defendant.)

10 REPORT OF PROCEEDINGS, had at the hearing in
11 the above-entitled cause before the Honorable Michael
12 P. Toomin, Judge of said court, on the 31st day of
13 July, 2019.

14 APPEARANCES:

15 HONORABLE KIMBERLY M. FOXX,
 State's Attorney of Cook County, by:
16 Ms. Cathy McNeil-Stein,
 Ms. Amy Crawford,
17 Assistant State's Attorneys,
 appeared on behalf of the People;

18 Ms. Tina Glandian,
19 Mr. Brian Watson,
 appeared on behalf of the Defendant;

20 Ms. Sheila O'Brien,
21 pro se petitioner.

22
23 Lisa A. Ciarrachi, CSR, RPR
 Official Court Reporter
 2650 S. California Ave., Rm. 4C02
24 Chicago, Illinois 60608
 License No. 084-00453

1 THE CLERK: In Re Appointment of Special
2 Prosecutor.

3 THE COURT: Good morning.

4 MS. O'BRIEN: Morning.

5 THE COURT: Good morning. Please identify
6 yourselves for the record.

7 MS. O'BRIEN: Sheila O'Brien, Petitioner, pro
8 se.

9 MS. GLANDIAN: Tina Glandian on behalf of
10 Jussie Smollett.

11 MR. WATSON: Good morning, your Honor, Brian
12 Watson of Riley Safer Holmes and Cancila on behalf of
13 Jussie Smollett.

14 MS. McNEIL-STEIN: Morning, your Honor. Cathy
15 McNeil-Stein and Amy Crawford on behalf of the State's
16 Attorney.

17 THE COURT: Okay. Good morning.

18 All right. We have a number of motions
19 before the Court filed by Ms. Glandian: Motion to
20 intervyene; motion for substitution of Judge for cause;
21 a motion for reconsideration of the June 21, 2019
22 order; and a motion to disclose transcripts of the
23 Grand Jury testimony.

24 I'm going to address these not in the order

1 I just read, but I think it makes sense to hear the
2 motion for substitution of Judges first. There are
3 some issues relating whether that stays here or goes
4 to another Judge to hear the other motions so I will
5 hear from Ms. Glandian. They're your motions.

6 MS. GLANDIAN: Thank you, your Honor.

7 Yes, on the substitution, it's our position
8 that whether the Court applies the criminal statute or
9 the civil statute, that this matter should be
10 transferred to another Judge, based on the assertions
11 set forth in our motion that were also supplemented by
12 affidavit.

13 It's our position that, in light of the
14 basis for the substitution, that we -- that we
15 needed -- we'd need not have filed an affidavit, but
16 in an abundance of caution --

17 THE COURT: Where did you find that principle,
18 that you need not file an affidavit?

19 MS. GLANDIAN: I set out forth, your Honor, in
20 the joint reply, that it's a rare case where you can
21 allege bias or prejudice, just from a judicial ruling
22 alone; however, that has been done. And I cited the
23 Court to a couple cases in our joint reply that was
24 filed yesterday morning.

1 And I think anything I had stated in the
2 affidavit is just mirroring what was already --

3 THE CLERK: Excuse me.

4 THE COURT: Go ahead.

5 MS. GLANDIAN: These were not facts that were
6 in my personal knowledge that had to be, I think,
7 stated under oath. This was our argument is that from
8 the judicial --

9 THE COURT: What facts did you have?

10 MS. GLANDIAN: Our facts were that the Court's
11 order presumes Mr. Smollett's guilt, and that that was
12 inappropriate --

13 THE COURT: You didn't state in your affidavit
14 those as facts; you stated them as opinion.

15 MS. GLANDIAN: Correct.

16 THE COURT: Four or five places. That's not
17 how we do affidavits in Illinois. You can't state
18 opinions. You have to state facts.

19 MS. GLANDIAN: Well, I think I did state facts
20 in the sense of what is contained in the order. And
21 our argument is that that -- those facts alone are
22 sufficient to warrant substitution for a cause in this
23 case.

24 And I understand it's a rare case in which

1 that's sufficient, but it's our position that this is
2 such a case.

3 THE COURT: Ms. O'Brien?

4 MS. O'BRIEN: Your Honor, in response -- thank
5 you, Judge.

6 My response was filed and so I'd stand on my
7 response to her motion for a substitution of Judge,
8 but as the Court knows, I also spread of record that
9 at the time this mo -- these motions were filed by
10 Ms. Glandian on July 19th, that she was not licensed
11 to practice law in Illinois. And that's very and
12 fundamental, Judge.

13 At that time, she indicated to the Court, on
14 her motions, that she was Rule 707 admitted, but she
15 was not. But her own pleadings, in response to me
16 spreading that of record, she admitted that that's
17 uncontroverted, that she was not licensed to practice
18 law, so I think that's a fundamental situation.

19 As to the -- so that's fundamental.

20 As to the merits of her motion, Judge, you
21 were here. You heard these -- you heard all the
22 evidence. You -- you were very fair and thorough, and
23 there's -- as I indicated earlier, on another motion,
24 there's no affidavit on her motion for substitution of

1 Judge, as required by Illinois statute.

2 And so the motion itself is faulty because
3 it doesn't comply with the statute. It's -- should be
4 held for naught because when she filed it, she was not
5 licensed to practice in Illinois, and, on the merits
6 of it, Judge, your order was talking about a
7 particular statute and the application of that statute
8 as it applies to the State's Attorney of Cook County.

9 The petition I brought had nothing to do
10 with the merits of Mr. Smollett's case. We didn't
11 litigate that; you didn't talk about it. What we were
12 talking about in the motion for a Special Prosecutor
13 was the application of a statute as it applies to the
14 State's Attorney in her role, and what would be the
15 process of the State's Attorney's job. We've never
16 litigated anything about Mr. Smollett, so anything you
17 may have said, either in court or in that Court order,
18 we never talked about that. It would be dictum.

19 You went right to the statute as being a
20 good Judge, you did, but your order is sound, and you
21 were fair, and that's my response to her motion to
22 substitute Judge for cause.

23 MS. GLANDIAN: May I respond, your Honor?

24 THE COURT: Sure.

1 MS. GLANDIAN: Um, the last point that
2 Ms. O'Brien raised that this was dicta, I think that's
3 exactly the point here, is that the Court was not
4 asked to or required to make any sort of findings as
5 to Mr. Smollett's guilt or innocence. All the Court
6 was asked to do in ruling on the petition for the
7 appointment of Special Prosecutor was to determine
8 whether that was required by statute.

9 However, the Court went further, and the
10 Court actually made findings referencing
11 Mr. Smollett's guilt when the Defense never had a
12 chance to put on a defense; when the case had been
13 dismissed against him; when he had pled not guilty;
14 and he's presumed innocent under both the United
15 States Constitution and the Illinois Constitution.

16 So I believe that the Court's order in which
17 the Court presumes that he's guilty, and then goes on
18 to appoint a Special Prosecutor is inherently flawed
19 and shows the level of antagonism towards Mr. Smollett
20 and a presumption of guilt that is improper, and in
21 light of those assertions in the order, I think
22 another Judge needs to now hear this.

23 And the rule on substitution for cause, your
24 Honor, is very clear. Illinois Courts have repeatedly

1 held that the rule is to be liberally construed, and
2 so that there's no appearance of impropriety even.

3 And this matter came to your Honor because
4 mis -- because Judge Martin, actually -- at that
5 point, it was Ms. O'Brien telling Judge Martin that he
6 shouldn't hear -- hear the case because of his son's
7 employment, I believe it was.

8 And even though Judge Martin felt that that
9 was not a ground to recuse himself, he still, in an
10 abundance of caution, and because this is a high
11 profile case and we want to avoid all appearance of
12 impropriety, transferred the case to your Honor.

13 Now, I think we're in a similar situation
14 now. Whether your Honor feels that you could be fair
15 or not, your Honor has made certain statements
16 presuming Mr. Smollett guilty, and to now hear these
17 motions, I believe is inappropriate.

18 And also, I'm sorry, your Honor, if I could
19 also address the first point that Ms. O'Brien made.
20 That's a serious accusation against an attorney, to,
21 um, allege the unauthorized practice of law. I sent
22 your Honor a letter detailing all of the reasons why
23 we, in good faith, did believe, and still do believe,
24 that we were Rule 707 admitted at the time we filed

1 the documents.

2 In any event, we have now filed our, you
3 know, entry of appearance, and further verified
4 statements nunc pro tunc from the date of the filing;
5 however, it's -- it's -- even when I called the ARDC
6 myself, they weren't sure what the answer was because
7 it's a unique situation where we were just admitted by
8 Judge Martin; this case was filed, you know, before
9 Judge Martin, initially; and it didn't seem like one
10 month after we'd have to seek his permission again to
11 represent Mr. Smollett, when he had just approved our
12 admission.

13 And the cases that hold any sort of issues
14 with Rule 707 admission, there are policy concerns
15 that go to the heart of the requirements of the
16 attorneys. And this is -- obviously, this was
17 publicly done. Ms. O'Brien, it's very disingenuous,
18 the claims she's making, because she continues -- and
19 from the inception of this case, has served myself and
20 Mr. Garagos as the attorney for Mr. Smollett.

21 So even by her own actions, she's been
22 acting like we are his attorneys and we're authorized.
23 And never did she once voice any objection in all of
24 the proceedings when Mr. Watson appeared on our

1 behalf, we had filed pleadings in our names -- just
2 like we did here, stating that we're Rule 707
3 admitted -- she never raised that issue, and so I
4 think it's -- it's really disingenuous now, after the
5 fact, to make such a serious accusation.

6 But in any event, the ARDC has approved our
7 admission as Judge Martin previously done himself as
8 well, and I think that is just a red herring here,
9 your Honor.

10 THE COURT: State have any comment?

11 MS. McNEIL-STEIN: Your Honor, we take no
12 position.

13 THE COURT: Counsel?

14 MR. WATSON: Nothing further, your Honor.
15 Thank you very much for the opportunity.

16 THE COURT: I think the issue that must first
17 be addressed is articulated in a civil case which
18 recognizes that the rule is the same whether you file
19 under the criminal rule or the civil rule, cases do
20 bear that out.

21 The case is In Re Estate of Wilson at
22 238 Ill.2d 519. It's a case that started in Cook
23 County, and in that case, the issue was whether the
24 Trial Court, upon presentation of a motion for

1 substitution of Judge for cause should have
2 automatically referred the motion to another Judge
3 upon its filing.

4 In this case, the Court addresses the three
5 threshold requirements that triggered the right to a
6 hearing before another Judge. They are, number one,
7 the request must be made by petition; number two, it
8 must set forth specific cause for substitution; and
9 number three, it must be verified by an affidavit.

10 In this case, the Petitioner in the motion,
11 Ms. Glandian, first indicated that the affidavit
12 requirement did not obtain here because, by looking at
13 the order itself and the grounds that she indicates,
14 the grounds of prejudice and bias were so evident that
15 you need not bother with the requirement of an
16 affidavit. She belatedly conceded that an affidavit
17 was required, which I received yesterday, in my
18 opinion -- and I think this would be borne out by an
19 examination of the affidavit -- it clearly is not an
20 affidavit. It's replete with her opinions, which
21 simply track what the motion says. And while it's
22 under oath or certification, it's certainly far afield
23 from what the requirements of an affidavit are in the
24 State of Illinois.

1 As to the second point, does it set forth a
2 specific cause for substitution? And the rule is as
3 cited in the Wilson case, and that is that it must
4 normally -- the grounds must normally stem from an
5 extrajudicial source. That is a source from something
6 other than what the Judge learned in the course of the
7 proceedings.

8 In the order of June 21st, I indicated that
9 the Petitioner's allegations, factual allegations,
10 stem from a number of articles published in the
11 Chicago Tribune, Sun-Times and other newspapers; local
12 broadcasts; redacted police department reports; and
13 materials recently released by the State's Attorney's
14 Office. While I recognize that portions of those
15 sources may contain hearsay rather than facts, within
16 the semblance of a prior record, I know that the
17 materials provided a backdrop for consideration of the
18 legal issues presented, and looking at all of that
19 material and the Petitioner's timeline, my feeling, at
20 that time, and now, is that those were not
21 extrajudicial sources; they were part and parcel of
22 the record, if you can call it a record, it was before
23 me, and that is what the Petitioner was basing her
24 assertions on, and that is what I learned from my

1 participation in the case that was litigated.

2 More liberally, a Judge's previous rulings
3 almost never constitute a valid basis, valid claim of
4 judicial bias or partiality. In the Wilson case, they
5 refer to another case that Ms. Glandian cited from the
6 United States Supreme Court, Liteky versus United
7 States at 510 US page 540. And I quote, a pendant
8 swung by the Judge on the basis of facts and produce,
9 or events occurring in the course of the current
10 proceedings or of prior proceedings do not constitute
11 a basis for a bias or partiality motion unless they
12 display a deep-seeded favoritism or antagonism that
13 would make fair judgment impossible.

14 They go on, but it basically says the same
15 thing.

16 And for these reasons -- both of them, the
17 lack of a valid affidavit and the fact that the bias
18 and prejudice are shown by matters occurring within
19 this proceeding -- I will deny the motion to transfer
20 this case, and the motion for substitution of Judges
21 shall be and is hereby denied.

22 We'll move on to the next motion, logically
23 would be a motion to intervene in the instant
24 proceedings. So this is your motion, Ms. Glandian.

1 MS. GLANDIAN: Yes, your Honor. Thank you.

2 Um, we think we've set forth, uh, a very
3 compelling reason why Mr. Smollett should be entitled
4 to intervene as of right in this matter under two of
5 the subsections of Section 2-408, both subsection
6 (a)(2) as well as (a)(3).

7 Um, the law is that a party will be entitled
8 to intervene as of right if their interests will be
9 adequately -- inadequately, I'm sorry, represented in
10 the action, and if they will be bound by an order.
11 Both are true in this case.

12 Neither Ms. O'Brien nor attorneys -- State's
13 Attorney Kim Foxx have the same interest that
14 Mr. Smollett has. The order specifically is about
15 Mr. Smollett; it's about his prior prosecution; and it
16 intends to bind him. And so I think, um, it's very
17 clear that his interests, as evidenced by the fact
18 that no other party moved for a motion for
19 reconsideration, I know Ms. O'Brien made the argument
20 that, um, both Ms. Foxx and Mr. Smollett have the same
21 interest here, which is to avoid the appointment of a
22 Special Prosecutor, albeit for different reasons.

23 I think the law is that that's not -- that's
24 not the state of the law, actually. First of all, I

1 think they are -- their interests are directly in
2 conflict. She's -- the State's Attorney's Office that
3 was representing the State in prosecuting Mr. Smollett
4 previously, and even if both of them object to the
5 appointment of a Special Prosecutor, it's for very
6 different reasons.

7 Um, furthermore, they have not sought a
8 motion for reconsideration, and they can't do so on
9 the same grounds that Mr. Smollett has. For instance,
10 one of the grounds we've raised is that a further
11 prosecution of him would violate principles of double
12 jeopardy. That's not an argument that they can or
13 will make.

14 Another argument that we've advanced is that
15 if there was any sort of an alleged defect in the
16 commission to prosecute him, that's a personal
17 privilege. Again, that's unique to Mr. Smollett.

18 And so I think the law is very clear that
19 under the facts of this case, or this entire
20 appointment for a Special Prosecutor is about
21 Mr. Smollett. In the prayer for relief, I believe
22 Ms. O'Brien cited that particular case ten times, and
23 the Court's order specifically says that it -- Special
24 Prosecutor may be appointed to further prosecute

1 Mr. Smollett. I think the interest of justice require
2 him to intervene, and I think we've established that
3 under the first prong that I cited.

4 There's also a separate subsection which
5 states that you can intervene if the Court -- I'm
6 sorry, if, um, the party would be adversely affected
7 by distribution or other disposition of his property,
8 which is subject to the control of the Court.

9 As I've explained, Mr. Smollett forfeited
10 \$10,000 in his bail to the Court upon the dismissal of
11 his case. If further prosecution was going to be
12 ordered -- which, again, it's our position that it
13 cannot be ordered -- but if this was going to happen,
14 what happens to that \$10,000? So that money is
15 subject to the control of the Court.

16 So under Section 2-408, subsection (a)(3),
17 we've also made a showing that he's entitled to
18 intervene under that section.

19 And so -- and aside from that, we've also
20 added that he's a necessary party to this proceeding.
21 And so, the Court has the discretion of any point to
22 add the necessary party, and I think we've met the
23 elements, which I could go through for a necessary
24 party.

1 THE COURT: When you -- when you intervene,
2 don't you take the case as it is? You're talking
3 about adding additional parties. Double jeopardy was
4 not an issue before me, and other issues that you seek
5 to bring into the case, doesn't that violate the rule
6 of taking the case as it stands?

7 MS. GLANDIAN: Well, when your Honor says
8 taking it as it stands, as it stands is we filed a
9 motion for reconsideration. So I think if the Court
10 agrees that there was a misapplication of the law,
11 then, yes, the Court could still -- the Court has the
12 jurisdiction and the authority to amend it's prior
13 order, which is obviously another motion we filed,
14 but.

15 THE COURT: Well, you -- you're taking things
16 backwards here because you're seeking to justify an
17 exception to the rule by what's something you seek to
18 file, but contingent upon me granting the motion to
19 intervene.

20 If I do not grant the motion to intervene,
21 you don't file the -- you will not address the motion
22 for reconsideration or the motion to make the Grand
23 Jury transcripts a matter of public interest; right?

24 MS. GLANDIAN: Right. And I think we have

1 established he's met two different sections of the
2 statute authorizing him to intervene. And I think it
3 would be fundamentally unfair to deprive him of his
4 constitutional right.

5 We've made constitutional challenges and not
6 let him intervene and seek to correct an order which,
7 if it's flawed, I would imagine the Court just as much
8 as Mr. Smollett, would want to correct the record.

9 And I think even if he's not allowed to
10 intervene, he still has, as a party who's affected by
11 this, appellate rights, and so rather than going down
12 that path, I think the prudent thing would be to have
13 the Court, at this juncture, revisit the order, and
14 see if -- if there was a misapplication of the law.

15 I don't see any benefit in trying to find
16 some technicality to not allow Mr. Smollett to --

17 THE COURT: Well the ben --

18 MS. GLANDIAN: -- intervene --

19 THE COURT: The only benefit is, would be
20 following the law, in the instance that I indicated to
21 you, where you seem to indicate that fair practice and
22 fairness would seem to overrule what the law says. I
23 don't know that that's true.

24 MS. GLANDIAN: I don't think that's what I'm

1 arguing, your Honor. I think, under the law, we've
2 established that he's allowed to intervene, under two
3 different sections of the -- of the Code.

4 And so I think, even if the Court for
5 whatever reason, were to disagree with the first
6 prong, I don't see how the Court gets around the fact
7 that what the Court actually ended up ordering would
8 affect the distribution of his property that's --
9 under the Court's order, which was unexpected and, in
10 our opinion, unprecedented, the Court took the
11 position that all of this was a nullity, and so that
12 the State couldn't even have arrested him properly.

13 If that's the case, then the City of Chicago
14 is holding onto his property without any sort of
15 authority, and it's a -- it's a -- a -- egregious
16 civil rights violation if they've arrested him,
17 prosecuted him, taken his money and all of this was
18 without any authority.

19 THE COURT: That's another issue that's not
20 before me.

21 MS. GLANDIAN: Well, I think, your Honor --
22 our -- what is before your Honor is a motion for
23 reconsideration in which we've laid out all of the
24 law, and grounds for him to intervene which, in this

1 case, would shock me that Mr. Smollett wouldn't be
2 entitled to intervene in a case that directly impacts
3 him, in which is interests are not represented, and in
4 which constitutional concerns are raised.

5 THE COURT: You say directly impact him?

6 MS. GLANDIAN: Correct.

7 THE COURT: Seems to me, by recalling the
8 granting of the prayer for relief, I indicated that
9 the Special Prosecutor saw fit, if there was a
10 reasonable ground to re-prosecute Mr. Smollett, and if
11 it was in the interest of justice, that was within the
12 purview of his grant of authority.

13 I don't consider that to be a direct --
14 direct cause or effect upon Mr. Smollett. It is
15 conditional. It could happen; it could not happen.
16 But it's not a direct consequence of the authority to
17 further prosecute him, if these contingencies are met.

18 MS. GLANDIAN: And your Honor, I believe the
19 law is -- may or will be bound. It's not will be
20 bound, but it's may, may be bound. And so as your
21 Honor just conceded, he may be bound if the Special
22 Prosecutor determines that they believe it's
23 appropriate to further prosecute him.

24 THE COURT: Okay.

1 MS. GLANDIAN: And so I think it's
2 fundamentally unfair for him not to have an
3 opportunity to raise these issues, and to actually
4 visit the grounds upon which the Court even appointed
5 the Special Prosecutor, which we believe is flawed,
6 and again, I think it's in everyone's interest to
7 actually address that motion on its merits and for the
8 Court to look at that order again, and the basis on
9 which it was granted.

10 THE COURT: Okay. Ms. O'Brien?

11 MS. O'BRIEN: Thank you, Judge.

12 I'll go backwards. I'll start with her
13 last -- the last prong of the statute. The last prong
14 talks about Mr. Smollett's property.

15 Mr. Smollett has a number of remedies to him
16 at this very moment. He could have filed a replevin
17 action, which he could do now that they're licensed in
18 Illinois; they could do that today.

19 And the interesting thing, Judge, is, as you
20 said, you -- you have appointed a Special Prosecutor
21 in this case to take a look at that case. This has
22 never been about the merits of Mr. Smollett's case.
23 It has been about who is the appropriate person to
24 prosecute this case. It was never about the merits.

1 We never talked about the merits. It's about a
2 specific statute, is Ms. Foxx the appropriate
3 prosecuting authority to prosecute this case.

4 Prior to this filing of a petition for a
5 Special Prosecutor and throughout the proceedings
6 prior to your ruling, Mr. Smollett could still have
7 had his case resurrected because it was a nolle pros;
8 Kim Foxx could have re-resurrected it; re -- it's a
9 three-year statute on that, from the time that she
10 nolle prosed it.

11 So the fact that another person is going to
12 be doing the duties of the State's Attorney doesn't
13 change the status of Mr. Smollett's case at all. It's
14 in the same status. The people are switching; the
15 case remains the same.

16 So the argument that Mr. Smollett is now
17 going to be subject to double jeopardy and all of this
18 is yet to be seen. These are also defenses that
19 should a Special Prosecutor decide to re-resurrect
20 Mr. Smollett's charges, she can raise all those
21 defenses in the criminal case. Those are not part of
22 this case.

23 Secondly, Judge, as to the second prong
24 about Mr. Smollett's interests being -- being

1 represented by the existing parties. The State's
2 Attorney is very capable, and you saw it, I saw it.
3 They are worthy opponents, and they fought very hard
4 about a specific statute. Again, this is not about
5 the merits of Mr. Smollett's case.

6 So, the whole point of this was who the
7 person would be, not whether Mr. Smollett's case was
8 going to be relitigated. And the State's Attorney
9 fought hard, and fought long, and -- and Mr. Smollett
10 did come into court and say, I don't want to be here,
11 I don't want to testify.

12 So, he could have spoken up. I asked him to
13 come, and they wouldn't come. So he decided their --
14 he didn't want to be heard. But now he wants to be
15 heard. So there's a real disconnect.

16 But there is a third prong to this statute
17 which Ms. Glandian has not addressed. And it says --
18 first part, upon timely application. Timely
19 application. This motion was filed on the last day of
20 the 30 days after you signed that order.

21 Mr. Smollett has known throughout the
22 entirety of these proceedings what's going on. How
23 did he know? Well, as most of us do, we're kind to
24 each other in the practice of law, we send each other

1 the pleadings. It doesn't mean that he's a party, but
2 it does mean if his name's being bantered about in a
3 courtroom and he's got private counsel, which he does,
4 you'd send it to them so they know. They have known
5 from the beginning.

6 Not only did they know, but they came in a
7 motion to quash my Rule 237 motion and said, don't
8 make me come to court. Mr. Smollett said, I don't
9 want to come to court; I don't want to testify.

10 So, they have gotten notices on every
11 pleading. They have engaged in emails with us,
12 sending pleadings back and forth. Is this a time --
13 this is the time to come in now and ask to be heard,
14 after two months of litigation that you knew about and
15 that you resisted? Now you're going to come in and
16 say, oh, it's -- it's so bad, I have to come in now.
17 No.

18 So the three prongs of this -- timely
19 application have not been met; the statute --
20 representation of Mr. Smollett's interest; State's
21 Attorney did a great job here. And Mr. Smollett is
22 not in a different position at this moment than he was
23 prior to the filing of this petition.

24 If the State's Attorney of Cook County, Kim

1 Foxx, wanted to resurrect Mr. Smollett's case on April
2 5th, she could have. And she didn't. This is not
3 about Mr. Smollett's guilt; it has never been about
4 that. It's not about his case, it's about who is
5 going to be in control of his case. That's what this
6 case is about, and those are -- that's what my
7 argument is, Judge. I would ask you to deny the
8 motion.

9 MS. GLANDIAN: If I may, your Honor?

10 THE COURT: State have anything?

11 MS. McNEIL-STEIN: Your Honor, the State
12 doesn't have -- doesn't take a position.

13 THE COURT: Okay.

14 MS. GLANDIAN: May I respond, your Honor?

15 THE COURT: Sure.

16 MS. GLANDIAN: Several points.

17 On -- as far as the timeliness goes, in our
18 joint reply, we cited a case, that's WH Lyman
19 Construction Company versus Village of Gurnee, and in
20 that case -- and I'm quoting -- that fact that the
21 Village's cross-claim had been litigated prior to
22 trial in this case did not eliminate Baxter and
23 Woodman's interest in the present litigation. To the
24 contrary, Baxter and Woodman's interest was increased

1 since it had already been determined that it would be
2 held liable for any liability found on the part of the
3 Village. Under these conditions, Baxter and Woodman
4 had a right to intervene pursuant to Section 2-408(a).

5 So, as far as the timeliness, it's very
6 early in the proceedings. We've filed a timely motion
7 for reconsideration, and I think, because of the
8 unexpected position that the Court took in the order,
9 that's what compelled us to now seek to intervene. No
10 one's -- no one's claiming we weren't aware.

11 Mr. Watson wasn't -- was in court; we were obviously
12 aware of these proceedings. However, we were not
13 aware that the Court's order was going to go as far as
14 it did, which we think is obviously error, and we feel
15 the need now to intervene.

16 As far as Ms. O'Brien's claims that this
17 isn't about Mr. Smollett's guilt or it's not about the
18 actual case, if that's the case, then the Court --
19 then the Court should limit the order. The Court
20 should say, a Special Prosecutor, if the Court is
21 going to stand by that, could investigate whether
22 there was any misconduct because they will find that
23 there was no misconduct, and if they want to
24 investigate why the State's Attorney's Office did what

1 it did, so be it. Let them investigate that, and that
2 has nothing do with Mr. Smollett, and that's fine.

3 And -- but if the Court is going to say that
4 the Special Prosecutor could further prosecute
5 Mr. Smollett, then he's entitled to intervene. That's
6 a direct impact on him, on his liberty, on his
7 property, and, under the law, he's entitled to
8 intervene.

9 Um, as far as Ms. O'Brien saying
10 Mr. Smollett was served with discovery requests and he
11 should have come and testified, um, that, to me, is a
12 ridiculous argument. He, at the time, is still being
13 sued by the City of Chicago. Um, as his attorney, I'm
14 never going to let him come in here and testify when
15 he doesn't have to when she's served improper requests
16 and the Court has already quashed those requests as
17 improper. And so, for her to say that that was an
18 opportunity, she was, uh, using improper discovery
19 procedures and we weren't going to have him come to
20 the state of Illinois to testify when he is still a
21 party in a civil lawsuit by the State of -- by the
22 City of Chicago.

23 And so, I think for all these reasons, we've
24 established well founded reasons that Mr. Smollett

1 should be entitled to intervene. Again, it would
2 actually boggle my mind that he's not allowed to
3 intervene in light of what the Court's order, uh,
4 appoints a Special Prosecutor to do.

5 So we'd ask the Court to grant the motion.

6 THE COURT: In your motion, you cite to City of
7 Chicago versus John Hancock Mutual Life at
8 127 Ill.App.3d 140, a 1984 case, from the First
9 District where the holding seems to be that the Trial
10 Court's discretion is limited to determining
11 timeliness, the inadequacy of representation, and the
12 sufficiency of interests.

13 In Anderson versus Grand Bahama Development
14 Company at 138 App.3d 272, a 1985 case, the general
15 rule was expressed that a prerequisite to any petition
16 to intervene is that the petition be timely only
17 permitted prior to entry of judgment. Post-judgment
18 intervention is limited to situations where it is the
19 only way of protecting the rights of the intervener.

20 That is not applicable here for the reasons
21 I earlier expressed, that it's not the -- has no
22 direct effect upon the rights of the intervener.
23 These issues could be raised at any time if, in fact,
24 Mr. Smollett was prosecuted.

1 In O'Bannon versus Northern Petrochemical
2 Company, 113 App.3d 734, the petition was filed after
3 the case was settled and dismissed.

4 And there seems to be here some question
5 that was raised by Ms. Glandian that the order that
6 the Court entered was not a final order; that it was
7 an order that was interlocutory, that because it
8 called for the appointment of a Special Prosecutor, it
9 did not have finality to it, and I believe you cited a
10 case that I'm very familiar with, People versus Harry
11 Aleman, and I fail to see how that case is applicable,
12 a case that I tried in this courtroom in 1997.

13 That case did go up. One of the issues was
14 whether the -- whether the order was a final order,
15 the order that said that the State had shown that
16 double jeopardy was not an impediment for the
17 prosecution of Mr. Aleman, and the matter was then
18 continued because it was, on its face, an interim
19 order, and it said so -- I have it here someplace --
20 but it said that it was an interim order, and it
21 continued the matter, on it's face, to have an
22 evidentiary hearing to see if the State could prove,
23 by competent evidence, the bribe that was said to have
24 occurred when Harry Aleman was acquitted in his first

1 case.

2 And it said it was not a final order; it was
3 an interim order. It clearly said it was. It has no
4 bearing to this case. This was not an interim order.
5 It didn't -- it didn't pretend to be, it didn't
6 purport to be. So I don't see the analogy there.

7 But the third proposition of law is as I've
8 indicated earlier, that the intervener must take the
9 suit as he finds it, and where the intervention would
10 result in the infection of new and complicated issues,
11 it may be denied.

12 Well, we have several new issues here that
13 appear in your pleadings, challenges to the proper
14 prosecutorial authority that could only be made by
15 Jessie Smollett; double jeopardy that any further
16 prosecution would violate the prescriptions against
17 double jeopardy; and, of course, as you indicated, a
18 Fourth Amendment issue relating to the \$10,000 in
19 bail; and the denial of liberty and property without
20 due process of law.

21 Here, the petition was far from timely as it
22 was in Ramsey Emergency Services versus Interstate
23 Commerce Commission, 367 App.3d 351. There, the
24 petition was filed after the proceedings were well

1 under way, as they were here. The evidence was
2 closed, as it was here. And, in that case, the
3 Administrative Law Judge had already issued a proposed
4 final order. So all of those requisites were met in
5 Ramsey; they were met here as well.

6 One further issue I would like to address,
7 and that is under the intervention statute, while the
8 party need not have a direct interest in the pending
9 suit to intervene, he must stand to gain or lose by
10 direct legal operation and effect of the judgment in
11 that suit.

12 If his interest is speculative or
13 hypothetical, this does not constitute sufficient
14 evidence or sufficient interest to warrant
15 intervention.

16 So here, of course, as I've indicated, the
17 order of June 21st is lacking any direct legal
18 operation. It only enables a Special Prosecutor to
19 conduct an independent investigation and
20 re-prosecution is not ordered, but may occur only if
21 additional considerations are met, i.e., reasonable
22 grounds exist to re-prosecute Mr. Smollett, and it's
23 in the interest of justice.

24 Whatever my opinion might be, it really has

1 no bearing because that is up to the Special
2 Prosecutor who will, in all likelihood, confront those
3 issues, as he or she is instructed to do.

4 The Court will deny the motion to intervene.
5 Based upon that ruling, there is no basis to proceed
6 with the motion for reconsideration, the Court having
7 ruled that there is no right to intervene as is
8 requested, and the -- also the motion to publish the
9 Grand Jury transcript that was referred to in
10 Counsel's pleadings.

11 Those orders will be entered. The matter,
12 again, will be taken off call.

13 We will reconvene when the Court has had the
14 opportunity to select a Special Prosecutor in
15 accordance with the order of June 21st.

16 Thank you very much.

17 MS. O'BRIEN: Thank you, Judge.

18 MS. GLANDIAN: Thank you, your Honor.

19 (Which were all the proceedings
20 had in the above-entitled cause.)

21

22

23

24

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

5
6
7
8
9
10
11
12
13
14
15
16

17
18
19
20
21

22
23
24

| | | |
|---|---|-------------------|
| |) | |
| |) | |
| |) | No. 19 MR 00014 |
| IN RE APPOINTMENT OF SPECIAL PROSECUTOR |) | |
| |) | |
| |) | Michael P. Toomin |
| |) | Judge Presiding |
| |) | |
| |) | |
| |) | |

This matter comes on for implementation of the order entered June 21, 2019, granting the Petition to Appoint a Special Prosecutor in the Matter of the People of the State of Illinois v. Jussie Smollett upon a finding of sufficient cause warranting disqualification of the State's Attorney of Cook County and appointment of a Special Prosecutor in her stead.

SR370

Pursuant to section 3-9008 (a-20) of the Counties Code (55 ILCS 5/3-9008 (a-20) (West 2018), the Special Prosecutor shall be vested with the same powers and authority of the elected State's Attorney of Cook County, limited only by the subject matter of this investigation, including the power to discover and gather relevant evidence, to compel the appearance of witnesses before a Special Grand Jury of the Circuit Court of Cook County, to confer immunity as may be deemed necessary, to consider the bar of limitations where applicable, and to institute criminal proceedings by indictment, information, or complaint, where supported by probable cause, upon his taking the proper oath required by law.

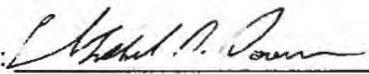
IT IS FURTHER ORDERED that the Special Prosecutor shall be paid reasonable compensation commensurate with such time and effort actually expended in pursuit of this investigation. However, in no event shall such compensation exceed the statutory annual salary of the elected State's Attorney for any twelve (12) month period.

IT IS FURTHER ORDERED that the Special Prosecutor shall be empowered to hire and direct a staff of deputy attorneys, investigators, and such other administrative personnel as necessary to discharge the duties of the Office of the Special Prosecutor. Compensation for the Special Prosecutor's staff, including deputy attorneys, shall be based upon reasonable rates for attorneys of similar qualifications in government service and commensurate with their skill, efforts and experience. It is understood that in the performance of his duties the Special Prosecutor shall utilize office space provided by his law firm, Winston & Strawn, LLP, with reimbursement for incidental costs for telephone or internet connections, or other office equipment and miscellaneous expenses incurred.

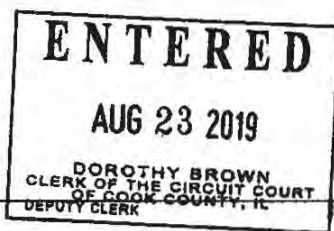
IT IS FURTHER ORDERED that the Special Prosecutor shall have unfettered access to reports, records, and other materials related to this matter currently in the possession of the Cook County State's Attorney's Office and its investigative partners, including the Chicago Police Department and the Cook County Inspector General, and may consider those materials in discharging his duties and conducting any investigations.

IT IS FURTHER ORDERED that the Special Prosecutor shall submit fee and associated cost petitions for the consideration of this Court at regular intervals, not to exceed three (3) months, for submission to and payment by the Cook County Board of Commissioners.

IT IS FURTHER ORDERED that at the conclusion of his investigation, the Special Prosecutor shall submit a final report to this Court and for the benefit of the Cook County Board of Commissioners detailing the progress and ultimate results of the investigation as well as criminal prosecutions commenced.

ENTERED: 
Michael P. Toomin,
Judge of the
Circuit Court of Cook County

DATE: _____



STATE OF ILLINOIS

COUNTY OF COOK

)
)
)
SS.

Special Grand Jury No. 2019 MR 00014 of the
Circuit Court of Cook County,

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that, on or about January 29, 2019, at and within the County of Cook:

Jussie Smollett

Committed the offense of: DISORDERLY CONDUCT

in that HE, KNOWINGLY TRANSMITTED OR CAUSED TO BE TRANSMITTED, IN ANY MANNER, TO ANY PEACE OFFICER, TO WIT: CHICAGO POLICE OFFICER MUHAMMED BAIG, A REPORT TO THE EFFECT THAT AN OFFENSE HAD BEEN COMMITTED, TO WIT: ON JANUARY 29, 2019, AT AROUND 2:45 A.M., JUSSIE SMOLLETT REPORTED, IN PERSON, THAT HE WAS THE VICTIM OF A HATE CRIME, A VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-7.1(a) OF THE ILLINOIS COMPILED STATUTES, REPORTING THAT ON JANUARY 29, 2019, AT APPROXIMATELY 2:00 A.M., NEAR 341 EAST LOWER NORTH WATER STREET, IN CHICAGO, COOK COUNTY, ILLINOIS, TWO UNKNOWN MALES APPROACHED JUSSIE SMOLLETT, CALLED JUSSIE SMOLLETT RACIAL AND HOMOPHOBIC SLURS, AND STRUCK JUSSIE SMOLLETT, AND THE TWO UNKNOWN MALES MADE PHYSICAL CONTACT OF AN INSULTING OR PROVOKING NATURE WITH JUSSIE SMOLLETT BY PUTTING A ROPE AROUND HIS NECK, AND JUSSIE SMOLLETT KNEW THAT AT THE TIME OF THIS TRANSMISSION THERE WAS NO REASONABLE GROUND FOR BELIEVING THAT SUCH AN OFFENSE HAD BEEN COMMITTED,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 26-1(a)(4) / (12-7.1(a)) OF ILLINOIS COMPILED STATUTES ACT 1992 AS AMENDED AND,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER: 1

CASE NUMBER: 20 CR 03050-01

FILED

FEB 11 2020

DOROTHY BROWN
CLERK OF CIRCUIT COURT

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that, on or about January 29, 2019, at and within the County of Cook:

Jussie Smollett

Committed the offense of: DISORDERLY CONDUCT

in that HE, KNOWINGLY TRANSMITTED OR CAUSED TO BE TRANSMITTED, IN ANY MANNER, TO ANY PEACE OFFICER, TO WIT: CHICAGO POLICE OFFICER MUHAMMED BAIG, A REPORT TO THE EFFECT THAT AN OFFENSE HAD BEEN COMMITTED, TO WIT: ON JANUARY 29, 2019, AT AROUND 2:45 A.M., JUSSIE SMOLLETT REPORTED, IN PERSON, THAT HE WAS THE VICTIM OF A BATTERY, A VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3(a)(2) OF THE ILLINOIS COMPILED STATUTES, REPORTING THAT ON JANUARY 29, 2019, AT APPROXIMATELY 2:00 A.M., NEAR 341 EAST LOWER NORTH WATER STREET, IN CHICAGO, COOK COUNTY, ILLINOIS, TWO UNKNOWN MALES APPROACHED JUSSIE SMOLLETT AND STRUCK JUSSIE SMOLLETT, AND THE TWO UNKNOWN MALES MADE PHYSICAL CONTACT OF AN INSULTING OR PROVOKING NATURE WITH JUSSIE SMOLLETT, POURING AN UNKNOWN CHEMICAL SUBSTANCE, BELIEVED TO BE BLEACH, ONTO JUSSIE SMOLLETT, AND JUSSIE SMOLLETT KNEW THAT AT THE TIME OF THIS TRANSMISSION THERE WAS NO REASONABLE GROUND FOR BELIEVING THAT SUCH AN OFFENSE HAD BEEN COMMITTED,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 26-1(a)(4) / (12-3(a)) OF ILLINOIS COMPILED STATUTES ACT 1992 AS AMENDED AND,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER: 2

CASE NUMBER: 20 CR 03050-01

FILED

FEB 11 2020

DOROTHY BROWN
CLERK OF CIRCUIT COURT

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about January 29, 2019, at and within the County of Cook:

Jussie Smollett

Committed the offense of: DISORDERLY CONDUCT

in that HE, KNOWINGLY TRANSMITTED OR CAUSED TO BE TRANSMITTED, IN ANY MANNER, TO ANY PEACE OFFICER, TO WIT: CHICAGO POLICE DETECTIVE KIMBERLY MURRAY, A REPORT TO THE EFFECT THAT AN OFFENSE HAD BEEN COMMITTED, TO WIT: ON JANUARY 29, 2019, AT AROUND 5:55 A.M., JUSSIE SMOLLETT REPORTED, IN PERSON, THAT HE WAS THE VICTIM OF A HATE CRIME, A VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-7.1(a) OF THE ILLINOIS COMPILED STATUTES, REPORTING THAT ON JANUARY 29, 2019, AT APPROXIMATELY 2:00 AM, NEAR THE INTERSECTION OF NEW STREET AND LOWER NORTH WATER STREET, IN CHICAGO, COOK COUNTY, ILLINOIS, JUSSIE SMOLLETT HAD RACIAL AND HOMOPHOBIC SLURS CALLED OUT AT HIM, AND TWO UNKNOWN OFFENDERS APPROACHED JUSSIE SMOLLETT FROM BEHIND, AND JUSSIE SMOLLETT WAS PUNCHED IN THE FACE AND KICKED IN THE BACK, CAUSING BODILY HARM TO JUSSIE SMOLLETT, AND JUSSIE SMOLLETT KNEW THAT AT THE TIME OF THIS TRANSMISSION THERE WAS NO REASONABLE GROUND FOR BELIEVING THAT SUCH AN OFFENSE HAD BEEN COMMITTED,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 26-1(a)(4) / (12-7.1(a)) OF ILLINOIS COMPILED STATUTES ACT 1992 AS AMENDED AND,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER: 3

CASE NUMBER: 20 CR 03050-01

FILED

FEB 11 2020

DOROTHY BROWN
CLERK OF CIRCUIT COURT

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about January 29, 2019, at and within the County of Cook:

Jussie Smollett

Committed the offense of: DISORDERLY CONDUCT

in that HE, KNOWINGLY TRANSMITTED OR CAUSED TO BE TRANSMITTED, IN ANY MANNER, TO ANY PEACE OFFICER, TO WIT: CHICAGO POLICE DETECTIVE KIMBERLY MURRAY, A REPORT TO THE EFFECT THAT AN OFFENSE HAD BEEN COMMITTED, TO WIT: ON JANUARY 29, 2019, AT AROUND 5:55 A.M., JUSSIE SMOLLETT REPORTED, IN PERSON, THAT HE WAS THE VICTIM OF A BATTERY, A VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3(a)(1) OF THE ILLINOIS COMPILED STATUTES, REPORTING THAT ON JANUARY 29, 2019, AT APPROXIMATELY 2:00 AM, NEAR THE INTERSECTION OF NEW STREET AND LOWER NORTH WATER STREET, IN CHICAGO, COOK COUNTY, ILLINOIS, TWO UNKNOWN OFFENDERS APPROACHED JUSSIE SMOLLETT FROM BEHIND, AND JUSSIE SMOLLETT WAS PUNCHED IN THE FACE AND KICKED IN THE BACK, CAUSING BODILY HARM TO JUSSIE SMOLLETT, AND JUSSIE SMOLLETT KNEW THAT AT THE TIME OF THIS TRANSMISSION THERE WAS NO REASONABLE GROUND FOR BELIEVING THAT SUCH AN OFFENSE HAD BEEN COMMITTED,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 26-1(a)(4) / (12-3(a)) OF ILLINOIS COMPILED STATUTES ACT 1992 AS AMENDED AND,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER: 4

CASE NUMBER: 20 CR 03050-01

FILED

FEB 11 2020

DOROTHY BROWN
CLERK OF CIRCUIT COURT

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about January 29, 2019, at and within the County of Cook:

Jussie Smollett

Committed the offense of: DISORDERLY CONDUCT

in that HE, KNOWINGLY TRANSMITTED OR CAUSED TO BE TRANSMITTED, IN ANY MANNER, TO ANY PEACE OFFICER, TO WIT: CHICAGO POLICE DETECTIVE KIMBERLY MURRAY, A REPORT TO THE EFFECT THAT AN OFFENSE HAD BEEN COMMITTED, TO WIT: ON JANUARY 29, 2019, AT AROUND 7:15 P.M., JUSSIE SMOLLETT REPORTED, IN PERSON, THAT HE WAS THE VICTIM OF A BATTERY, A VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3(a)(1) OF THE ILLINOIS COMPILED STATUTES, REPORTING THAT ON JANUARY 29, 2019, AT APPROXIMATELY 2:00 AM, NEAR THE INTERSECTION OF NEW STREET AND LOWER NORTH WATER STREET, IN CHICAGO, COOK COUNTY, ILLINOIS, TWO UNKNOWN OFFENDERS APPROACHED JUSSIE SMOLLETT FROM BEHIND AND ENGAGED IN A PHYSICAL ALTERCATION WITH JUSSIE SMOLLETT, CAUSING BODILY HARM TO JUSSIE SMOLLETT, AND JUSSIE SMOLLETT KNEW THAT AT THE TIME OF THIS TRANSMISSION THERE WAS NO REASONABLE GROUND FOR BELIEVING THAT SUCH AN OFFENSE HAD BEEN COMMITTED,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 26-1(a)(4) / (12-3(a)) OF ILLINOIS COMPILED STATUTES ACT 1992 AS AMENDED AND,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER: 5

CASE NUMBER: 20 CR 03050-01

FILED

FEB 11 2020

DOROTHY BROWN
CLERK OF CIRCUIT COURT

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about February 14, 2019, at and within the County of Cook:

Jussie Smollett

Committed the offense of: DISORDERLY CONDUCT

in that HE, KNOWINGLY TRANSMITTED OR CAUSED TO BE TRANSMITTED, IN ANY MANNER, TO ANY PEACE OFFICER, TO WIT: CHICAGO POLICE DETECTIVE ROBERT GRAVES, A REPORT TO THE EFFECT THAT AN OFFENSE HAD BEEN COMMITTED, TO WIT: ON FEBRUARY 14, 2019, AT AROUND 12:15 P.M., JUSSIE SMOLLETT REPORTED, IN PERSON, THAT HE WAS THE VICTIM OF AN AGGRAVATED BATTERY, A VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(f)(2) OF THE ILLINOIS COMPILED STATUTES, REPORTING THAT ON JANUARY 29, 2019, NEAR 341 EAST LOWER NORTH WATER STREET, IN CHICAGO, COOK COUNTY, ILLINOIS, TWO UNKNOWN MALES, ONE OF WHOM WORE A MASK, APPROACHED JUSSIE SMOLLETT AND ENGAGED IN A PHYSICAL ALTERCATION WITH JUSSIE SMOLLETT, AND THE TWO UNKNOWN MALES MADE PHYSICAL CONTACT OF AN INSULTING OR PROVOKING NATURE WITH JUSSIE SMOLLETT BY PUTTING A ROPE AROUND HIS NECK, AND JUSSIE SMOLLETT KNEW THAT AT THE TIME OF THIS TRANSMISSION THERE WAS NO REASONABLE GROUND FOR BELIEVING THAT SUCH AN OFFENSE HAD BEEN COMMITTED,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 26-1(a)(4) / (12-3.05(f)(2)) OF ILLINOIS COMPILED STATUTES ACT 1992 AS AMENDED AND,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER: 6

CASE NUMBER: 20 CR 03050-01

FILED

FEB 12 2020

DOROTHY BROWN
CLERK OF CIRCUIT COURT

SPECIAL GRAND JURY NO. 2019 MR 00014
General No. 20 CR 03050-01

Circuit Court of Cook County
County Department
Criminal Division
Special Grand Jury No. 2019 MR 00014

The People of the State of Illinois

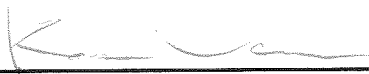
v.

Jussie Smollett

INDICTMENT FOR

DISORDERLY CONDUCT

A TRUE BILL



Foreperson of the Grand Jury

WITNESS

Investigator Thomas C. Wilson, Office of the Independent Inspector General, Cook County,
Illinois

Detective Michael Theis, Chicago Police Department

Filed FEBRUARY 11, 2020

Dorothy Brown, Clerk

Bail \$ _____

FILED

FEB 11 2020

DOROTHY BROWN
CLERK OF CIRCUIT COURT