

No. 09-2560

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSEPH A. STOCK,

Petitioner-Appellant,

v.

ANTHONY RAMOS, Acting Warden,
Stateville Correctional Center,

Respondent-Appellee.

Appeal from the United States
District Court for the Northern
District of Illinois,
Eastern Division

Case No. 06 C 448

Hon. David H. Coar,
Presiding Judge

BRIEF AND REQUIRED SHORT APPENDIX OF
PETITIONER-APPELLANT JOSEPH A. STOCK

BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

SARAH O'ROURKE SCHRUP
JEFFREY URDANGEN

Attorneys

Alison L. Speck

Senior Law Student

David R. Pekarek Krohn

Senior Law Student

**Counsel for Petitioner-Appellant,
Joseph A. Stock**

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSEPH A. STOCK,

Petitioner-Appellant,

v.

ANTHONY RAMOS, Acting Warden,
Stateville Correctional Center,

Respondent-Appellee.

Appeal from the United States
District Court for the Northern
District of Illinois,
Eastern Division

Case No. 06 C 448

Hon. David H. Coar,
Presiding Judge

DISCLOSURE STATEMENT

I, the undersigned counsel for the Petitioner-Appellant, Joseph A. Stock, furnish the following list in compliance with Fed. R. App. P. 26.1 and Cir. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case: Joseph A. Stock.

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court: Sarah O. Schrup (attorney of record), Jeffrey Urdangen (attorney), Alison L. Speck (senior law student), and David R. Pekarek Krohn (senior law student), of the Bluhm Legal Clinic at the Northwestern University School of Law. The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear:

Andrea Lubelfeld
Evanston Community Defender Office, Inc.
1123 Emerson St., Suite 203
Evanston, Illinois 60201

Cynthia Giacchetti
Law Offices of Cynthia Giacchetti

53 West Jackson Boulevard, Suite 1460
Chicago, Illinois 60604

Attorney's Signature: _____ Date: December 3, 2009

Attorney's Printed Name: Sarah O. Schrup

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to

Circuit Rule 3(d). **Yes** **X** **No**

Address: 375 East Chicago Avenue, Chicago, Illinois 60611
Phone Number: (312) 503-0063
Fax Number: (312) 503-8977
E-Mail Address: s-schrup@law.northwestern.edu

TABLE OF CONTENTS

DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	v
STATEMENT OF JURISDICTION	1
STATEMENT OF THE ISSUE	2
STATEMENT OF THE CASE.....	3
STATEMENT OF THE FACTS	5
SUMMARY OF THE ARGUMENT	21
ARGUMENT	23
I. Stock was denied his Sixth Amendment right to confrontation and was denied a fair trial.....	30
A. The state trial court violated Stock’s constitutional right to confront and impeach the State’s star witness by improperly limiting cross-examination.....	30
B. The state appellate court issued a decision that used the wrong Supreme Court precedent, and was therefore contrary to federal law	38
C. Even if this Court finds that the appellate court applied the correct rule, the appellate court unreasonably applied that rule to Stock’s case	39
II. These fundamental constitutional errors were not harmless	42
CONCLUSION.....	48
CERTIFICATE OF SERVICE.....	49
CIRCUIT RULE 31(e) CERTIFICATION.....	50
CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)	51
CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 30(d).....	52
ATTACHED REQUIRED SHORT APPENDIX	App. i

RULE 30(a) SHORT APPENDIX TABLE OF CONTENTS App. ii
RULE 30(b) APPENDIX TABLE OF CONTENTS App. iii

TABLE OF AUTHORITIES

CASES

<i>Anderson v. Cowan</i> , 227 F.3d 893 (7th Cir. 2000).....	26
<i>Blackledge v. Allison</i> , 431 U.S. 63 (1977)	23
<i>Brecht v. Abrahamson</i> , 507 U.S. 619 (1993).....	25
<i>Brown v. United States</i> , 411 U.S. 223 (1973).....	44
<i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973).....	37
<i>Coffin v. United States</i> , 156 U.S. 432 (1895)	33
<i>County Court v. Allen</i> , 442 U.S. 140 (1979)	34
<i>Crane v. Kentucky</i> , 476 U.S. 683 (1986).....	45
<i>Davis v. Alaska</i> , 415 U.S. 308 (1974)	passim
<i>Delaware v. Fensterer</i> , 474 U.S. 15 (1985)	passim
<i>Delaware v. Van Arsdall</i> , 475 U.S. 673 (1986)	passim
<i>Fry v. Pliler</i> , 551 U.S. 112 (2007)	26
<i>Harris v. Nelson</i> , 394 U.S. 286 (1969).....	23
<i>Heller v. Jonathan Invs., Inc.</i> , 481 N.E.2d 997 (Ill. App. Ct. 1985).....	36
<i>Kotteakos v. United States</i> , 328 U.S. 750 (1946).....	25, 26, 46
<i>Olden v. Kentucky</i> , 488 U.S. 227 (1988).....	42
<i>Panetti v. Quarterman</i> , 551 U.S. 930 (2007).....	25, 39
<i>People v. Barnwell</i> , 675 N.E.2d 148 (Ill. App. Ct. 1996).....	34
<i>People v. Britz</i> , 493 N.E.2d 575 (Ill. 1986)	35, 36
<i>People v. Caffey</i> , 92 N.E.2d 1163 (Ill. 2001)	36, 37
<i>People v. Carroll</i> , 751 N.E.2d 44 (Ill. App. Ct. 2001).....	36

<i>People v. Hosty</i> , 497 N.E.2d 334 (Ill. App. Ct. 1986)	35, 36
<i>People v. Stock</i> , 829 N.E.2d 793 (Table) (Ill. Jan. 26, 2005).....	3
<i>People v. Ward</i> , 609 N.E.2d 252 (Ill. 1992)	37
<i>People v. Williams</i> , 769 N.E.2d 518 (Ill. App. Ct. 2002).....	33
<i>Rittenhouse v. Battles</i> , 263 F.3d 689 (7th Cir. 2001).....	24
<i>Schaff v. Snyder</i> , 190 F.3d 513 (7th Cir. 1999).....	26
<i>Smiley v. Thurmer</i> , 542 F.3d 574 (7th Cir. 2008).....	25
<i>Tennessee v. Street</i> , 471 U.S. 409 (1985).....	31
<i>United States v. Bates</i> , 617 F.2d 585 (10th Cir. 1980)	41
<i>United States v. Byrd</i> , 208 F.3d 592 (7th Cir. 2000)	45
<i>United States v. Cerro</i> , 775 F.2d 908 (7th Cir. 1985)	45
<i>United States v. Owens</i> , 484 U.S. 554 (1988).....	39
<i>United States v. Peak</i> , 856 F.2d 825 (7th Cir. 1988)	45, 46
<i>Washington v. Smith</i> , 219 F.3d 620 (7th Cir. 2000)	24
<i>Wiggins v. Smith</i> , 539 U.S. 510 (2003)	25
<i>Williams v. Taylor</i> , 529 U.S. 362 (2000)	24, 25

STATUTES

28 U.S.C. § 2241 (2006)	1
28 U.S.C. § 2253 (2006)	1
28 U.S.C. § 2253(c) (2006)	1
28 U.S.C. § 2254 (2006)	1
28 U.S.C. § 2254(a) (2006).....	23

28 U.S.C. § 2254(d) (2006)..... 24, 25, 26

OTHER AUTHORITIES

Fed. R. App. P. 22(b)..... 1

Robert J. Steigmann & Lori A. Nicholson, *Illinois Evidence Manual* § 4:25 (4th ed.)
(updated November 2009)..... 37

U.S. Const. amend. VI..... 26

U.S. Const. amend. XIV..... 26

STATEMENT OF JURISDICTION

Petitioner-Appellant Joseph A. Stock appeals from an order denying his petition for a writ of habeas corpus. Stock timely filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254 on January 25, 2006, in the United States District Court for the Northern District of Illinois, Eastern Division. 28 U.S.C. §§ 2241, 2254 (2006). The district court, which had jurisdiction pursuant to 28 U.S.C. § 2241, denied Stock's petition and entered its final judgment on March 31, 2009.

Stock sought a Certificate of Appealability from the district court on April 12, 2009 and timely filed his notice of appeal on April 29, 2009. On June 18, 2009, the district court granted Stock's request for a Certificate of Appealability pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b). 28 U.S.C. § 2253(c) (2006).

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 2253.

STATEMENT OF THE ISSUE

Whether the district court erred in denying Stock's petition for a writ of habeas corpus, where the State violated Stock's Sixth Amendment right to confrontation by preventing any impeachment of the State's star witness with omissions and statements the witness made in response to Stock's statements during a recorded telephone conversation when the omissions and statements cut at the heart of the credibility of the witness's testimony.

STATEMENT OF THE CASE¹

In February 2001 Joseph Stock was arrested and charged with the murder of Connie Wagner. (App. A288; Tr. 1096.) On September 13, 2002, Stock was convicted of first degree murder by a jury in Cook County, Illinois. (C. 298.) On November 1, 2002, Judge Thomas Fecarotta imposed a sentence of ninety years. (Tr. 1453.) In his direct appeal to the Illinois appellate court, Stock claimed, *inter alia*, a Confrontation Clause violation. (App. A84-89.) The Illinois appellate court rejected his claims and affirmed his conviction and sentence. (App. A99.) The Illinois Supreme Court denied Stock's petition for leave to appeal. *People v. Stock*, 829 N.E.2d 793 (Table) (Ill. Jan. 26, 2005). On January 25, 2006, after exhausting his state-court remedies, Stock filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Illinois, Eastern Division pursuant to 28 U.S.C. § 2254. (App. A32-38.) Stock argued that he was denied the right to confront the State's star witness, Alfonso Najera, about his inappropriate responses or lack of responses in a recorded telephone conversation, which were wholly inconsistent with his testimony. (App. A36, A40.) The district court held that, "[w]hile it is a close call, the court's ruling was not clearly incorrect and was not unreasonable." (App. A24.) On June 18, 2009, the district court granted Stock's

¹ References to documents contained in the district court record shall be cited as (R. ___ at ___.) References to the sequentially paginated, chronological transcripts contained within the Illinois record of proceedings shall be denoted (Tr. ___), and can be found in Exhibit F attached to the State's answer in the district court (R. 23). References to the Illinois common law record shall be denoted (C. ___), and can be found in Exhibit A attached to the State's answer in the district court (R. 23). Finally, citations to materials reproduced in the Appendices on appeal, shall be cited as (App. ___).

request for a certificate of appealability, noting, “the initial inquiry as to the propriety of the trial court’s evidentiary rulings was rather subtle,” and that Stock “has shown through his extensive briefs that reasonable jurists could find this Court’s assessment of his constitutional claims debatable.” (App. A30-31.) This appeal timely followed. (R. 55.)

STATEMENT OF THE FACTS

Joseph Stock and Connie Wagner met at Horizon Marketing Research in Rolling Meadows, Illinois, where they both worked, and began dating in February 1997. (App. A239-40.) According to Stock's sister, the two had fun together and seemed happy. (Tr. 644.) Stock lived with his family in Elk Grove Village, Illinois and had no adult criminal record. (App. A297; Tr. 1447.) Connie lived with her father and brother in Palatine, Illinois, fourteen-and-a-half miles (about a twenty-two minute drive) west of the Stocks' house. (App. A399-400; Tr. 826-27.)

Connie was killed on June 20, 1997. (Tr. 303-04, 313.) The police investigated the crime for nearly four years without arresting a suspect. Then, on February 22, 2001, the police arrested Stock for her murder. (Tr. 1096.) The key evidence leading to Stock's arrest was a statement his friend, Alfonso Najera, signed in September 1997, three-and-a-half years prior to the arrest, stating that Stock had confessed to the murder. (App. A179, A183, A195.) None of the evidence recovered at the scene, including fingerprints and a hair, matched Stock. (Tr. 614-24, 1145, 1149-53.) Following a jury trial in September 2002, Stock was convicted and sentenced to ninety years in prison. (Tr. 1453.)

Connie was a drug user who frequently pawned jewelry to get money for marijuana and cocaine. (App. A258, A262.) In fact, she and her close friend, Michael Pope, pawned "everything [they] could get their hands on." (App. A248, A261.) This money then went to buy drugs from Latin King drug dealers. (App. A261.) Pope and Connie would buy the drugs from the gang members at an

apartment complex called Baldwin Green, five or six of blocks from her home. (App. A275-76.) It was at this apartment complex that the police discovered Connie's car after her death. (Tr. 274.)

Connie and Pope were close friends with Rob Durango, a "higher ranking" drug dealer and member of the Latin Kings gang. (App. A257-59.) Connie had exchanged valuables as collateral for drugs. (App. A259.) At one point Connie and Pope went to Rob Durango with money to try to get the valuables back, but were unable to recover those items. (App. A259, A261-62.)

Pope and Stock did not get along. (App. A263.) In fact, they were on "very, very bad terms." (App. A263.) In one instance, Pope attempted to start a fight between Stock and Connie's previous boyfriend, David Alcarise, by leaving Alcarise's phone number on Stock's pager. (App. A262-63.) Shortly before the murder, while Stock was in a liquor store, Alcarise approached Connie in the store's parking lot and angrily slammed her car door. (App. A256-57.) Eventually, Pope confronted Connie and told her that she needed to choose between him and Stock. (App. A264.) Connie chose Stock. (App. A265.)

According to Pope, Stock and Connie fought over the phone the night before the murder. (App. A243, A245-56.) Pope testified that, during the fight, he overheard Connie tell Stock that she was pregnant, that she and her family were moving to Texas, and that Stock would never see the baby. (App. A245-46.) After Stock got off the phone, Connie and Pope discussed a plan to harm Stock and "get even with him." (App. A269-70.) They came up with three ways to hurt Stock:

damaging his mother's car, leaving a message on Stock's answering machine to alert Stock's parents that Stock was working at an adult bookstore, and finally telling the police that Stock was dealing marijuana. (App. A270-71.) While Pope was still on the phone, Connie called the police and anonymously told an officer that Stock was selling marijuana to her sister. (App. A272.) She did not, however, tell the police that Stock threatened her. (App. A273-74.)

Betty Stock, Joseph's mother, woke up at about 6:00 or 6:30 on the morning of June 20, 1997. (App. A301-02.) It was her day off work. (App. A302.) She took out the garbage and saw both of the family's cars in the driveway. (App. A304.) She checked on Joseph at about 8:30 or 9:00 a.m. (App. A350) and inquired about his plans for the day and if he needed her to set an alarm (App. A305-06). She then went to the bank and deposited her paycheck at 9:26 a.m. (App. A306-09.) While she was at the bank, someone paged Joseph's pager from the Stock household. (App. A307.) Betty, Joseph's sister Theresa, and Max Stock, Joseph's father, would have had no reason to page Joseph at that time because he was at home. (App. A309.) Stock had been known to page himself from home when he lost his pager somewhere in the house. (App. A383.) Stock did not have anything planned, so he decided to go out with his mother and sister around 10:30 a.m. (App. A303, A313-14.) They went to the Wooddale train station, which is ten minutes away from their house. (App. A314-15.) All three of them got on the train heading downtown, east of the Stocks' home in Elk Grove Village and even farther east of Connie's home in Palatine. (App. A315-16.) Stock got off the train ten or fifteen minutes later,

stating that he wanted to catch the bus at Harlem in order to visit his friend Najera. (App. A315-16.) At about 4:30 p.m., Stock called his uncle, asking for a ride. (App. A424.) His uncle came and picked him up near Harlem and Foster, on Chicago's west side. (App. A425-26.) During the car ride, Stock's demeanor appeared relaxed and normal. (App. A434-35.) Stock's uncle drove him to Najera's house, where Stock ran to check to see if Najera was there. (App. A426-27.) Finding no one home, Stock returned with his uncle to his grandfather's house in Chicago. (App. A422-23, A427.) There, while they sat in the kitchen, watching television and talking, a story came on the news about a murder in Palatine. (App. A428.) The news channel showed a view of the outside of Connie's house; Stock went into shock and started hyperventilating, stating that he recognized the house. (App. A428.)

Early in the morning that same day, June 20, 1997, Connie's father, Gary Wagner, left for work. (App. A401-02.) Before he left, at about 5:15 a.m., he saw Connie sleeping on the couch in the basement, a room the family used for entertaining guests. (App. A402, A409.) When he left, he had to move Connie's car, which he then put back in the driveway. (App. A413.) Later that day, at 3:25 p.m., he returned home. (App. A403.) Connie's car was not in the driveway. (App. A404.) Wagner parked his car in the garage. (App. A404.) There were men working on the cement on his front stoop, so he attempted to enter the home through a door that led from the garage. (App. A404.) However, he found this door locked. (App. A404.) He walked around the house to use the front door, looking at the workmen mending

the cement. (App. A405.) The front door was unlocked, which he found unusual because the family normally kept the house locked. (App. A405.) Once inside, he called for Connie, and when she did not respond, he went upstairs to look for her. (App. A405.) Not finding her upstairs, he went downstairs to find her. (App. A405.) He found part of the couch turned over. (App. A406.) He moved it and found Connie lying underneath it. (App. A406.) Mr. Wagner then went to a neighbor, who called the police. (App. A407.)

The police came to the home and processed the scene. (Tr. 304.) After checking the doors and windows, they determined that there were no signs of forced entry. (Tr. 305.) The investigators found blood throughout the house, including on doors in the first-floor bathroom and a second-floor bedroom. (Tr. 307-19, 340-42.) In the bathroom sink, investigators found a plastic bag that Connie's brother testified had not been in the sink that morning. (Tr. 779-80.) On the main floor, the telephone cord in the kitchen had been cut. (App. A405; Tr. 305.) Upstairs, the phones in the bedrooms were off their cradles and their cords had also been cut. (Tr. 307, 310.)

The police entered the basement, where they found Connie face down in the middle of the room in a pool of blood. (Tr. 313.) The room was in disarray, pieces of the sectional sofa had been pushed around, and the coffee table and speakers were moved. (Tr. 314.) One of the speakers was on top of the coffee table upside down. (Tr. 314-15.) There was blood on the ground, on the cushions, on the speaker found on the coffee table, and on the handles of the basement washtub. (Tr. 313, 314, 315,

319, 350.) Blood was also found on the walls and the ceiling; experts testified that the person stabbing the victim would likely have gotten blood on them. (Tr. 572-73.) Stock gave the clothing he wore the day of the murder to the police; however, there was no blood on any of his clothes or shoes. (App. A324-25; Tr. 1049.) Blood was also found on sink handles and a light switch in the laundry room in the basement. (Tr. 314, 343.) The cord on the basement phone had also been cut, and used to bind Connie's wrists and to tie them behind her back. (Tr. 313, 323-24.) Stereo wire tied Connie's ankles. (Tr. 348-49.) Wounds on Connie's arms, wrists, and hands showed that there had been a struggle, during which Connie tried to defend herself, and after which she was bound. (Tr. 568-69.)

Fingerprints were found on a glass and newspaper, as well as a block of wood and an envelope. (Tr. 315, 316.) The fingerprinting expert was unable to match the fingerprints found at the scene to Stock, and also ruled out the victim and her family. (Tr. 614-17, 619-21.) Fingerprints and smears of blood were also found upstairs on paper in one of the bedrooms. (Tr. 618-19.) Those fingerprints also did not match Stock. (Tr. 620.) Additionally, there were fingerprints found on items in the upstairs bathroom. (Tr. 621.) The fingerprinting expert found eight suitable latent prints and was able to match six of them to Connie's father and brother. (Tr. 621-22.) The two remaining prints were unidentified, and did not match Stock. (Tr. 622.)

The investigators also found a blanket with a partial bloody footprint on it, which was inventoried and sent to the crime laboratory. (Tr. 345.) Investigators

found a light-colored hair underneath one of the victim's fingernails. (Tr. 335-36.) The hair did not belong to Connie or Stock. (Tr. 1145, 1149, 1153.) The police located Connie's car a few blocks from her home, in the parking lot of the Baldwin Green Apartments, where Connie had previously purchased drugs from gang members and friends. (App. A275-76; Tr. 996.) Additionally, although the medical examiner could not pinpoint the exact time of death, food in Connie's stomach showed that she ate between one and two hours prior to her death. (Tr. 561-62.) In any event, the State's theory at trial was that Connie was murdered no later than 11:00 a.m. (Tr. 1323.)

The police processed Connie's car, and found Stock's fingerprints on the passenger's side of the car, but not on the steering wheel or the driver's side. (Tr. 601-03, 628-29.) No blood was found in the car. (Tr. 1052.) No witnesses saw Stock in the house on the day of the murder. (Tr. 182.) However, the Wagners' neighbor, who could see their house from his driveway, saw a Hispanic male in his early twenties driving slowly down the street that morning. (Tr. 948-50.) Police officers tried to find PACE bus drivers and passengers who saw Stock on the bus on June 20, and checked with cab companies to see if they had picked up any fares the day of the murder from the Wagners' street. (Tr. 969-70, 973-78.) A police officer drove from Stock's house in Elk Grove Village to the Wagner household and determined that it would take twenty-two minutes to drive the fourteen-and-a-half miles. (Tr. 826-27.) The State never established how Stock would have gotten to and from

Connie's home from Harlem and Foster, which is even farther away. Stock did not have a car and, as noted above, had to call his uncle for a ride. (App. A424.)

The day after the murder, Stock voluntarily went to the Palatine Police Department and met with detectives. (Tr. 1160-61.) Stock answered the detectives' questions for three to four hours, voluntarily provided fingerprints and a hair sample, and gave the police the clothes he wore the day before. (Tr. 1162-63.) The police observed no scratches on his body that would have indicated his involvement in the "major struggle" during Connie's murder. (Tr. 558, 569.) Over the next couple of months, the police interviewed a number of people including Stock's friends Bartek Trzbunia (Tr. 704, 710-11), Julie Roth (Tr. 390, 401), and Najera (App. A177). Najera had known Stock since he was ten years old, through their mothers, who were good friends. (App. A160.) They also interviewed Najera's girlfriend, Julie Buscaglia. (App. A282, A291.) When Najera spoke with the police during these initial interviews, he said he did not know anything about Connie's murder. (App. A177, A188-89.)

Three months later, in September 1997, the police still did not have a suspect in custody. On September 4, 1997, the police brought Najera in for more questioning. (App. A186-87.) Once at the station, Najera was Mirandized and kept there for more than ten hours. (App. A193, A221; Tr. 1077.) During this time, two or three officers questioned Najera about phone calls between him and Stock the night before Connie's murder. (App. A194.) The police told Najera that they believed he knew something about Connie's death. (App. A194-95, A220-21.) They

showed him a gruesome morgue photo of Connie. (App. A189-90.) Najera acknowledged at trial, “they wanted information from me. And they didn’t want me to leave until I told them.” (App. A222.) Initially, Najera maintained, as he had during multiple police interviews, that he knew nothing. (App. A188-89.) Eventually, at about midnight, after being at the police station since the early afternoon, Najera signed a statement written by a Cook County prosecutor that contained the following story about Stock’s alleged confession to Najera. (App. A195; Tr. 1077, 1080.)

On the evening of June 24, 1997, Stock, his mother, and his sister came over to Najera’s house. (App. A169.) The Stocks brought with them a bag of news clippings about Connie’s murder, and Stock showed them to everyone. (App. A169-70.) As the group was sitting around the table looking at the clippings, Najera wanted to show Stock pictures he had of a car show the two of them attended with Connie. (App. A171.) Stock and Najera went into Najera’s room to look at the pictures while everyone else stayed in the living room. (App. A171.) Najera’s statement alleged that while Stock and Najera were alone, Stock told him he killed Connie and explained how he did it, miming stabbing motions. (App. A172-73.) Stock supposedly entered the house using a set of copied keys (App. A176), and found Connie sleeping (App. A173). Lastly, the statement alleged that Stock said that after the murder he washed up and left in Connie’s car. (App. A176-77.) Najera’s statement contained no information that the police did not already possess. (Tr. 1309.) Likewise, Julie Buscaglia testified at trial that Najera had told her

about Stock's confession immediately after the murder (App. A285-86), yet did not tell the police about the supposed confession when they interviewed her in July 1997 (App. A286).

After Najera gave his statement, another eleven months passed without an arrest. In August 1998 Palatine Police Detective Richard Cruz asked Najera to make a phone call to Stock, which would be recorded. (App. A212.) The detective asked Najera to bring up the confession in the conversation. (App. A213.) During this conversation, however, Najera never explicitly mentioned the confession he claimed Stock made to him. (App. A468-78.) Instead, throughout the conversation, the two men discussed the investigation and the fact that they, as well as their friends and family, were being called in to talk with the police. (App. A468-78.) Najera began the phone call by complaining that the police had subpoenaed him. (App. A468.) Stock commiserated, stating that the police had subpoenaed his mother and sister, who were at the courthouse that day. (App. A468.) The men seemed concerned that the police would take advantage of any inconsistencies between their stories. (App. A468-78.) While discussing the investigation, Stock suggested the two of them meet to talk before Najera went to the courthouse, following the invitation with, "[the police] just want to make a bust on somebody to make themselves look good All they're going to try and do is intimidate you and all that kind of bull shit." (App. A470.) During the phone conversation, Najera affirmed to Stock that he believed in Stock's innocence:

[Stock]: Like I said, they're [sic] just want to make a quick arrest and you know like I said, my ass would have been in jail a long time ago.

[Najera]: Huh, Huh.

[Stock]: I mean shit – you still believe me, don't you?

[Najera]: Yeah, I believe you, dude, I believe you, man.

(App. A470.)

Later in the phone call, Stock said to Najera:

They just want you to get agitated, and they want to hear – you know what I'm saying? But then that is going to turn into a whole another thing because first off you'd be lying if you said what do you call it, any kind of negative thing regarding me – you know what I mean? Because I didn't do nothing, and I don't know who did. So.

(App. A476.)

Rather than mentioning the alleged confession, however, Najera merely responded, "Hey, man, I got to get back to work, dude." (App. A476.) Further, when Stock told Najera that "I got nothing to run from If I was guilty, my ass would have took off I want to know who's responsible myself," Najera again changed the subject, saying that he had to get back to work. (App. A477.) Following the taped conversation, the police asked Najera to wear a wire and talk to Stock in person. (App. A215.) The police told Najera they would supervise the event, but Najera refused. (App. A215-16.) The police then waited another two-and-a-half years before arresting Stock on February 22, 2001. (Tr. 1096.) In total, over three-and-a-half years had passed since the murder.

Court Proceedings on the Taped Conversation

Najera's testimony, which was based on the statement that Najera signed containing Stock's alleged confession, ultimately was crucial to the State's case. The State acknowledged that it could not have proceeded against Stock without Najera's testimony. (App. A466.) The State filed a motion *in limine* to exclude the taped phone conversation between Najera and Stock, arguing that the "statements made [by Stock] are prior consistent statements and hearsay." (C. 189.) Defense counsel objected, arguing that the statements were not hearsay because they were not being offered for the truth of the matter asserted, but rather to impeach Najera on his failure to raise Stock's supposed earlier confession during the call. (App. A122-23.) Defense counsel stressed that it was not using the statements to establish Stock's innocence, but to show that Najera failed to contradict Stock's protestations of innocence and requests for clarification when given the opportunity to do so. (App. A123, A128-30, A134-36.) The court, however, agreed with the State's characterization of the testimony, found that Stock's statements were hearsay because they were self-serving and exculpatory, and granted the motion to exclude. (App. A137, A139.)

The court nevertheless recognized Stock's Sixth Amendment right to confront witnesses and sought to remedy its limitation on that right by allowing defense counsel to impeach Najera with the transcript should Najera claim on the stand that he brought up the prior confession during the taped conversation. (App. A139.) The trial court stated when ruling on the motion *in limine*, "I'm telling you now, in no way shape or form is that conversation coming out unless two things occur; one,

the witness denies the fact that he didn't confront And none of the testimony or none of the statements made by defendant are admissible. Period." (App. A141.) Immediately before Najera's testimony during trial, the State filed a motion to clarify the trial court's earlier ruling. (App. A146.) In the motion to clarify, the State now asserted that Najera *did* reference the confession during the conversation, the taped conversation no longer had any impeachment value within the parameters of the court's earlier Confrontation Clause ruling and, therefore, no part of the taped conversation should come in at trial. (App. A147.) Specifically, the State pointed to the following exchange to support its assertion that Najera raised the prior confession with Stock:

[Najera]: Yeah, I believe you, dude. I believe you, man. I just want to make sure that you didn't say something to anybody else and they come to court and then.

[Stock]: That what?

[Najera]: You didn't tell anybody else – you know what I'm saying? Cause they come to court and then I look like, you know.

[Stock]: Tell anybody what?

(App. A470.)²

The State argued that these comments implied that Stock had told Najera incriminating evidence and Najera "confronted [Stock] with it the best way he could." (App. A148.) Specifically, the State claimed that the use of the phrase "anybody else" could infer that Stock had told Najera something and "the context

² The State's motion misquotes the exchange, omitting some of Najera's words, changing others, and omitting all of Stock's responses. The quotation here is from the actual transcript. (*Compare C. 256-57 with App. A470.*)

surrounding it is criminal because [Najera is] talking about coming to court and possibly getting in trouble himself.” (App. A148.) The trial court agreed with the State’s characterization of this exchange. (App. A148-49.) Although the trial court recognized the jury’s role in determining what Najera meant by his statements, it flatly refused to allow the jury to evaluate Stock’s responses and Najera’s subsequent failure to respond in a way that would be consistent with his prior statement to the police that Stock had confessed to him. (App. A149-50, A153, A156.)

Therefore, although the trial court’s initial ruling would have allowed the defense to impeach Najera if he claimed that he raised the confession (App. A139-41.), once the parties and the court agreed that Najera had obliquely raised the confession, the court’s subsequent ruling on the motion to clarify closed the door on that small window of inquiry. (App. A147-55.) Defense counsel argued that this limit on the scope of cross-examination would remove Stock’s ability to impeach Najera. (App. A155-56.) Without the ability to close up the impeachment via Stock’s responses and Najera’s failure to confirm the earlier confession, defense counsel maintained that he could not in good faith touch on the conversation at all. (App. A155-56.) Defense counsel confirmed with the court that if the State used Najera’s statement “tell anybody else” to show that Najera brought up the confession, the defense would not have a right to say to Najera, “Well, and then didn’t Joe Stock say, ‘Tell anybody what?’” (App. A155-56.) Defense counsel

concluded that he would not ask whether Najera confronted him. (App. A155-56.)

Aside from the alleged confession, there was no other evidence that directly linked Stock to the crime. His fingerprints did not match any of those recovered at the scene. (Tr. 614-17, 619-22.) Blood was found on the floor, walls and the ceiling; experts testified that the person stabbing the victim would likely have gotten blood on them, but the clothes and shoes Stock wore on the day of the murder had no blood on them. (Tr. 572-73, 1049; App. A324-25.) Additionally, a light-colored hair found underneath one of Connie's fingernails did not belong to either Connie or Stock. (Tr. 335-36, 1145, 1149, 1153.)

Accordingly, the State relied heavily on Najera's testimony as to Stock's alleged confession. Throughout the State's closing arguments, it utilized Najera's testimony to tie together the other, circumstantial evidence. (App. A451-54, A455-56.) The State told the jury that it had proven Stock's guilt "by putting up witnesses that tell you he's confessed. And he has told you, and he told you how... We proved that. We proved that the defendant performed the acts. He himself tells you he did those acts." (App. A455-56.)

The jury then began deliberations. One of the first things the jury requested was the transcript or the "call taped with [Stock]." (App. A460.) The jury also asked for an explanation of the meanings of "beyond reasonable doubt" or "reasonable doubt." (App. A462.) The court did not provide a copy of the transcript to the jury, responding to both requests by maintaining that the jury possessed all

the available evidence, instructions, and law that applied to the case. (App. A460-62, 465.) The jury found Stock guilty of Connie's murder and the court sentenced him to ninety years in prison. (Tr. 1453.)

SUMMARY OF THE ARGUMENT

The state courts denied Stock his Sixth Amendment right to confront, a right essential to protecting the truth-seeking function in a criminal defendant's trial. This grievous constitutional violation meant that Stock did not receive a fair trial. First, the state trial court improperly prohibited impeachment of the State's star witness, who claimed that Stock had previously confessed to the crime. Second, the state appellate court applied the wrong standard to determine when limitations on cross-examination violate the Confrontation Clause. Third, even if the state appellate court applied the correct standard, it applied it unreasonably.

The State relied heavily on Najera's testimony to convict Stock. Najera testified at trial that Stock had confessed to him days after the murder. The trial court barred the defense from presenting to the jury statements Najera made that contradicted his testimony about Stock's supposed confession. Specifically, during a recorded telephone call where the police had instructed Najera to raise the confession with Stock, Najera not only failed to challenge Stock's protestations of innocence when it would have been natural to do so, but also explicitly affirmed Stock's innocence. The trial court kept the substance of these exchanges from the jury based on erroneous presumptions about Stock's guilt, about the role of the factfinder, and about the definition of exculpatory hearsay. But the wholesale ban on Stock's impeachment of Najera meant that the jury did not hear facts it needed to properly weigh Najera's credibility about the prior confession, the heart of the State's case against Stock.

The state appellate court compounded this trial error by ignoring the controlling Supreme Court confrontation cases of *Delaware v. Van Arsdall* and *Davis v. Alaska*, and instead relying on the inapposite precedent of *Delaware v. Fensterer*. And even if *Fensterer* could be construed as instructive for this case, the state appellate court erroneously and unreasonably held that Stock had an opportunity for effective cross-examination despite his complete inability to impeach the testimony of the State's star witness.

Therefore, the state courts' decisions were both contrary to and an unreasonable application of federal law. And because Najera was central to the State's case—indeed, the State admitted it could not try Stock without his testimony—these errors had a substantial and injurious effect on the jury's verdict, and were not harmless. This Court should grant Stock's petition for a writ of habeas corpus.

ARGUMENT

Stock's constitutional right to confrontation was violated when the trial court erroneously restricted cross-examination of the State's star witness. Although Najera represented to the police that Stock had confessed to the murder, he later failed to raise that confession when Stock explicitly opened the door for him to do so in a recorded telephone conversation. More importantly, Najera explicitly affirmed Stock's innocence at points during that conversation. Yet the jury never learned of these critical statements by Najera, which were vital to impeaching the credibility of his testimony that Stock had confessed to him, and thus to Stock's ability to present a defense. These errors denied Stock a fair trial and were not harmless. Therefore, this Court should issue a writ of habeas corpus.

FEDERAL HABEAS CORPUS STANDARDS

The purpose of the writ of habeas corpus is to ensure that a person is not detained in violation of the constitution. *Blackledge v. Allison*, 431 U.S. 63, 72 (1977) (citing *Harris v. Nelson*, 394 U.S. 286, 290-291 (1969)). Accordingly, courts are tasked with the solemn duty to carefully consider petitions for writs of habeas corpus. *See Harris*, 394 U.S. at 292. Federal habeas protection is available to petitioners in state custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a) (2006). Federal courts will grant a writ of habeas corpus when a state court decision was: (1) "contrary to, or involved an unreasonable application of, clearly established Federal law" or (2) "based on an

unreasonable determination of the facts in light of the evidence” 28 U.S.C. § 2254(d).

Under the Supreme Court’s interpretation of the “contrary to” prong, there are two circumstances under which habeas relief will be granted. *Williams v. Taylor*, 529 U.S. 362, 405 (2000).³ First, habeas relief will be granted if the state court arrived “at a conclusion opposite to that reached by [the Supreme] Court on a question of law.” *Id.* Habeas relief is therefore appropriate when the state court applied “a rule that contradicts the governing law as expounded in Supreme Court cases” *Washington v. Smith*, 219 F.3d 620, 628 (7th Cir. 2000). The second circumstance where habeas relief will be granted under the “contrary to” clause is when the “state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at a result opposite [that of the Supreme Court.]” *Williams*, 529 U.S. at 405.

³ In his § 2254 petition, Stock claimed that he was “denied his right to confront” the witness against him and did not limit his claim to either the “contrary to” or the “unreasonable application” test. (App. A36.) In its response, the State analyzed the issue as one of unreasonable application. (R. 23 at 6.) Stock’s reply, therefore, addressed the State’s analysis with respect to the “unreasonable application” prong. (R. 44 at 5.) Similarly, the district court’s decision only addressed the “unreasonable application” prong (R. 53 at 15), but the request for a certificate of appealability that the district court granted identifies the salient issue as a Confrontation Clause violation. (App. A28, A31.) Because Stock’s petition raised the Confrontation Clause claim generally and the district court certified this issue for appeal, he should be permitted to raise both “contrary to” and “unreasonable application” arguments on appeal. But to the extent that this Court finds that the certificate of appealability extends only to arguments that the state appellate ruling was an unreasonable application of Supreme Court precedent, Petitioner respectfully requests this Court to amend the certificate of appealability to include the argument that the ruling was contrary to, and not only an unreasonable application of, Supreme Court precedent. *See Rittenhouse v. Battles*, 263 F.3d 689, 693 (7th Cir. 2001) (party can make a request to expand certificate of appealability in its brief by specifically asking for consideration or simply including issues not specified in the certificate).

Federal courts also will grant a writ of habeas corpus when a state court decision was “based on an unreasonable determination of the facts in light of the evidence” 28 U.S.C. § 2254(d). There are two ways in which a state court decision may be an unreasonable application of clearly established federal law. First, the court may apply the correct governing legal rule, but unreasonably apply it to the facts of the particular case. *Williams*, 529 U.S. at 407. Second, the court may unreasonably extend a legal principle from Supreme Court precedent to a new context where it should not apply or unreasonably refuse to extend that principle to new context where it should apply. *Id.*; *Smiley v. Thurmer*, 542 F.3d 574, 580 (7th Cir. 2008). Section 2254 does not prohibit a federal court from finding unreasonable application when it involves a set of facts different from those of the case in which the law was announced. *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007); *Wiggins v. Smith*, 539 U.S. 510, 520 (2003) (“a federal court may grant relief when a state court has misapplied a governing legal principle to a set of facts different from those of the case in which the principle was announced.”) (internal quotes omitted).

Once this Court determines that a constitutional violation occurred, it must then decide whether the error was harmless. This Court applies on habeas review the standard outlined in *Kotteakos v. United States*, 328 U.S. 750 (1946): the court will reverse if the error “had substantial and injurious effect or influence in determining the jury's verdict.” *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993)

(quoting *Kotteakos*, 328 U.S. at 776); *see also Fry v. Pliker*, 551 U.S. 112, 119-120 (2007).

This court reviews the district court's decision to deny habeas relief *de novo*. *Anderson v. Cowan*, 227 F.3d 893, 896 (7th Cir. 2000). This Court also reviews *de novo* questions relating to the "contrary to" clause of § 2254(d). *Anderson*, 227 F.3d at 896. Determinations under the "unreasonable application" prong of that section are mixed questions of law and fact that this Court will also traditionally review *de novo*, but will defer to "a reasonable state court decision." *Schaff v. Snyder*, 190 F.3d 513, 522 (7th Cir. 1999).

THE SUPREME COURT'S CONFRONTATION CLAUSE JURISPRUDENCE

A criminal defendant's right to confront witnesses against him is protected by the Sixth and Fourteenth Amendments of the United States Constitution. U.S. Const. amend. VI, XIV. The Supreme Court's Confrontation Clause jurisprudence regarding limitations on cross-examination consists of a trio of cases: (1) *Davis v. Alaska*, 415 U.S. 308 (1974); (2) *Delaware v. Fensterer*, 474 U.S. 15 (1985); and (3) *Delaware v. Van Arsdall*, 475 U.S. 673 (1986). In *Davis*, the Supreme Court addressed the conflict between a state evidentiary law and a defendant's right to impeach a witness's credibility through cross-examination. 415 U.S. at 309. Based on an Alaska rule that rendered juvenile adjudications inadmissible, the trial judge prevented the defendant from inquiring on cross-examination about a crucial prosecution witness's juvenile delinquency adjudication and probation. *Id.* at 311-12. Defense counsel retained some curtailed ability to probe the witness's belief

that the police considered him a potential suspect, but without these additional lines of inquiry, defense counsel could not properly impeach the witness regarding the motivation behind his statements. *See id.* at 312-14. In reversing the conviction for a violation of the Confrontation Clause, the Court found that the scope of cross-examination was improperly limited, noting that “[i]t would be difficult to conceive of a situation more clearly illustrating the need for cross-examination.” *Id.* at 314. The Court emphasized that the jury “as sole judge of the credibility of a witness . . . were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on [the witness’s] testimony” *Id.* at 317. Thus, *Davis* stands for the proposition that state evidentiary law must yield in appropriate circumstances to the defendant’s constitutional right to impeach during cross-examination.⁴ *See id.* at 319.

The next major Confrontation Clause case to face the court, *Delaware v. Fensterer*, is a factual and legal outlier in the trio of cases. Unlike *Davis* and *Van Arsdall*, *Fensterer* did not address the restriction of cross-examination imposed by a state law or by a trial court’s mandate. 474 U.S. at 18-19 (specifically noting that *Davis* did not apply to *Fensterer*’s situation). In fact, *Fensterer* did not involve

⁴ The district court distinguished *Davis* noting that in *Davis*, “the limits on cross-examination compromised the truth-seeking function . . . by preventing the defendant from inquiring into the witness’s motivation to lie [In *Stock*’s case], in contrast, the limits on cross-examination did not prevent *Stock* from pointing out a witness’s motivation to lie” (App. A24.) However, if limitation on cross-examination is improper when cross-examination would merely suggest the witness *may* be lying, it is not obvious how such a limitation could be permissible when, as in *Stock*’s case, cross-examination would suggest the witness *is* lying.

limits on cross-examination questioning at all; rather, it focused on a witness's answers based on that witness's faulty memory. *See id.* at 20. The government's expert claimed on the stand that he could not recall whether he had employed a discredited scientific method as the basis for his opinion. *Id.* at 16-17. The Court found that even though the defense was unable to completely discredit the prosecution expert, the issue of his testimony's credibility was successfully put in front of the jury in other ways. *Id.* at 20. The Court held that when the defendant has the opportunity to impeach the credibility of a witness's testimony through questioning, the Confrontation Clause does not require that the defense get the answer that it desires. *Id.* at 19-20 (“[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.”). In short, unlike *Davis*, where all questioning on a topic was curtailed and, therefore, no opportunity for effective cross-examination existed, *Fensterer* found no confrontation clause problem when defense counsel was able to probe the witness even though the witness did not give the answer the defense would have liked.⁵ *See id.*

If there was any doubt about the effect of *Fensterer* on *Davis*, the Court cleared it up in *Van Arsdall*. *See* 475 U.S. at 679. In *Van Arsdall*, the Court said that a trial court violates the Confrontation Clause when it prohibits all inquiry

⁵ Significantly, *Fensterer* was summarily reversed at the certiorari stage. Thus, the Court rendered its decision without the benefit of merits briefing or oral argument. 474 U.S. at 23.

into an issue that might cause the jury to question the witness's credibility. *Id.*

The defendant in *Van Arsdall* sought to impeach a witness about the dismissal of a criminal charge of public intoxication in exchange for his testimony. *Id.* at 676.

The trial court prohibited the defendant from questioning the witness about that charge. *Id.* The Supreme Court noted that the trial court retains discretion to impose reasonable limits on "cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Id.* at 679. In so doing, however, the Court reaffirmed the long-standing principle from *Davis* that a court may not cut off all inquiry into a critical issue challenging the credibility of the testimony. *Id.* ("By thus cutting off all questioning about an event that the State conceded had taken place and that a jury might reasonably have found furnished the witness a motive for favoring the prosecution in his testimony, the court's ruling violated respondent's rights secured by the Confrontation Clause.").

These cases, taken together, stand for the proposition that the Confrontation Clause is violated when a trial court unreasonably restricts or completely prohibits a defendant from asking questions necessary to impeach the credibility of witness testimony. As discussed below, the state court and the district court misconstrued this precedent, applied the wrong legal rule, and unreasonably applied these rules to the facts of Stock's case. These errors were not harmless and resulted in a serious constitutional error that this Court should rectify.

I. Stock was denied his Sixth Amendment right to confrontation and was denied a fair trial

The district court should have granted Stock habeas relief because the Illinois state courts fundamentally misunderstood the Supreme Court precedent defining unconstitutional limits on cross-examination. First, the trial court's decision was contrary to this rule because it improperly limited impeachment of Najera's testimony regarding Stock's alleged confession. Second, the state appellate court's decision was also contrary to Supreme Court law because the court ignored the governing rules of *Van Arsdall* and *Davis* and instead addressed only *Fensterer*, a case whose principles only tangentially touch upon the issue facing the court in Stock's case, if at all. *Delaware v. Van Arsdall*, 475 U.S. 673 (1986); *Delaware v. Fensterer*, 474 U.S. 15 (1985); *Davis v. Alaska*, 415 U.S. 308 (1974). Finally, even if this Court finds that *Fensterer* was the correct legal rule, the appellate court unreasonably applied that rule to the facts of Stock's case because Stock was denied even an opportunity for effective cross-examination.

A. The state trial court violated Stock's constitutional right to confront and impeach the State's star witness by improperly limiting cross-examination

The state trial court completely prohibited the defense from questioning Najera about the recorded telephone call, keeping from the jury facts it needed to properly evaluate the credibility of Najera's testimony and to determine whether the alleged confession occurred. Therefore, the trial judge unconstitutionally restricted inquiry into the credibility of a key witness's testimony in direct violation of *Van Arsdall* and *Davis*. See *Van Arsdall*, 475 U.S. at 679; *Davis*, 415 U.S. at 317-

18. Moreover, the trial court’s decision was based on four erroneous assumptions about Stock’s statements and their evidentiary value that further infected the trial court’s ruling. These underlying errors, discussed below, further explain how and why the court abridged Stock’s fundamental, constitutional right to confront the State’s star witness.

Although the trial court admitted that Stock’s confrontation rights were implicated by its decision to prohibit questioning based on the recorded telephone call (App. A139), and although any of the court’s concerns could have been adequately remedied by a limiting instruction to the jury, *see Tennessee v. Street*, 471 U.S. 409, 417 (1985) (jury instruction can be used to direct jury’s attention to limited purpose of out-of-court statements), it nonetheless categorically refused, on hearsay grounds, to let the jury hear several statements that formed the basis of the defense’s critical impeachment of Najera (App. A149, A157). The following six excerpts from the phone call transcript, which defense counsel was completely prohibited from referencing during the cross-examination of Najera, demonstrate the scope of this constitutional violation; they reflect opportunities where a reasonable person would have mentioned the alleged former confession, but where Najera either restated his belief in Stock’s innocence or failed to raise the alleged confession:

- **EXCERPT 1:**

“[Stock]: It’s a bunch of shit, man. They ain’t got nothing. I didn’t do nothing – you know that.

[Najera]: Yeah I know.”

- **EXCERPT 2:**

“[Stock]: It’s just a bunch of shit. You know and I know that – what do you call it? – my ass would have been in jail a long time if I was guilty. You know what I’m saying.”

[Najera]: Yeah, yeah. It’s just bullshit, man, you know.”

- **EXCERPT 3:**

“[Stock]: Well basically you know. Like I said, they’re just want to make a quick arrest and you know like I said, my ass would have been in jail a long time ago.

[Najera]: Huh, huh.”

- **EXCERPT 4:**

“[Stock]: I mean shit – you still believe me, don’t you?

[Najera]: Yeah, I believe you, dude. I believe you, man.”

- **EXCERPT 5:**

“[Najera]: I just want to make sure that you didn’t say something to anybody else and they come to court and then.

[Stock]: That what?

[Najera]: You didn’t tell anybody else – you know what I’m saying? Cause they come to court and then I look like, you know.”

- **EXCERPT 6:**

“[Stock]: Tell anybody what?

[Najera]: Anything. I mean did they subpoena anybody else?”

(App. A468, A470.)

In response to the first four opportunities, Najera not only failed to contradict the statement by mentioning the alleged prior confession, but actually agreed that Petitioner was innocent—a position that is wholly inconsistent with his testimony that Petitioner had told him he had committed the murder. The last two opportunities—“That what?” and “Tell anybody what?”—represent questions of clarification where Najera logically should have responded *Tell anybody what you told me in my bedroom—that you killed Connie*. Yet Najera failed to mention the alleged confession in his response and the defense was prohibited from impeaching him with this critical fact. *See People v. Williams*, 769 N.E.2d 518, 524 (Ill. App. Ct. 2002) (Impeachment by omission allows using witness’s prior silence to discredit testimony if the witness had an opportunity to make a statement, and, under the circumstances, a person normally would have made the statement.). Thus, the trial court’s prohibition here directly contradicted *Davis* and *Van Arsdall*.

This constitutional violation did not occur in a vacuum. As noted above, it was the product of the courts’ confusion and four subsidiary errors that led the trial court to unconstitutionally limit Stock’s cross-examination of Najera.

First, the trial court’s unconstitutional ruling was built upon a baseline presumption that Stock was guilty rather than innocent. *See Coffin v. United States*, 156 U.S. 432, 453 (1895) (finding presumption of innocence “axiomatic and elementary” and “the foundation of the administration of our criminal law”); *see also*

Davis, 415 U.S. at 318 (noting the injurious effect of unconstitutionally limiting the defense's confrontation rights). At least two of Stock's statements could only be deemed exculpatory if interpreted with the assumption that Stock was guilty. Specifically, in response to Najera's cryptic "tell anybody else" statements, Stock asked: "That what" and "Tell anybody what"? But these statements are not exculpatory statements in which the defendant denies committing the crime. *See, e.g., People v. Barnwell*, 675 N.E.2d 148, 154-155 (Ill. App. Ct. 1996) (in sexual assault case, defendant's hearsay statements that sex was consensual were properly excluded). Rather, Stock's statements can only be considered exculpatory if it is presumed that Stock committed the crime and confessed to Najera. Otherwise, these statements are nothing more than requests for clarification. Therefore, the trial court's ruling was based on an improper presumption of guilt, setting up a further violation of Stock's constitutional right to confront Najera.

Second, the trial court erroneously invaded the province of the jury to weigh and consider Najera's statements in context, a direct violation not only of *Davis*, but also of Stock's constitutional right to have the jury find all ultimate facts beyond a reasonable doubt. *See County Court v. Allen*, 442 U.S. 140, 156 (1979) ("[I]n criminal cases, the ultimate test of any device's constitutional validity in a given case remains constant: the device must not undermine the factfinder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt."). Instead, the trial court cherry-picked some evidence it felt the jury should resolve, while prohibiting the jury from considering evidence of a

virtually indistinguishable character. (*Compare* App. A149-50 (trial court declining to “read into” Najera’s words because “[t]hat’s up to the fact finder”) *with* App. A156-57 (trial court construing Stock’s statements as exculpatory and excluding them from jury’s consideration even though simultaneously admitting that it “didn’t know what [Stock] meant by his statements on there.”).) Thus, the erroneous invasion of the jury’s role impacted the trial court’s unconstitutional decision to limit Najera’s cross examination.

Third, the trial court erroneously held that these statements were inadmissible because they were exculpatory. (App. A139) (Trial court excluded statements in part because it considered them “prior consistent statement[s]” and “denial[s] of a crime.”). Illinois law, however, allows out-of-court exculpatory statements if they test the credibility of testimony. *See People v. Britz*, 493 N.E.2d 575, 577-78 (Ill. 1986). In its ruling, the trial court appeared to treat the case as closer to that of *People v. Hosty*, 497 N.E.2d 334 (Ill. App. Ct. 1986) than to *Britz*. (App. A138 (“distinguishing” *Britz* and *Hosty*, but seeming to follow what it believed was the holding of *Hosty*); *see also* App. A50-51 (state appellate court explicitly relying on *Hosty* for conclusion that Stock’s statements were properly excluded as exculpatory).) But the trial and appellate courts here wrongly relied on *Hosty*, a factually and legally distinguishable case. As a factual matter, the *Hosty* court itself explicitly noted that the defendant’s statements in that case were *not* exculpatory. *Hosty*, 497 N.E.2d at 339 (“We do not agree with the defendant that the statements, ‘I didn’t do anything, you didn’t do anything’ and ‘I never went to

the airport [where the victim's body was found]' are exculpatory or amount to denials.”). And, as a matter of law, although the *Hosty* court decided the case on other grounds, it specifically noted that it might be error to exclude the statements to the extent they allowed defense counsel to directly challenge the witness's credibility. *See id.* (citing *Britz*, 493 N.E.2d 575); *see also Britz*, 493 N.E.2d at 578 (recorded exculpatory statements made by defendant “were relevant to the weight to be given the defendant's confessions and should have been admitted into evidence for this purpose”). By relying on inapposite precedent, the trial court justified its unconstitutional Sixth Amendment violation.

Fourth, Stock's statements were not hearsay because they were not offered to prove the truth of the matter asserted. *See People v. Caffey*, 792 N.E.2d 1163, 1187 (Ill. 2001). Instead, defense counsel introduced them for the independent purpose of showing that Najera's failure to respond to them by referring to the earlier confession undercut Najera's credibility with respect to whether that confession occurred. *See People v. Carroll*, 751 N.E.2d 44, 46 (Ill. App. Ct. 2001) (“[S]tatements offered for their effect on the listener or to explain subsequent course of conduct of another are not hearsay.”); *Heller v. Jonathan Invs., Inc.*, 481 N.E.2d 997, 1003 (Ill. App. Ct. 1985) (“[O]ut-of-court statement . . . offered to show the reaction of the party to whom the statement was made . . . is not subject to the exclusionary impact of the hearsay rule.”), *rev'd on other grounds*, 495 N.E.2d 589

(Ill. 1986).⁶ When Stock asked Najera “That what?” and “Tell anybody what?” he made no assertions, implicit or otherwise. Accordingly, the trial court’s erroneous assumption regarding the hearsay nature of this testimony likewise contributed to this constitutional violation.

The trial court abridged Stock’s right to confront the State’s most important witness through its mechanical application of evidentiary rules.⁷ *See Chambers v. Mississippi*, 410 U.S. 284, 295 (1973) (noting that cross examination is more than a procedural tool; it assures the “accuracy of the truth-determining process” and is fundamental to the right of confrontation); *see also Davis*, 415 U.S. at 316. The trial court denied defense counsel the opportunity to expose fundamental inconsistencies

⁶ In any event, Stock’s statements should have been admitted under Illinois’ “completeness doctrine.” *Caffey*, 792 N.E.2d at 1189 (“[W]hen a portion of a conversation is related by a witness, the opposing party has a right to bring out the remainder of that conversation to prevent the trier of fact from being misled.” (quoting *People v. Ward*, 609 N.E.2d 252, 268 (Ill. 1992))); *see also* Robert J. Steigmann & Lori A. Nicholson, *Illinois Evidence Manual* § 4:25 (4th ed.) (updated November 2009) (completeness doctrine is an exception to the rule that self-serving or exculpatory statements are inadmissible as hearsay). Because the trial court held that Najera’s “tell anybody else” statement was admissible (App. A155-56), Stock’s responses likewise should have been admitted to complete the story. As defense counsel recognized, he could not risk asking Najera about his inconsistent statements because he was not allowed to close the impeachment with Stock’s responses, which would have laid bare Najera’s incredibility as a witness. (App. A156.)

⁷ Even if the trial judge correctly identified petitioner’s questions during the phone conversation as hearsay statements, its ruling still was contrary to *Davis* because the application of the hearsay rule should have given way to the more important confrontation rights. *Davis* says that the Confrontation Clause is violated when facts are kept from the jury from which they could question the reliability of the witness, even in some instances when the State has an independent and important interest in keeping those facts out of the trial. *Davis*, 415 U.S. at 319 (concluding that “the right of confrontation is paramount to the State’s policy . . .”); *see also Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (“[W]here constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.”). Here, the trial judge applied the state’s hearsay rule mechanistically and, in so doing, violated Stock’s constitutional rights. (App. A157) (“[I]t’s hearsay and there is no way around that.”).

in Najera’s testimony. Therefore, the jury had no opportunity to assess the State’s star witness’s testimony, without which the State could not prove Stock’s guilt. (App. A466.) Keeping these facts from the jury violated the Confrontation Clause. *See Davis*, 415 U.S. at 318. This Court should, therefore, grant Stock habeas relief.

B. The state appellate court issued a decision that used the wrong Supreme Court precedent, and was therefore contrary to federal law

The state appellate court’s analysis upholding the erroneous trial-level decisions was also contrary to the Supreme Court’s confrontation clause jurisprudence. In reviewing the trial court’s actions, the state appellate court should have considered whether cross-examination was completely or unreasonably limited and kept facts from the jury necessary to properly weigh the credibility of Najera’s testimony. *See Van Arsdall*, 475 U.S. at 679; *Davis*, 415 U.S. at 318. The appellate court, however, improperly focused solely on *Fensterer*—a wholly inapplicable case—and completely ignored the governing principles of *Davis* and *Van Arsdall*. (App. A51) (citing *Fensterer*, 474 U.S. at 20).⁸ The rule from *Fensterer*, that the Confrontation Clause is not necessarily violated when the witness does not give the answer most helpful to the defense, *Fensterer*, 474 U.S. at 19-20, has a prerequisite that was not met here. *Fensterer* applies only if the trial court did not restrict cross-examination. *Id.* at 18-19 (case does not fall into category involving “restrictions imposed by law or by the trial court on the scope of

⁸ Although the district court did cite *Davis* and *Van Arsdall*, in the end it also erroneously relied on *Fensterer*. (App. A17-20.)

cross-examination.”). Had the appellate court applied the proper *Davis/Van Arsdall* rule, it would have been clear that the trial court violated Stock’s Sixth Amendment rights by forbidding impeachment of Najera and preventing the jury from properly evaluating his credibility and that of the supposed confession. The appellate court relied on the wrong rule and its decision is therefore contrary to federal law. This Court should grant Stock habeas relief.

C. Even if this Court finds that the appellate court applied the correct rule, the appellate court unreasonably applied that rule to Stock’s case

As noted above, it is Stock’s position that the Illinois appellate court’s reliance on *Fensterer* was in error. *See supra* Section I.B. But even if this Court finds that *Fensterer* is the governing rule, the application of that language to this case was unreasonable.⁹ In *Fensterer*, defense counsel’s ability to question the witness was not limited. *Fensterer*, 474 U.S. at 19; *cf. United States v. Owens*, 484 U.S. 554, 559, 561-62 (1988) (citing *Fensterer*, but noting that “limitations on the scope of examination by the trial court . . . may undermine the process to such a degree that meaningful cross-examination within the intent of the Rule no longer exists.”). Counsel retained the ability to question the witness on the crucial impeachment matters. *Fensterer*, 474 U.S. at 20. Moreover, both the lawyer’s questions and the witness’s answers undermined the witness’s credibility even

⁹ A finding that a state court decision resulted from an unreasonable application does not preclude finding that a decision was also contrary to clearly established federal law. *See Panetti*, 551 U.S. at 953 (noting that the Court had previously found a state-court decision “both contrary to and involving an unreasonable application of” clearly established federal law).

though the witness did not give the precise answer that defense counsel sought. *Id.* at 19 (noting that an expert witness who cannot recall the basis for his opinion invites the jury to find that his opinion is as unreliable as his memory). Therefore, in *Fensterer* the defense had an opportunity for effective cross-examination. *Id.* at 19-20; *see also id.* at 22.

Unlike *Fensterer*, the trial court eliminated Stock's ability to effectively cross-examine Najera because the defense could not even ask the questions that would have exposed the infirmities in the heart of Najera's testimony: the alleged confession that Stock made to him. And because defense counsel could not ask the questions, the jury could not assess Najera's credibility through them. Similarly, because Najera never had to answer for the inconsistencies stemming from the recorded conversation, the jury could not judge his credibility based on the responses he would have given. Except through Stock's statements and Najera's inconsistent responses, there was simply no other way for defense counsel to impeach Najera and the confession that he supposedly heard.

The appellate court's legal analysis of *Fensterer* as applied to Stock's case stated in its entirety:

We are mindful that "the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." (Emphasis in original.) *Delaware v. Fensterer*, 474 U.S. 15, 20, 88 L.Ed.2d 15, 19, 106 S. Ct. 292, 295 (1985).

(App. A51.) The court then held that the defense had been given adequate opportunity to effectively cross-examine Najera. (App. A51-52.) But the appellate

court's sole rationale for this conclusion was the fact that the cross-examination of Najera consisted of forty-six transcript pages. (App. A51.) The court analyzed neither the content of the cross-examination itself nor the parameters by which it was restricted. Had the court conducted such an inquiry, the scope of the constitutional violation would have been evident. That is, although the defense had an opportunity for a *lengthy* or even *wordy* cross-examination, without the ability to ask the questions that would have impeached Najera's credibility on this crucial matter, there was no opportunity for *effective* cross-examination as *Fensterer* requires.¹⁰ *Cf. United States v. Bates*, 617 F.2d 585, 588 (10th Cir. 1980) (rejecting the argument that lengthy cross-examination made further impeachment "unnecessary" because improperly excluded impeachment materials, had they been admitted, could have destroyed witness's remaining credibility). Therefore, the courts' decisions below likewise unreasonably applied Supreme Court precedent.

¹⁰ And despite the State's suggestion below that the defense possessed but opted not to use an "alternative method" to impeach Najera on his general failure to raise the confession with Stock (R. 23 at 15, 17-18, Exh. G at 41-44), a review of the colloquy between the parties and the court during the hearing on the State's "Motion to Clarify" lays bare the futility of any such questioning. *See supra* p. 18. As defense counsel pointed out to the trial court in the wake of its ruling that the defense could not bring in Stock's responses even if Najera denied not raising the confession, the defense could not go down an impeachment line of questioning that it could not ultimately substantiate with the transcript. (App. A156.) In any event, the crux of the impeachment was not Najera's general failure to mention the confession; the parties had by that point agreed that Najera had feebly attempted to broach the topic. (App. 152-52.) Rather, the impeachment that the defense sought—but what was denied by the trial court's ruling—was about Najera's bizarre and counterintuitive responses when Stock created the opportunity for Najera to confront him with his alleged prior confession. (App. 128-30, 142-43, 154-55.) Therefore, even if it existed, this so-called "alternative method" of impeachment could not constitute "effective cross examination" under *Fensterer* that would remedy the Sixth Amendment violation.

II. These fundamental constitutional errors were not harmless

The State could not have proven Stock guilty beyond a reasonable doubt without the jury completely crediting Najera's testimony. Because the defense was prohibited from probing Najera's credibility with respect to the heart of his testimony—the alleged confession—these errors cannot be deemed harmless. Courts consider a number of factors in deciding whether a constitutional error was sufficiently harmful to require reversal: (1) the importance of the witness's testimony in the prosecution's case; (2) whether the testimony was cumulative; (3) the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the prosecution's case. *Van Arsdall*, 475 U.S. at 684. The first, second, fourth, and fifth factors apply in this case and overwhelmingly show that the courts' constitutional errors were not harmless.

With respect to the first factor, eliminating defense counsel's ability to cross examine the State's key witness on the heart of its case is not harmless error. *Van Arsdall*, 475 U.S. at 684; *see also Olden v. Kentucky*, 488 U.S. 227, 233 (1988) (finding that the restriction on the cross-examination of a key witness, whose testimony was "central, indeed crucial, to the prosecution's case" was not harmless "beyond a reasonable doubt."). Najera's testimony about Stock's alleged confession was central to the prosecution's case. The State admitted that it could not prove Stock guilty beyond a reasonable doubt without the jury crediting Najera's testimony. (App. A466) (stating that "[w]ithout [Najera's] testimony the State cannot go forward."). The State's reliance on Najera became clear in closing

arguments, where the State repeatedly emphasized Stock's alleged confession to Najera:

On June 24th as he sits with Al he tells him. He confesses. The defendant confesses to killing Connie Wagner. He confesses to his cousin or what would be his cousin. He confesses and tells him, I killed the bitch. I was angry with her. I killed her. I stabbed her. While I was stabbing her, I had a rap song playing in my mind. She was sleeping. She asked me to stop, but I told her to fuck off, fuck her. He used the keys to get in. He washed up, cleaned up and he left. Those are the actions. That's what this trial is about. That is what this trial is about. It's not about some loose hair lying under a fingernail that might have been thrown there or got there. It's not about a Hispanic guy that drove by and what was it Mr. – or Kathleen Rabagliata and her husband saw a Hispanic guy driving by. It's not about drugs or the fact that Michael Pope and Connie Wagner were doing drugs. Oh, maybe it's these drug dealers they owed money. That's not what this case is about. *The case is about the defendant's statements and actions. He has confessed to murdering Connie Wagner.*

....

What is the evidence? Well, there is different ways to have evidence, and most of the way that you get the evidence, and actually all the evidence comes from witnesses, okay? They get up there. They take an oath, swear to tell the truth to the best of their ability, and they are asked questions And they sit up here and they take and tell you. And it's what they tell you that becomes the evidence.

(App. A445-47) (emphasis added).

Moreover, the State used Najera's testimony to connect and bolster weak circumstantial evidence, further showing that Najera's testimony was the linchpin of the State's case. Throughout its closing argument, the State continued to refer to Najera's testimony, not only as proof of the confession, but also as support and explanation for other evidence. (App. A451-54, A455-56.) For example, the State

emphasized to the jury that the blood found in the sink, which, incidentally lacked any forensic link to Stock, was corroborated by Najera's testimony that Stock said he washed up. (App. A451.) Putting aside that all of this supposed "corroboration" detail came from a statement written by a Cook County prosecutor who knew what facts needed corroboration (App. A179, A183, A195), that the State told its theory of the case through Najera further demonstrates why the error in limiting the defense's cross examination cannot be harmless. (App. A455-56.) (State telling the jury that it had proven that "defendant performed the acts which caused the death of Connie Wagner" by "putting up witnesses that tell you he's confessed."). Finally, the jury explicitly asked for the call transcript during deliberations, which also shows how central Najera's testimony was to its decision. (App. A460.) The jury was never given that transcript, just as it was never allowed to hear the defense's impeachment of Najera based on that transcript. Najera's testimony regarding the alleged confession was crucial to the State's case and impeaching Najera on the confession would have "substantially affected" the jury.

Second, the fact that Najera's testimony was not cumulative weighs against finding the erroneous restriction of cross-examination harmless. *Brown v. United States*, 411 U.S. 223, 231 (1973) (finding erroneous admission of testimony to be harmless when it was "merely cumulative of other overwhelming and largely uncontroverted evidence."). Najera's testimony was the primary source of evidence about Stock's alleged confession. Thus, Najera's testimony was far from

cumulative. Any impeachment of this critical confession witness would have “substantially affected” the jury.

Third, the limitation on defense counsel’s ability to cross-examine Najera weighs the fourth *Van Arsdall* factor against a finding of harmless error. The Supreme Court has found that a meaningful opportunity to present a complete defense “would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant’s claim of innocence.” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). This Court has consistently recognized that the exclusion of critical defense evidence has a substantial effect on the jury. *United States v. Byrd*, 208 F.3d 592, 594-96 (7th Cir. 2000) (reversing conviction when omitted evidence was central to Byrd’s defense and so affected his substantial rights as to deny him a fair trial and, therefore, could not be deemed harmless); *see also United States v. Peak*, 856 F.2d 825, 835-36 (7th Cir. 1988) (finding exclusion of vital evidence to have more than slight effect on the jury and thus to be reversible error); *United States v. Cerro*, 775 F.2d 908, 916 (7th Cir. 1985) (stating that the error in excluding evidence that might have carried great weight with the jury would not be harmless even though the prosecution’s evidence was very strong).

Like *Crane*, the court excluded reliable evidence bearing on the credibility of Stock’s confession. And, like *Cerro*, Stock wanted to present evidence central to his defense. Stock simply could not present a full defense without the ability to impeach the State’s key witness on testimony vital to its case. Providing the jury

with testimony that would have rendered incredible Najera's testimony on the alleged confession would have substantially affected the jury. As a result, the limitation on defense counsel's ability to cross-examine Najera emasculated Stock's defense and counsels against finding harmless error.

Finally, turning to the fifth *Van Arsdall* factor, the erroneous limitation on Najera's cross cannot be deemed harmless in light of the remaining evidence in the case. See *Kotteakos*, 328 U.S. at 763 (stating that error that is harmless "in the face of other clear evidence" might not be harmless in a close case); see also *Peak*, 856 F.2d at 835-36 (finding reversible error where court refused to admit testimony that would have been "vital" and the only evidence to support defense). Here, lacking other clear evidence, the State had no case without Najera's testimony. No forensic evidence or testimony tied Stock to the crime. Hair, fingerprints, and footprints connected to the crime did not match Stock. (Tr. 345, 618-22, 1145, 1149, 1153.)

The State simply did not have the evidence to secure Stock's conviction without Najera's testimony about the alleged confession. Even with the confession, the State seemingly believed it did not have enough to convict Stock. The three-and-a-half year delay between Najera's statement and Stock's arrest and the fact that the State had orchestrated a corroborating recorded telephone conversation in order to make Najera's testimony credible shows the weakness inherent in its case. (App. A186-87, A212; Tr. 1096.) Most importantly, when that recorded conversation backfired and actually weakened Najera's testimony about the supposed confession, the State had to ensure that the recorded telephone conversation never went before

the jury. (App. A146-49.) Indeed, recognizing its value to its truth-seeking function, one of the first things the jury requested during its deliberations was a copy of that transcript. (App. A460.) The erroneous restriction of defense counsel's cross-examination of Najera cannot be deemed harmless and Stock's petition for a writ of habeas corpus should be granted.

CONCLUSION

For the foregoing reasons, the petitioner, Joseph A. Stock, respectfully requests that the Court grant his petition for a writ of habeas corpus.

Respectfully Submitted,

Joseph A. Stock
Petitioner-Appellant

By: _____

SARAH O'ROURKE SCHRUP
JEFFREY URDANGEN
Attorneys

Alison L. Speck
Senior Law Student

David R. Pekarek Krohn
Senior Law Student

BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

**Counsel for Petitioner-Appellant,
Joseph A. Stock**

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSEPH A. STOCK,

Petitioner-Appellant,

v.

ANTHONY RAMOS, Acting Warden,
Stateville Correctional Center,

Respondent-Appellee.

Appeal from the United States
District Court for the Northern
District of Illinois,
Eastern Division

Case No. 06 C 448

Hon. David H. Coar,
Presiding Judge

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Petitioner-Appellant, Joseph A. Stock, hereby certify that on December 3, 2009, two copies of the Brief and Required Short Appendix of Appellant, as well as a digital version containing the brief, were sent by United States mail to the following individual:

Garson S. Fischer, Attorney
OFFICE OF THE ATTORNEY GENERAL
100 W. Randolph Street
State of Illinois Center
Chicago, IL 60601

SARAH O'ROURKE SCHRUP
Attorney
BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: December 3, 2009

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSEPH A. STOCK,

Petitioner-Appellant,

v.

ANTHONY RAMOS, Acting Warden,
Stateville Correctional Center,

Respondent-Appellee.

Appeal from the United States
District Court for the Northern
District of Illinois,
Eastern Division

Case No. 06 C 448

Hon. David H. Coar,
Presiding Judge

CIRCUIT RULE 31(e) CERTIFICATION

I, the undersigned, counsel for the Petitioner-Appellant, Joseph A. Stock, hereby certify that I have filed electronically, pursuant to Circuit Rule 31(e), versions of the brief and all of the Appendix items that are available in non-scanned PDF format.

SARAH O'ROURKE SCHRUP
Attorney
BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: December 3, 2009

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSEPH A. STOCK,

Petitioner-Appellant,

v.

ANTHONY RAMOS, Acting Warden,
Stateville Correctional Center,

Respondent-Appellee.

Appeal from the United States
District Court for the Northern
District of Illinois,
Eastern Division

Case No. 06 C 448

Hon. David H. Coar,
Presiding Judge

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because this brief contains 12,107 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 12 point Century Schoolbook font with footnotes in 11 point Century Schoolbook font.

SARAH O'ROURKE SCHRUP
Attorney
BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: December 3, 2009

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSEPH A. STOCK,

Petitioner-Appellant,

v.

ANTHONY RAMOS, Acting Warden,
Stateville Correctional Center,

Respondent-Appellee.

Appeal from the United States
District Court for the Northern
District of Illinois,
Eastern Division

Case No. 06 C 448

Hon. David H. Coar,
Presiding Judge

CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 30(d)

I, the undersigned, counsel for the Petitioner-Appellant, Joseph A. Stock, hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the Appendix to this brief.

SARAH O'ROURKE SCHRUP
Attorney
BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: December 3, 2009

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSEPH A. STOCK,

Petitioner-Appellant,

v.

ANTHONY RAMOS, Acting Warden,
Stateville Correctional Center,

Respondent-Appellee.

Appeal from the United States
District Court for the Northern
District of Illinois,
Eastern Division

Case No. 06 C 448

Hon. David H. Coar,
Presiding Judge

ATTACHED REQUIRED SHORT APPENDIX OF
PETITIONER-APPELLANT JOSEPH A. STOCK

BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

SARAH O'ROURKE SCHRUP
JEFFREY URDANGEN

Attorneys
Alison L. Speck
Senior Law Student
David R. Pekarek Krohn
Senior Law Student

**Counsel for Petitioner-Appellant,
Joseph A. Stock**

RULE 30(a) SHORT APPENDIX TABLE OF CONTENTS

Stock v. Uchtman, No. 06-C-448 (N.D. Ill. March 3, 2009) (Docket Entry Denying
Petition for Writ of Habeas Corpus) (R. 52.)A1

Stock v. Uchtman, No. 06-C-448 (N.D. Ill. March 3, 2009) (Memorandum Opinion
and Order Denying Petition for Writ of Habeas Corpus) (R. 53.)A2

Stock v. Uchtman, No. 06-C-448 (N.D. Ill. April 12, 2009) (Request for a Certificate
of Appealability) (R. 54.)A28

Stock v. Uchtman, No. 06-C-448 (N.D. Ill. June 18, 2009) (Certificate of
Appealability Granted) (R. 58.)A30

Stock v. Uchtman, No. 06-C-448 (N.D. Ill. January 25, 2006) (Petition for Writ of
Habeas Corpus) (R. 01)A32

RULE 30(b) APPENDIX TABLE OF CONTENTS

People v. Stock, No. 1-02-3534 (Ill. App. 1st. Dist. 2004) (State appellate order affirming conviction)A43

People v. Stock, No. 1-02-3534 (Petition for Leave to Appeal to the Supreme Court of Illinois).....A63

Rule 10(e) Index to the Transcript of the Proceedings.....A117

Transcript of first discussion of motion *in limine* (Tr. 48-59).....A120

Transcript of second discussion of motion *in limine* (Tr. 122-35).....A132

Transcript of discussion of motion to clarify (Tr. 426-38)A146

Testimony of Alfonso Najera (Tr. 448-525).....A159

Testimony of Michael Pope (Tr. 229-72)A237

Testimony of Julie Buscaglia (Tr. 668-82)A281

Testimony of Elizabeth Stock (Tr. 840-941)A296

Testimony of Gary P. Wagner, Sr. (Tr. 206-29).....A398

Testimony of Peter Kurtyka (Tr. 732-53)A422

State Closing Argument (Tr. 1272-86).....A444

Response to Jury Questions During Deliberation (Tr. 1351-57)A459

Motion to Set a Trial Date (C. 368-69).....A466

Transcript of Recorded Call Between Stock and Najera.....A468