

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014

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)

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Hon. _____

Judge Presiding

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

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

Introduction

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

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

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

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

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

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

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

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

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

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

Procedural History

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

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

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

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

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

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

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

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

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

The Evidence in this Case

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit C [Proffer at 1].

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

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

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

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

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

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

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

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

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

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

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

Exhibit D (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

Exhibit E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit H at 5 (emphases added).

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

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

Exhibit I at 6-7 (emphasis added).

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

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

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

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

Exhibit C [Proffer at 4].

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

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

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

Exhibit K at 12-13 (emphasis added).

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

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

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

Exhibit L at 6 (emphasis added).

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

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

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

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

Exhibit M at 6 (emphasis added).

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

Legal Standard

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

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

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

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

Argument

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit A [Order at 20].

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

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

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

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

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

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

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

Id. at 1159.

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

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

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

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

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

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

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

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

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

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

C. The Appointment Is Vague and Overbroad.

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

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

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

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

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

Dated: July 19, 2019

Respectfully submitted,

/s/ Tina Glandian

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

IN RE: APPOINTMENT OF A SPECIAL
PROSECUTOR

) No. 19 MR 00014
)
) Hon. _____

ORDER

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

IT IS SO ORDERED.

ENTERED:

Circuit Court of Cook County
Criminal Division

EXHIBIT A

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

IN RE APPOINTMENT OF SPECIAL PROSECUTOR

)
)
) **No. 19 MR 00014**
)
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Michael P. Toomin
Judge Presiding

ORDER

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in opposition to well-established authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

authority of the County Board:

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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


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

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

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

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



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

DATE: JUNE 21, 2019

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR

No. 2019 Misc. 00014

The Hon. Leroy Martin, Jr.

NOTICE OF MOTION

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

2650 S. California
Chicago, Illinois 60608

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

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

Sheila M. O'Brien

Sheila M. O'Brien, *Pro se*

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

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

IN RE: APPOINTMENT OF A SPECIAL PROSECUTOR

No. 2019 Misc.

00014

Hon. LeRoy Martin, Jr.

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

INTRODUCTION

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

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

THE PETITIONER

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

media and have been the subject of comedy routines on national television, all to our detriment.

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

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

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

Jan. 22, 2019

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

Jan. 29, 2019

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

Jan. 30, 2019

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

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

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

Jan. 31, 2019

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

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

Feb. 1, 2019

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

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

Feb. 12, 2019

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

Feb. 14, 2019

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

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

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

Feb. 15, 2019

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

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

Feb. 16, 2019

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

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

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

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

Feb. 19, 2019

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

(Exhibit 2 attached)

Feb. 20, 2019

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

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

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

Feb. 21, 2019

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

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

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

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

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

Feb. 25, 2019

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

March 8, 2019

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

March 13, 2019

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

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

March 14, 2019

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

March 24, 2019

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

March 26, 2019

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

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

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

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

-- Intense national media coverage continues.

March 27, 2019

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

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

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

--Foxy says the court file should remain public.

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

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

March 28, 2019

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

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

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

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

March 29, 2019

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

April 4, 2019

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

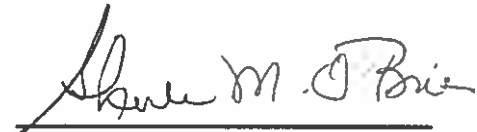
the investigation, prosecution and dismissal of People of the State of Illinois v. Jussie Smollett

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

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

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

Respectfully submitted,



Sheila M. O'Brien, *pro se*

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

CERTIFICATE OF SERVICE

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

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

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

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



Sheila M. O'Brien, *Pro se*

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

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

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

(a) (Blank).

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

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

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

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

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

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

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

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

Megan Crepeau and Jason Meisner Chicago Tribune

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The outcome also surprised veteran criminal defense attorney Dawn Projansky.

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

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

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

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

Chicago Tribune’s Jeremy Gerner contributed.

mcrepeau@chicagotribune.com



Sheila M. O'Brien

Retired Justice Illinois Appellate Court

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

Licenses Supreme Courts of Illinois, Missouri and the United States

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

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

Boards Women's Bar Foundation

Former Boards

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

Gubernatorial Commissions

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

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

Active in civic, charitable and church affairs

EXHIBIT C

BOND PROFFER

Defendant: Jussie Smollett (DOB 6/21/82) - 36 years old

Charge: Disorderly Conduct-False Report (Class 4 Felony)

The Defendant Jussie Smollett is an Actor and Singer-Songwriter, who currently appears as a character on the Fox television show "Empire." Defendant Smollett currently resides in an Apartment in Chicago's Streeterville neighborhood.

The People expect the evidence to show that:

On Tuesday, January 22, 2019, Defendant Smollett received a written letter at the Cinespace Chicago Film Studios, which is a facility on the Southwest Side of Chicago where the Empire Television Show is filmed. This letter contained written threats directed toward Defendant Smollett, and contained a then unknown white powdery substance. The letter also contained cut out letters pieced together which stated "Smollett Jussie you will die black f--", and the word "MAGA" was hand written on the envelope where the return address is typically located. This powdery substance has since been determined to be crushed ibuprofen tablets. The letter also contained a drawing of a stick figure, which appears to have a rope around the neck and a gun pointed at it. Law enforcement authorities were contacted, and the letter was turned over to the Federal Bureau of Investigation, which is currently conducting forensic analysis of the letter.

In January of 2019, and at all times relevant hereto, Defendant Smollett was close friends with an individual by the name of Abimbola "Abel" Osundairo, who is 25 years old. Smollett and Abel initiated their friendship in the fall of 2017. During the course of this friendship, Defendant Smollett and Abel socialized together, exercised together, as well as worked together on the Fox television series Empire. Within that working relationship, Abel was a stand-in for a character named "Kai", who is a love interest of Defendant Smollett's character on the Empire TV Show. Additionally, text messages between Defendant Smollett and Abel revealed that Abel was a source of designer drugs for Defendant Smollett. Specifically, since the spring of 2018, on several occasions, Defendant Smollett requested Abel to provide him with "Molly", which is a street name for the narcotic Ecstasy.

Text messages generated by Defendant Smollett to Abel, specifically starting on the morning of January 25, 2019, reveal Defendant Smollett asking Abel when he would be leaving on his upcoming trip to Nigeria. This trip was scheduled to take place on the evening of January 29, 2019, and it had been planned by Abel and his brother Olabinjo "Ola" Osundairo (27 years old) two months prior.

After Abel confirmed the date and time of his trip, Defendant Smollett texted Abel stating **"Might need your help on the low. You around to meet up and talk face to face?"** The two then made arrangements to meet at the Cinespace Studios that afternoon, where Defendant Smollett subsequently drove Abel home to Abel's apartment in the Lakeview neighborhood. During the ride, Defendant Smollett indicated to Abel his displeasure with

the Empire Studio's handling of the racist and homophobic letter he received three days prior. Defendant Smollett then stated that he wanted to stage an attack where Abel would appear to batter him. Defendant Smollett also suggested that Abel's older brother Ola assist him with the attack. Defendant Smollett had met Ola on several previous occasions through Abel. Additionally, Ola had also appeared as an extra of the Empire TV show. Abel and Ola are both dark skinned, black males, born in the United States, with Nigerian decent.

When Defendant Smollett and Abel reached Abel's apartment at approximately 5:00 PM on January 25, 2019, Ola, who was then living with Abel, was summoned into Defendant Smollett's vehicle. Once inside, Smollett asked Ola if he could trust him. When Ola said he could, Smollett detailed his plans of the attack to the brothers. Defendant Smollett stated that he wanted them to appear to attack him on the evening of January 28, 2019 near his apartment building in Streeterville. Defendant Smollett also stated that he wanted the brothers to catch his attention by calling him an "Empire F----- Empire N-----." Defendant Smollett further detailed that he wanted Abel to attack him, but not hurt him too badly and give him a chance to appear to fight back. Defendant Smollett also included that he wanted Ola to place a rope around his neck, pour gasoline on him and yell "This is MAGA country." Prior to the brothers getting out of Smollett's car, Smollett provided Abel with a \$100 bill to purchase the rope, gasoline, ski masks, gloves and red baseball caps which resemble the ones that say "Make America Great Again." The ride from Cinescape Studios to the Osundairo brothers' home and the meeting between Smollett and the brothers is corroborated by CPD POD videos and cellular phone tower data of Smollett's phone number.

On the late morning of Sunday January 27, 2019, Smollett drove his vehicle back to the Lakeview neighborhood to pick up the brothers and show them the scene where he wanted the staged attack to take place. Smollett then drove the brothers to the corner of New Street and North Water Street in Chicago where the staged attack was to take place. This was just outside Smollett's apartment building. Further details were provided by Smollett which included that the staged attack was to take place near the stairs on the southwest corner of New and North Water Streets at 10:00PM the following night. Smollett also instructed the brothers not to bring their cell phones with them. Smollett directed the brothers' attention toward a surveillance camera on the corner, which he believed would capture the incident. There was a change in the plan that bleach was going to be used rather than gasoline during the simulated attack. Smollett then drove the brothers home and provided them with a \$3500 personal check made payable to Abel, which was backdated to January 23, 2019.

On the morning of January 28, 2019, the date of the planned incident, the brothers purchased the clothing items at a local beauty supply store and the rope at a nearby hardware store, using the \$100 bill that Smollett had given them. These purchases were corroborated by surveillance video and a receipt. Abel also deposited Smollett's check that same day in his own bank account. Later that evening, the plan had changed and the time of the attack had to be pushed back because Smollett's flight into O'Hare Airport from New York had been delayed by four hours. Smollett's plane eventually landed at O'Hare at 12:30 AM on January 29, 2019. At 12:49 AM, there was a phone call between Smollett and Abel which lasted three minutes. During this call, Smollett told Abel the attack would take place at exactly 2:00 AM at the preset location. Minutes later Ola ordered an Uber ride share to his

home to leave for the crime scene. Cell phone records and Uber records confirm this call and the Uber ride.

The brothers then took the Uber to the 1400 block of North Wells where they exited the Uber and flagged down a taxi which took them to within three blocks of the arranged scene at approximately 1:22 AM. The taxi's in-car video captures the brothers flagging the cab and riding in the back seat.

From approximately 1:22A.M. until approximately 2:03A.M., video evidence showed the brothers on foot in an area bordered by Lake Shore Drive on the east, Columbus Drive on the west, Illinois Street to the north, and the Chicago River to the south. Video evidence also showed that Smollett returned back to his apartment from the airport at approximately 1:30 AM. At 1:45 AM, Smollett left his building to walk to a nearby Subway restaurant at Illinois Street and McClurg Court. At 2:00 AM, the brothers were at the intersection of New St. and North Water Street; however, Defendant Smollett did not arrive exactly at the preset time. The brothers then proceeded a quarter block north and waited near a bench until Smollett arrived, which was four minutes later. Surveillance cameras captured the brothers waiting at this location just prior to the staged attack. During Smollett's interview on ABC's Good Morning America which aired on February 14, 2019, he identified the people shown in a still of this surveillance video as his attackers. Also, during this interview, Smollett indicated that he was positive that these were his attackers. The two men in this video are in fact that Osundairo brothers.

It was at this time, that the brothers staged the attack of Defendant Smollett just how Smollett had instructed them. While the staged attack was occurring, a witness, who is an employee of NBC News Chicago, had just parked and exited her vehicle just around the corner from the location of the staged attack. This witness indicated that she heard nothing at the time the staged attack was occurring, despite the fact that Defendant Smollett told CPD detectives that his attackers were "yelling" racial and homophobic slurs at him, and he in turn was "yelling" back at them. The staged attack lasted 45 seconds, and it was just outside the view of the desired nearby camera that Smollett had pointed out to the brothers approximately 15 hours earlier.

Approximately one minute later, video evidence showed the brothers run from the location, southbound toward the Chicago River and westbound toward Columbus Drive. Video evidence also captured the brothers entering a taxi at the Hyatt Regency Hotel across the river at 02:10 A.M.

Video evidence then showed that at 2:25 AM, the brothers exit the taxi on the 3600 block of North Marshfield Ave. and walk northbound. This was only a few blocks from the brothers' Lakeview apartment, which was also the original Uber pick up location to the staged crime scene. Video shows the brothers walking from where they were dropped off toward their home. Two minutes after the brothers exited the taxi, at 2:27 A.M., Defendant Smollett's manager called the police to report the incident. At approximately 2:42 A.M., Chicago Police arrived at Smollett's apartment. Chicago Police Officers observed that Smollett had a rope draped around his neck. This was captured on police body worn camera. Seconds later,

Smollett asked the Police to shut off the cameras. Smollett then made a police report where he claimed he was the victim of an attack in which the offenders struck him while yelling racial and homophobic slurs. Smollett also reported that the offenders placed a rope around his neck, poured a liquid chemical on him, and told him this is "MAGA Country." Defendant Smollett also reported for the first time, that three days prior, on January 26, 2019, he received a phone call from an unidentified phone number in which an unidentified male caller stated, "Hey you little F----" before ending the call. Smollett also told police that the incident happened near a camera, which he stated should have captured the attack. This is the same camera that Defendant Smollett pointed out to the Osundairo brothers in preparation of this staged attack. Smollett also told police that the initial and primary attacker (now known to be Abel Osundairo) was wearing a ski mask which covered his entire face, with the exception of his eyes and the area all around his eyes. Smollett stated to the police that he could see that the area around this person's eyes was white-skinned. As stated earlier in this proffer, the Osundairo brothers are dark skinned male blacks. During the Good Morning America interview referenced earlier, Smollett stated "And it feels like if I had said it was a Muslim, or a Mexican, or someone black, I feel like the doubters would have supported me much more. A lot more..." These statements by Smollett further misled the police and the public to believe that his attackers were white.

On January 29, 2019 at 7:45 PM, just less than 18 hours following reported attack, Defendant Smollett placed a phone call to Abel and the duration of the call was five seconds. Two minutes later, Abel called back Smollett and the call lasted 1 minute and 34 seconds. The brothers then boarded their flight to Nigeria and left the country. On January 30, 2019 at 10:46 AM, Defendant Smollett called Abel, who was in Istanbul Turkey, and the duration of the call lasted 8 minutes and 48 seconds.

For the next two weeks, the Chicago Police Department investigated this matter as a Hate Crime. Chicago police were able to identify the Osundairo brothers as the alleged attackers through an extensive investigation using Surveillance Videos, Police Pod Videos, in-car taxi camera videos, rideshare records, credit card records, bank records, and a store receipt. On February 13, 2019, the brothers returned from Nigeria, landing at Chicago O'Hare International Airport, and they were detained by US Customs. Members of the Chicago Police Department then placed them into custody. That same evening, the Chicago Police executed a Search Warrant upon the Osundairo brothers' residence where they recovered evidence which linked Abel to the Empire TV show. Chicago Police already had determined that Ola was affiliated with the show as well.

Following their arrest and through consultation with their attorneys, the brothers agreed to cooperate in the investigation. As more evidence, such as text messages, phone records, social media records, bank records, surveillance video and the receipt from the purchase of the rope was obtained by investigators, the investigation shifted from a Hate Crime to a Disorderly Conduct investigation. The Cook County State's Attorney's Office approved charges of Disorderly Conduct against Defendant Smollett at 6:10 PM on February 20, 2019. At 5:00 AM this morning (January 21, 2019), Defendant Smollett was placed into custody at Area Central Chicago Police Headquarters.

EXHIBIT D

1/20/2019 4:56:49 PM(UTC+0)Direction:Incoming, +[REDACTED] (Jule Smol)
Like twice

Status: Read
Read: 1/20/2019 4:56:55 PM(UTC+0)

1/20/2019 4:58:41 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
Anything you can't eat? Allergies?

Status: Sent
Delivered: 1/20/2019 4:58:41 PM(UTC+0)

1/20/2019 5:06:38 PM(UTC+0)Direction:Incoming, +[REDACTED] (Jule Smol)
Not that i know of but i did an allergy test with my throat Dr and will have results in a week. I don't eat pork or beef tho

Status: Read
Read: 1/20/2019 5:07:07 PM(UTC+0)

1/20/2019 5:07:42 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
Ok . So you're alright for now with dairy?

Status: Sent
Delivered: 1/20/2019 5:07:42 PM(UTC+0)

1/20/2019 5:08:02 PM(UTC+0)Direction:Incoming, +[REDACTED] (Jule Smol)
Oh sorry. Yeah no dairy. Horrible for my vocal

Status: Read
Read: 1/20/2019 5:08:09 PM(UTC+0)

1/20/2019 5:10:07 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
Alright.

Status: Sent
Delivered: 1/20/2019 5:10:07 PM(UTC+0)

1/20/2019 8:00:31 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
This is your grocery list. Are you good with everything on here?

Attachments:

[IMG_5566.PNG](#)

Status: Sent
Delivered: 1/20/2019 8:00:33 PM(UTC+0)

1/22/2019 8:38:50 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
When is your music video shoot?

Status: Sent
Delivered: 1/22/2019 8:38:51 PM(UTC+0)

1/25/2019 2:17:52 PM(UTC+0)Direction:Outgoing, +[REDACTED] (#King Abimbola)
[https://docs.google.com/document/\[REDACTED\]](https://docs.google.com/document/[REDACTED])

Attachments:



Status: Sent
Delivered: 1/25/2019 2:17:53 PM(UTC+0)

1/25/2019 2:18:09 PM(UTC+0)Direction:Outgoing, +17739488716 (#King Abimbola)
<https://docs.google.com/document/d/18N2qJHnLm8MSNglyhPJjIhDs7QuTbIFTyIbKwqEpF-s>

Attachments:



[4FEED16C-4490-4163-8128-E45EB643483F_pluginPayloadAttachment](#)

Status: Sent
Delivered: 1/25/2019 2:18:10 PM(UTC+0)

1/25/2019 2:19:17 PM(UTC+0)Direction:Outgoing, +17739488716 (#King Abimbola)
This is the meal plan and the breakdown of macronutrients. Also includes projected fat loss.

Status: Sent
Delivered: 1/25/2019 2:19:19 PM(UTC+0)

1/25/2019 3:08:37 PM(UTC+0)Direction:Incoming, +13108002810 (Jule Smol)
Cool i can't pull up on phone so gotta check on my computer. When do you leave town?

Status: Read
Read: 1/25/2019 3:08:56 PM(UTC+0)

1/25/2019 3:18:47 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)

Attachments:



IMG_5635.PNG

Status: Sent
Delivered: 1/25/2019 3:18:49 PM(UTC+0)

1/25/2019 3:18:56 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
What time Tuesday night?

Status: Read
Read: 1/25/2019 3:19:00 PM(UTC+0)

1/25/2019 3:19:14 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
9:30pm

Status: Sent
Delivered: 1/25/2019 3:19:15 PM(UTC+0)

1/25/2019 3:31:06 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Why what's up?

Status: Sent
Delivered: 1/25/2019 3:31:07 PM(UTC+0)

1/25/2019 3:34:44 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Might need your help on the low. You around to meet up and talk face to face?

Status: Read
Read: 1/25/2019 3:34:51 PM(UTC+0)

1/25/2019 3:34:52 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Later like after 4

Status: Read
Read: 1/25/2019 3:34:52 PM(UTC+0)

1/25/2019 3:36:29 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Yea, I can do that.

Status: Sent
Delivered: 1/25/2019 3:36:29 PM(UTC+0)

1/25/2019 8:13:08 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Wya?

Status: Read
Read: 1/25/2019 8:13:47 PM(UTC+0)

1/25/2019 8:20:00 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
I'm at the gym finishing up

Status: Sent
Delivered: 1/25/2019 8:20:00 PM(UTC+0)

1/25/2019 8:20:31 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Where? I'll take like 20 mins.

Status: Read
Read: 1/25/2019 8:21:02 PM(UTC+0)

1/25/2019 8:21:53 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)

Status: Sent
Delivered: 1/25/2019 8:21:53 PM(UTC+0)

1/25/2019 8:22:34 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
You gonna come here or should I come to you?

Status: Sent
Delivered: 1/25/2019 8:22:36 PM(UTC+0)

1/25/2019 8:22:50 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
How far are you from the stages?

Status: Read
Read: 1/25/2019 8:23:45 PM(UTC+0)

1/25/2019 8:24:18 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
30 mins

Status: Sent
Delivered: 1/25/2019 8:24:18 PM(UTC+0)

1/25/2019 8:28:23 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Ok can you meet me there? We can ride and talk.

Status: Read
Read: 1/25/2019 8:28:47 PM(UTC+0)

1/25/2019 8:29:00 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Yea I can come

Status: Sent
Delivered: 1/25/2019 8:29:00 PM(UTC+0)

1/25/2019 9:23:12 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Here

Status: Sent
Delivered: 1/25/2019 9:23 14 PM(UTC+0)

1/25/2019 9:33:33 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Come outside breezeway

Status: Read
Read: 1/25/2019 10:04 20 PM(UTC+0)

1/26/2019 10:50:57 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
You still down to train tomorrow?

Status: Sent
Delivered: 1/26/2019 10 50 58 PM(UTC+0)

1/26/2019 10:51:35 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Yeah. Meet me at 7 15am?

Status: Read
Read: 1/26/2019 10 52 52 PM(UTC+0)

1/26/2019 10:54:48 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
I have a ceremony and won't be done until 9 am.

Status: Sent
Delivered: 1/26/2019 10:54:49 PM(UTC+0)

1/26/2019 10:56:21 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Alright I'm picking up my creative director [REDACTED] at 830am or something dork the airport. Just hit me after you're done with your ceremony. I have a flight to east coast tomorrow at 3pm

Status: Read
Read: 1/26/2019 10 58:10 PM(UTC+0)

1/26/2019 11:00:21 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Alright. Will do.

Status: Sent
Delivered: 1/26/2019 11:00:21 PM(UTC+0)

1/27/2019 3:18:24 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Wya?

Status: Read
Read: 1/27/2019 3 22 31 PM(UTC+0)

1/27/2019 3:22:58 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
I'm On my way back to Chicago

Status: Sent
Delivered: 1/27/2019 3 23 00 PM(UTC+0)

1/27/2019 3:24:11 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
How long?

Status: Read
Read: 1/27/2019 3 28 19 PM(UTC+0)

1/27/2019 3:31:04 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
An hr.

Status: Sent
Delivered: 1/27/2019 3 31 04 PM(UTC+0)

1/27/2019 4:53:43 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Here

Status: Read
Read: 1/27/2019 4 53 46 PM(UTC+0)

1/27/2019 4:53:51 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Ight

Status: Sent
Delivered: 1/27/2019 4 53 51 PM(UTC+0)

1/27/2019 4:56:48 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Where you at

Status: Sent
Delivered: 1/27/2019 4 56:48 PM(UTC+0)

1/27/2019 4:56:59 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Out front i think

Status: Read
Read: 1/28/2019 12 36 44 AM(UTC+0)

1/28/2019 5:35:16 PM(UTC+0)Direction:Incoming, + [REDACTED] (Jule Smol)
Gotcha. Did it this morning.

Status: Read
Read: 1/28/2019 5:42 31 PM(UTC+0)

1/29/2019 5:44:06 PM(UTC+0)Direction:Outgoing, + [REDACTED] (#King AbimBola)
Bruh say it ain't true, I'm praying for speedy recovery. Shit is wild.

Status: Sent
Delivered: 1/29/2019 5:44:07 PM(UTC+0)

EXHIBIT E

375	Google	https://www.google.com/?client=safari&channel=iphone_bm	1/30/2019 4:38:20 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
376	Turkish Airlines Wi-Fi Access Portal	https://portal.turktelekomwifily.com/apsPortal/loginPage?0	1/30/2019 11:47:57 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
377	Turkish Airlines Wi-Fi Access Portal	https://portal.turktelekomwifily.com/apsPortal/msLoginPage?1	1/30/2019 11:47:21 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
378		https://portal.turktelekomwifily.com/apsPortal/loginPage;jsessionid=e94262b8bc086658d5fb711c57a870-1.LinkListener-rootContainer-milesAndSmilesLink	1/30/2019 11:47:21 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
379		https://portal.turktelekomwifily.com/apsPortal/loginPage	1/30/2019 11:45:39 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
380	Turkish Airlines Wi-Fi Access Portal	https://portal.turktelekomwifily.com/apsPortal/loginPage;jsessionid=e94262b8bc086658d5fb711c57a870	1/30/2019 11:45:39 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
381	Turkish Airlines: Home	http://www.lkwifi.net/#/12019/01/29/empire-star-jussie-smollett-attacked-hospitalized-homophobic-hate-crime/	1/30/2019 11:45:21 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
382	Empire Star Jussie Smollett Beaten in Homophobic Attack By MAGA Supporters TMZ.com	http://m.tmz.com/#/2019/01/29/empire-star-jussie-smollett-attacked-hospitalized-homophobic-hate-crime/	1/29/2019 5:20:41 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
383	TMZ	http://m.tmz.com/2019/01/29/empire-star-jussie-smollett-attacked-hospitalized-homophobic-hate-crime/	1/29/2019 5:20:39 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
384		https://www.tmz.com/2019/01/29/empire-star-jussie-smollett-attacked-hospitalized-homophobic-hate-crime/	1/29/2019 5:20:39 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
385	#PrayersUp: Jussie Smollett Hospitalized After Reportedly Being Injured In A Homophobic Attack - The Shade Room	https://theshaderoom.com/prayersup-jussie-smollett-hospitalized-after-reportedly-being-injured-in-a-homophobic-attack/	1/29/2019 5:20:00 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
386	The Shade Room - Celebrity & Entertainment News - All Trending Topics	https://theshaderoom.com/	1/29/2019 5:19:51 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
387		http://theshaderoom.com/	1/29/2019 5:19:51 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
388	The Shade Room (@theshaderoom) • Instagram photos and videos	https://www.instagram.com/theshaderoom/?hl=en	1/29/2019 5:19:33 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
389	The Shade Room (@theshaderoom) • Instagram photos and videos	https://www.instagram.com/theshaderoom/?hl=en	1/29/2019 5:19:32 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
390	Savage Race - The Best Obstacles. The Perfect Distance	https://savagerace.com/	1/29/2019 4:30:21 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
391	shirts illustrated - Google Search	https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&ei=TXRPXKj2MKS6jwTCx4LwDQ&q=shirts+illustrated&oeq=shirts&gs_l=mobile-gws-wiz-hp:1.0.35i39l2j0l3.3543.5673..7121...1.0.0.230.920.0j5j1.....0.....5.46i131j0i131j0i87.DcWDSTl6qTY	1/28/2019 9:29:58 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
392	Google	https://www.google.com/?client=safari&channel=iphone_bm	1/28/2019 9:29:49 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
393		https://www.wada-ama.org/sites/default/files/wada_2019_english_prohibited_list.pdf	1/27/2019 12:28:51 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
394	Prohibited List Documents World Anti-Doping Agency	https://www.wada-ama.org/en/resources/science-medicine/prohibited-list-documents	1/27/2019 12:28:38 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
395		https://www.wada-ama.org/en/resources/science-medicine/prohibited-list	1/27/2019 12:28:38 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
396	Banned Substances NaturalBodybuilding.com	https://naturalbodybuilding.com/banned-substances/	1/27/2019 12:28:02 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes

454	Tamoxifen Citrate – U.S. Diesel Labs	https://usdieselabs.com/product/tamoxifen-citrate/	1/25/2019 5:58:19 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
455	YK11 – U.S. Diesel Labs	https://usdieselabs.com/product/yk11/	1/25/2019 5:57:52 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
456	ANDARINE – U.S. Diesel Labs	https://usdieselabs.com/product/andarine/	1/25/2019 5:56:29 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
457	RAD140 – U.S. Diesel Labs	https://usdieselabs.com/product/rad140/	1/25/2019 5:55:27 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
458	rad 140 labs - Google Search	https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&ei=sqRKXOGwPI-6ggfwipVgCg&q=rad+140+labs&oq=rad+140+labs&gs_l=mobile-gws-wiz-hp:3.0i22i30i5.2288.8484.10824...1.0.0.159.1576.0j12...0...1...5.35i39j0i67j46i67j0i131i07j46i20i263j0j0i22i10i30.PALeys6vYag	1/25/2019 5:55:11 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
459	Google	https://www.google.com/?client=safari&channel=iphone_bm	1/25/2019 5:54:59 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
460	The Truth About RAD140 In 3 Minutes - Read before you buy Testolone	https://www.mynvi.org/testolone-rad140/	1/25/2019 5:49:12 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
461	rad 140 landmark - Google Search	https://www.google.com/search?client=safari&channel=iphone_bm&ei=nS1KXL7dGOWatgX2xpeoAQ&q=rad+140+landmark&oq=rad+140+landmark&gs_l=mobile-gws-wiz-serp:1.0.0i22i30i33i22i29i30i33i160.30105865.30112481...30113557...2.0.0.164.174.4.0j12...0...1...5.35i39j0i67j0i131j0j46i67j0i22i10i30.D401Uxmppc	1/25/2019 5:48:48 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
462	bow legged - Google Search	https://www.google.com/search?client=safari&channel=iphone_bm&source=hp&ei=li1KXPPNlcbKsQVjbfAAw&q=bow+legged&oq=bow+legged&gs_l=mobile-gws-wiz-hp:1.3.46i275j0i4.2867.4242..6331...1.0.0.307.880.0j2j1j1...0...1...5.35i39j46egp9XrHOFLM	1/24/2019 9:26:53 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
463	Google	https://www.google.com/?client=safari&channel=iphone_bm	1/24/2019 9:26:46 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
464	How Do I Reach a Real Person at the IRS? - Amy Northard, CPA - The Accountant for Creatives®	https://amynorthardcpa.com/how-do-i-reach-a-real-person-at-the-irs/	1/24/2019 8:57:43 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
465	Digital Banking Timeout	https://www.tcfbank.com/digital-banking-timeout	1/24/2019 8:57:40 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
466		https://digitalbanking.tcfbank.com/d3rest/va/uth/logout?reason=session-expired&csrf=a6f5bef62dde2c611ee9292885ca10f6	1/24/2019 8:57:40 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
467	TCF Bank	https://digitalbanking.tcfbank.com/?username=oosundairo#dashboard/manage	1/24/2019 6:37:17 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
468	TCF Bank	https://digitalbanking.tcfbank.com/?userna me=oosundairo#login	1/24/2019 6:37:17 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
469	TCF Bank	https://digitalbanking.tcfbank.com/?userna me=oosundairo#	1/24/2019 6:37:17 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
470	TCF Bank	https://digitalbanking.tcfbank.com/?userna me=oosundairo#login	1/24/2019 6:36:46 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
471	TCF Bank	https://digitalbanking.tcfbank.com/?userna me=oosundairo	1/24/2019 6:36:41 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
472	Bank at TCF – Business, Personal, Online Banking TCF Bank	https://www.tcfbank.com/	1/24/2019 6:36:29 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
473	Google	https://www.google.com/?client=safari&channel=iphone_bm	1/24/2019 6:36:15 PM(UTC+0)	1	Safari Source Extraction: Legacy	Yes
474		https://tunein.com/radio/Chicago-Public-Radio-915-s27410/	1/24/2019 4:15:46 AM(UTC+0)	1	Safari Source Extraction: Legacy	Yes

EXHIBIT F

1/12/2019 6:22:34 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
The team has to pay for the flight

Status: Read
Read: 1/12/2019 9:01:11 AM(UTC+0)

1/12/2019 6:22:40 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Lol so they gonna do just that

Status: Read
Read: 1/12/2019 9:01:11 AM(UTC+0)

1/12/2019 10:32:07 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)

Attachments:
IMG_0173.PNG

Status: Sent
Delivered: 1/12/2019 10:32:10 PM(UTC+0)

1/12/2019 10:32:51 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)

Attachments:
IMG_0175.PNG

Status: Sent
Delivered: 1/12/2019 10:32:52 PM(UTC+0)

1/12/2019 10:33:25 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)

Attachments:
image-1.jpg

Status: Sent
Delivered: 1/12/2019 10:33:26 PM(UTC+0)

1/12/2019 10:33:42 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
Your homeboy is mentally disturbed

Status: Sent
Delivered: 1/12/2019 10:33:42 PM(UTC+0)

1/13/2019 6:16:57 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Hahahahaha bruh

Status: Read
Read: 1/13/2019 6:17:19 AM(UTC+0)

1/13/2019 6:17:05 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
I'm really laughing at the emails man

Status: Read
Read: 1/13/2019 6:17:19 AM(UTC+0)

1/13/2019 6:17:08 AM(UTC+0)Direction:Incoming, + [REDACTED] (OD)

Status: Read
Read: 1/13/2019 6:17:19 AM(UTC+0)

1/13/2019 6:17:31 AM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
Dude ass a fruit

Status: Sent
Delivered: 1/13/2019 6:17:32 AM(UTC+0)

1/14/2019 7:01:58 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Did fruity folks ever say anything back

Status: Read
Read: 1/14/2019 7:04:54 PM(UTC+0)

1/14/2019 7:05:49 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
I never replied to his fruity ass after that. I haven't been replying to him on ig either I'm done with Gaylord ass

Status: Sent
Delivered: 1/14/2019 7:05:50 PM(UTC+0)

1/14/2019 7:12:28 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Lmaooooo bruh you don't know how weak I am right now

Status: Read
Read: 1/14/2019 8:10:48 PM(UTC+0)

1/14/2019 7:12:49 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Bruh I just want to see folks to admit to that shit

Status: Read
Read: 1/14/2019 8:10:48 PM(UTC+0)

1/14/2019 7:13:07 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)
Like what's the name of the agency? Whose?

Status: Read
Read: 1/14/2019 8:10:48 PM(UTC+0)

1/14/2019 7:13:09 PM(UTC+0)Direction:Incoming, + [REDACTED] (OD)

Status: Read
Read: 1/14/2019 8:10:48 PM(UTC+0)

1/14/2019 8:48:40 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
I don't even care no more Just tired of down low niggas tryna sneakily be on some gay shit like niggas is stupid

Status: Sent
Delivered: 1/14/2019 8:48:41 PM(UTC+0)

Gay Reframe
ASS A
"Fruit"
"Gaylord"

EXHIBIT G

Status: Sent
Delivered: 1/12/2019 10:36:39 PM(UTC+0)

1/12/2019 10:34:19 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
This man is a sicko

GAY reference
in emails from D.O

Status: Sent
Delivered: 1/12/2019 10:36:39 PM(UTC+0)

1/12/2019 10:48:47 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)
Wtf

Status: Read
Read: 1/12/2019 10:57:26 PM(UTC+0)

1/12/2019 10:48:50 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)
Hahahahahahahaha

Status: Read
Read: 1/12/2019 10:57:26 PM(UTC+0)

1/12/2019 10:48:53 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)

Status: Read
Read: 1/12/2019 10:57:26 PM(UTC+0)

1/12/2019 10:48:59 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)
Help the man

Status: Read
Read: 1/12/2019 10:57:26 PM(UTC+0)

1/12/2019 10:58:04 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
[REDACTED] said he sent him the same exact email 2 years ago

Status: Sent
Delivered: 1/12/2019 10:58:04 PM(UTC+0)

1/12/2019 10:58:18 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)
Are you serious?

Status: Read
Read: 1/12/2019 10:58:23 PM(UTC+0)

1/12/2019 10:58:27 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)
Same email address?

Status: Read
Read: 1/12/2019 10:58:34 PM(UTC+0)

1/12/2019 10:58:44 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
Same exact one

Status: Sent
Delivered: 1/12/2019 10:58:45 PM(UTC+0)

1/12/2019 10:58:59 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)
Lock him up

Status: Read
Read: 1/12/2019 11:25:46 PM(UTC+0)

1/12/2019 11:25:51 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
Sicko

Status: Sent
Delivered: 1/12/2019 11:25:52 PM(UTC+0)

1/12/2019 11:48:15 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
What's [REDACTED] address

Status: Sent
Delivered: 1/12/2019 11:48:17 PM(UTC+0)

1/12/2019 11:53:40 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
Yoooooooo

Status: Sent
Delivered: 1/12/2019 11:53:42 PM(UTC+0)

1/12/2019 11:57:05 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)

Status: Read
Read: 1/12/2019 11:57:11 PM(UTC+0)

1/12/2019 11:57:19 PM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
Thanks

Status: Sent
Delivered: 1/12/2019 11:57:20 PM(UTC+0)

1/12/2019 11:57:31 PM(UTC+0)Direction:Incoming, + [REDACTED] (Bola Bon Jova)
Thank G-D

Status: Read
Read: 1/13/2019 12:46:01 AM(UTC+0)

1/13/2019 1:01:23 AM(UTC+0)Direction:Outgoing, + [REDACTED] (Ola)
What's password to [REDACTED]

Status: Sent
Delivered: 1/13/2019 1:01:24 AM(UTC+0)

EXHIBIT H

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id : 11580050
Sup id : 13027789 CASR339

PROGRESS				DETECTIVE SUP. APPROVAL COMPLETE			
Last Offense Classification/Re-Classification		IUCR Code		Original Offense Classification		IUCR Code	
BATTERY / Agg: Hands/Fist/Feet No/Minor Injury		0440		BATTERY / Agg: Hands/Fist/Feet No/Minor Injury		0440	
Address of Occurrence		Beat of Occur		No of Victims		No of Offenders	
341 E LOWER NORTH WATER ST		1834		1		2	
Location Type		Location Code		No of Arrested		SCR No	
Street		304		0			
Date of Occurrence		Unit Assigned		Secondary Location		Hate Crime	
29-JAN-2019 02:00		1823R				No	
				Date RO Arrived		Fire Related?	
				29-JAN-2019 02:42		NO	
						Gang Related?	
						NO	
						Domestic Related?	
						NO	
Reporting Officer		Star No		Approving Supervisor		Star No	
HENECHAN, William		21312		BLAS, Ronald		1248	
Date Submitted		Date Approved		Primary Detective Assigned		Star No	
08-FEB-2019 20:56		09-FEB-2019 12:35		MURRAY, Kimberly		20808	
				Assignment Type			
				FIELD			

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular

Phone:

SSN:

DLN/ID: CA

OTHER IDENTIFICATIONS: Type - State Id #

State - California

Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

SUSPECT(S)

UNK

Male / White

ACTIONS: The Offender Fled From Sidewalk

RELATIONSHIP OF VICTIM TO OFFENDER:

JC133190

[REDACTED] - No Relationship

UNK

Male / White

DESCRIPTION: 5'10-6'00, 180-200,

ACTIONS: The Offender Fled From Sidewalk

WEARING: Black Mask With Open Eyes Only, Dark Jacket/Top, Dark Pants

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED] - No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

Type

Weapon Used

Abrasions

Hand/Feet/Teeth/Etc.

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED] (Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

LOCATION OF INCIDENT:

341 E Lower North Water St

Chicago IL 60611

304 - Street

DATE & TIME OF INCIDENT:

29-JAN-2019 02:00

MOTIVE CODE(S):

Undetermined

CAUSE CODE(S):

Other

METHOD CODE(S):

Dna

CAU CODE(S):

Dna

OTHER PROPERTY RECOVERED:

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design

Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

INV #: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**OTHER PROPERTY
DAMAGED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design

Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**PERSONNEL
ASSIGNED:**

Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R

**OTHER INDIVIDUALS
INVOLVED:**

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED]-1958

DESCRIPTION: 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium

Complexion

RES:

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular
Phone:

DLN/ID: - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

	(Victim)	
UNK		(Suspect)
	(Victim)	
UNK		(Suspect)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

PROGRESS SUP NARRATIVE

R/D and Det. Stoll#20701 were asked to assist in the investigation on 6 Feb 2019 at 1200 hours by Area Central Detective Division Commander Ed Wodnicki.

R/Ds attended a debriefing session and were made aware of potential leads in the investigation and were asked to locate and interview a Uber Driver

R/D and Det. Stoll met with UBER Driver at in Chicago IL on 6 Feb 2019 at 1640 hours. is a Male Black 56 yoa. is 601 / 230 LBS.

lives with his wife at the location and stated he has driven a Taxi for several years in Chicago but now only drives for UBER. [REDACTED] stated he mostly drives at night and the early morning hours.

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

[REDACTED] stated the two offenders did not make conversation with him and whispered to each other during the ride. The Uber application listed the drop off location was to be on the 1400 block of N WIELAND but has been shielded on [REDACTED] UBER application interface. Rider #1 was on his cell phone for most of the ride. [REDACTED] stated he heard rider #2 tell #1 that he should change the location for drop off on his UBER application, somewhere in the "100's", suggesting the south side of Chicago. Shortly thereafter, the rider #2 demanded they get dropped prior to the listed drop off location. At 1400 N Wells rider #2 demanded he stop and he jumped out of the vehicle and then waived down a Taxi. [REDACTED] stated from the time the 2 riders entered his Uber vehicle, a Toyota Highlander, he thought he was going to be robbed. [REDACTED] stated the riders refused to communicate with him which led to his fear of being robbed. [REDACTED] stated he found it very odd that the pair discussed changing the drop off location and then entering a Taxi prior to their final destination. [REDACTED] stated he may be able to make an identification of Rider Number 1, but was unsure about rider #2.

[REDACTED] indicated that the riders may have been of African decent, based on the way Rider #1 called him "brother" with an African Accent. [REDACTED] stated he has NO VIDEO RECORDING system inside his vehicle. [REDACTED] stated both riders had a very dark complexion. [REDACTED] stated he will be available in the future if R/D has any further questions or needs to re-interview him.

Det. Heneghan#21312

Det. Stoll #20701

EXHIBIT I

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id : 11580050
Sup id : 13084938 CASR339

PROGRESS				DETECTIVE SUP. APPROVAL COMPLETE			
Last Offense Classification/Re-Classification		IUCR Code		Original Offense Classification		IUCR Code	
BATTERY / Agg: Hands/Fist/Feet No/Minor Injury		0440		BATTERY / Agg: Hands/Fist/Feet No/Minor Injury		0440	
Address of Occurrence		Beat of Occur		No of Victims		No of Offenders	
341 E LOWER NORTH WATER ST		1834		1		2	
Location Type		Location Code		No of Arrested		SCR No	
Street		304		2			
Date of Occurrence		Unit Assigned		Secondary Location		Hate Crime	
29-JAN-2019 02:00		1823R				No	
				Date RO Arrived		Fire Related?	
				29-JAN-2019 02:42		NO	
				Gang Related?		Domestic Related?	
				NO		NO	
Reporting Officer		Star No		Approving Supervisor		Star No	
THEIS, Michael		21217		HALEEM, Morad		1280	
Date Submitted		Date Approved		Primary Detective Assigned		Star No	
19-MAR-2019 15:21		19-MAR-2019 15:29		MURRAY, Kimberly		20808	
				Assignment Type			
				FIELD			

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular
Phone:

SSN:

DLN/ID: CA

OTHER IDENTIFICATIONS: Type - State Id #
State - California
Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

OFFENDER(S)

OSUNDAIRO, Olabinjo

-- In Custody--

Male / Black / 27 Years

DOB: 1991

DESCRIPTION: 5'08, 175, Black Hair, Short Hair Style, Brown Eyes, Dark Complexion

JC133190

RES: [REDACTED]

DLN/ID: [REDACTED]

ACTIONS: The Offender Fled From Sidewalk

IR#: [REDACTED] CB #: 19768424

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED]

- No Relationship

-- In Custody--

OSUNDAIRO, Abimbola

Male / Black / 25 Years

DOB: [REDACTED] 1993

DESCRIPTION: 6'00, 185, Black Hair, Fade Hair Style, Brown Eyes, Dark Complexion

RES: [REDACTED]

DLN/ID: [REDACTED] - IL

ACTIONS: The Offender Fled From Sidewalk

IR#: [REDACTED] CB #: 19768414

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED]

- No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

[REDACTED]

TypeWeapon Used

Abrasions

Hand/Feet/Teeth/Etc.

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED]

(Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

LOCATION OF

341 E Lower North Water St

Chicago IL 60611

INCIDENT: 304 - Street
DATE & TIME OF INCIDENT: 29-JAN-2019 02:00
MOTIVE CODE(S): Undetermined
CAUSE CODE(S): Other
METHOD CODE(S): Dna
CAU CODE(S): Dna

**OTHER PROPERTY
RECOVERED:**

INV #: 14363588
Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

INV #: 14363589
Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**OTHER PROPERTY
DAMAGED:**

INV #: 14363588
Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**PERSONNEL
ASSIGNED:**

Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390
THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R

OTHER INDIVIDUALS
INVOLVED:

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED] 1958

DESCRIPTION: 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium
Complexion

RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular [REDACTED]
Phone: [REDACTED]

DLN/ID: [REDACTED] - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

[REDACTED] (Victim)

OSUNDAIRO, Olabinjo (Offender)

[REDACTED] (Victim)

OSUNDAIRO, Abimbola (Offender)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:**PROGRESS SUP NARRATIVE**

This is an Area Central PROGRESS Supplementary Case Report. This report should be read in conjunction with RD number JC133190.

TYPE OF INCIDENT:

Aggravated Battery - Hands, Fist, Feet / Minor Injury (0440)

RD NUMBER:

JC-133190

LOCATION:

341 E Lower North Water St
Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:

Tuesday, 29 Jan 19, 0200 hours

DATE, TIME ASSIGNED:

31 January 2019 at 1230 hours

VICTIM:

[REDACTED]
M/1/36 [REDACTED] 82
6'0" 170
[REDACTED]

MANNER / MOTIVE:

The victim was walking to his residence when he was approached by two offenders who engaged in racial and homophobic slurs directed at the victim. The offenders then struck the victim about the face and body causing minor injuries / undetermined motive, possible hate crime

INVESTIGATION:

1 February 2019

The contents of this report, including interviews, are in essence and not verbatim unless otherwise noted by quotation marks.

At the start of the day R/D and P.O. Gilbert #15552 went to the Hyatt Regency Hotel. R/D picked up a disk that was being held by security. The disk contained the video footage from Hyatt Regency Hotel security cameras and a player for some of the video. The video had been viewed and marked

for export by R/D, Det. Calle, Det. Haro, and Det. Vogenthaler the day before, 31 Jan 2019. The selected video was from outside cameras that showed Stetson Ave, East South Water Street, and East Wacker drive. This disk was inventoried under #14367663.

R/D and P.O. Gilbert then relocated to the Chicago Regional Computer Forensics Laboratory (CGRCFL) to submit the 32 Gigabyte (GB) Secure Digital Memory Card (SD Card) that was retrieved from Yellow Cab #1394 the night before. At the CGRCFL, R/D spoke with [REDACTED] who took custody of the 32GB SD card and assigned it to CGRCFL inventory number CGRCFL128664 and assigned it to CGRCFL case number 19-CGRCFL-0108.

R/D and P.O. Gilbert met up with Task Force Agent(TFA) Special Agent(SA)Wing and Det. Jasica #20420 at the 3600 block of North Marshfield. R/D and Det. Jasica went to the 3600 block of N. Marshfield and retrieved video from a house that had been viewed the day before. This video showed the two subjects getting out of the yellow cab, proceed to the west side of the street and walk north bound on the west sidewalk of N. Marshfield Ave. The video footage showed the two subjects walking across Waveland Ave and continue down the west sidewalk of N. Marshfield Ave. This video was inventoried under this case number and sent to CPD's Evidence and Recovered Property Section (ERPS).

R/D, P.O. Gilbert, TFA SA Wing, and Det. Jasica conducted a canvass which started starting at the 3700 block of Marshfield and headed north bound on Marshfield. Any house that appeared to have a video camera or a video doorbell was knocked on and the team requested to view the video. At approximately 1400 hrs the team was joined by Det. Calle #20177 and at approximately 1500hrs Det. Jasica returned to the Area. The last location the subjects were seen on video was near the intersection of W. Grace St. and N. Marshfield Ave. The team searched both directions on Grace St. as well as further north on Marshfield Ave. and the subjects were not seen on any other video located at this time.

R/D, P.O. Gilbert, TFA SA Wing, and Det. Calle relocated to Area Central Detective Division. Once at the Area, Det. Hill #20889 and Det. Haro #20159 joined the team and there was a briefing with command personnel and the team. At the completion of the briefing R/D received a call from [REDACTED] phone number [REDACTED] the driver of Yellow Cab #1394, who stated he would be willing to come in and be interviewed but he had no way of getting to Area Central. In order to facilitate the interview Det. Calle and P.O. Gilbert took a department vehicle and went to pick up [REDACTED]

[REDACTED] arrived at Area Central at approximately 2300hrs. [REDACTED] was interviewed by R/D, Det. Calle, and TFA SA Wing. [REDACTED] explained that he shared the Yellow cab with a partner, [REDACTED] would usually start driving around 0400hrs since he had the cab during the day shift but on the morning of January 29th, 2019 [REDACTED] had parked the car early. [REDACTED] decided to start his shift early since the cab was available. On most mornings [REDACTED] goes to the HYATT regency and will wait there for about 15 minutes or so to see if any fares are available. On the morning of January 29th [REDACTED] had pulled up in front of the Hyatt Regency and stated that he got out of his car to clean the windows and then was sitting in his car waiting to see if a fare would show up. After a few minutes the doors opened startling [REDACTED] He explained that he would lock the doors so he could get a look at a person before they entered his taxi. [REDACTED] thinks he forgot to lock his doors after cleaning the window. He said he could see the one that got in on the passenger side of the car pretty well and [REDACTED] described him as a dark skinned black male with a goatee 25 to 30 years old. This person said "Hey brother" when he got into the cab and

was wearing all black with a big jacket and a hat pulled back. [REDACTED] said the person had a big build. [REDACTED] said he could not see the second person who sat behind him. When the second person got in he said "Hey boss". [REDACTED] felt the second person sounded "black". [REDACTED] stated that he was nervous and said "if they say they want to go south I tell them no" and then "but they say they want to go to Lake Shore Drive and Belmont so I think ok". [REDACTED] said he saw the person on the passenger side on a cell phone "only text no talk". [REDACTED] drove to Lake Shore Drive and went north to the Belmont exit. The person on the passenger side told [REDACTED] to make a series of right and left turns in rapid succession and then said stop. [REDACTED] was not sure where he was located. [REDACTED] was pretty sure one of the first turns he was told to make was to make a right on Sheffield but he could not be sure of any of the turns after getting off on Belmont. Once [REDACTED] stopped the taxi the person on the passenger side of the car gave him twenty dollars and said "keep the change." [REDACTED] told R/D the fare was nineteen dollars. The two passengers then walked to the "left" side of the street and [REDACTED] said he drove away. [REDACTED] stated he remembered the event clearly because he thought he was going to get robbed. [REDACTED] felt he would be able to identify the person on the passenger side of the car if he saw him again.

Once the interview was complete, Det. Calle and P.O. Gilbert drove [REDACTED] back home. [REDACTED] was dropped off at approximately 0015hrs on 2 February 2019.

R/D and TFA SA Wing discussed the interview and progressed the administrative work.

The investigation continues.

Report of:

Detective Theis #21217

Detective Vogenthaler #20390

Area Central

Detective Division

EXHIBIT J

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id : 11580050
Sup id : 13059447 CASR339

PROGRESS		DETECTIVE SUP. APPROVAL COMPLETE			
Last Offense Classification/Re-Classification	IUCR Code	Original Offense Classification			IUCR Code
BATTERY / Agg: Hands/Fist/Feet No/Minor Injury	0440	BATTERY / Agg: Hands/Fist/Feet No/Minor Injury			0440
Address of Occurrence	Beat of Occur	No of Victims	No of Offenders	No of Arrested	SCR No
341 E LOWER NORTH WATER ST	1834	1	2	2	
Location Type	Location Code	Secondary Location			Hate Crime
Street	304				No
Date of Occurrence	Unit Assigned	Date RO Arrived	Fire Related?	Gang Related?	Domestic Related?
29-JAN-2019 02:00	1823R	29-JAN-2019 02:42	NO	NO	NO
Reporting Officer	Star No	Approving Supervisor	Star No	Primary Detective Assigned	Star No
VOGENTHALER, Michael	20390	HALEEM, Morad	1280	MURRAY, Kimberly	20808
Date Submitted	Date Approved		Assignment Type		
18-MAR-2019 09:15	19-MAR-2019 14:59		FIELD		

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular

Phone:

SSN:

DLN/ID: - CA

OTHER IDENTIFICATIONS: Type - State Id #

State - California

Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

OFFENDER(S)

OSUNDAIRO, Olabinjo

-- In Custody--

Male / Black / 27 Years

DOB: 1991

DESCRIPTION: 5'08, 175, Black Hair, Short Hair Style, Brown Eyes, Dark Complexion

JC133190

RES: [REDACTED]

DLN/ID: [REDACTED] IL

ACTIONS: The Offender Fled From Sidewalk

IR#: [REDACTED] CB #: 19768424

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED]

- No Relationship

-- In Custody--

OSUNDAIRO, Abimbola

Male / Black / 25 Years

DOB: [REDACTED]-1993

DESCRIPTION: 6'00, 185, Black Hair, Fade Hair Style, Brown Eyes, Dark Complexion

RES: [REDACTED]

DLN/ID: [REDACTED] IL

ACTIONS: The Offender Fled From Sidewalk

IR#: [REDACTED] CB #: 19768414

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED]

- No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

[REDACTED]

Type

Abrasions

Weapon Used

Hand/Feet/Teeth/Etc.

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED]

(Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

LOCATION OF

341 E Lower North Water St
Chicago IL 60611

INCIDENT: 304 - Street
DATE & TIME OF INCIDENT: 29-JAN-2019 02:00
MOTIVE CODE(S): Undetermined
CAUSE CODE(S): Other
METHOD CODE(S): Dna
CAU CODE(S): Dna

**OTHER PROPERTY
RECOVERED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

INV #: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**OTHER PROPERTY
DAMAGED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**PERSONNEL
ASSIGNED:**

Assisting Detective/Youth Inv.

VOGENTHALER, Michael W

20390

THEIS, Michael J

21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R

OTHER INDIVIDUALS
INVOLVED:(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED] 1958

DESCRIPTION: 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium
Complexion

RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular [REDACTED]
Phone:

DLN/ID: [REDACTED] - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

[REDACTED]	(Victim)	
OSUNDAIRO, Olabinjo		(Offender)
[REDACTED]	(Victim)	
OSUNDAIRO, Abimbola		(Offender)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

This is an Area Central PROGRESS Supplementary Case Report. This report should be read in conjunction with RD number JC133190.

TYPE OF INCIDENT:

Aggravated Battery - Hands, Fist, Feet / Minor Injury (0440)

RD NUMBER:

JC-133190

LOCATION:

341 E Lower North Water St
Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:

Tuesday, 29 Jan 19, 0200 hours

DATE, TIME ASSIGNED:

31 January 2019 at 1230 hours

VICTIM:

M/1/36 [REDACTED] 82
6'0" 170

IN CUSTODY:

OSUNDAIRO, Olabinjo

M/1 [REDACTED] 1991
CB# 19768424
IR# [REDACTED]
DLN [REDACTED]

OSUNDAIRO, Abimbola

M/1 [REDACTED] 1993
CB# 19768414
IR# [REDACTED]
DLN [REDACTED]

MANNER / MOTIVE:

The victim was walking to his residence when he was approached by two offenders who engaged in racial and homophobic slurs directed at the victim. The offenders then struck the victim about the face and body causing minor injuries / undetermined motive, possible hate crime

INVESTIGATION:

On 06-Feb-2019

The contents of this report, including interviews, are in essence and not verbatim unless otherwise noted by quotation marks.

A review of the UBER subpoena return for Olabinjo OSUNDAIRO showed a ride from 41 [REDACTED] N. Ashland leaving at 1918 hours and arriving at OHARE International Airport (ORD) at 2000 hours on 29-JAN-2019. A search of open source social media by Det. Jasica then showed Olabinjo OSUNDAIRO to possibly be in Nigeria.

Task Force S/A Wing then contacted Josue MURPHY with the US Customs and Border Protection Office (CBP) located at OHARE Airport. Agent MURPHY then performed a search of airline records which showed Olabinjo OSUNDAIRO and his brother, Abimbola OSUNDAIRO, to have left OHARE Airport, ultimately traveling to Nigeria on 29-JAN-2019 and scheduled to return from Nigeria to OHARE Airport on 13-FEB-2019. This information was then provided to Task Force S/A Wing. Still photographs of Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO at OHARE Airport were also included. This information was transferred to a DVD disc and inventoried under INV# 14390225.

Over the next several days, searches were conducted and photographs captured of Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO from Chicago Police Databases, the Illinois Secretary of State database, open source social media accounts and open source internet searches (progress reports and inventories for this information will be forthcoming). A comparison was made between these images, the still photographs from OHARE Airport and the video recovered from the Sun Taxi Cab #904 (Refer to the PROGRESS report of Det. Paragas for details of the Sun taxi Cab Video recovery). This comparison showed a strong resemblance between Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO and the subjects on the video recovered from Sun Taxi Cab #904.

R/D was aware of the fact that [REDACTED] received a threatening letter which was documented under CPD RD#JC125614 and that [REDACTED] received a phone threat on Saturday, [January 26, 2019] at an unknown time, where an unidentified male caller stated, "Hey you little Faggot" which was documented in JC133190. After reviewing evidence available at the time, a plan was put into place to take Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO into custody at OHARE Airport along with conducting a simultaneous search warrant (19SW4998) at the residence [REDACTED] belonging to Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO. This was being done to minimize the chance for loss of evidence and alerting Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO (See Progress Supplementary report for the specifics of 19SW4998).

11-FEB-2019

Information was received by order of the United States District Court, Northern District of Illinois, where Acting Chief Judge Rebecca Pallmeyer released phone records pertaining to federal case 19GJ152 to be used by members of the Chicago Police Department and Cook County States

Attorney's office. During a search of these records, another phone number suspected of belonging to Olabinjo OSUNDAIRO was discovered [REDACTED]. Phone records show this phone to be in communication with a phone number [REDACTED] belonging to [REDACTED] before and a phone number [REDACTED] belonging to [REDACTED] after the incident on 29-JAN-2019. This information was transferred to a DVD disc and inventoried under INV# 14390225.

12-FEB-2019

A search of CPD used databases revealed information showing a direct link in ownership between [REDACTED] and [REDACTED]. It is to be noted that the number [REDACTED] was found on an original GPR created by Det. Kim MURRAY #20808 and described as belonging to a physical trainer named "Bon". Based on this information, a search warrant for phone records for [REDACTED] was authored by Det. Kevin Stoll (for facts relevant to this portion of the investigation, refer to a Progress Supplementary report prepared by Det. Stoll) this search warrant and related documents were inventoried under INV #14385993.

Based on the facts available at this time, Det. Theis prepared a search warrant for the person and possessions for Olabinjo OSUNDAIRO (19SW5000) along with a search warrant for a buccal swab, hair sample and fingerprints and palm prints for Olabinjo OSUNDAIRO (19SW5009). These warrants were then sent to ASA Bill Reardon who reviewed and approved these warrants and assigned the numbers listed above. Based on the facts available at this time, Det. Theis prepared a search warrant for the person and possessions for Abimbola OSUNDAIRO (19SW5004) along with a search warrant for a buccal swab, hair sample and fingerprints and palm prints for Abimbola OSUNDAIRO (19SW5011). These warrants were then sent to ASA Bill Reardon who reviewed and approved these warrants and assigned the numbers listed above. Det. Theis then took search warrants 19SW5000 and 19SW5004 to the residence of Judge Elizabeth Ciaccia-Lezza #2228, who reviewed and approved the listed warrants.

13-FEB-2019

Det. Theis left Area Central and relocated to 26th and California where he went to the Chief Judges office for approval of search warrants 19SW5009 and 19SW5011. The Chief Judge assigned Judge Diane Cannon #1689. Det. Theis went to court room 600 and presented search warrants 19SW5009 and 19SW5011 to Judge Cannon who reviewed and approved the listed warrants.

R/D along with Commander Wodnicki #356, TFO SA Wing, Sgt. Blas #1248, Det. Theis #21217, Det. Jasica #20420, Det. Zambrano #21178, Det. Parages #20775 and Det. Hill #20889 went to the US Customs and Border Protection Office (CBP) room number LL369, located in Terminal 5 at OHARE International Airport. R/D was in contact with Josue MURPHY and associates with the U.S. Customs and Border Protection Office (CBP), who informed R/D of the flight status of Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO. At 1818 hours, Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO exited the plane and were sent by CBP to primary and secondary customs screening and were kept separated. As Customs Officers were preparing to release Abimbola OSUNDAIRO, R/D and Det. Theis then relocated near the exit for the CBP area inside OHARE Airport. Once released by CBP, Abimbola OSUNDAIRO approached the exit to the Customs and Border Protection area, (at approximately 1950 hours) R/D and Det. Theis approached Abimbola OSUNDAIRO, identified themselves as Chicago Police Detectives, and requested to have a conversation with Abimbola OSUNDAIRO. Abimbola OSUNDAIRO agreed and followed R/D and Det. Theis to an interview area located inside the CBP office inside OHARE Airport. As detectives approached the CBP interview area, Abimbola OSUNDAIRO asked to use the restroom. It was at this point R/D felt the necessity to execute search warrant number 19SW5004 for the person of

Abimbola OSUNDAIRO. R/D provided Abimbola OSUNDAIRO a copy of the search warrant which Abimbola OSUNDAIRO then read. Abimbola OSUNDAIRO complied with the search and R/D secured the personal property, including a cell phone [REDACTED] belonging to Abimbola OSUNDAIRO. This was done to prevent any loss of evidence once Abimbola OSUNDAIRO entered the restroom. Abimbola OSUNDAIRO was then allowed to use the restroom. After, Abimbola OSUNDAIRO was taken to an interview area located inside the CBP office. At 1954 hours, Abimbola OSUNDAIRO consented to being audio and video recorded and was then read his MIRANDA warnings from a pre-printed card by Det. Theis. Abimbola OSUNDAIRO declined to speak with R/D and Det. Theis. At this point the interview was terminated.

After being released by CBP (at approximately 1959 hours), Det. Jasica and Task Force S/A Wing met Olabinjo OSUNDAIRO near the exit to the Customs and Border Protection area. Det. Jasica identified himself as a Chicago Police Detective and requested to have a conversation with Olabinjo OSUNDAIRO. Olabinjo OSUNDAIRO agreed and followed Det. Jasica and Task Force S/A Wing to an interview area located inside the CBP office. R/D stayed with Abimbola OSUNDAIRO inside the interview room, as Det. Theis met with Det. Jasica and Task Force S/A Wing, who accompanied Olabinjo OSUNDAIRO to a separate interview room located inside the CBP office. Det. Theis entered the interview room with Olabinjo OSUNDAIRO. Det. Jasica then relieved R/D and stayed with Abimbola OSUNDAIRO. R/D then joined Det. Theis and Olabinjo OSUNDAIRO.

At 2002 hours, Olabinjo OSUNDAIRO consented to being audio and video recorded and was then read his MIRANDA warnings from a pre-printed card by Det. Theis. Olabinjo OSUNDAIRO declined to speak with R/D and Det. Theis. At this point the interview was terminated.

R/D elected to execute search warrant number 19SW5000 for the person of Olabinjo OSUNDAIRO. R/D provided Olabinjo OSUNDAIRO a copy of the search warrant which Olabinjo OSUNDAIRO then read. Olabinjo OSUNDAIRO complied with the search and R/D secured the personal property, including three cell phones [REDACTED] and [REDACTED] belonging to Olabinjo OSUNDAIRO. Olabinjo OSUNDAIRO provided R/D with the unlock codes to the three phones he had in his possession.

R/D then elected to return to Area Central with Olabinjo OSUNDAIRO and Abimbola OSUNDAIRO. While keeping both subjects separated, Olabinjo OSUNDAIRO was placed into 016th District beat car 1642 and Abimbola OSUNDAIRO was placed into 016th District beat car 1651. Both subjects were then transported to Area Central for further processing. Both beat cars had in car camera and in car audio activated.

(All times are approximate and based on ERI video)

When Olabinjo OSUNDAIRO arrived at Area Central, he was placed in interview room number 1 by beat car 1642. At 2208 hours, the camera was activated by Sgt. Blas #1248 with Olabinjo OSUNDAIRO in the room. At 2221 hours, R/D and Det. Theis entered the room and Olabinjo OSUNDAIRO consented to audio and video recording of the room. Olabinjo OSUNDAIRO was then read his MIRANDA warnings from the CPD FOP book. Olabinjo OSUNDAIRO declined to speak with R/D or Det. Theis. At 2232 hours, search warrant #19SW5009 was executed by CPD ET Glowacki #15452, who recovered a hair and a buccal sample. The ET was unable to take prints at this time as the ink tray for fingerprinting was frozen. At 2256 hours, Olabinjo OSUNDAIRO asked about his charges and asked R/D to speak to an attorney. At 2329 hours, ET Glowacki returned to take fingerprints and palm prints. At 2352 hours, Olabinjo OSUNDAIRO was given alcohol wipes to clean the ink off of his hands. At 0131 hours, on 14-FEB-2019, Olabinjo OSUNDAIRO was brought

down to the 002nd District lockup for the evening. Several times during the course of the evening, Olabinjo OSUNDAIRO was offered food, water and use of the restroom.

When Abimbola OSUNDAIRO arrived at Area Central, ERI camera was activated by Sgt. Blas for interview room number 7 and at 2212 hours, beat car 1651 placed Abimbola OSUNDAIRO in the room. At 2247 hours, R/D and Det. Theis entered the room and Abimbola OSUNDAIRO consented to audio and video recording of the room. Abimbola OSUNDAIRO was then read his MIRANDA warnings from the CPD FOP book. Abimbola OSUNDAIRO declined to speak with R/D or Det. Theis. Det. Theis then attempted to serve search warrant 19SW5011. Abimbola OSUNDAIRO was given a copy of the warrant and found that the birthdate was incorrect and refused to participate in the warrant. R/D and Det. Theis then had a conversation with ASA Bill Reardon and ASA Nick Trutenko, who looked at said warrant and stated that all of the information in regards to the identity of Abimbola OSUNDAIRO was correct with the exception of the month of birth. ASA Bill Reardon and ASA Nick Trutenko advised that this was known as a "scriveners error" and the warrant should be enforceable. ASA Bill Reardon and ASA Nick Trutenko also stated the warrant could be rewritten and the error corrected. At 2251 hours, Abimbola OSUNDAIRO was given a bottle of water. At 2307 hours, Abimbola OSUNDAIRO was advised the discrepancy on the warrant was a "scriveners error" and the warrant was enforceable. Again, Abimbola OSUNDAIRO refused to cooperate without his lawyer. At 2325 hours, R/D requested Abimbola OSUNDAIRO to open his phone in an attempt to find his lawyers phone number. Abimbola OSUNDAIRO refused and asked R/D to call [REDACTED] at [REDACTED]. At 2350 hours, R/D informed Abimbola OSUNDAIRO that he would rewrite the warrant and attempt to have a lawyer present when search warrant 19SW5011 was enforced. At 0144 hours, on 14-FEB-2019, Abimbola OSUNDAIRO was brought down to the 002nd District lockup for the evening. Several times during the course of the evening, Abimbola OSUNDAIRO was offered food, water and use of the restroom. (See ERI Video for a more detailed account of the listed events)

Det. McKendry then rewrote 19SW5011, correcting the "scriveners error". This warrant was then given to ASA Bill Reardon, who reviewed and approved the warrant and assigned search warrant number 19SW5073.

14-FEB-2019

At approximately 0200 hours R/D elected to complete search warrant 19SW5000 (search of the personal property-luggage of Olabinjo OSUNDAIRO recovered at OHARE Airport) and 19SW5004 (search of the personal property-luggage of Abimbola OSUNDAIRO recovered at OHARE Airport). This search was conducted in the SOMEX office at Area Central. R/D performed a search of luggage and personal property belonging to Olabinjo OSUNDAIRO. R/D then inventoried the luggage and person property belonging to Olabinjo OSUNDAIRO under CPD INV# 14375402. R/D then performed a search of luggage and personal property belonging to Abimbola OSUNDAIRO. R/D recovered a spiral notebook from the luggage belonging to Abimbola OSUNDAIRO and inventoried said notebook under INV #14375433. R/D then inventoried the luggage and person property belonging to Abimbola OSUNDAIRO under CPD INV# 14375362, 14375375 and 14375417.

The investigation continues.

Report of:
Det. Vogenthaler #20390

Det. Theis #21217

EXHIBIT K

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id : 11580050
Sup id : 13015654 CASR339

PROGRESS-VIOLENT(SCENE)

DETECTIVE SUP. APPROVAL COMPLETE

Last Offense Classification/Re-Classification	IUCR Code	Original Offense Classification	IUCR Code
BATTERY / Agg: Hands/Fist/Feet No/Minor Injury	0440	BATTERY / Agg: Hands/Fist/Feet No/Minor Injury	0440
Address of Occurrence	Beat of Occur	No of Victims	No of Offenders
341 E LOWER NORTH WATER ST	1834	1	2
		No of Arrested	SCR No
		0	
Location Type	Location Code	Secondary Location	Hate Crime
Street	304		No
Date of Occurrence	Unit Assigned	Date RO Arrived	Fire Related?
29-JAN-2019 02:00	1823R	29-JAN-2019 02:42	NO
		Gang Related?	Domestic Related?
		NO	NO

Reporting Officer	Star No	Approving Supervisor	Star No	Primary Detective Assigned	Star No
GRAVES, Robert	20007	RYAN, Sean	1401	MURRAY, Kimberly	20808
Date Submitted	Date Approved	Assignment Type			
06-FEB-2019 05:30	06-FEB-2019 05:32	FIELD			

THIS IS A FIELD INVESTIGATION PROGRESS-VIOLENT(SCENE) REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular

Phone:

SSN:

DLN/ID: - CA

OTHER IDENTIFICATIONS: Type - State Id #

State - California

Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

SUSPECT(S)

UNK

Male / White

ACTIONS: The Offender Fled From Sidewalk

RELATIONSHIP OF VICTIM TO OFFENDER:

JC133190

[REDACTED] - No Relationship

UNK

Male / White

DESCRIPTION: 5'10-6'00, 180-200,**ACTIONS:** The Offender Fled From Sidewalk**WEARING:** Black Mask With Open Eyes Only, Dark Jacket/Top, Dark Pants**RELATIONSHIP OF VICTIM TO OFFENDER:**

[REDACTED] - No Relationship

ITEM USED:

Weapon

VICTIM INJURIESType

Abrasions

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital**INJURY TREATMENT:** Treated And ReleasedWeapon Used

Hand/Feet/Teeth/Etc.

PHYSICIAN NAME: Dr Turelli**TRANSPORTED TO:**

[REDACTED] (Victim)

Transported To Northwestern Hospital

WEAPON(S):**INV#:** 14363589**Evidence****PROPERTY TYPE:** OTHER

White Rope

OWNER: Unk**POSSESSOR/USER:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**LOCATION OF INCIDENT:**

341 E Lower North Water St

Chicago IL 60611

304 - Street

DATE & TIME OF INCIDENT:

29-JAN-2019 02:00

MOTIVE CODE(S):

Undetermined

CAUSE CODE(S):

Other

METHOD CODE(S):

Dna

CAU CODE(S):

Dna

OTHER PROPERTY RECOVERED:**INV #:** 14363588**Evidence**

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design

Stain To Back Of Navy Hoodie

OWNER: [REDACTED]**POSSESSOR/USER:** [REDACTED]**PHONE#:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**INV #:** 14363589**Evidence****PROPERTY TYPE: OTHER**

White Rope

OWNER: Unk**POSSESSOR/USER:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**OTHER PROPERTY
DAMAGED:****INV #:** 14363588**Evidence****PROPERTY TYPE: CLOTHES/FURS**

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design

Stain To Back Of Navy Hoodie

OWNER: [REDACTED]**POSSESSOR/USER:** [REDACTED]**PHONE#:** [REDACTED]**QUANTITY:** 1**LOCATION FOUND:** [REDACTED]**PERSONNEL
ASSIGNED:**Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R**OTHER INDIVIDUALS
INVOLVED:**

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED] 1958**DESCRIPTION:** 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium

Complexion

RES:

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular
Phone:

DLN/ID: - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

UNK

(Victim)

(Suspect)

UNK

(Victim)

(Suspect)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

THIS IS THE ASSIGNED UNIT PROGRESS-VIOLENT (SCENE) REPORT

This report should be read in conjunction with all other case reports related to RD Number JC-133190

TYPE OF INCIDENT:

Aggravated Battery - Hands, Fist, Feet / Minor Injury (0440)

RD NUMBER:

JC-133190

LOCATION:

341 E Lower North Water St
Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:

Tuesday, 29 Jan 19, 0200 hours

WEATHER, LIGHTING:

Cold and Clear, 5 Degrees, Artificial Street Lamp Lighting

DATE, TIME ASSIGNED:

29 Jan 19, 0445 hours

VICTIM:

[REDACTED]
M/1/36 [REDACTED] 82
6'0" 170

[REDACTED]
CA DL# [REDACTED]

CA SID# [REDACTED]

FBI# [REDACTED]

Occupation: Actor

Clothing: Cream and multi colored knit sweater, navy hooded sweatshirt, light blue jeans, white gym shoes

ARREST HISTORY:

Total Arrests: 1

Total Convictions: 1

INJURIES:

Abrasions and redness to right and left cheeks

Injury to inner lower lip

Redness to neck

Soreness to back, shoulder, and rib area

TAKEN TO:

Northwestern Hospital

TAKEN BY:

[REDACTED] (Creative Director)

M/1/60 [REDACTED] 58
[REDACTED]

CA DL# [REDACTED]

TREATED BY:
Dr TURELLI

WANTED:

1)

M/2/unk

Approximate Height 5'10" - 6'0"

Approximate Weight 180-200

Black Mask with open eye area

Dark colored jacket/top

Dark colored pants

2)

No Description Given

MANNER / MOTIVE:

The victim was walking to his residence when he was approached by two offenders who engaged in racial and homophobic slurs directed at the victim. The offenders then struck the victim about the face and body causing minor injuries / undetermined motive, possible hate crime

EVIDENCE:

Inventory# 14363588

1 Blue Hooded Sweatshirt

1 Cream Sweater with Muti Color Pattern

Inventory# 14363589

1 White Rope

PHOTOGRAPHS:

Photo ID card

Street Signs at Intersection of New St and North Water St

Multiple Views of Southwest Corner of New St and North Water St

View of Victim [REDACTED] (M/1/36)

Identification Photo of Victim

Views of Injury to Victim's Left Cheek and Eye Area

Views of Injury to Victim's Right Cheek and Eye Area

Views of Injury to Victim's Neck

Views of Injury to Victim's Lower Lip

Views of Victim's Zippered Ivory Colored Sweater, Front and Back

Views of Victim's Navy Blue Hooded Sweatshirt with Suspect Bleach Stains, Front and Back

View of White Rope


VIDEO:

Loews Dock Area (Recovered)

340 E North Water St

Chicago, IL 60611


Contact:




Loews Building (To Be Recovered)
340 E North Water St
Chicago, IL 60611
Contact:




Subway Restaurant (Recovered)
511 N McClurg Ct
Chicago, IL 60611
Contact:




Target (Recovered)
401 E Illinois St
Chicago, IL 60611
Contact:




River East Center (Recovered)
322 E Illinois St
Chicago, IL 60611
Contact:



City View Condominiums (To Be Recovered)
Dock Cameras
440/480 N McClurg St
Chicago, IL 60611
Contact:



Walgreens (Recovered)
342 E Illinois St
Chicago, IL 60611
Contact:



Lizzy McNeil's Bar (To Be Recovered)

400 N McClurg Ct
Chicago, IL 60611
Contact:



Sheraton Hotel (To Be Recovered)
Chicago Burger Company
301 E North Water St
Chicago, IL 60611
Contact:



PODS:

6870 401 N New St (Ordered)
6879 500 N McClurg Ct (Ordered)
9079 343 E River Drive (Ordered)
9080 359 E River Drive (Ordered)
6786 301 E Lower North Water St (Ordered)
6779 399 N Columbus Dr (Unable To Order)

PERSONNEL ASSIGNED:

Beat 1823R Assigned Paper Unit
PO BAIG #14926
PO ALVAREZ #19689

Beat 1824R Assist Unit
PO GARCIA #8840
PO CARRASCO #7267

Beat 5833 Evidence Technicians
ET BATTAGLIA #11770
ET HEIN #14225

Beat 5124 Assigned Detectives
Det MURRAY #20808
Det GRAVES #20007

Beat 5114 Assisting Detectives
Det GUTIERREZ #21150
Det SANTOS #21429

Beat 5134 Assisting Detective
Det CORFIELD #20613

Beat 5157 Assisting Detectives
Det FYKES #20925
Det COOPER #20146



Beat 5164 Assisting Detective
Det FRAUSTO #20003

Beat 5162 Assisting Detective
Det BRENNAN #20316

INTERVIEWED:

[REDACTED] (Victim)

[REDACTED] (Creative Director)

[REDACTED] (Musical Agent)

[REDACTED] (Night Doorman)

F/47

71

INVESTIGATION:

R/D's were assigned this investigation by Sgt. WILLIAMS #847 of this command on 29 Jan 2019 at approximately 0445 hours. R/D's were informed that there was an Aggravated battery which occurred at the location of 341 E. Lower North Water street and the victim is an actor [REDACTED] on the "Empire" television show. R/D's were informed that the victim was at Northwestern Hospital and there was a possible crime scene at 341 E. Lower North Water street. The contents of this report, including interviews, are in essence and not verbatim unless otherwise noted by quotation marks.

R/D's immediately relocated to the scene 341 E. Lower North Water St. to begin the investigation. Upon arrival, at approximately 0515 hours, R/D's made the following observations. R/D's noted that there was no crime scene being protected and R/D's verified this VIA OEMC and beat 1832R stated that there was no evidence outside, at the location of the incident.

The address of 341. E. Lower North Water Street (400 north) is situated on the south side of Lower North Water Street which is a two Way Street with vehicular traffic flowing east and west bound. There is vehicular parking on the south side of Lower North Water Street. Lower North Water Street intersects with New Street (341 east). A staircase, allowing foot traffic access to upper and lower North Water Street was located on the southwest corner of the intersection. New street is a two Way Street with vehicular traffic flowing both north and south bound. New St. only extends for one (1) block and ends at Illinois street (500 north) at the north end. R/D's noted that New Street becomes a one way northbound only after the intersection of Lower North Water street and the Chicago river lies to the south of New Street. There is only vehicular parking on the west side of New Street.

Numerous garage and service doors line northbound New St. towards Illinois St. There are Multi-unit residential buildings located eastbound on Lower North Water Street. The lobby and entrance to [REDACTED] residence in on the north side of Upper North Water Street [REDACTED] The Sheraton Hotel (301 E. North Water St.) is on the south side of the upper level of North Water Street and west of the aforementioned staircase.

R/D's arrived at Northwestern Hospital at 0545 hours to interview [REDACTED]

AT 0555 hours R/D's interviewed [REDACTED] in room #68 of the Emergency Room Mezzanine Level with [REDACTED] present. [REDACTED] agreed to be interviewed and related in essence not verbatim, that he flew into O'Hare Airport from New York's LaGuardia Airport at approximately midnight and was driven home to his apartment by [REDACTED] arriving at approximately 0130 hours. [REDACTED] was hungry so he left his apartment alone and exited the building through the lobby on upper North Water St. [REDACTED] used the staircase near the Sheraton Hotel (301 E. North Water St.) to make his way to Lower North Water street and New St. [REDACTED] began walking towards Walgreens located at 342 E. Illinois St. to grab some eggs, by walking north on New St., however Walgreens was closed. [REDACTED] proceeded to Subway Restaurant at 511 N. McClurg Ct. and purchased a tuna sub for [REDACTED] and a salad for himself. [REDACTED] left the Subway Restaurant with the purchased food in a bag and walked southbound on the west side of McClurg CT to walk home. While walking on McClurg CT [REDACTED] called his music agent, [REDACTED] and placed his cell phone in his pocket. [REDACTED] used a wired headphone earbud to speak with [REDACTED] while he walked home. [REDACTED] approached his building on Lower North Water St and walked towards the dock area to enter into the building via a garage access door. Before he reached the access door near the dock area [REDACTED] realized he forgot his key fob and then turned to walk towards the staircase to enter through the lobby entrance instead. While in the middle of the intersection of New St and Lower North Water St and walking southbound [REDACTED] heard one of the offenders state "Empire Faggot Empire Nigger." [REDACTED] replied "what the fuck you say to me?". One of the offenders stated "this is MAGA country Nigger". Immediately thereafter, [REDACTED] was punched to the left of his face. [REDACTED] began to fight back and all three individuals fell to the ground and were "tussling." [REDACTED] felt kicking to his back and a pulling on his neck. The physical altercation then stopped and the offenders fled on foot southbound on New St towards the river and towards the pub named Lizzies. [REDACTED] retrieved his phone from the ground and realized that [REDACTED] was still connected. [REDACTED] encouraged [REDACTED] not to chase after his attackers and go into his apartment for safety. As [REDACTED] was on the staircase, to retreat up towards his apartment building lobby, he noticed a rope, fashioned like a noose, around his neck. When [REDACTED] entered into the building lobby he told the door guy in passing "I just got jumped" then returned to his apartment. As he entered his apartment he felt something wet on his sweatshirt and smelled bleach. [REDACTED] did not initially want to notify the Police, but [REDACTED] encouraged him to report the incident. [REDACTED] subsequently called 911. [REDACTED] stated he was not robbed and was in possession of his property which consisted of his phone, credit card, ATM card, and ID. [REDACTED] gave the following description of offender #1 Male, white, unknown age, 5'10"-6'00" weighing between 180-200 pounds, black ski mask with open eye area, dark colored jacket/top, and dark pants. [REDACTED] related he was able to see the color of the skin through the open area of the mask. [REDACTED] was unable to provide a description of offender #2. [REDACTED] injuries consisted of scratches on both cheeks, redness to the neck and soreness to the back area [REDACTED] was expected to be treated and released. During the interview [REDACTED] revealed he was sent a threatening letter approximately a week prior that the FBI was currently investigating. He also revealed that he received a phone call on Saturday in which a male voice said "Hey you little faggot" when he

answered the phone and then promptly hung up. Lastly, [REDACTED] revealed that he was a guest on AL Sharpton Live Sunday at 4pm in which they were speaking about Trump and HBCU's (Historically Black Colleges and Universities). [REDACTED] had nothing further to relate to R/D's at this time and the interview concluded at 0645 hours.

At 0650 hours R/D's interviewed [REDACTED] alone in room #68 of the Emergency Room Mezzanine Level, while [REDACTED] was receiving medical treatment in a different area of the hospital. [REDACTED] agreed to be interviewed and related, in essence not verbatim, that he is [REDACTED] Creative Director and is staying at [REDACTED] apartment as a guest. [REDACTED] left apartment in [REDACTED] vehicle around 7pm to pick up [REDACTED] from O'Hare Airport. [REDACTED] waited over 4 hours for [REDACTED] to arrive at O'Hare due to many flight delays. They drove back to [REDACTED] apartment together arriving at approximately 1:30 am. [REDACTED] was frustrated regarding the flight delay, so he stayed in the apartment when [REDACTED] left to get food. [REDACTED] received 2 missed calls from [REDACTED] at 2:07 am and 2:08 am. Det. GRAVES verified said missed calls by viewing [REDACTED] phone. [REDACTED] had nothing further to relate to R/D's at this time and the interview was concluded at 0700 hours.

Evidence Technicians beat 5833 arrived at Northwestern Hospital at approximately 0630 hours to document the injuries of [REDACTED]. Beat 5833 photographed the visible injuries of [REDACTED]. R/D's were informed that beat 5833 went to the crime scene and photographed the area. R/D's informed beat 5833 that the reporting Officers beat 1823R had recovered the rope and the clothing that had been stained with apparent bleach. Beat 5833 relocated to 018 district to photograph and inventory the clothing and rope.

At 0615 hours Det. GUTIERREZ interviewed [REDACTED] the night doorman, working at the time [REDACTED] returned to the building after being attacked. [REDACTED] agreed to be interviewed and related, in essence not verbatim that he observed a male enter the lobby and state "I was jumped." The male then went upstairs. [REDACTED] also observed a cut/ scratch on the male's face and what appeared to be snow on his hood. [REDACTED] related that he was aware that [REDACTED] resided in the building and believed the male to be [REDACTED]. [REDACTED] had nothing further to relate to Det. GUTIERREZ at this time and the interview concluded at 0620 hours.

R/D's relocated back to the area of the crime scene in an attempt to recover video. R/D's observed a POD camera on the north east corner of New St. and Lower North Water St.

R/D's observed a POD camera at the end of New St. by the river.

R/D's observed surveillance cameras on Walgreens located at 342 E. Illinois St. (later recovered by Det. FYKES #20925 from [REDACTED]). The interior camera pointing towards the front doors does not appear to show the victim.

R/D's observed private surveillance cameras on the building at the corner of Illinois St and McClurg Ct. R/D's contacted the security for River East Center located at 322 E. Illinois. R/D's recovered said video from [REDACTED].

R/D's relocated to Subway at 511 N. McClurg Ct and was informed that the Video would be emailed to Det. MURRAY by the owner [REDACTED]. The video confirmed that the victim was inside the Subway ordering food.

R/D's observed surveillance cameras at Target located at 401 E. Illinois. R/D's recovered video from [REDACTED] The video appears to show victim [REDACTED] walking on the west side of McClurg Ct carrying a bag.

R/D's observed cameras at City View Condos and [REDACTED] allowed R/D's to view the cameras. The cameras are situated in the rear of the property and are motion activated. The video does not appear to show victim [REDACTED] walking on McClurg Ct.

R/D's spoke with [REDACTED] of [REDACTED] (residence) who related that he would be able to provide the transponder times that the vehicle of the victim was leaving and entering into the garage. He would be able to provide this information on 30 Jan 2019 along with the building video.

Det. GUTIERREZ recovered video from the loading dock under the residence (Lower North Water St) of [REDACTED] The video shows [REDACTED] walking towards the garage door then turns around to walk towards the stairs leading up to the lobby of his residence.

R/D's reviewed POD 6870 located at 401 N. New. The POD view is north on New street from Lower North Water St. The camera shows two subjects in dark clothes on the west side of New Street seated on the bench which is in the middle of New St. shortly before the incident. The subjects are then observed walking south, on the west side of New St., just moments before the incident. The subjects leave sight of the camera.

R/D's viewed POD #9079 located at 343 E. River drive. The camera is facing west looking towards the River walk. The camera shows the two individuals running southbound along the wall towards the river then running west down the river walk towards Columbus St. These subjects are observed running just moments after the incident occurred.

R/D's viewed the lobby video which shows the victim [REDACTED] walking into the lobby, passing by the doorman and briefly saying something [REDACTED] is observed with an object hanging around his neck and some white substance on his hood.

The body cameras of Officers BAIG #14926 and ALVAREZ #19689 was viewed and preserved. The cameras show the Officers being met by [REDACTED] The Officers being brought up to the apartment and upon entering the apartment victim [REDACTED] is observed to have rope wrapped around his neck. Upon being informed that the interview is being recorded victim [REDACTED] requested the cameras be turned off.

Det. CORFIELD interviewed [REDACTED] (DOB [REDACTED] 1971, F/U/47, [REDACTED] via telephone at approximately 1820 hours. [REDACTED] lives at [REDACTED] the same building [REDACTED] lives in. [REDACTED] related the following in summary and not verbatim:

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

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

At 1814 hours Det. GRAVES interviewed ██████ via telephone. ██████ agreed to be interviewed and related in essence and not verbatim, that he was on the phone with ██████ during the attack. ██████ related that at this time he was in Las Vegas and he was on the phone with ██████ at approximately 1200 Pacific Time (0200 central time). ██████ heard someone say something in the background, then heard someone ask if he was the "Empire faggot nigger". ██████ stated he did hear someone say "this is MAGA country". He stated the phone dropped and heard what he believed to be a struggle. ██████ then picked up the phone and said "I was jumped." ██████ told him not to go after the guys and call the Police. ██████ then hung up. ██████ stated that he called ██████ 2 times, but ██████ did not pick up. ██████ related that the times were at 0207 and 0208 hours (central time). ██████ related that he is ██████ musical Agent and stated that he believed SMOLLETT is in good standing with the show "Empire". ██████ believed ██████ signed a contract for another year maybe two. ██████ did confirm that ██████ is ██████ Creative Director. ██████ related that he did not have anything further to add at this time and the interview was concluded at approximately 1825 hours.

████████ was contacted and agreed to do a "walkthrough" of the incident to accurately document the incident. R/D's arrived at the residence of victim ██████ at 1915 hours. ██████ was placed in the back seat of an unmarked Police car. ██████ requested his two friends accompany him, which R/D's agreed.

████████ provided his flight information American Airlines flight number 336 from New York LaGuardia to Chicago O'Hare on 28 Jan 2019.

████████ then details the route he took as R/D's drove the area. ██████ stated that he left the apartment from Upper North Water St., walks down the stairs and walks down New street smoking a cigarette towards Walgreens (342 E. Illinois). He realizes Walgreens is closed then continues towards Subway (511 N. McClurg). ██████ calls ██████ at 0145 and asked if he wants anything from Subway he said a Tuna sandwich. ██████ stated that he orders food and takes the food to go. He leaves Subway, crosses the street and walks northbound on the west side of Mc Clurg Ct. ██████ stated that he called ██████ and was talking with him while wearing the earbuds. He walks past the Target (401 E. Illinois) which is on the other side of the street. He then turns right on Lower North Water St. and walks on the north side of the street. He crossed New St. and was going to enter the residence through the lower level parking garage. He realized that he did not have his key fob because ██████ drove. He turns around and crosses south towards the stairwell. ██████ stated while in the street he hears the beginning of the altercation from behind him. Offenders approach southbound from New St, behind him. ██████ stated that the struggle occurred at the base of the stairwell where the snow was located. He stated that his phone fell to the ground and it was still connected with his manager, from 0201-0206 hours. ██████ stated that no property was taken he reiterated what was said prior to the altercation, "Empire Faggot Empire Nigger" and "this is MAGA country Nigger". ██████ stated they ran south towards the river, but doesn't know which way from there. ██████ then grabbed his phone, saw his food lying on the ground and he picked it up. ██████ stated "Look there is my water bottle that I bought from Subway it's still on the ground at the base of the stairs". ██████ was asked about the sweater not getting dirty to which he explained they were on the ice and snow. ██████ was asked if he would sign to release medical records, which he declined. ██████ was asked to submit to a buccal swab for

elimination for touching the rope which he stated he would ask [REDACTED] (to submit buccal also) and think about it. [REDACTED] was asked to turn over his phone to, which he declined. [REDACTED] stated that he did not have a broken rib as reported in the news, but he was sore in the rib area. R/D's concluded the walk through at 2000 hours and returned [REDACTED] to the front of his residence.

This investigation is ongoing. There is more video being gathered and reviewed. More reports will be generated detailing that progress.

This case remains in PROGRESS.

Report of:

Det. Robert GRAVES #20007

Det. Kimberly MURRAY #20808

Area Central Detective Division

EXHIBIT L

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id : 11580050
Sup id : 13058669 CASR339

PROGRESS		DETECTIVE SUP. APPROVAL COMPLETE			
Last Offense Classification/Re-Classification	IUCR Code	Original Offense Classification			IUCR Code
BATTERY / Agg: Hands/Fist/Feet No/Minor Injury	0440	BATTERY / Agg: Hands/Fist/Feet No/Minor Injury			0440
Address of Occurrence	Beat of Occur	No of Victims	No of Offenders	No of Arrested	SCR No
341 E LOWER NORTH WATER ST	1834	1	2	0	
Location Type	Location Code	Secondary Location			Hate Crime
Street	304				No
Date of Occurrence	Unit Assigned	Date RO Arrived	Fire Related?	Gang Related?	Domestic Related?
29-JAN-2019 02:00	1823R	29-JAN-2019 02:42	NO	NO	NO
Reporting Officer	Star No	Approving Supervisor	Star No	Primary Detective Assigned	Star No
CORFIELD, Robert	20613	HALEEM, Morad	1280	MURRAY, Kimberly	20808
Date Submitted	Date Approved	Assignment Type			
01-MAR-2019 02:54	19-MAR-2019 14:41	FIELD			

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular

Phone:

SSN:

DLN/ID: CA

OTHER IDENTIFICATIONS: Type -

State Id #

State - California

Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

SUSPECT(S)

UNK

Male / White

ACTIONS: The Offender Fled From Sidewalk

RELATIONSHIP OF VICTIM TO OFFENDER:

JC133190

[REDACTED] - No Relationship

UNK

Male / White

DESCRIPTION: 5'10-6'00, 180-200,

ACTIONS: The Offender Fled From Sidewalk

WEARING: Black Mask With Open Eyes Only, Dark Jacket/Top, Dark
Pants

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED] - No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

Type

Weapon Used

Abrasions

Hand/Feet/Teeth/Etc.

EXTENT: Minor
Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED] (Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**LOCATION OF
INCIDENT:**

341 E Lower North Water St
Chicago IL 60611
304 - Street

**DATE & TIME OF
INCIDENT:**

29-JAN-2019 02:00

MOTIVE CODE(S):

Undetermined

CAUSE CODE(S):

Other

METHOD CODE(S):

Dna

CAU CODE(S):

Dna

**OTHER PROPERTY
RECOVERED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

INV #: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**OTHER PROPERTY
DAMAGED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**PERSONNEL
ASSIGNED:**

Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R

**OTHER INDIVIDUALS
INVOLVED:**

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED]-1958

DESCRIPTION: 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium

Complexion

RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:

Cellular [REDACTED]
Phone: [REDACTED]

DLN/ID: [REDACTED] CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

[REDACTED]	(Victim)	
UNK		(Suspect)
[REDACTED]	(Victim)	
UNK		(Suspect)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500

REQUEST TYPE: Notification

PERSON NAME: ,Goldie

STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000

REQUEST TYPE: Notification

PERSON NAME: ,

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:060500

REQUEST TYPE: Notification

PERSON NAME: ,Rocco

STAR #: 15049

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

THIS IS AN AREA CENTRAL INVESTIGATIONS PROGRESS CASE SUPPLEMENTARY REPORT AND SHOULD BE READ IN CONJUNCTION WITH ALL REPORTS RELATED TO THIS RECORD DIVISION NUMBER.

RD NUMBER:
JC133190

TYPE OF INCIDENT:

Aggravated Battery - Hands, Fist, Feet / Minor Injury (0440)

LOCATION:

341 E Lower North Water St
Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:

Tuesday, 29 Jan 2019, 0200 hours

DATE, TIME ASSIGNED:

29 Jan 2019 at 0445 hours

VICTIM:

[REDACTED]
M/1/36 [REDACTED] 1982
6'0" 170
[REDACTED]

MANNER / MOTIVE:

The victim was walking to his residence when he was approached by two offenders who engaged in racial and homophobic slurs directed at the victim. The offenders then struck the victim about the face and body causing minor injuries / undetermined motive, possible hate crime

WITNESS:

[REDACTED] Loss Prevention Officer Sheraton
DOE [REDACTED] 1989 Grand Hotel
M/B/29 [REDACTED]
[REDACTED]

IN DL # [REDACTED]

PERSON(S) INTERVIEWED:

[REDACTED] Witness

INVESTIGATING DETECTIVES:

Det. R. CORFIELD # 20613
Det. J. SANTOS # 21429

INVESTIGATION:

In summary, on 01 FEB 2019 at 0030 hours, R/D CORFIELD # 20613 and Det. SANTOS # 21429 relocated to the Sheraton Grand Hotel located at 301 E North Water St. and interviewed Loss Prevention Agent [REDACTED] related the following in summary and not verbatim:

On the night of the attack, 29 JAN 2019, [REDACTED] was working in his official capacity as a Loss

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

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

This investigation remains in PROGRESS.

REPORT OF:

Detective Robert CORFIELD # 20613
Area Central Detective Division

EXHIBIT M

CHICAGO POLICE DEPARTMENT
CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

JC133190

Case id : 11580050
Sup id : 13056454 CASR339

PROGRESS

DETECTIVE SUP. APPROVAL COMPLETE

Last Offense Classification/Re-Classification	IUCR Code	Original Offense Classification			IUCR Code
BATTERY / Agg: Hands/Fist/Feet No/Minor Injury	0440	BATTERY / Agg: Hands/Fist/Feet No/Minor Injury			0440
Address of Occurrence	Beat of Occur	No of Victims	No of Offenders	No of Arrested	SCR No
341 E LOWER NORTH WATER ST	1834	1	2	0	
Location Type	Location Code	Secondary Location			Hate Crime
Street	304				No
Date of Occurrence	Unit Assigned	Date RO Arrived	Fire Related?	Gang Related?	Domestic Related?
29-JAN-2019 02:00	1823R	29-JAN-2019 02:42	NO	NO	NO

Reporting Officer	Star No	Approving Supervisor	Star No	Primary Detective Assigned	Star No
CALLE, David	20177	HALEEM, Morad	1280	MURRAY, Kimberly	20808
Date Submitted	Date Approved			Assignment Type	
13-MAR-2019 08:04	19-MAR-2019 14:48			FIELD	

THIS IS A FIELD INVESTIGATION PROGRESS REPORT

VICTIM(S):

TYPE: Individual

Male / Black / 36 Years

DOB: 1982

RES:

BIRTH PL: California

DESCRIPTION: 5'11,175,Brown Hair, Short Hair Style, Brown Eyes, Light Brown Complexion

EMPLOYMENT: Actor

SOBRIETY: Sober

OTHER COMMUNICATIONS:

Cellular
Phone:

SSN:

DLN/ID: CA

OTHER IDENTIFICATIONS: Type - State Id #
State - California
Type - Other Id # Fbi#

ACTIONS: The Victim Outside Street

SUSPECT(S)

UNK

Male / White

ACTIONS: The Offender Fled From Sidewalk

RELATIONSHIP OF VICTIM TO OFFENDER:

JC133190

[REDACTED] - No Relationship

UNK

Male / White

DESCRIPTION: 5'10-6'00, 180-200,

ACTIONS: The Offender Fled From Sidewalk

WEARING: Black Mask With Open Eyes Only, Dark Jacket/Top, Dark
Pants

RELATIONSHIP OF VICTIM TO OFFENDER:

[REDACTED] - No Relationship

ITEM USED:

Weapon

VICTIM INJURIES

Type

Abrasions

Weapon Used

Hand/Feet/Teeth/Etc.

EXTENT: Minor

Injured by Offender

HOSPITAL: Northwestern Hospital

INJURY TREATMENT: Treated And Released

PHYSICIAN NAME: Dr Turelli

TRANSPORTED TO:

[REDACTED] (Victim)

Transported To Northwestern Hospital

WEAPON(S):

INV#: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**LOCATION OF
INCIDENT:**

341 E Lower North Water St

Chicago IL 60611

304 - Street

**DATE & TIME OF
INCIDENT:**

29-JAN-2019 02:00

MOTIVE CODE(S):

Undetermined

CAUSE CODE(S):

Other

METHOD CODE(S):

Dna

CAU CODE(S):

Dna

**OTHER PROPERTY
RECOVERED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

INV #: 14363589

Evidence

PROPERTY TYPE: OTHER

White Rope

OWNER: Unk

POSSESSOR/USER: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**OTHER PROPERTY
DAMAGED:**

INV #: 14363588

Evidence

PROPERTY TYPE: CLOTHES/FURS

1 Navy Hoodie With "Chicago" On Front And 1 White Sweater With Multicolor Design
Stain To Back Of Navy Hoodie

OWNER: [REDACTED]

POSSESSOR/USER: [REDACTED]

PHONE#: [REDACTED]

QUANTITY: 1

LOCATION FOUND: [REDACTED]

**PERSONNEL
ASSIGNED:**

Assisting Detective/Youth Inv.

VOGENTHALER, Michael W # 20390

THEIS, Michael J # 21217

Detective/Investigator

CECCHIN, Vincent G # 20091

MURRAY, Kimberly D # 20808

Reporting Officer

BAIG, Muhammad O # 14926

BEAT: 1823R

**OTHER INDIVIDUALS
INVOLVED:**

[REDACTED]

(Person Reporting
Offense)

Male / Black / 60 Years

DOB: [REDACTED] 1958

DESCRIPTION: 6'01,200,Black Hair, Short Hair Style, Brown Eyes, Medium

Complexion
RES: [REDACTED]

EMPLOYMENT: Creative Director

OTHER COMMUNICATIONS:
Cellular [REDACTED]
Phone: [REDACTED]

DLN/ID: [REDACTED] - CA

ACTIONS: The Person Reporting Offense Was Inside Residence

CRIME CODE
SUMMARY:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury

IUCR ASSOCIATIONS:

0440 - Battery - Agg: Hands/Fist/Feet No/Minor Injury
[REDACTED] (Victim)
UNK (Suspect)
[REDACTED] (Victim)
UNK (Suspect)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:044500
REQUEST TYPE: Notification
PERSON NAME: ,Goldie
STAR #: 10478

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 01/29/2019:042000
REQUEST TYPE: Notification
PERSON NAME: ,
NOTIFICATION DATE & TIME: 01/29/2019:060500
REQUEST TYPE: Notification
PERSON NAME: ,Rocco
STAR #: 15049

INCIDENT NOTIFICATION:

REPORT DISTRIBUTIONS:

No Distribution

INVESTIGATION:

PROGRESS SUP NARRATIVE

TYPE OF INCIDENT:
Public Peace Violations / Other Violation (2890)

RD NUMBER:
JC-133190

LOCATION:
341 E Lower North Water St

Chicago, IL 60611
Street
District 018
Beat 1834

DAY, DATE, TIME:
Tuesday, 29 Jan 19, 0200 hours

WITNESSES:

[REDACTED]
M/1 [REDACTED] 1991
CB# [REDACTED]
IR# [REDACTED]
DLN [REDACTED] IL

[REDACTED]
M/1 [REDACTED] 1993
CB# [REDACTED]
IR# [REDACTED]
DLN [REDACTED] IL

OFFENDER:
SMOLLETT Jussie

[REDACTED]
M/1/36 [REDACTED] 1982
CB# 19771648
IR# [REDACTED]
DLN [REDACTED] CA

MANNER / MOTIVE:

Jussie SMOLLETT made false reports to police claiming to be the victim of an Aggravated battery/
Undetermined motive.

INTERVIEWED:

[REDACTED]
DLN: Indiana [REDACTED]

INVESTIGATION:

This investigation and the following is a summation and should not be considered verbatim unless noted. This Supplementary Case Report should be read in addition to and in conjunction with any other documentation in existence pertaining to this incident.

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

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

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

Reporting Detective
David Calle #20177
Area Central