

1 STATE OF ILLINOIS)

2 COUNTY OF LASALLE)

3 IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

4 LASALLE COUNTY, ILLINOIS

5

6 PEOPLE OF THE STATE OF ILLINOIS,)

7 Plaintiff,)

8 -vs-) No. 1960-CF-753

9 CHESTER O. WEGER,)

10 Defendant.)

11

12 REPORT OF PROCEEDINGS had in the above-entitled matter,

13 at the Criminal Justice Center, Ottawa, Illinois on the

14 20th day of June, 2023.

15

16 BEFORE: THE HONORABLE JUDGE MICHAEL C. JANSZ

17 PRESENT: MS. COLLEEN GRIFFIN

18 MR. CHRISTOPHER KOCH

19 MR. SCOTT PYLES

20 Appeared on behalf of the People,

21 MR. ANDREW HALE

22 Appeared on behalf of the Defendant.

23 EMILY DALE, CSR

24 CSR# 084-004301

1 THE COURT: Let the record show this is People of the
2 State of Illinois versus Chester Weger, 2060-CF-753. The
3 matter is before the Court this afternoon for a hearing on
4 petitioner's motion for appointment of a new special
5 prosecutor. Would counsel please identify themselves for the
6 record?

7 MS. GRIFFIN: Colleen Griffin on behalf of the State.

8 MR. KOCH: Chris Koch on behalf of the State.

9 MR. HALE: Andy Hale on behalf of defendant/petitioner
10 Chester Weger.

11 THE COURT: Okay. Are you ready to proceed, Mr. Hale?

12 MR. HALE: I am, Your Honor.

13 THE COURT: All right. You may proceed.

14 MR. HALE: Can I move this podium?

15 THE COURT: Yes, you absolutely may.

16 MR. HALE: I have to stand up, Your Honor.

17 THE COURT: That's okay.

18 MR. HALE: I'm a creature of habit.

19 THE COURT: I'm okay with that.

20 MR. HALE: Your Honor, I don't take lightly filing a
21 motion like this. I understand and I'm aware that the relief
22 we're requesting is not typical, maybe even extraordinary,
23 but I think the nature of the case and the facts of the case
24 are extraordinary, and let me put it in context. We're not

1 talking here about a little DUI or a traffic ticket or some
2 minor infraction. We're talking about probably one of the
3 most -- if this is a wrongful conviction, and we obviously
4 contend it is, it would be by far the longest in the United
5 States. It's a significant, significant potential
6 miscarriage of justice, and as we stand here today I think
7 what anybody has to agree to is there's two sides to the
8 story at the very least. All right. There's a lot more to
9 it and so I want to kinda work my way backwards in reverse
10 order.

11 Will County State's Attorney James Glasgow got
12 appointed as special prosecutor because the LaSalle County
13 State's Attorney had a conflict at the time so since that
14 time Will County has failed to conduct any meaningful
15 investigation, objected to my request to microscopically
16 examine Chester Weger's signature on the confession document,
17 failed to interview any of the witnesses I advised them
18 about, failed to look at any of the documents in the case.
19 All the documents that Mr. Stout had at the historical
20 museum, didn't look at any of those. Opposed our DNA testing
21 on chain of custody grounds, and it was overruled, and let me
22 go back to the start, and this is the most egregious one that
23 I want to focus on. Opposed, opposed me even looking at the
24 physical evidence, simply having an evidence inspection when

1 as Your Honor has noted every Cub Scout pack and Brownie
2 group, school group in the central valley seems to at some
3 point seen the evidence. Kids have tried on the jacket so
4 this is what's important. This is the foundation of the
5 question is why?

6 Why hasn't Will County done any of those things, and
7 as I said in my reply brief something is not right. Why have
8 they not done any of those fundamental basic things that you
9 would expect and that they're required to do. Well, here's
10 why. If you remember going back in time Mr. Glasgow despite
11 a protective order in the case he went and unilaterally
12 looked at the physical evidence, and he then called me on the
13 telephone, and he told me his words were it was a complete
14 disaster. That's a quote. A complete disaster, and I said
15 well, if it's a complete disaster -- and he said, you know,
16 I'm not going to let you look at it. I said if it's a
17 complete disaster why can't I just look at it, and he said
18 let me think about it so that first call was May 28th. It's
19 in my declaration May 28th, 2021, and I submitted a
20 declaration in our reply brief.

21 The next day May 29th he called me back, and he said
22 no, I'm not going to let you look at the evidence, and part
23 of what he said was it would needlessly inflame people's
24 passions and muddy up the local authorities, and as you saw

1 in my declaration, Your Honor, the very next day I sent an
2 e-mail to Mr. Glasgow, a long e-mail, and I mentioned that
3 quote so I have a contemporaneous document reciting what he
4 said to me, and I put it in quotes in my e-mail.

5 So let me pause there. When he first told me, when
6 Mr. Glasgow told me the evidence is a complete disaster we
7 had to go to court. We had to bring a motion in front of
8 Your Honor to ask permission to view the evidence which you
9 granted and then we had the Microtrace Lab, Dr. Palenik and
10 his son Dr. Chris Palenik, and they took 2500 photographs.
11 We submitted all those to the Court, and you've seen those.

12 There is no way anybody could characterize that
13 evidence as a complete disaster. I mean the bulk of what we
14 want to look at it are glass slides, hairs mounted on glass
15 slides that are perfectly preserved. They are engraved with
16 a diamond pen with an exhibit number so you know exactly what
17 they are and where they came from. I mean Mr. Glasgow made
18 it sound like, and I think I said this before, you put
19 everything in a garbage bag, you shook it up and you dumped
20 it out on the table and you didn't know what was what or
21 where anything came from. That could not be farther from the
22 truth. I mean it's astonishing how organized everything was.

23 THE COURT: How do you respond to and you mentioned it
24 his statements that your predecessor defense counsel had

1 indicated that the evidence was in such poor shape that they
2 couldn't establish a chain of custody?

3 MR. HALE: A couple things. I don't know why prior
4 counsel would have said that. I really don't because it's
5 stunning that Donna Kelly would say something like that. I
6 don't know if she was basing that comment on everything in
7 that file cabinet or if she was basing that on a few things
8 that she wanted to look at. I don't know. I don't think she
9 could have been basing it on everything in that file cabinet
10 because there's no way. I mean the State would have to agree
11 there are things in that file cabinet and there are slides
12 that we know exactly what they are, exactly where they came
13 from. They're mounted. They're labelled. You know, some
14 things are loose and in envelopes. They're still labelled.
15 You know, it's labelled on the outside what they are and
16 where they came from, but the bulk of what we want to look at
17 is glass slides, and if you remember there was a box of glass
18 slides like, you know, with a cover(Indicating) so why would
19 Mr. Glasgow tell me it's a complete disaster?

20 That is simply wrong. I mean -- and then to not even
21 let me look at it and then to tell me this is his concern,
22 and this is the quote "needlessly inflame people's passions."
23 That's not a proper consideration for him. His job is to
24 seek justice. Muddy up the local authorities. What? That's

1 his concern it would muddy up the local authorities? That's
2 not a proper consideration and so right there that back in
3 May of 2021 for whatever reason that's the stance he was
4 taking, and that's why nothing has been done since that time.

5 That's why they've objected to my forensic testing.
6 They have not interviewed witnesses. They have not looked at
7 documents. They've objected to my review of the signatures.
8 They have not conducted a meaningful investigation.

9 Something happened back then, and when I met with him just to
10 be clear on May 5th, 2021 I wasn't aware of all the what I'll
11 call the bomb-shell stuff that I am now. Mr. Tyson talking
12 about Smokey Wrona, the woman talking about her grandfather
13 with the mob, the telephone operator overhearing a
14 conversation traced to the bar in Aurora, the two brothers
15 Glen Palmatier and William Palmatier, the bloody overalls,
16 the tree that the forest tree expert that couldn't match the
17 log to a tree in St. Louis Canyon, the memo.

18 I mean this is all stuff I found out after I met with
19 him so to the extent that Mr. Glasgow even made up his mind
20 in May of 2021 that he thought Chester Weger's confession was
21 true, which by the way he told he didn't believe it, all this
22 new stuff, how can you not -- and I'm not saying he's got to
23 agree with me. Okay. They want to spin it like I'm sour
24 grapes, you know. They don't agree with me. No, what I'm

1 saying is Mr. Glasgow has to do his job which he hasn't done.
2 You mean to tell me you're not going to interview witnesses?
3 I mean you're not going to talk to the woman about her
4 grandfather? You're not going to talk to Mr. Tyson? You're
5 not going to try to figure out their credibility?

6 Yes, it's hearsay. Hearsay is admissible in
7 post-conviction petitions. Plus as we said in our reply
8 brief some of these statements aren't even hearsay. They're
9 statements by people involved in the underlying crimes and so
10 I think there's two things here. I mean it is to me an
11 outrageous lack of dereliction of duties, a lack of any, any
12 interest in getting to the bottom of this, any lack in
13 investigation in again, in what is potentially a colossal
14 miscarriage of justice, one of the most important cases and
15 significant cases this State has ever had. One of the most
16 important criminal cases the State has ever had. It was a
17 national news story so the question is why? Why had nothing
18 been done.

19 I put in a little footnote in my brief. It's just a
20 footnote, Rule 3.8 a prosecutor's duties. When a prosecutor
21 is presented, and I'm summarizing, when a prosecutor is
22 presented with new material, credible evidence that maybe
23 somebody didn't commit a crime but that they were convicted
24 of they shall, the statute says shall, conduct a reasonable

1 investigation. Will County makes it sound like they have to
2 discover the evidence on their own, and they act like they're
3 shielded because I gave them the evidence. Let's say I gave
4 them five DNA results or five eyewitness statements or a
5 videotape, they have no duty to investigate under their
6 theory? They have their own independent duty to investigate
7 so here we are two years have gone by, and they've done
8 nothing. They've shown no interest in justice in getting to
9 the truth and so I go back to this.

10 Step one we cited in our brief a Rule 23 case. You
11 know, there's a split. We talked about since the statute was
12 amended we cited a couple cases where they still use the
13 appearance of impropriety language. That in re M.D. case is
14 a Third District case. We also cited a Second District case,
15 the Benford case and then there is this First District case
16 the in re special prosecutor case that is contrary, but there
17 is Third District law that still imposes the appearance of
18 impropriety requirement, and what I would submit, Your Honor,
19 is based on what I just told you and everything in our briefs
20 the lack of doing those six or seven things shows at the very
21 least an appearance of impropriety, not interviewing
22 witnesses, not looking at documents, objecting to us looking
23 at the signatures, objecting to our evidence inspection. All
24 these things there's an appearance of impropriety. Why?

1 Why? Especially the evidence inspection and then did you
2 want to ask a question?

3 THE COURT: I did, but go ahead.

4 MR. HALE: No, no. I'm going to go to part two.

5 THE COURT: What I wanted to ask you is so since you
6 raised it are you basing your argument for a special
7 prosecutor on an actual conflict, an appearance of
8 impropriety, both?

9 MR. HALE: Both.

10 THE COURT: Then explain because obviously there's
11 case law that talks about what an actual conflict is --

12 MR. HALE: Yes.

13 THE COURT: And so they have to be interested.

14 MR. HALE: Yes.

15 THE COURT: They have to be an actual part of
16 litigation or interested in the cause or proceeding as a
17 private individual so I would like you to address how you
18 feel LaSalle County(sic) has an actual conflict and then we
19 can talk about the appearance of impropriety part.

20 MR. HALE: Okay. My answer to that is I don't have
21 all the information yet. I don't know. What I do think is
22 based on these quotations -- based on Mr. Glasgow's comments
23 that the evidence is a complete disaster, letting me look at
24 it would needlessly inflame people's passions, muddy up the

1 local authorities, that is grounds for an evidentiary
2 hearing. The statute says you can conduct an evidentiary
3 hearing. I mean I don't have all the answers yet, and how
4 could I? You know, I mean, how could I? You need some kind
5 of evidentiary hearing to flush this out.

6 I mean I don't know everything that happened behind
7 the scenes. I think there should be an evidentiary hearing
8 with Mr. Glasgow here to explain why he said those things,
9 what he meant by those things, and for instance,
10 hypothetically, what if somebody called up Mr. Glasgow and
11 said you know what, if you vacate this conviction we're not
12 going to support you in the next election. You're not going
13 to get re-elected. What if somebody called him up and said
14 hey -- a friend of his or somebody or he knows somebody
15 involved in the case and said, you know, you better not be
16 thinking about vacating this conviction. What if he talked
17 to somebody else and said you know what, if you vacate this
18 conviction do you realize the financial liability that's
19 coming down the road to LaSalle County?

20 All of those things, if there's proof of that, yes,
21 he's got an actual conflict of interest. If he's taking a
22 position now to not let me look at the evidence, not even let
23 me look at the evidence because of people he's spoken to or
24 talked to, yes, he's got a personal conflict, and he is not

1 disinterested. He is not acting disinterested, and anybody
2 acting disinterested -- I mean the proof is almost there
3 because anybody acting disinterested would not say the
4 evidence is a complete disaster which was a
5 misrepresentation, would not tell me letting me look at the
6 evidence is going to needlessly inflame people's passions or
7 muddy up the local authorities. There's got to be more to
8 the story, and I would note that in the two Rule 23 opinions
9 we cited in re M.D. and Benford there were evidentiary
10 hearings held in those cases. There were evidentiary
11 hearings held in both those cases, and the courts ruled as
12 they did, but I think it would be entirely premature on the
13 actual conflict of interest to simply deny it now and not
14 give us the ability at an evidentiary hearing, and I'll give
15 you an example.

16 I did a FOIA request to Will County for all the phone
17 numbers that called Mr. Glasgow, Mr. Glasgow called from his
18 office phone from the time he got appointed until the end of
19 May, 2021. Okay, and let me give you an example. I had this
20 exact issue down in Peoria with my Cleve Heidelberg case. We
21 had a similar issue, and I got the State Attorney's at the
22 time Jerry Brady did not interview any of my witnesses,
23 wasn't doing anything. We did a FOIA, and it showed several
24 phone calls between him and the former prosecutor in the case

1 who was his mentor. It's the only person he talked to. He
2 didn't talk to my witnesses. He talked to the former
3 prosecutor, his mentor, who told him oh, yeah, Cleve
4 Heidelberg is guilty.

5 It would be the same thing as if the only person Mr.
6 Glasgow talked to was Tony Raccuglia, and Tony Raccuglia said
7 hell, yeah, Chester Weger is guilty. He didn't talk to the
8 woman about her grandfather, Mr. Tyson, Mr. Woods, Mr.
9 Delorto, all those people so those phone records, for
10 instance, may show phone calls between Mr. Glasgow, people in
11 LaSalle County, political people, I don't know, but I think I
12 should get the ability to flush that out based on the things
13 that I already know he said to me.

14 THE COURT: Well, let me ask you -- my concern with
15 this a little bit is that what is to prevent someone from
16 making these claims on almost any case where they were
17 unhappy with what the prosecutors were doing? I mean there's
18 the case out of the Third District called People versus Max
19 which says that mere speculation or suspicion is not enough
20 to justify an appointment so my question becomes, and you've
21 raised these issues without claiming they're true. I'm
22 assuming you're not claiming somebody called him and told him
23 these things?

24 MR. HALE: Right.

1 THE COURT: You're simply saying you don't know, but
2 my problem is what is to prevent people from doing that all
3 the time unless they have some concrete evidence? Now, you
4 have made a statement that Mr. Glasgow made statements to you
5 orally. Interestingly if he denies it, the only way the
6 impeachment is proved is by your testimony which would then
7 prevent you from participating at least in that hearing and
8 maybe more because an attorney being a witness in his own
9 case like that we start to run in to some new issues.

10 MR. HALE: I agree, and the way I would argue with
11 Your Honor is it would -- I'd be a witness in that hearing,
12 and I would argue that I should still be allowed to be an
13 advocate in the case. I'd be a witness. Mr. Glasgow would
14 be a witness, and we can both be examined about the calls.
15 Here's the difference to what you said about why couldn't
16 this happen in any case. These are the two things that are
17 different. In this case -- and again, let me put it in
18 context. It's the Starved Rock murder case where somebody
19 served 60 years in prison, and it's not some little
20 rinky-dink case so what we know is they didn't interview my
21 witnesses. They didn't go out and look at the documents.
22 They opposed our testing. They opposed me even looking at
23 the evidence, and I know he misrepresented, Mr. Glasgow, the
24 nature of the evidence saying it's a complete disaster and

1 told me and he gave me these improper comments that it would
2 needlessly inflame people's passions and muddy up the local
3 authorities. That's what is unique and different about this
4 case.

5 THE COURT: But when he says the evidence is a
6 complete disaster, from his perspective. I mean the problem
7 is is you're viewing it from your perspective. You don't
8 know what his perspective is. You're saying there's an
9 objective perspective that might disagree, but that's where
10 I'm -- on the actual conflict issue that's where I'm
11 challenging you on this --

12 MR. HALE: Yes.

13 THE COURT: Because I'm not sure because he's clearly
14 not a party to the action per se. I mean not -- I don't know
15 how old Mr. Glasgow is, but I don't know there's very many of
16 us in the room besides your client who was here in 1960.

17 MR. HALE: I agree with what you said, and that's why
18 I think he should have to explain it. I mean let's ask him
19 why did you say it was a complete disaster? What was a
20 complete disaster if he can defend it. What if he can't?
21 What if he says that he did talk to people about this case?

22 THE COURT: Assuming you got what you requested and
23 there was a new special prosecutor, that would -- I mean
24 that's -- it's going to take a long time. I mean getting one

1 in the first place was not easy. Getting a second one will
2 not be easy.

3 MR. HALE: You know, I -- that's a very good point.

4 THE COURT: It's very time consuming.

5 MR. HALE: And I really struggled with that.

6 THE COURT: I mean if someone would have to get up to
7 speed and I can tell you from the amount of reading I've had
8 to do between my other obligations, it's a lot of
9 information.

10 MR. HALE: That has not been lost on me.

11 THE COURT: Okay.

12 MR. HALE: And I have really struggled with because
13 I've known these things, you know. I've known these things,
14 and I kept thinking I wasn't going to have to go down this
15 road, but when I continued to see things not getting done, I
16 think this is something that had to be done, but I fully
17 acknowledge that if you were to grant this motion it is going
18 to take time, and that's unfortunate, but at the same time
19 it's been two years. It's been two years and so this is the
20 thing, Your Honor, I go back to it, you know. This is the
21 difference. It's not like a case where -- it's the same
22 thing in my Peoria case. If Mr. Glasgow would have said, you
23 know, Andy, I interviewed all your witnesses. I just don't
24 really find them credible. We kind of challenged them.

1 Their stories didn't match up. We did an investigation, you
2 know. We went out and looked at the documents. We didn't
3 find anything significant there. We looked at the signatures
4 under a microscope. It all looks legitimate. That's fine.
5 I could not quarrel with that if they had a different
6 opinion, if Mr. Glasgow has a different opinion, but my issue
7 is to not do any of those things is not normal. It is not
8 normal. It is not defensible. I mean you can't just say you
9 know, I don't think I need to.

10 I mean what they say in their response is they believe
11 the confession, and it got affirmed. I mean that is such an
12 incredibly naive argument. If we're debating why Chester
13 Weger's guilty and they're saying the confession, and
14 everything we now know about false confessions, all the
15 factors are here, threats of death, his age, all the things,
16 to just simply hang your hat on that and say I'm not even
17 going to investigate because he confessed. I mean that just
18 -- there's got to be something going on here because these
19 are fundamental things. Like I said, if Mr. Glasgow would
20 have investigated and drawn his own conclusions, even with
21 the DNA evidence. There are things if we worked together
22 that I'm sure we can agree on that there's proper chain of
23 custody, mounted slides, hairs. We could say hey, these
24 things, all the chain of custody, let's test them. Let's get

1 to the bottom of it.

2 They want to say we don't know where the hair came
3 from. Let's not forget there were hairs found on the finger
4 of Ms. Murphy, that same finger where the fingertip was cut
5 off. It was so important in 1960 that the State sent it to
6 the Washington University Medical School to be compared to
7 the victims, and you can bet your last dollar if it had been
8 similar to Chester Wegner they compared it to him, it would
9 have been brought up in the trial. The State deemed it
10 relevant to the crime scene and significant. I now take one
11 of these same hairs, send it for DNA testing. It's a male
12 profile. It's not Chester Wegner, and the State said well,
13 whose hair is that? It could be anybody. Well, here's the
14 thing. These poor women, there was a violent struggle. They
15 were beaten. They were dragged in to a cave. You can't tell
16 me persuasively that there was a hair on Ms. Murphy's glove
17 when she went to take her hike that still is there on that
18 glove after everything this poor woman went through.

19 That hair, that hair is from one of the killers. They
20 know that. That's such a significant hair, and even though I
21 think that hair alone exonerates Chester Wegner, there's 75
22 other things, and I've talked about some of them that we've
23 gotten in to. I mean how about Harland Warren in his
24 interview on the 40th anniversary of the Starved Rock murders

1 telling the LaSalle paper oh, yeah, Illinois State Police,
2 they didn't know what they were doing. They thought the
3 Chicago mafia was involved. Oh, that's interesting. How do
4 you not even interview the woman about her grandfather to say
5 what was his name? Who were his friends? Where did he live?
6 Tell me more about it. I mean Will County might find out
7 more things that I don't even know. They've got powers to do
8 -- to interview people, do discovery. I can't do those
9 things so at the end of the day it's two things, and thank
10 you for your patience.

11 THE COURT: No, you take as long as you need.

12 MR. HALE: It's really two things, and I just go back
13 to them. Sorry I'm a broken record. I think these things
14 that Mr. Glasgow said to me in May of 2021 are so telling.
15 Think about this for a minute too. It's one thing to argue
16 chain of custody, etc., etc., but let's pause. Let's think
17 of what he -- Mr. Glasgow did not even want me to look at the
18 evidence. He opposed it. We had to bring a motion before
19 Your Honor to have an evidence inspection. Why on earth
20 would he oppose me even looking at it? I can't even think of
21 a legitimate good faith reason why he wouldn't let me just
22 look at the evidence. Because you know why, because when we
23 looked it we're like holy cow. There's a lot of good stuff
24 here. There's a lot of things that we can test. As Your

1 Honor ruled we submitted some evidence. I mean we got a hair
2 on Ms. Murphy that's not Chester Wegner so and then why would
3 he tell me it's going to inflame people's passions and muddy
4 up the local authorities? This also jives by the way. I
5 haven't talked about that law review article.

6 THE REPORTER: The what?

7 MR. HALE: The law review article that I submitted in
8 my motion. I know it's not binding authority, Your Honor.
9 The Court can consider it. We did cite a case. That law
10 review article talks about prosecutors having kinda some
11 unique potential conflicts, things like your personal
12 ambition, are you going to get re-elected, the nature of the
13 office. They even talked about the reluctance to really
14 fairly look at wrongful convictions, and I think Mr.
15 Glasgow's comments dovetail perfectly with that law review
16 article, and I would also be asking that the Court kinda
17 consider modifying or extending the law compatible with a
18 conflict where somebody is concerned about -- let's say Mr.
19 Glasgow thought, you know, if I vacate this conviction I'm
20 not going to get re-elected. I know I got constituents who
21 aren't going to vote for me. Is he interested as a person,
22 you know? Is that an actual conflict under the case law
23 today? Well, that is a conflict, and if that's in his
24 mindset, if he can't fairly look at this case because he

1 unlike other prosecutors is so concerned about what people
2 are going to think of him or what people are going to think
3 of law enforcement, then he's not disinterested, and he
4 should be replaced. You know --

5 THE COURT: Every State's Attorney would in theory
6 fall in to that category. No matter who would replace him in
7 theory that law review article paints with a pretty broad
8 brush.

9 MR. HALE: Yes, but the difference is I think every
10 prosecutor potentially could be looked at that way, but I
11 don't think every prosecutor who got this case and I don't
12 think any other prosecutor who got this case would have the
13 pattern that Mr. Glasgow does of not doing any of those
14 things, opposing the evidence inspection and making the
15 comments he made to me. I don't think anybody, any other
16 state's attorney would have done that so I think based on the
17 M.D. case which was decided post amendment. I know it's a
18 Rule 23 opinion, but it's a Third District case. It still
19 uses the appearance of impropriety language. I do think the
20 Lang case is an appropriate analogy. You know, Lang was the
21 one where the State's Attorney was characterized as going to
22 like at all costs to convict this person, and I argue this is
23 the flip-side where Will County is doing everything they can
24 to preserve the conviction, opposing me looking at the

1 evidence, not wanting to interview witnesses, not wanting to
2 look at documents, not wanting to review the signatures of
3 Chester Weger.

4 I mean I don't know if Your Honor saw these, those
5 signatures you can just facially see there's irregularities
6 on those documents. I mean there's two pens. There's some
7 weird stuff on there. What is the harm in letting the
8 scientist, and Will County puts in their brief Chris Palenik
9 this is not his area of expertise. I'm not arguing -- it's
10 not a handwriting analysis. It's a microscopic review of the
11 signatures, you know, looking at it under a microscope. What
12 if there's evidence of tracing, Your Honor? What if there's
13 evidence under those signatures of a pencil and somebody's
14 tracing Chester Weger's name each time, you don't think that
15 would --

16 THE COURT: On each individual page?

17 MR. HALE: Yes.

18 THE COURT: Didn't -- and I haven't looked at your
19 motion for additional -- to have those things sent off for
20 testing, but didn't you in your reply agree to withdraw that
21 as a request?

22 MR. HALE: I did. I did, but my point now is --

23 THE COURT: That they shouldn't have objected in the
24 first place.

1 MR. HALE: This is what I think Will County should be
2 doing and they're not. I mean I think they should be
3 conducting a reasonable investigation on all these issues.
4 Let's say -- I mean let's say the signatures come out and
5 there's nothing there. Okay. Fine. You talk to the
6 witnesses. You don't believe them. Fine. You view the
7 documents, you know, you do all these things. Okay. They're
8 going to draw their own conclusions, but they have to do
9 those things. I mean it just stuns me -- and again, I go
10 back to this is the Starved Rock murders case. They have
11 shown zero interest in doing anything. The only two people
12 they've interviewed, they interviewed Dave Raccuglia who's
13 got no first-hand knowledge about this case at all and then
14 they interviewed initially James Murphy. James Murphy if I
15 can I elaborate on this.

16 THE COURT: (Nodding head.)

17 MR. HALE: We think one of the prime suspects, you
18 know, the woman said her grandfather said one of the husbands
19 wanted his wife killed. Mrs. Murphy has got these unique
20 things, the missing fingertips, the spoiled clothing, you
21 know. In Chester Wegner's interrogation he's asked did you
22 kick any of them in the crotch? Did you urinate on them?
23 Did you defecate on them? It turns out Glen Palmatier knows
24 Robert Murphy. Stephen Kindig the polygraph examiner knows

1 Robert Murphy. I mean isn't this piquing anybody's interest
2 and then James Murphy is born two months before the women get
3 murdered. Two years later his biological mother marries
4 Robert Murphy. Well, who's the biological father? If the
5 biological father was Robert Murphy, that means he was having
6 an affair with this woman, and there could potentially be a
7 motive for murder. Okay. I mean that we all would agree is
8 a fair point of investigation.

9 THE COURT: Has that been in the pleadings so far? I
10 don't remember seeing that.

11 MR. HALE: You know, I've been trying to be delicate
12 about this.

13 THE COURT: Okay because I don't remember seeing that
14 particular statement that you made. The other things, yes.

15 MR. HALE: So let me just repeat this. It's
16 undisputed, it's undisputed that Marianne Anderson gave birth
17 to a baby boy in January of 1960. Okay. That boy is James
18 Murphy. Okay, and it's undisputed that two years later
19 Marianne Anderson marries Robert Murphy. I'm not arguing now
20 that two years is too quick. I'm not arguing that. What I'm
21 arguing is who's the biological father?

22 THE COURT: Okay.

23 MR. HALE: So when the Will County State's attorneys
24 went to interview Mr. Murphy the first time, and it was in

1 court one day they gave me -- I walked in to court, and they
2 handed me like a little one page memo summary of interview as
3 their disclosure obligation. They didn't even ask Mr. Murphy
4 who his biological father is. I mean the only relevance that
5 James Murphy is who's your dad. Now they have gone back, and
6 they interviewed him a second time, and they gave me another
7 updated memo. They actually asked him to do a buccal swab,
8 and he said let me think about. He didn't agree to do it.
9 So all they've done is they did that first interview with Mr.
10 James Murphy where they didn't even talk about anything
11 relevant, and they do David Raccuglia and then they went back
12 because I pointed it out that they didn't even ask James
13 Murphy the relevant question about who's his biological
14 father so you're going to interview David Raccuglia whose dad
15 is the prosecutor and not any of my people? Not the woman
16 whose grandfather told her it was a mob hit? Not Mr. Tyson
17 that expressed Smokey Wrona? I mean how do you explain that?
18 I mean -- so I mean I could go on and on and on.

19 THE COURT: Let me ask you --

20 MR. HALE: Yeah.

21 THE COURT: Let me ask you a question then. So let's
22 assume for the sake of my question that Will County had done
23 everything you requested, did all the interviews and then
24 concluded they didn't agree with you. We'd be in the same

1 place in the case that we are right now.

2 MR. HALE: We would.

3 THE COURT: So what difference will it make whether
4 they're in the case tomorrow or not since there having done
5 what you requested may not have changed their opinion? What
6 I'm trying to differentiate is between -- because a lot of
7 your arguments sounds like an ethical argument, like an
8 ethical obligation of a prosecutor to seek justice, and
9 obviously this Court doesn't have any authority on the issue
10 of ethics so that's why I'm asking you that question. Like
11 how would it change where we are right now if they had done
12 those things and we'd still at the same stage except you
13 wouldn't have filed a motion to appoint a special prosecutor?

14 MR. HALE: I believe if they would have done all those
15 things fairly and open-mindedly we wouldn't be here. Chester
16 Weger's conviction would be vacated.

17 THE COURT: So you believe if they had done the things
18 that you're suggesting they would have agreed with you and
19 agreed with getting the case resolved in the way you suggest?

20 MR. HALE: I do believe that, but my first point is
21 they have to do it.

22 THE COURT: I understand.

23 MR. HALE: They have to tell me -- they have to go
24 through all that work and then tell me do you agree with me

1 or do you not. They have to do the work and take a stand.

2 THE COURT: Right, and I guess what I'm trying to
3 understand is from this point forward is that more of an
4 ethical question, or is that a conflict? You're saying it's
5 a conflict. There must be something there. You're saying
6 where there's smoke there's got to be fire, and you want a
7 chance to look in to it, but my point is that if they had
8 done everything we'd be at the same place we are now in
9 theory, and we'd still be moving forward the same way that
10 we'll eventually move forward.

11 MR. HALE: To answer your question I think it's both.
12 I think it's an ethical conflict that I agree Your Honor
13 doesn't jurisdiction over. Rule 3.8 there's nobody enforcing
14 this. This is the thing about it. There's nobody -- Will
15 County is just there's no accountability. I mean they can
16 just not do anything and nobody would know. I mean that's
17 just the way it is, but with the conflict of interest I think
18 in light of what Mr. Glasgow told me and how his comments
19 were so improper, for him to say those to me, okay, were so
20 improper to claim, you know, it would needlessly inflame
21 people's passions, muddy up the local authorities, call the
22 evidence a complete disaster, yeah, there's -- I believe
23 there's an underlying conflict there that I'm unfortunately
24 in the dark, you know, about some of it, but I know the part

1 that's thumping above the surface.

2 It's like the iceberg that the Titanic hit. I can see
3 the top part, and there's a bunch below the surface that I
4 don't know yet, but that's why in these other cases and
5 that's why the statute specifically says the court can
6 conduct an evidentiary hearing. It's there for that reason
7 because I don't think it's fair to people like me. How would
8 I know without discovery, you know, what's going on behind
9 the scenes? I'm basing it on these and I think what I've
10 told Your Honor are some pretty unique, unusual circumstances
11 in this case. I'm not just talking about, you know,
12 something minor. When you add up all those things
13 collectively I do think there's a basis for an evidentiary
14 hearing, and I think Mr. Glasgow should offer testimony, and
15 I would offer testimony about what he said to me if needed.
16 If he challenges it, I mean if he denies it I'm happy to take
17 the stand and tell my side of the story.

18 THE COURT: You know, I think part of what makes these
19 kind of cases difficult is that prosecutors are
20 constitutionally created offices that courts are reluctant to
21 step in to too much if they can avoid it. Now, I know here
22 it's a little bit different because we already have a special
23 prosecutor, but when you talk about how difficult it is and
24 the evidentiary hearing I think that those are, you know -- I

1 mean there's a reason why those are a little bit more
2 difficult because you don't want these happening all the
3 time.

4 MR. HALE: And I agree with that.

5 THE COURT: And I understand your position too.

6 MR. HALE: And I agree it's a I'll say extraordinary.
7 It's an extraordinary request and remedy, and I'm well aware
8 of all the things Your Honor is talking about.

9 THE COURT: What about the appearance of impropriety
10 part of it since I had initially asked you about the actual
11 conflict?

12 MR. HALE: Well, that's the easier part. I mean the
13 harder part is --

14 THE COURT: You believe the case law supports that as
15 a basis for removal.

16 MR. HALE: Well, yes, in the sense that there are
17 those two cases that I cited.

18 THE COURT: Right.

19 MR. HALE: They don't explain things the way the in re
20 special prosecutor case opinion explains it, but, you know,
21 the way they matter-of-factly still impose the appearance of
22 impropriety aspect especially with in re M.D. being a Third
23 District case. That's, you know, that is law that, you know,
24 you can look to because I know these are Rule 23 opinions so

1 yes, I do believe that's the case.

2 THE COURT: Okay. Yes, and I do have the in re
3 special prosecutor case you're referring to is the one out of
4 the First District from 2019?

5 MR. HALE: Yes.

6 THE COURT: Because there's actually a couple of them.

7 MR. HALE: Yes.

8 THE COURT: They all have the same kind of name.

9 MR. HALE: And I cited that in our motion as contrary
10 authority. You know, I would note that Will County does not
11 address my cases in their response, but at the end of the
12 day, Your Honor, I'll finish where I started. Something's
13 not right. Something is definitely not right, and I think
14 that we have alleged enough on the appearance of impropriety
15 to have the motion granted today. On the actual conflict of
16 interest I would request respectfully an evidentiary hearing
17 where the Court can hear evidence and then decide whether we
18 have met our burden, and then thirdly, I would ask the Court
19 to consider that law review article kinda extending and
20 modifying the law in terms of conflict of interest for
21 prosecutors based on those other factors that the law review
22 article talked about, you know, and I think are appropriate
23 here and are consistent with Mr. Glasgow's comments to me
24 about not wanting to muddy up the local authorities or

1 needlessly inflame people's passions so let me just end by
2 saying this.

3 I just don't think, you know, Will County cannot just
4 sit there and do nothing other than review the things that I
5 give them and then say them nope, not enough. I have in this
6 proceeding, you know, I think the conduct speaks for itself.
7 I think it's outrageous. It's unique. It's suspicious.
8 It's curious, and I think there's more to the story, and I'm
9 not just making this up and speculating. I've got facts
10 about positions they've taken, and I've got facts about
11 comments that Mr. Glasgow said to me personally so there is a
12 basis there for what I am alleging. I understand the
13 significance of my request, but I would respectfully ask Your
14 Honor to do those things.

15 THE COURT: Thanks, Mr. Hale. Thank you for indulging
16 my questions.

17 MR. HALE: Yes.

18 THE COURT: Counsel.

19 MS. GRIFFIN: Your Honor, is it okay if I address the
20 Court from --

21 THE COURT: Wherever you're most comfortable.

22 MS. GRIFFIN: Thank you, judge. As Your Honor is
23 aware of the law regarding actual conflict so we're not going
24 to delve in to that and the appearance of impropriety which

1 the State does not believe it is still a viable reason to
2 have a special prosecutor appointed. However, I don't think
3 that the defense has shown either an actual conflict which I
4 believe counsel admits or the appearance of impropriety.
5 Instead it appears that the defense is really just mounting
6 an attack on Mr. Glasgow as a reason to show this Court that
7 it should appoint a special prosecutor.

8 I think Mr. Glasgow's conduct over his 33 years as a
9 prosecutor, 27 of which were as an elected attorney speak for
10 itself. Mr. Glasgow was instrumental in exonerating or a
11 part in exonerating Kevin Fox who was convicted of murdering
12 his daughter based on a false confession, but that false
13 confession was shown by DNA testing to be wrong. As counsel
14 even says here he thinks there's something curious about
15 statements made by Mr. Glasgow, and, therefore, he wants an
16 evidentiary hearing based on those supposed statements made
17 during conversations. Even accepting that Mr. Glasgow may
18 have made those statements, that is not -- that does not rise
19 to the level of going on this fishing expedition as to why he
20 used certain words to describe certain things, and regarding
21 the facts of this case I want to start out by saying I know
22 that there is the motion to allow the successive
23 post-conviction petition, and the State cannot have any input
24 in to that. Some of what I'm going to say is going to talk

1 about that evidence in this case so I want to make perfectly
2 clear that we're not addressing that in any way, shape or
3 form.

4 Regarding objecting to the defense viewing the
5 evidence, once I looked at that claim I decided to go back in
6 time as to what occurred previously in this case. It was not
7 til September 28th of 2020 where in this particular motion
8 that Will County State's Attorney's Office is now addressing.
9 Before that occurred there was a request back in 2020 that
10 Microtrace be allowed to view the evidence as well as test
11 the evidence. That request was denied by Your Honor. Then
12 basically defendant filed what I guess could be considered a
13 motion for reconsideration at September 28th, 2020. The
14 State's Attorney's Office was not even in the case -- the
15 Will County State's Attorney's Office was not even in the
16 case at the time. The LaSalle County State's Attorney's
17 Office objected to that evidence.

18 Counsel refers to conversations that he had with Mr.
19 Glasgow on May 28th of 2021 well after that motion was filed
20 and the State's Attorney's Office responded to it. That was
21 two days before a hearing was to be held before Your Honor on
22 the request to view the evidence so the State's Attorney's
23 Office's position in its filings that Your Honor's own ruling
24 denying leave to look at the evidence was correct. We were

1 simply responding to that, and to suggest that they had to
2 come in to court to ask this Court to view the evidence
3 because of these May 28th, 2021 conversations is simply
4 untrue. That motion was filed September 28th of 2020.

5 I think it's also interesting that at the June 1st,
6 2021 hearing wherein again the defendant reiterated its
7 request to observe the evidence Ms. Stack herself agreed that
8 this Court had previously relied on Donna Kelly's statement
9 of the condition of the evidence in this case and agreed that
10 it was well-documented that the evidence is in a highly
11 questionable condition due to highly questionable conduct.
12 So again, in looking at all the pleadings in this case before
13 Mr. Hale had any conversation with Mr. Glasgow about viewing
14 the evidence, again, that was two days before that exact
15 decision was to be decided by Your Honor so to somehow
16 suggest that we had anything to do with the allowance or
17 disallowance of the viewing of the evidence is simply untrue.
18 We were in no position to overrule Your Honor's previous
19 decision that it should not be viewed.

20 Regarding the Will County State's Attorney's objection
21 to any DNA testing, the State's Attorney does believe that
22 what the defendant just does not like is the State's
23 Attorney's Office holding it to the standard under 116 which
24 is what statute this motion was brought under. I want to

1 refer to defendant's claim that the Will County State's
2 Attorney's Office conducted a wholly improper ex-parte
3 examination of the evidence in May of 2021 in violation of
4 the court order issued on August 19th, 2020. That is simply
5 an untrue statement and completely misrepresents this Court's
6 August 19th, 2020 order. That order says it is hereby
7 ordered that all evidence related to this case in this
8 above-captioned case be preserved and protected. The Will
9 County State's Attorney's Office did not violate that order
10 which does not state that there could be no viewing of the
11 evidence.

12 Regarding Mr. Glasgow's supposed statement that the
13 evidence was in a complete state of disarray, while defendant
14 apparently believes and in all his pleadings has suggested
15 that this evidence is somehow in some type of pristine
16 condition, obviously based on observations of other persons
17 including in pleadings, observations by prior counsel, Ms.
18 Stack's agreement it was not in a pristine condition, Mr.
19 Mogged's documentation of the state of the evidence. I don't
20 think a subjective statement that it is in complete disarray
21 shows there's any type of conflict in this case, and quite
22 frankly the Will County State's Attorney's Office still does
23 not believe that this evidence is in a condition that it
24 could be properly shown to have a chain of custody, and as we

1 refer to in our prior pleadings foundation is a part of chain
2 of custody. There's simply no way that a proper foundation
3 for any of this evidence can ever be laid that it could be
4 admissible in a court of law.

5 Regarding the Will County State's Attorney's Office
6 supposed refusal to interview petitioner's witnesses, I
7 believe that that definitely bears response. The defendant
8 has Mrs. Smith, and the defendant says in his reply that he
9 thinks it's unbelievable that the Will County State's
10 Attorney's Office would not interview her. She says that her
11 grandfather said this was a hit by the mob. The
12 grandfather's dead. Defendant said that we should not
13 consider this as hearsay because admissions, and I'm quoting,
14 made by criminals who plan to execute the murder of three
15 women are not hearsay. There's not one statement that Mr.
16 Hale refers to that is from an actual person that said they
17 committed the crime. It is based on hearsay, double hearsay,
18 Mrs. Smith saying her grandfather said it was a mob hit.
19 Defendant refers to a Mr. Tyson who says a man he knew as
20 Smokey Wrona admitted to him that he helped plan the murder
21 of the women. Defendant says Wrona's statement is not
22 hearsay. Wrona's actually dead. There's no statement of
23 Wrona before this Court. It's a statement of Tyson that are
24 hearsay so even accepting that Mrs. Smith says that her

1 grandfather said that this was a mob hit, there's nothing
2 more that she could tell us.

3 THE COURT: What about your ability to assess her
4 credibility and the statement she made? I mean what about
5 granted assuming that she told Mr. Hale everything she knew,
6 what about his argument that your office should at least be
7 sizing up these individuals to determine whether their
8 testimony is even worthy of credibility without regard to
9 anything else?

10 MS. GRIFFIN: Well, I would respond that we don't take
11 issue with whether she's telling the truth or not. She
12 obviously told an employer of hers the same thing. I don't
13 take any issue with Mrs. Smith saying this occurred. What
14 the State's response is is that it can lead to nothing. The
15 grandfather's dead. All of these people who would have had
16 any information as to whether this was a 1960's mafia hit are
17 dead. The grandfather's dead. I don't know what else --
18 what other information Mrs. Smith could possibly allude to
19 because again, she was -- I think she said she was 14 or 15
20 when these statements were made. The State can't really
21 investigate the 1906's mob and go back in time and
22 investigate the 1960's mob so we don't take issue with Mrs.
23 Smith's credibility. It just that is really the end of what
24 her information could possibly be that her grandfather told

1 her that this was a hit on these women. Also, Your Honor,
2 that statement is inconsistent with certain other aspects of
3 what the defense has presented as evidence including what Mr.
4 Tyson said.

5 The State in this case has taken in to account all of
6 defendant's exhibits supplied to the State. Again, the
7 defendant thinks the State should make more of an
8 investigation in to their witnesses and their hearsay because
9 it may lead to more and the State may walk away from an
10 interview believing his witnesses. Again, the State does not
11 necessarily disbelieve these witnesses. However, what they
12 have to say is simply hearsay.

13 THE COURT: How do you respond to his general argument
14 that your office has an obligation to ascertain the truth,
15 you know, the higher obligation, the ethical obligation for
16 justice as it relates to all of these arguments that you're
17 making? How do you respond to Mr. Hale's argument on that?

18 MS. GRIFFIN: The State's Attorney's Office has looked
19 in to all of the issues in this case, and I believe that Mr.
20 Hale's classification that the State has done nothing in this
21 case is simply incorrect. Our office has reviewed each and
22 every item and document provided by the defense. We have
23 reviewed the entire record in this case including reading the
24 defendant's trial and the appeals. The State met with

1 defense counsel and listened to their presentation of what
2 they believed the evidence showed. The State has gone to the
3 scene of the crime and looked around there. We requested
4 documents from Mr. Hale regarding a letter that Mr. Raccuglia
5 had that Mr. Hale had not turned over to our office. The
6 Will County State's Attorney's Office has reviewed the
7 documents provided by Steve Stout. I don't believe there's
8 anything in the ethical rules that requires the State to
9 conduct its own DNA testing of the evidence in this case. We
10 reviewed everything that has been provided to us and have
11 made our conclusion that it does not show actual innocence in
12 this case so I don't believe that there's any ethical
13 violation in what the State's response to this is.

14 Defense counsel also refers to the State's Attorney's
15 objection to an examination of the defendant's signature on
16 his confession, and quite frankly it appears to the State
17 that some of these items are simply thrown in there to try
18 and add fuel to some fire that he's trying to get this Court
19 to bear in to. The defendant never has disagreed that the
20 defendant -- has never contended that he did not sign his
21 confession, nor does defendant disagree that Christopher
22 Palenik is not an expert in handwriting analysis. Now he
23 merely says that he seeks to have Palenik examine the paper
24 and ink for signs of tracing or multiple pens being used and

1 concludes what is the harm in allowing petitioner to do this.

2 First, again, the defendant has never contested that
3 he signed the confession. Second, defendant does not explain
4 what expertise Palenik has in distinguishing whether multiple
5 pens were used. Third, the defendant does not explain what
6 significance multiple pens being used could even have so the
7 State will respond that the harm in this is there's no expert
8 to testify as to anything at issue in this case and the harm
9 is allowing a non-expert to opine on an issue that is not
10 even before this Court or matters not relevant to these
11 proceedings.

12 Again, the defendant refers to what he says is a Will
13 County State's Attorney's Office failure to review key
14 documents. Again, the Will County State's Attorney's Office
15 has reviewed all the documents defendant has provided to this
16 office and all the documents that we have seen on our own.
17 Now, defendant takes issue with the Will County State's
18 Attorney's Office not believing that the documents provided
19 by the defendant shows he's actually innocent and this
20 somehow shows a conflict on the part of the Will County
21 State's Attorney's Office, and in regards to this throughout
22 the defendant's pleadings -- in many of the pleadings he
23 consistently says that the confession in this case was the
24 only evidence against the defendant.

1 The State cites to the testimony of Dr. Kruglik that
2 was testified to at trial to whom defendant confessed and
3 without citation to medical or psychiatric journal defendant
4 simply says the Will County State's Attorney's Office
5 misapprehends the nature of false and coerced confessions.
6 The defendant continues after petitioner's will was broken
7 down by the State's coercion threats of death he falsely
8 confessed to the murders to save his life. This is basically
9 a psychiatric statement by Mr. Hale in his responses, and
10 there's simply no journal that Mr. Hale refers to that talks
11 about this as a coerced confession, again, Mr. Kruglik's
12 report, and I know Your Honor has seen it, also refers to the
13 defendant confessing to two other crimes that he committed,
14 and I don't know if that's part of this nature of false and
15 coerced confessions that once you're coerced in to confessing
16 to one crime that you just start adding other crimes. I
17 don't know. However, that is true evidence that was
18 presented at the trial and simply not been shown to be
19 incorrect. The voluntariness of the defendant's confession
20 was looked at by the trial court, by the Appellate Court, by
21 a habeas corpus court, and all have found that the confession
22 was voluntary.

23 THE COURT: Is it enough to rely on what happened in
24 the 60's? I think their argument is that's the question they

1 have. They've come up with different information. The
2 question is as far as a prosecutor's obligation to do their
3 work, is it enough to rely because you are correct, the trial
4 court allowed it in in early 1960, '61 and then the Supreme
5 Court affirmed and found it was voluntary so the question
6 becomes is that enough?

7 MS. GRIFFIN: I believe it's enough, yes, where we
8 have not been presented with anything -- any valid
9 information that would suggest the confession was coerced.
10 Again, we're talking about hearsay, double hearsay,
11 conjecture, newspaper articles that the defense has provided
12 to us and to Your Honor, and I believe that there's -- the
13 defendant has shown us nothing that would make us believe
14 that we can't rely on what occurred in 1960, and again, part
15 of that is also defendant taking issue with the State
16 believing defendant's statements regarding the red plane
17 because now defendant says that Drummond told him to say it.
18 Well, now we're supposed to believe the defendant over
19 anybody else because he now says Drummond told him to say it
20 --

21 THE COURT: I think it's Dummett.

22 MS. GRIFFIN: Sorry.

23 THE COURT: That's okay. I just want to make sure the
24 record is clear we're talking about the same person.

1 MS. GRIFFIN: Thank you.

2 THE COURT: You're welcome.

3 MS. GRIFFIN: The defendant also takes issue with the
4 State pointing out that the defendant lied at trial because
5 now defendant has submitted an affidavit explaining why he
6 lied. I think it's noteworthy that in that affidavit
7 defendant purports to explain that he lied and said he was
8 writing a letter because his real whereabouts being at the
9 barber shop could not be confirmed. However, his lie could
10 not be confirmed either so why would you pick one unconfirmed
11 lie over another unconfirmed lie? It simply doesn't make any
12 sense, and again, for the State to ignore all of the evidence
13 that was presented at trial simply because the defendant now
14 says he either was coerced in to doing it or he made it up
15 for whatever reason, I don't think that that's what the State
16 is looking at here.

17 Also there was the deputy that testified at trial that
18 defendant told him that the two worst things he ever did was
19 to take the last lie detector and go to Starved Rock to show
20 investigators what happened because defendant now says he did
21 not say that. First, the defendant actually does not say
22 where he denies that he made these statements to the deputy.
23 It's not included in his affidavit of January, 2005, and also
24 regarding Dr. Kruglik I would point out and I think that

1 there's testimony or one could look up his reputation, and
2 there's nothing to suggest that Dr. Kruglik was anything but
3 honest in his testimony. He was a well-respected medical
4 doctor from the Chicago land area who I don't believe his
5 credibility or anything like that has ever been called in to
6 question.

7 The State -- the defendant basically concludes with a
8 statement so there you have it in black and white the Will
9 County State's Attorney's Office believes defendant is
10 guilty. At this point in time the defendant has not
11 presented the Will County State's Attorney's Office anything
12 which shows defendant is actually innocent. However,
13 obviously should any evidence come to light in the future
14 that shows defendant is likely innocent that certainly would
15 change the posture of the case, but where we're at now is
16 that this motion for leave to file successive post-conviction
17 petition is before the Court and that is Your Honor's
18 decision to make as to whether this evidence is enough to get
19 him past filing that motion.

20 I want to briefly touch on the Supreme Court Rule
21 3.8(g)(2), little 2.

22 THE COURT: Can I ask a question first?

23 MS. GRIFFIN: Yes.

24 THE COURT: Early on in your arguments you referenced

1 some proceedings that happened before Will County got in the
2 case.

3 MS. GRIFFIN: Correct.

4 THE COURT: And unfortunately we don't have a file up
5 here so I was trying to find the orders that you're referring
6 to on the computer, and I'm not as good at that as I am with
7 paper, but could you tell me -- my memory was that when
8 LaSalle County was involved Mr. Hale had filed a motion for
9 DNA testing, but he just basically asked for everything, and
10 I denied the motion finding he had not met his burden of
11 proof at that point and so then I think he said I'd like to
12 at least see the evidence before I make the request again to
13 which I agreed that made sense. Were you in the case when I
14 made that decision, or was that still LaSalle County?

15 MS. GRIFFIN: We were in the case at that point.

16 THE COURT: Okay and so was there an order I entered
17 previously that he couldn't even look at it?

18 MS. GRIFFIN: Not specifically, Your Honor, but I did
19 look at the pleadings in the case, and I may have copies of
20 those. It was a request that was previously made. While it
21 wasn't the focus of the motion it was a request that was made
22 in those pleadings, and while it wasn't necessarily referred
23 to by Your Honor in its order denying the motion for leave
24 for DNA testing, they did not respond with well, can we just

1 view it, but it was a request that was made by them
2 previously.

3 THE COURT: Because I know the first request was
4 LaSalle County State's Attorney. It was Ms. Donnelly.

5 MS. GRIFFIN: Yes.

6 THE COURT: And it was after the election that the
7 Court appointed a special prosecutor, and Will County got
8 involved. That's what I wanted to make sure of because I
9 didn't have a memory of saying they couldn't look at it. I
10 just had a memory of denying their first request because
11 frankly they wanted everything.

12 MS. GRIFFIN: Correct.

13 THE COURT: And the second request they made was much
14 more narrow and then the Court granted I think eight of nine
15 requests on that one so that's what I was trying to verify.

16 MS. GRIFFIN: Yes, it was a request that was made.
17 However, it was never really the focus of the argument before
18 Your Honor at that time.

19 THE COURT: So to the point he's made about the
20 comments made by Mr. Glasgow about it will muddy the waters
21 and it's a complete mess is fairly subjective.

22 MS. GRIFFIN: Correct.

23 THE COURT: But what about the other one about it will
24 muddy the waters? Your argument with regard to that, what is

1 your position as to whether he did or didn't say it, whether
2 it's relevant or not relevant?

3 MS. GRIFFIN: I don't know what the conversation
4 between Mr. Glasgow and Mr. Hale was. However, if Mr.
5 Glasgow did say that our position is that it's simply not
6 relevant to these proceedings. That being said does not show
7 that Mr. Glasgow somehow has some kind of conflict in this
8 case. You know, people have conversations all the time where
9 they use certain words regarding certain things, and to use
10 that as the basis for a motion to appoint a different special
11 prosecutor I believe simply is not supported by the law.

12 THE COURT: What about his request then for an
13 evidentiary hearing?

14 MS. GRIFFIN: Well, that kind of ties in to that same
15 thing. I guess it would be to Your Honor to believe that if
16 those statements do rise in some way to some level of a
17 showing of an actual conflict or an appearance of
18 impropriety, that would be a different story, but the State's
19 position is that there does not need to be an evidentiary
20 hearing on whether those statements were made or what Mr.
21 Glasgow meant by making those statements because it simply
22 does not show that there was an appearance of impropriety.
23 The defendant is trying to bootstrap some kind of argument
24 that maybe somebody called Mr. Glasgow on the telephone and

1 said they wouldn't support him in his next election if
2 there's even going to be a next election for Mr. Glasgow and
3 that somehow he's trying to make a mountain out of a molehill
4 basically on those statements.

5 THE COURT: Go back to your original argument. I just
6 wanted to ask about that. Thank you.

7 MS. GRIFFIN: I just want to talk a little bit about
8 Rule 3.8. It's curious that in the response to the
9 defendant's reply counsel says well, I only raised, you know,
10 that rule in a footnote and now the State's Attorney's Office
11 spends four pages talking about the law regarding that rule.
12 Well, that's the only thing that the defendant could possibly
13 rely on is that Illinois Supreme Court Rule 3.8 so that is
14 why the State's Attorney's Office spent four pages which
15 apparently defense counsel believes was too much in response
16 to what he says was only his footnote. The State's
17 Attorney's Office did address that rule which of course would
18 be the rule of -- the ethical rule to investigate cases, and
19 I set forth in our response that nothing in that rule or any
20 case law that has decided anything regarding that Rule 3.8
21 suggests that the State's Attorney's Office needs to
22 investigate unless there's new credible evidence that is
23 found that shows the defendant may be actually innocent.

24 It's the State's Attorney's Office's position, the

1 Will County State's Attorney's Office's position that we have
2 not been presented with any new credible evidence that
3 suggests that the defendant is innocent. In his reply the
4 defendant kind of expounds a little bit on Rule 3.8, and I
5 believe actually initially that because he did not initially
6 do so in his motion speaks volumes because there's nothing
7 that shows that the State's Attorney's Office violated that
8 rule.

9 Regarding the law review article referenced by defense
10 counsel rethinking prosecutor's conflict of interest would
11 suggest that all prosecutors have this inherent conflict
12 because they want to uphold their convictions. While Mr.
13 Hale asks this Court to expand on law regarding conflicts of
14 interest and appointments of special prosecutors I don't
15 believe that that is appropriate in this case. There are the
16 Appellate Court decisions that show when an actual conflict
17 or the appearance of impropriety has been shown, and again,
18 as Your Honor pointed out if all these prosecutors in the
19 State have this inherent conflict or who would take over this
20 case if this is what all prosecutors have.

21 Regarding the Lang case, I don't believe that Lang is
22 even applicable to this case. There the prosecutor went out
23 and gathered evidence against the defendant, called the
24 police on the defendant, investigated against the defendant

1 and kept the case up until the point of trial where he then
2 testified on behalf of the State. Clearly Lang is completely
3 different from this case and not even close to showing an
4 actual conflict or the appearance of impropriety here.

5 One more point, Your Honor, regarding counsel's
6 suggestion that we have been presented all of his evidence
7 for over two years, that's simply not the case. The
8 defendant gave us a binder approximately September of last
9 year which we painstakingly went through and reviewed all the
10 documents in this case, and just simply because the State's
11 Attorney's Office does not have the same view of that
12 evidence does not show an actual conflict or the appearance
13 of impropriety on the part of the State's Attorney's Office.
14 So again, I do not believe that an evidentiary hearing needs
15 to be held in this case because the defendant has made
16 absolutely no allegations here that would rise to the level
17 of conflict of interest. Again, Mr. Glasgow's statements
18 would not show that he is conflicted in this case, and the
19 defendant's efforts to suggest that we should have an
20 evidentiary hearing to see if anything else is going on is
21 inappropriate and a fishing expedition, and the State would
22 ask this Court to deny the motion to appoint additional
23 special prosecutor or for an evidentiary hearing.

24 THE COURT: Thank you, counsel. Mr. Hale.

1 MR. HALE: Yes, Your Honor. There was a lot to digest
2 there. I thought there was some pretty stunning things Ms.
3 Griffin just said that I think actually prove my case. Let's
4 just talk about, you know, this whole mafia. You heard her
5 recite the greatest hits from 1960. The confession, talking
6 to Dr. Kruglik, some jail guard that claims Chester confessed
7 to him. They're like oh. They're so determined Chester
8 Wegner is guilty based on the 1960 trial, and it's just
9 stunning to me that there's absolutely no intellectual
10 curiosity, professional curiosity like could this -- could we
11 have gotten it wrong, and I can't stress this enough.

12 I mean in my brief on pages -- in my reply brief on
13 pages 10, 11 and 12 I've got those bullet points. Okay.
14 Each of those bullets points I could talk to you probably
15 about fifty minutes a piece. All of those bullet points of
16 new evidence that has come to light, the tip of Mrs. Murphy's
17 finger cut off. I'll give you some examples. The DNA
18 results. The fact that before trial Dummett and Hess
19 deputies they get a forestry expert in Madison, Wisconsin.
20 They take the log which they claim is the murder weapon.
21 They go down to St. Louis Canyon to match to a tree, and you
22 know what, it doesn't match, and guess what, guess what,
23 let's talk about Mr. Tyson.

24 You know what Mr. Tyson says, Mr. Tyson says that

1 Smokey Wrona told him -- he was in his yard at the time in
2 1960. He kicked a frozen log, and he brought it with him.
3 Now, why would Mr. Tyson make that up? It's such an
4 innocuous little point, but it jives exactly with the fact
5 that the log was foreign to the tree, and here's another one
6 that Mr. Tyson what he told me. When Mr. Tyson when I
7 interviewed him I was not aware of the telephone operator
8 memo. Okay. He tells me that Smokey Wrona told him that he
9 was kind of the organizer, you know, kind of was the local
10 guy to help the Chicago mafia guys plan this attack, and he
11 had -- this is what Mr. Tyson told me. Smokey Wrona had
12 bloody clothes in the trunk of a car, and he didn't know what
13 to do with them so there's some kind of delay there, and he
14 said ultimately he decided to burn them in a burn pit in
15 Bureau County. Now, let's pause.

16 When Mr. Tyson's telling me that I haven't even
17 discovered the telephone operator memo where she is saying
18 she hears two guys talking about what, bloody overalls in the
19 trunk of a car, and the guy with the bloody overalls in the
20 trunk of the car hasn't gotten rid of them yet and then what
21 does the one brother, what does William Palmatier say? He
22 says tell him to burn them. It jives exactly with what Mr.
23 Tyson was saying. I mean, you know, and I can go on and on
24 with all this evidence, witnesses that saw the women talking

1 to a guy by the side of the road and three or four other guys
2 in a car. I mean the log not being the murder weapon. The
3 State within days said the log would have crumbled. It was
4 fragile. There's two types of twine. I can -- there's like
5 75 items of evidence here so I won't bore you with the
6 details, but for them to be like oh, in 1960 he confessed.
7 Here's the thing with false confessions. They have no
8 appreciation and no understanding of the concept.

9 When somebody falsely confesses as Chester Wegner did
10 to save his life it would not be a surprise that that same
11 day or the day after he would continue to say he committed
12 the murders because in his mind he is saving his life so the
13 fact that he told -- I'm not suggesting Dr. Kruglik coerced
14 it. I'm just saying Chester Wegner recounted to Kruglik the
15 same thing he talked about to the deputies. He had not had
16 his Public Defender yet and so here's the thing. Let me go
17 to this part.

18 When we stop talking about the mafia evidence, there
19 were two things Ms. Griffin said. Interviewing, you know,
20 this woman about her grandfather, it would lead to nothing,
21 and the State can't investigate the 1960's mob. Are you
22 kidding me? I deserve a special prosecutor who understands
23 that they can investigate and understands that they can learn
24 new things and understands that they can talk to witnesses

1 and try to, you know, put pieces together. I mean for her to
2 say it can lead to nothing. I mean I guess there's no cold
3 case. How could you ever have a cold case investigation if
4 everyone's dead? It will lead to nothing. There's no point
5 in this. It's all hearsay. It's a shocking -- and if this
6 is really what they believe, if it's not a conflict of
7 interest, if this is really what they believe? If Will
8 County's mindset is it will lead to nothing. We can't
9 investigate the 1960's mob. This is old. We can't learn
10 anything, if that's what they really believe then they should
11 be booted out of the case today because that's outrageous
12 that that's their attitude. I mean it could lead to nothing.
13 You mean you can't interview this woman and say tell me about
14 your grandfather. Where did he live? Who were his friends?
15 Do you have any family photos? Do you have any pictures, any
16 yearbook pictures? Do you have any proof he's in the mafia?
17 I mean there's a billion things you could ask her.

18 The same thing with Mr. Tyson. They could -- I mean
19 how about Glen Palmatier? I mean I got this in the Steve
20 Stout documents, you know. They traced the phone call. The
21 telephone operator says she hears the two guys talking. They
22 trace it to the bar Aurora owned by Glen Palmatier, and it's
23 traced to his brother William Palmatier in Peru so in that
24 transcript of the hearing which I gave Will County, the

1 Illinois State Police interviewed Glen Palmatier and they ask
2 him about the telephone operator. Of course what does he do?
3 He says I didn't make the call. It could have been anybody.
4 It's a pay phone here. Well, here's the interesting part.
5 They say to him we've been coming in here everyday so they've
6 been conducting surveillance and we see you talking to a guy
7 named Lupe the Chief Cardenas. You are aware he's like a
8 known hoodlum, and he denies it.

9 Well, here's the thing. I simply went to
10 newspapers.com and put in Lupe the Chief Cardenas. Guess
11 what? He's got mob connections. He did serious prison time
12 for a mob highjacking of a truck full of platinum so I mean
13 -- and then in that same transcript one of the Illinois State
14 Police says oh, yeah, before Glen Palmatier's lawyer got here
15 Glen Palmatier told me he knew Robert Murphy. He was friends
16 with Robert Murphy so I mean it's like holy moly. I mean the
17 stuff I gave to Will County is jaw dropping, okay, and to
18 think that they would not even investigate any of it tells
19 you that there's something going on here because in light of
20 everything that I've told them about all this evidence, for
21 them to simply sit here today, Your Honor, and just all they
22 can do is say he confessed in 1960. It got affirmed, and
23 there was a red plane. Oh, and guess what? One of our
24 witnesses we contend Deputy Dummett had Chester Wegner say

1 the red plane was flying overhead. One of my witnesses was a
2 guy names Robert Harris who's probably 80 now. I took a
3 videotaped statement under oath. He said Dummett tried to
4 frame him back in 1970 for a serious crime. He's still upset
5 about it. You've got Dummett and then we also have
6 affidavits from former LaSalle County State's Attorneys
7 telling Dummett stories where Dummett and I'll give you one
8 example at a trial --

9 THE COURT: Public Defenders.

10 MR. HALE: Public Defenders so my point is I mean I'm
11 trying to condense this. It's hard, but I've given them so,
12 so much to look in to. There is no way -- there is no way
13 you can take all my evidence and just simply say oh, this is
14 nonsense. He confessed back in the day so her comments that
15 it can lead to nothing and the State can't investigate the
16 1960's mob, that shows you the mentality of that office.
17 Something is going on. Why would she say that?

18 Then in terms of the false confession, I mean she said
19 they've not been presented with any evidence to suggest his
20 confession was coerced. Well, wait a minute. There's trial
21 testimony. They admit that Illinois State Police were told
22 to follow Chester Wegner 24/7 for a month. Threats of death.
23 Dummett denied it at trial threatening Chester Wegner, got
24 impeached by another State's Attorney. We have an expert

1 opinion. We gave them an expert opinion of an expert we
2 hired on false confessions who went through all the factors.
3 I talked about Robert Harris so I mean for them to say
4 there's no evidence that the confession was coerced, it's
5 like they didn't look at any of my evidence.

6 Mr. Glasgow's representation about the evidence,
7 whatever the prior history was the point is he went and
8 looked at it with his eyeballs and told me it's a complete
9 disaster, not disarray, complete disaster, and he would not
10 agree to me even looking at it which is indefensible. That's
11 why even those things that you brought up it would inflame
12 people's passion and muddy up the local authorities, I
13 actually put that in quotation marks in my e-mail the next
14 day. That was a direct quote, and the reason I put it in
15 there it was so outrageous he said it to me that I put it in
16 quotes in that e-mail so for them to say there's been no
17 credible evidence presented, again, I'm not arguing now. I
18 just want to be clear about this. I'm not saying they have
19 to agree with me. They're obligated to agree with me. I
20 think my case is overwhelming, but they have a duty to
21 investigate, and you can tell they've done -- they don't even
22 think they can do it. They have this futile attitude that
23 what can we do? Everybody's dead. We can't investigate the
24 1960's mob. I mean it's beyond my comprehension that they

1 can even say that.

2 Then finally on the evidentiary hearing I have raised
3 enough. I have raised a very alarming course of conduct,
4 some alarming quotations by Mr. Glasgow. It is not a fishing
5 expedition. There is a basis for it, there is definitely,
6 definitely a basis for an evidentiary hearing so.

7 THE COURT: The one thing I wanted to say with regard
8 to that is the statements that you attribute to Mr. Glasgow
9 were made right after they got in the case before you found
10 Mr. Tyson, before you found everyone else. Does that make a
11 difference? I mean that was very early in the case.

12 MR. HALE: And well, just to be clear --

13 THE COURT: And people's viewpoints may have been
14 different in the spring of 2021 than they might be in say now
15 the summer of -- well, tomorrow will be summer, spring of
16 2023.

17 MR. HALE: That's a fair point, and to be clear, all
18 those statements so the statements May 28th was it's a
19 complete disaster. I asked to look at it. He said well, let
20 me think about it, and he said no. I said if it's a complete
21 disaster then let me just look at it. I mean what's the
22 harm? He said let me think about it so he called me back the
23 next day. That's when he told me he wasn't going to let me
24 look at it so that's all in the context of the physical

1 evidence, those comments. So those comments don't pertain to
2 whether he thinks Chester Wegner is guilty or not. It just
3 pertains to whether he thought he was going to allow me to
4 look at the physical evidence so I don't think -- I don't see
5 how he could not only was a complete disaster not a proper
6 characterization but for him to say it would inflame people's
7 passions and muddy up the local authorities, you know, and
8 then the other thing is with all the evidence that I've given
9 them, all these things, it's the same stuff that's in this
10 successive post-conviction petition, and it is summarized on
11 those four pages and those bullet points.

12 For them to sit here now, and like I said to you,
13 they've interviewed two people James Murphy and David
14 Raccuglia. I don't see how you can possibly justify that
15 unless there's something going on. They're simply trying to,
16 you know, David Raccuglia had a letter that Chester wrote to
17 his father apparently that they thought was maybe inculpatory
18 or somehow incriminating. That's why they want to talk to
19 him to get that letter, okay, because they're trying to --
20 not to try to look at any of my stuff, they're just trying to
21 -- the one person they want to talk to Dave Raccuglia, he's
22 got this letter because that might show Chester Weger's
23 guilt. What about all my evidence? What about all my
24 witnesses and then James Murphy they don't even ask him the

1 million dollar question who's your biological father until
2 they give me the memo and I say well, didn't you even ask him
3 the only relevant question so at the end of the day I think
4 it's an absolutely outrageous, stunning display of a lack of
5 any investigation in what would be what and will be the
6 longest, biggest wrongful conviction by far in United States
7 history, and they have no interest in investigating it.

8 Thank you.

9 THE COURT: Thank you, Mr. Hale. Why don't we take a
10 short recess just because we've all been here for an hour and
11 a half. Why don't we maybe come back in ten minutes or so.

12 Thank you.

13 (Recess taken.)

14 THE COURT: Let the record show we're back in court on
15 People of the State of Illinois versus Chester Wegner,
16 1960-CF-753. The record should indicate that all the parties
17 are present. Mr. Wegner is present. We took a short recess
18 just so we could all stretch our legs. So I want to thank
19 initially all counsel for their arguments and their time.
20 The briefs were very helpful. There was a lot of
21 information. It's a very interesting issue. This is
22 obviously a very interesting case, and I appreciate
23 everyone's passions in their argument and where we stand with
24 all this.

1 Ultimately the issue before the Court, and I tend to
2 like to do written rulings at times, but in the interest of
3 keeping the case moving I've decided I'm going to make an
4 oral ruling today. So the issue before the Court is whether
5 or not the Court should grant Mr. Weger's request for
6 appointment of a new special prosecutor, and as indicated by
7 way of background the State's Attorney's Office had the case
8 initially of LaSalle County. When there was an election and
9 then a change in State's Attorneys a conflict then arose
10 which was actual and so a request was made for a special
11 prosecutor. The Court entered that order and then Will
12 County was gracious enough to accept the responsibility to
13 come in and be the special prosecutor in the case.

14 I don't know if everybody understands how it works,
15 but it's incumbent on the Court to try to find someone so the
16 Court has to go through a series of steps and different
17 prosecutors are given the opportunity. Will County was the
18 one they agreed to take over the handling of the case, and
19 they've handled it since that time so under the statute for
20 appointment of a special prosecutor as it currently sits the
21 statute provides that the court shall consider -- can on its
22 own motion or on an interested person in a cause or
23 proceeding civil or criminal make a determination as to
24 whether the State's Attorney has an actual conflict of

1 interest in the cause or proceeding.

2 That's a change from the way the statute was
3 previously. Actual conflict of interest has been defined in
4 the case law prior to the change, and that change has been
5 accepted since the case law as meaning two things. One, that
6 the State's Attorney is interested in a case only if he is an
7 actual party in the litigation or he is interested in the
8 cause or proceeding as a private individual and so in the
9 Court's review of it that's the view the Court's taking.

10 I am aware of the fact that there is the M.D. case
11 that was cited by Mr. Hale, and I've read that case. One
12 thing that makes M.D. a little bit different is one, it's not
13 published so it's not binding precedent on the Court, but in
14 that particular case the issue wasn't raised in the trial
15 court. It was raised in the Appellate Court so they did a
16 plain error review which is a little bit different and so
17 that issue wasn't really fleshed out in the trial court in
18 the same way. The Court has reviewed the M.D. case and has
19 looked at it, but the Court is of the view that the more
20 binding case on this Court is the in re appointment of
21 special prosecutor which is 2019 Ill.App.1d 173173 and that
22 was the one that was provided by Mr. Hale recognizing his
23 obligation to provide case law that is contrary to the
24 position he's making. He did cite that case. I found it

1 too, but I thank you for that.

2 In that case the court indicated that an appearance of
3 impropriety was not contained within the new drafting of the
4 statute so as the Court goes through its analysis and
5 considers all the arguments initially clearly Mr. Glasgow is
6 not an actual party in the litigation and so that basis for
7 conflict doesn't exist at least not in the way it's defined
8 under the case law. Then the other point becomes is he
9 interested in the cause or proceeding as a private individual
10 so this is sort of the argument I think Mr. Hale was making
11 with regard to the law review article, the conflict of
12 interests, whether or not prosecutors can have extraneous
13 influences affecting their decision.

14 None of the cases really that I read that really hits
15 on all fours with what we're dealing with here today. A lot
16 of them deal with original decisions about whether you're
17 going to prosecute a particular individual. The special
18 prosecutor case I referred to dealt with how the Cook County
19 State's Attorney's Office dealt with claims that were being
20 made against police officers and whether that was a conflict,
21 and in the Court's view -- I'm aware of all the issues that
22 have been raised.

23 I will accept for purposes of today's arguments that
24 Mr. Glasgow made the comments about the evidence was a

1 disaster and let's not muddy the waters. I'll accept that as
2 true for purposes of today. That in the Court's mind doesn't
3 necessarily give rise to the fact that he had a conflict that
4 was preventing him from handling the case in an appropriate
5 way. This Court is not an ethics court. I am not here to
6 make decisions about whether there was a violation of 3.8
7 which is a prosecutor's obligation to seek justice, not just
8 convictions.

9 One of the things that makes this case particularly
10 unique is that the conviction that arose from this case
11 occurred 60 years ago. The law was completely different when
12 Mr. Wegner went on trial as it is today. I mean some not
13 even close the differences in the law. This is not a case
14 where a prosecutor's deciding whether to prosecute a case.
15 It's a case where a prosecutor is deciding whether to look in
16 to whether a conviction was appropriate and so it's not lost
17 on the Court that this case starts from a little bit
18 different spot because Mr. Wegner back in 1960 was
19 convicted -- 1961 was convicted of these offenses, and that
20 was affirmed by the Illinois Supreme Court.

21 There's been some post-conviction petitions in the
22 interim, and all of those have been denied and so when Will
23 County got involved it wasn't a case of exercising your
24 discretion as to whether or not someone was or was not

1 guilty. There already had been an adjudication on that
2 issue. The Court doesn't find those initial statements made
3 in the early stages of the case to be sufficiently concerning
4 that an evidentiary hearing would be necessary to look in to
5 them. The case -- he had just gotten in to the case. He had
6 not been there very long. I don't see that I ever entered an
7 order that people couldn't look or at least the State's
8 Attorney couldn't look at the evidence. I did enter a
9 protective order that it couldn't be tampered with certainly
10 in any way, and I don't remember that I ever denied Mr. Hale
11 the opportunity to see the evidence. I think the first time
12 he said can I at least look at it I agreed with him because
13 that just made sense to me frankly, but having said all that
14 the issue is whether there's an actual conflict of interest,
15 and this Court in the exercise of its discretion cannot find
16 that the Will County State's Attorney's Office has an actual
17 conflict of interest.

18 Mr. Hale doesn't agree with their decisions. There's
19 some issues that he can maybe raise about how it applies to
20 general ethical standards, but as far as an actual conflict
21 of interest, that's a very specific item, and the Court can't
22 find that there's anything there that would give rise to the
23 need for a hearing. It would be speculative. There's -- I
24 just can't -- I don't find in my discretion that there would

1 be that.

2 The Court also finds that the appearance of
3 impropriety standard does not apply because in re appointment
4 of special prosecutor has basically held that. Trial courts
5 are bound by Appellate Court decisions and if there's no
6 opinion in the Third District that has been published then
7 other districts are binding. That First District opinion
8 would be binding. The Court's of the view that the arguments
9 that were being made as to conducting the investigation,
10 interviewing witnesses, going and looking at all those things
11 go more toward the appearance of impropriety, the ethical
12 part of it which is where these things generally rise as
13 opposed to the actual conflict of interest.

14 I'm also aware that in making the decision to deny the
15 motion to appoint a special prosecutor, to remove this one
16 and put in a new one the case can continue to move forward,
17 and that is as everyone here knows the Court has a busy
18 schedule, and I do everything I can to accommodate it, but
19 unfortunately time as Mr. Hale pointed out is not on his
20 client's side. The Court is doing everything it can to move
21 as fast as it can on everything. I'm not making the decision
22 to deny the motion simply out of time constraints because
23 that's not a factor, but it's not lost on me that the case
24 can continue to move forward.

1 Will County has responded to motions in a timely
2 fashion. They have showed up for all the court hearings.
3 They have been prepared, and they have argued. They have
4 acted professionally just as Mr. Hale has and so the Court is
5 satisfied that the individuals who are appearing in court are
6 doing the best they can with what they have. The Court does
7 not find there's an actual conflict of interest. The Court's
8 going to deny the request for a special prosecutor, and what
9 we need to do is then pick a date when we can have a hearing
10 on Mr. Hale's request to have the evidence viewed for
11 purposes of determining whether there is testable evidence
12 available if I've said that correctly. I think I have.

13 MR. HALE: Yes.

14 THE COURT: You're not asking for DNA testing. What
15 you're asking is that your expert be allowed to look at it to
16 say this item might have DNA, and this one might not.

17 MR. HALE: Correct.

18 THE COURT: Which apparently requires more than what
19 he did two years ago when he was in the sheriff's department
20 taking pictures and categorizing it, but that's kinda where
21 we are right now with the hearing.

22 MR. HALE: And Your Honor, as you know that motion is
23 fully briefed.

24 THE COURT: It is. We'll pick a date for that.

1 MR. HALE: Yeah, we were hoping to --

2 THE COURT: I would do it today, but candidly we've
3 been here two hours, and I will tell you that I've spent time
4 looking on this. I didn't spend much time relooking at what
5 I had done on that. I would like a chance to be able to look
6 that over again. I'd like Will County to have a chance to be
7 able to look it over again because I don't know if they were
8 prepared to talk about that today. One of the things I've
9 always tried to do from the bench is if I set a motion I try
10 to keep it to that motion so that people are prepared for the
11 reason we're there. I don't want anybody to not be ready or
12 not be prepared and so even the Court needs some time to look
13 over.

14 Now, I'm going to try to find a date as quick as we
15 can because it has been fully briefed. I will also say for
16 the record that I'm working my way through your petition. I
17 have -- there's a lot of exhibits, and the exhibits are not
18 just one page. There's a transcript in there that I think
19 had to be close to 100 pages, the one of Mr. Tyson, and that
20 was done as a four on a page and so there's a lot of -- the
21 Court has been reading through it. A lot of what you said
22 today the Court was familiar with because the Court has
23 already seen it because I've read through your motion for
24 leave to file a successive petition so I am working on that.

1 I'm trying to juggle all three of these at the same time
2 while handing everything else.

3 MR. HALE: We appreciate that, Your Honor.

4 THE COURT: I know you do. I feel bad that I have to
5 keep making what sounds like excuses for being busy, but I do
6 recognize people's time is valuable. So what about
7 Wednesday, July 19th?

8 MR. HALE: That's fine with me, Your Honor.

9 THE COURT: I have a call at 1:30 and 2:00. I would
10 probably set it for 2:30. It would be like today. I wasn't
11 able to let you in right away because I had a call that I had
12 to do in here so I can probably do it that afternoon if Will
13 County is available.

14 MS. GRIFFIN: We are.

15 THE COURT: Okay. Then why don't we do that for the
16 hearing on your motion with regard to having the evidence
17 reviewed, and I will set that for 2:30. That will be, you
18 know, kind of a light -- kinda it could go either way. It
19 could be a little bit after that depending on how my other
20 call goes. All right. Is there anything else we need to do
21 on the record?

22 MR. HALE: There were two other issues, Your Honor.

23 THE COURT: Okay.

24 MR. HALE: The first one I raised with Will County

1 just a couple days ago. So if you remember -- I'm sorry. I
2 have to stand up.

3 THE COURT: That's okay.

4 MR. HALE: If you remember when we did the first round
5 you granted us leave to test eight items.

6 THE COURT: I did.

7 MR. HALE: One of those hairs we got an STR profile, a
8 nuclear profile of a male not Mr. Wegner.

9 THE COURT: Correct.

10 MR. HALE: We didn't have enough technical
11 requirements to submit it to the National CODIS database. We
12 have had enough to submit to Illinois. It was not a match in
13 Illinois not a huge surprise because my understanding CODIS
14 didn't start collecting these samples until the late 90's.

15 THE COURT: Okay.

16 MR. HALE: But Bode Technology has the ability to do
17 genealogy on that hair which my understanding there's a
18 little bit of a different test. It's called SMP sequencing.
19 That sequence is developed and then that sequence is taken
20 and you kinda build out a genealogy profile, and you can
21 potentially match the identity of a person's hair through
22 that. The best case example is the Golden State killer.
23 They actually solved it through genealogy, DNA and genealogy.
24 It was also used in the Idaho State murder case, and what I

1 told Will County this morning was Bode's been -- they
2 outsource the SMP sequencing. There's two labs that do it.
3 One's called Gene by Gene in Maryland. The other is called
4 Othram, O-t-h-r-a-m in Texas. Othram actually worked on
5 Idaho the four students that were murdered so because I knew
6 Bode through this Gene by Gene company was having some
7 difficulty I actually happened to be reading an article in
8 the New York Times on Sunday about the Idaho murders.

9 They talked about how Othram had this advanced
10 technology, and they do it in-house and so the Idaho
11 authorities used Othram for that purposes, took the DNA, did
12 the genealogy and connected it to this offender. Anyway, so
13 I talked to Othram. I gave them all the Bode reports. They
14 analyzed the data, and they said we think that we may have a
15 shot at -- have more success than Bode's third party did in
16 terms of doing this sequencing.

17 What I asked Will County was I wanted to see if they
18 would agree we can take that hair that we've gotten the DNA
19 profile, have Bode send it to the Othram lab because they
20 have a more advanced technology for this SMP sequencing.
21 They then would try this SMP sequencing/genealogy part to see
22 if we can identify whose hair it is because as you recall in
23 fact, in Will County's response to the motion we argued today
24 as to that DNA hair result they said well, the hair could

1 have been anybody's.

2 Whose hair is it? Well, what if the hair comes back
3 to somebody in the Chicago mafia? I think that's pretty
4 significant. If it comes back to one of the state troopers,
5 okay, then we know it's not significant, but, you know, it
6 has the potential to obviously be the same thing as a CODIS
7 hit so it's a very long-winded way of saying I sent over an
8 agreed order to them that I would propose. I will let them
9 speak to what their response to that is, but that's something
10 I'd be interested in doing as soon as we can.

11 THE COURT: Okay. What's Will County's position with
12 regard to that request?

13 MR. KOCH: Your Honor, at this point we're not able to
14 say whether we're going to oppose it or not, and here's the
15 reason why. This was originally -- Your Honor granted
16 permission for Bode Lab to do the DNA testing. Bode Lab did
17 the DNA testing. They sent their profile over to the
18 Illinois State Police for entry in to CODIS if it could be
19 entered. It could not be entered in to CODIS so it was
20 searched state-wide and so at that point I don't know if the
21 Court's intent was that was the purpose of the order, but it
22 doesn't really matter because the question that I had for Mr.
23 Hale was is this lab accredited which I don't know that it
24 is.

1 I was able to do a little bit of search this morning.
2 I know that the Illinois State Police does not review SMP
3 sequencing. It sounds like there might only be two labs in
4 the country that do that so I don't know -- at this point I
5 just don't know what extent, how that would be reviewed, if
6 it is accredited. Is the evidence going to be consumed? I
7 don't know that either. I did put a call in to Bode
8 Technology this morning to see if I could speak with the
9 analyst there to kinda get those questions answered. I also
10 know that there was additional testing that was done at Bode
11 Lab for which I don't have the results. I believe Mr. Hale
12 has those results, and I don't have them so I would like to
13 review everything if I could just to see if there are any,
14 you know, exactly what it is he's asking for. It sounds like
15 he's not asking for STRmix technology which is a newer DNA
16 technology that's really come in to play now so I'm not
17 familiar necessarily with SMP sequencing.

18 Like I said I did reach out to the Illinois State
19 Police lab this morning to find out a little bit of
20 information about that lab or that type of sequencing, and it
21 was informed that they don't analyze it or review it so I'm
22 just looking for a little bit of time if I could just to look
23 in to that to see if we oppose it and then I guess, you know,
24 going back to the original order of being allowed to be

1 tested by Bode. The Will County State's Attorney's Office is
2 very familiar with Bode Technology. The Illinois State
3 Police actually outsources some of their work to Bode so
4 we're very familiar with their procedures and protocols. I
5 would just like an opportunity to learn a little bit more
6 about this lab.

7 THE COURT: What's your response? I'll tell you the
8 biggest concerns I have concerns in the sense of questions is
9 consumption and chain of evidence, two of the big things
10 that --

11 MR. HALE: Right so on consumption I'm pretty
12 confident there's not consumption because I asked Bode that.
13 Bode already outsourced the hair for the SMP sequencing, and
14 we still have the hair. They used a very minor part so the
15 hair would not be considered. Othram the lab in Texas sent
16 me a whole protocol for how the evidence needs to be sent to
17 them, and actually can I give you just the draft order I mean
18 just so you can see? I attached to it --

19 THE COURT: I think that the State's request to get a
20 little more information.

21 MR. HALE: Okay.

22 THE COURT: I think it's understandable. I will tell
23 you that my having just heard this for the first time if the
24 chain of custody is preserved and if the evidence isn't going

1 to be consumed I mean I can weigh it. I haven't made a
2 decision, but in my mind I can see there would be arguments.
3 There might be a Frye argument as to whether this is a
4 generally-accepted method of doing something which wouldn't
5 necessarily affect whether it gets tested initially but
6 whether it comes in at a subsequent hearing, and I could see
7 where there could be issues like that. I haven't thought it
8 all through because I'm hearing it for the first time, but
9 the reason it was sent to the State Police was to try to
10 identify whose DNA it was, and you're just asking to do that
11 another step or two up the ladder.

12 MR. HALE: Right.

13 THE COURT: So we'll see. I think Will County should
14 have a couple days to at least get some of their questions
15 answered.

16 MR. HALE: I have no problem with that.

17 THE COURT: We can address it. If you can work out an
18 agreed order ahead of time I'm happy to look at it. I will
19 tell you I'm not here next week so if you send it next week
20 you will not hear from me, but any time after July 5th if you
21 have an agreed order, fine, or we can talk about it on the
22 19th.

23 MR. KOCH: May I ask one question?

24 THE COURT: Yes.

1 MR. KOCH: I thought I heard Mr. Hale just say that
2 he's already outsourced this. Bode already outsourced this
3 for SMP. Is that what I heard, or did I hear that wrong?

4 MR. HALE: No, you heard that right. So what happened
5 was --

6 MR. KOCH: So if I may, if it's already been
7 outsourced, what agency has that, and why aren't they the
8 ones that's being requested to do it?

9 MR. HALE: I found this out when I talked to the
10 Othram Lab. They said to me Bode doesn't do SMP sequencing.
11 I didn't know that. I've been dealing with the Bode in-house
12 genealogy department. I assumed Bode did it in-house.

13 THE COURT: Oh.

14 MR. HALE: So when Othram said to me they said, you
15 know, Bode doesn't do it in-house. They either send it to
16 Gene by Gene in Maryland or they send it to us so I went back
17 to Bode because if they sent it to Othram then the point is
18 moot because Bode's been having some trouble with the
19 sequencing. I couldn't give you the technical reasons.

20 THE COURT: I wouldn't understand it.

21 MR. HALE: Right so knowing that when I went to Bode I
22 said who did the SMP sequencing? They said Gene by Gene. I
23 said oh, okay. So the hair was -- the sequencing was done by
24 Gene by Gene. Bode takes that data I guess and then if they

1 have enough data they then do the genealogy part. Okay. But
2 it sounds like they're not going to have enough data to build
3 out the genealogy part whereas Othram who does it in-house
4 and it sounds like they're more sophisticated may be able to
5 develop a more robust SMP sequencing profile because they
6 have done it before. Like I said, I was reading about this
7 in the New York Times last week because it worked with the
8 Idaho murders. I don't know who the Golden State killer case
9 -- what lab did that, but this is becoming, you know -- law
10 enforcement is tapping in to this more commonly now.

11 THE COURT: Why don't we -- since the issue of
12 outsourcing has been raised and I can tell Will County is a
13 little bit concerned, why don't the two of you talk and see
14 where we are on the 19th. If you have an agreed order, fine.
15 If not we can talk about it on the 19th. I'm not sure
16 whether outsourcing is something that has happened and you
17 were unaware of it or whether it was something they want to
18 do.

19 MR. HALE: They did it. I was unaware of it. I
20 thought Bode did it all in-house.

21 THE COURT: Yeah, I understand because that goes to
22 the two seminal issues that I had at the beginning
23 consumption and chain of custody.

24 MR. HALE: Yeah.

1 THE COURT: Why don't you chat with Will County. Why
2 don't everyone talk about that because we're not going to
3 solve it here today this afternoon, but at least the issue
4 has been raised.

5 MR. HALE: Okay.

6 THE COURT: You can talk to them about it. If there's
7 an agreed order then I'm fine with entering that. If not
8 then maybe we can talk about it after the arguments on the
9 19th when we get done with the other evidentiary requests.

10 MR. KOCH: Thank you, Your Honor.

11 THE COURT: Is there anything else, Mr. Hale?

12 MR. HALE: I think that covers it, Your Honor.

13 THE COURT: Does it? Okay. I don't want to cut you
14 short.

15 MR. HALE: No, I think what I was going to bring up --
16 and I apologize for this. You had asked us to get back to
17 you on Mr. Stout's documents.

18 THE COURT: Oh, yeah.

19 MR. HALE: And I haven't talked to Will County about
20 this yet, but there were a few of the categories. There were
21 a total of 21 items on your list.

22 THE COURT: The ones I didn't disclose?

23 MR. HALE: Right, and there were about five of those
24 that we thought may have some relevance and the other ones we

1 don't need so I haven't had a chance to talk to Will County
2 about it yet.

3 THE COURT: I still have the documents.

4 MR. HALE: Can we like talk about it and then whatever
5 we decide we don't need you can release those categories?

6 THE COURT: That's fine. I'm sure you don't need the
7 one that deals with the gambling case.

8 MR. HALE: Correct.

9 THE COURT: But interestingly the more motions that
10 are filed and the more people argue I can understand that
11 there may be things there that wouldn't be relevant to the
12 original case but might be relevant to your theories in the
13 case.

14 MR. HALE: That's why I'm taking a closer look on
15 those so I'm not ready to give you a final answer, but I did
16 want to -- I know that you were --

17 THE COURT: I still have the things.

18 MR. HALE: Yeah, I just wanted to give you an update
19 on that.

20 THE COURT: Thank you. I still have those items.
21 They're not going anywhere. They're still in my office.

22 MR. HALE: Okay.

23 THE COURT: You can speak with Will County and see
24 what happens and then we'll go from there.

1 MR. HALE: Okay. Sounds good.

2 THE COURT: All right. Is there anything else we need
3 to do?

4 MS. GRIFFIN: No, Your Honor.

5 THE COURT: Thank you for your patience. Thank you
6 for your briefs. I'll see you on the 19th.

7 MR. HALE: Thank you, Your Honor.

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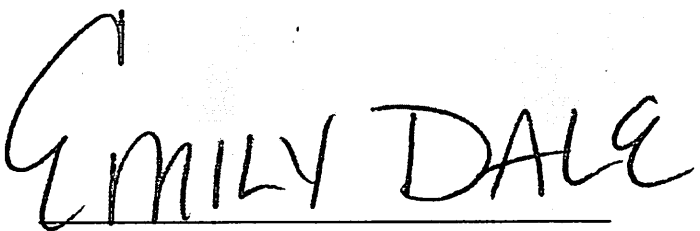
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF LASALLE)
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5 I, EMILY DALE, a Certified Shorthand Reporter of the
6 State of Illinois, do hereby certify that I reported in
7 shorthand the proceedings had at the trial aforesaid, and that
8 the foregoing is a true, complete and correct transcript of
9 the proceedings of said trial as appears from my stenographic
10 notes so taken and transcribed by me.

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A handwritten signature in black ink that reads "EMILY DALE". The signature is written in a cursive style with a large, sweeping initial "E". A horizontal line is drawn underneath the signature.

EMILY DALE, C.S.R.

C.S.R. No. 084-004301