

No. 105437

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Appellate Court of
)	Illinois, First District, No.
Plaintiff-Appellee,)	
)	
-vs-)	There heard on Appeal from the Circuit
)	Court of Cook County, Illinois,
)	No. 92 CR 14706.
)	
TERRANCE WALKER,)	Honorable
)	John Morrissey,
Defendant-Appellant.)	Judge Presiding.

PROOF OF SERVICE

TO: Lisa M. Madigan, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, Illinois 60601;
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 Mr. Terrance Walker, Register No. B-53452, Big Muddy River Correctional Center,
 P.O. Box 900, Ina, IL 62846

You are hereby notified that on July 8, 2008, we sent via State of Illinois messenger service twenty copies of the Brief and Argument in the above-entitled cause to the Clerk of the above Court and three copies to the Attorney General of Illinois. We have also personally delivered three copies to the State's Attorney of Cook County.

ROBERT M. STEPHENSON
 Assistant Appellate Defender

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

The undersigned, being first duly sworn on oath, deposes and says that he personally sent via messenger service the required number of copies of the attached Brief and Argument to the Clerk of the above Court and to the Attorney General of Illinois and personally delivered copies to the State's Attorney of Cook County on July 8, 2008.

CLERK

SUBSCRIBED AND SWORN TO BEFORE ME
 on July 8, 2008.

NOTARY PUBLIC

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BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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POINTS AND AUTHORITIES

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I. The trial court denied Terrance Walker his right to counsel and a fair trial by forcing the 16-year-old to trial on two counts of first degree murder with an appointed attorney that was admittedly and demonstrably unprepared to represent him. 10

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II. Terrance Walker received ineffective assistance of counsel when his court appointed attorney informed the court prior to the start of the juvenile’s double-murder trial that she was unprepared, that she could not proceed, and, during the ensuing trial, failed to provide any meaningful adversarial testing of the State’s case as evidenced by her failure to develop a theory of the case, submitting a legally deficient defense, failing to request a ruling on a motion to suppress, and failing to file any post-trial motion or notice of appeal after a trial that consumed less than 43 pages of transcripts. 20

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NATURE OF THE CASE

Terrance Walker was convicted of first degree murder and second degree murder after a bench trial and was sentenced to concurrent terms of 60 years and 15 years in prison, and the Appellate Court affirmed the judgment. This court allowed defendant's petition for leave to appeal.

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

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court denied Terrance Walker his right to counsel and a fair trial by forcing the 16-year-old to trial on two counts of first degree murder with an appointed attorney that was admittedly and demonstrably unprepared to represent him.

2. Whether Terrance Walker received ineffective assistance of counsel when his court-appointed attorney informed the court prior to the start of the juvenile's double-murder trial that she was unprepared, that she could not proceed, and, during the ensuing trial, failed to provide any meaningful adversarial testing of the State's case as evidenced by her failure to develop a theory of the case, submitting a legally deficient defense, failing to request a ruling on a motion to suppress, and failing to file any post-trial motion or notice of appeal after a trial that consumed less than 43 pages of transcripts.

STATEMENT OF FACTS

The State charged 15-year-old Terrance Walker with four counts of first degree murder in connection with the shooting deaths of Terry Mathews and Damien Stanford on July 2, 1992. (C. 13-17) On July 9, 1992, assistant public defender Marijane Placek entered her appearance on behalf of Terrance Walker. (C. 21) On August 12, 1993, assistant public defender Shelton Green filed a motion for continuance, indicating that assistant Marijane Placek was on a leave of absence from her duties, and would not resume her duties until September 13, 1993. (C. 31) On November 19, 1993, assistant public defender Viola Armijo Rouse filed a Motion to Suppress Statements on behalf of Terrance Walker. (C. 33-35) On January 20, 1994, the first trial date set by the parties, recently appointed counsel, Rouse, informed the court that she had failed to prepare to represent Terrance due to a scheduling error and being held to trial in other cases the previous night, but the Court refused to continue the case finding counsel's lack of preparedness "irrelevant," and a "dirty shame." (R. 8-9) Prior to this time, every continuance had been by agreement, the case had not previously been set for trial, and Terrance had not sought to delay the proceedings by requesting either a change of counsel or of judge. The proceedings that followed, which consumed a total of 42 pages of transcripts, resulted in Circuit Court Judge Morrissey finding then 16-year-old Terrance Walker guilty on one count of first degree murder, and one count of second degree murder. (R. 51-52) Judge Morrissey sentenced Terrance to two concurrent terms of 60 and 15 years in the Illinois Department of Corrections. (C. 69) Rouse did not file any post-trial motions.

Rouse did not file a notice of appeal. Instead, over twelve years after trial, on May 10, 2006, this Court allowed Terrance Walker's Motion for Supervisory Order

instructing the circuit court to reopen the case, admonish Terrance pursuant to Supreme Court Rule 605(a), and allow him an opportunity to file a notice of appeal. (C. 65-6) Terrance filed a notice of appeal. (C. 71-2) On September 4, 2007, the appellate court affirmed Terrance Walker's convictions in an unpublished order. *People v. Walker*, No. 1-06-1761 (1st Dist. September 4, 2007) (hereinafter, Order). On January 30, 2008, this Court allowed Terrance Walker's Petition for Leave to Appeal.

PROCEEDINGS IN CIRCUIT COURT

Terrance Walker appeared in court for trial on two counts of first degree murder, and learned, as the court did, that his appointed attorney had not prepared for trial. (R. 6) (CL. 19-20) Terrance's counsel explained that she mistakenly had calendared the trial for the following week, and only discovered her error the prior day. (R. 8) In addition, defense counsel had been on other trials all week – until 7:10 p.m. the day before in a different court room. (R. 8) Defense counsel informed the court that she was not prepared for trial. (R. 8-9) The following dialog occurred between the court and defense counsel:

COURT: Ms. Rouse, this has been set. I am sorry. We will pass this case for trial.

MS. ROUSE: I am not ready for trial, Judge, and I will not be able to go to trial today.

COURT: It is irrelevant. There isn't a private attorney in the business who hasn't tried to pull something like this.

MS. ROUSE: As the Court knows, I was not originally assigned to Mr. Walker's case.

COURT: I know, but it is a dirty shame.

(R. 9) When the court recalled the case, Terrance's double murder trial commenced. (R. 9) The resulting trial consisted of the testimony of four State's witnesses, of whom defense counsel asked a total of 19 questions during cross-examination. (R. 11-53) Defense counsel did not raise a single objection to any of the testimony offered by the State's witnesses. (R. 11-53) The defense did not call a single witness. (R. 11-53) The entire double-murder trial of the juvenile consumed a total of only 42 pages of transcripts. (R. 11-53)

The State's first witness, after defense counsel waived opening statement, was Chicago Police Officer Gregory Bella. (R. 13-17) Officer Bella testified that he received an assignment to investigate "men shot in a car" located at the 5400 block of West Kamerling on the morning of June 9, 1992. (R. 13-14) The officer observed a green Chevy parked on the south side of the street facing westbound, with two black males in the front seat. (R. 14-15) Both of the individuals had been shot in the back of the head. (R. 15) Officer Bella testified that he called for a supervisor, detectives, and a mobile crime lab. (R. 15) The officer guarded the scene until the crime lab and the detectives arrived. (R. 15) Defense counsel did not raise any objections to Officer Bella's testimony, nor did she ask any questions of the officer. (R. 13-17)

The State's second witness, forensic investigator Officer Robert Davie, received an assignment at 7:30 a.m., on June 9, 1992, to respond to a shooting at 5467 West Kamerling. (R. 18-9) The officer photographed the automobile at the scene, examined it for fingerprints, and looked for physical evidence. (R. 19) In connection with his investigation, the officer recovered a "blood standard" from the driver's side front seat, two fired cartridge cases from the rear floor of the automobile, and one .22 caliber cartridge case from the front passenger seat. (R. 20) The officer also lifted a fingerprint

from the exterior portion of a rear door or window. (R. 20) On cross-examination, defense counsel raised three questions for the officer, and established that the officer took print ridge impressions from both the inside and the outside of the car, from the left and right side of the car, and, in total, lifted 16 ridge impressions from the automobile. (R. 22)

The State's third witness, James Brewer, was qualified as an expert in the field of latent fingerprint identification by way of stipulation. (R. 24) Brewer testified that he was assigned to this case on June 12, 1992. (R. 24) In connection with his work, Brewer obtained "16 lifts" to examine. (R. 25) He specifically recalled a single lift identified only as having come "from the right exterior door of that car." (R. 25) Defense counsel did not raise an objection to this line questioning. (R. 24-5) Brewer placed the lift in the "Automated Fingerprint Identification System." (Hereinafter AFIS) (R. 25) Brewer requested the AFIS to submit five candidates based on the print. (R. 26) Brewer then compared the prints of the five candidates with the actual fingerprint lift. (R. 26) Brewer compared the lift to a candidate named Terrance Walker. (R. 26-7) To do so, Brewer accessed Terrance Walker's juvenile file. (R. 27) Brewer testified that "those prints belonged to one and the same person." (R. 28) On cross-examination, defense counsel raised two questions to establish that only one of the 16 lifts matched Terrance Walker's prints, and that the matched lift was taken from the "exterior door." (R. 28) This fact had already been established by the State during its direct examination of the witness. (R. 25)

Next, the State proceeded by way of stipulation. (R. 29) Specifically, it was stipulated that if Detective Michael Fleming were called testify, he would testify that Brewer informed him of the results of the fingerprint comparison. After receiving

Brewer's information, Detective Fleming began to look for Terrance Walker. During the course of his search, Fleming found Terrance's brother, Isman Walker. Fleming spoke with Isman Walker at the police station, and, subsequently, located Terrance Walker on the street. Fleming, if he appeared in court, would have identified Terrance Walker in open court. Fleming brought Terrance Walker to Area 5, and spoke with him. As a result of the conversation, Fleming notified the State's Attorney's Office. Assistant State's Attorney Catherine Bernard arrived at Area 5 and conducted an investigation of the case. (R. 30)

On June 15, 1992, ASA Bernard, a member of the felony review unit, arrived at Area 5 and interviewed both Isman Walker and Terrance Walker. (R. 32-33) Bernard interviewed Mr. Walker for thirty minutes. (R. 35) According to Bernard's testimony, Youth Officer Misonick was present for the interview. At the conclusion of the interview, Bernard explained various forms of statements, and Terrance elected to make a handwritten statement. (R. 35) Bernard then summarized the interview on a paper, in a different room from Terrance Walker. (R. 35) Bernard rejoined Terrance and the two read the statement over. (R. 35) Three corrections were made to the summary, and Bernard, Terrance, Youth Officer Misonick, and Detective Schak signed the summary at the bottom of each page. (R. 36-9) According to the statement, Terrance Matthews and another man accused Terrance Walker of stealing their rock cocaine. Terrance denied any involvement, and the two men threatened Terrance and his family. When the two men arrived at Terrance's house, he observed one of the men place a handgun in his waistband. Terrance grabbed his own handgun, and entered the vehicle with the two men. The statement indicates that Terrance subsequently shot both men. The State then moved, without objection, to have the statement admitted into evidence and made part of

the record. (R. 39) (Supp. R. 4, Exhibit 8)

On cross examination, Bernard acknowledged that the detectives informed her that they had already spoken to Terrance, and had obtained information regarding the homicides. (R. 40) Bernard did not recall whether the officers informed her that no youth officer was present when they questioned Terrance. (R. 40) Bernard denied learning that Terrance informed the officers that he was afraid of the two victims in this matter. (R. 41)

The State and defense then entered a series of stipulations. There were two stipulations from proof of life witnesses, one for each victim. (R. 42-3) There were two stipulations concerning the cause of death, one for each victim. (R. 43-6) The State then moved to have the balance of their exhibits admitted into evidence, which was granted without objection. (R. 46) The State rested. (R. 46)

The defense proceeded by way of a single stipulation. It was stipulated between the parties that if Detective Schak and/or Detective Flemming were called to testify, they would testify that Terrance Walker informed them during a post-arrest interview that he had known Terry Matthews for a long time. (R. 46) Further, that Terrance Walker informed the detectives that Mr. Matthews and his friend had accused Terrance of stealing their dope. (R. 47) Terrance knew these men had a gun. (R. 47) Terrance feared these two men, and thought they would hurt him or his family. (R. 47) With that, the defense rested. (R. 47) Defense counsel never mentioned, or asked the court to rule on her previously filed Motion to Suppress statements, which had been entered and continued on the previous date to be heard in conjunction with the trial. (R. 3) (CL. 33)

The court found Terrance, a juvenile at the time, guilty on one count of first degree murder and one count of second-degree murder. (R. 51-52) (CL. 69) The court

subsequently sentenced Terrance to concurrent 60 and 15 year terms in prison. (R. 62)
(CL. 69)

ARGUMENT

I. The trial court denied Terrance Walker his right to counsel and a fair trial by forcing the 16-year-old to trial on two counts of first degree murder with an appointed attorney that was admittedly and demonstrably unprepared to represent him.

The trial judge abused his discretion, and denied Terrance Walker due process of law, by failing to order a continuance after Terrance's court-appointed attorney informed the court that she failed to prepare to represent her client on two counts of first degree murder. In refusing to order a continuance, Judge Morrissey explicitly stated that factors found to be relevant to the exercise of sound discretion by both statutory and case law were "irrelevant" to his determination. Instead of analyzing these pertinent factors and exercising sound discretion, Judge Morrissey refused to continue the case on the sole basis that the case had been set for trial. The judge's statement that the case would proceed to trial solely because it had been set for trial indicates not simply an abuse of discretion, but the type of rote application of courtroom policy that sacrifices discretion in favor of predilection.

Judge Morrissey, by refusing to order a continuance and forcing Terrance to proceed with unprepared counsel, effectively denied Terrance Walker counsel and his right to a fair trial. This is evidenced by, among other factors, the brevity of the proceedings that resulted in Terrance's convictions – in a mere 42 pages of transcripts a 16-year-old, represented by admittedly unprepared counsel, was found guilty of first degree murder and received 60 years in the Illinois Department of Corrections. This Court should reverse Terrance Walker's convictions, and remand the case for a new, fair trial.

The decision to order a continuance rests in the sound discretion of the trial

court. *People v. Johnson*, 205 Ill. 2d 381, 406 (2002); *People v. Crump*, 5 Ill. 2d 251, 263 (1995). An abuse of discretion exists when the trial court's decision is arbitrary and no reasonable person would adopt the view of the court. *Id.*, citing, *People v. Illgen*, 145 Ill 2d 353, 364 (1991). "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." *Unger v. Sarafite*, 376 U.S. 575, 589-90 (1964); United States Const. Amend XIV. This standard applies when the grounds sought for the continuance include, among other things, appointed counsel's lack of preparedness. *People v. Tyler*, 128 Ill. App. 3d 1080, 1097 (2nd Dist. 1984); 725 ILCS 5/114-4(b)(2). "Where the record shows that the trial attorney appeared fully prepared and conducted representation of the accused with diligence and skill, courts are reluctant to find prejudice to the movant's rights from denial of the motion." *Id.* A necessary corollary to the holding of *Tyler* is that the inverse is true. That is, when the record demonstrates that an attorney was not prepared, and demonstrated neither diligence nor skill in representing the accused, courts are inclined to find prejudice resulting from the denial of a continuance.

While the resolution of this issue rests on the particular facts and circumstances of each case, courts of review should consider the denial of a continuance in light of the diligence shown on the part of defendant, as well as the extent to which the denial of a continuance "embarrassed the defendant in preparing his defense and prejudiced his rights." *People v. Jefferson*, 35 Ill. App. 3d 424, 426 (1st Dist. 1976), citing, *People v. Brown*, 13 Ill. App. 3d 277, 280 (1st Dist. 1973); *People v. Gatherright*, 9 Ill. App. 3d 1058, 1061 (1st Dist. 1973); *People v. Lyons*, 26 Ill. App. 3d 358, 359-60 (3rd Dist.

1975); *People v. Hicks*, 125 Ill. App. 2d 48, 57 (3rd Dist. 1970); *People v. Canaday*, 49 Ill.2d 416, 427 (1971); *People v. Felder*, 22 Ill. App. 3d 737 (1st Dist. 1974). In Illinois, continuances should be granted when “the interests of justice so demand.” *People v. Friedman*, 79 Ill. 2d 341, 347 (1980); 725 ILCS 5/114-4(d).

In this case, Terrance Walker’s appointed counsel informed the court that she failed to prepare to defend the juvenile on charges of double murder, and would not be able to proceed to trial. (R. 8-9) Counsel had mistakenly mis-calendared the trial date, had been on other trials during the week including until 7:10 p.m. the previous night, and had not originally been assigned to represent Mr. Walker. (R. 8-9) In response, the following dialogue occurred:

COURT: Ms. Rouse, this has been set. I am sorry. We will pass this case for trial.

MS. ROUSE: I am not ready for trial, Judge, and I will not be able to go to trial today.

COURT: It is irrelevant. There isn’t a private attorney in the business who hasn’t tried to pull something like this.

MS. ROUSE: As the Court knows, I was not originally assigned to Mr. Walker’s case.

COURT: I know, but it is a dirty shame.

(R. 9)

In refusing to continue the case the trial judge expressly refused to consider factors relevant to the exercise of sound discretion. Both statutory and case law indicate that counsel’s state of preparedness generally, and specifically when counsel’s lack of preparedness is caused by counsel being “held to trial in another cause” is relevant to the

exercise of discretion when confronted with a request for a continuance. 725 ILCS 114-4(b)(2); *People v. Jefferson*, 35 Ill. App. 3d 424, 427 (1st Dist. 1976) (forcing the defendant to go to trial despite defense counsel’s statement that she was unable to proceed because of a lack of preparation constituted an abuse of discretion). Here, counsel informed the court that she failed to prepare because she had mis-calendared the trial date, and because she had been held to other trials during the week, until 7:10 p.m. the previous evening. (R. 8-9) Instead of weighing these factors in reaching a determination, the trial judge explicitly refused to consider them, deeming counsel’s lack of preparedness “irrelevant.” (R. 9) Similarly, the trial judge explicitly refused to consider counsel’s statement that she had not been originally appointed to represent Terrance, by acknowledging its veracity but dismissing its import as a “dirty shame.” (R. 9) It should be presumed that a trial judge would not consider factors he found to be “irrelevant” or a “dirty shame” in reaching a determination. Consequently, Judge Morrissey expressly refused to consider factors that statutory and case law have held to be relevant to the exercise of sound discretion.

Similarly, the trial judge did not base his decision on the complexity of the case, the seriousness of the charges or the diligence of the defendant – all of which have been found to be relevant to the exercise of sound discretion when confronted with a request for a continuance. *People v. Sullivan*, 52 Ill. App. 3d 666, 670 (1977) (indicating that both the complexity of the case and the seriousness of the offense are relevant factors to ruling on a continuance); *People v. Lyons*, 2 Ill. App. 3d 358 (indicating the determination on a continuance should be made in light of the diligence shown on the part of the defendant). With respect to the complexity of the case, the State’s Answer to Discovery lists 42 separate witnesses, and two statements. (R. 22-25) The seriousness

of the charges in this case are beyond dispute – a juvenile facing a possible sentence of natural life based on two counts of first degree murder. (C. 13-17) With respect to the diligence on the part of the defendant, Terrance Walker never requested a change of attorney, change of judge, or otherwise sought to delay the proceedings. The half-sheet indicates that every prior continuance had been by agreement, and the case had not previously been set for trial. (C. 2-4) Consequently, counsel’s request to continue the trial date was the first such request made solely by the defense. Terrance Walker simply appeared in court to learn that his attorney failed to prepare his defense, and his trial judge found her lack of preparation “irrelevant.” (R. 9)

In addition, the trial judge failed to consider other factors relevant to the exercise of sound discretion when confronted with a request for a continuance. The trial judge did not base his decision on concerns over judicial economy, document management, or inconvenience to the parties or witnesses – all concerns which have been held not to constitute an abuse of discretion. *People v. Sullivan*, 52 Ill. App. 3d 666, 670 (to have granted a further continuance would have upset the trial schedule, inconvenienced the court, prosecution and jury). In this case, there were no civilian witnesses, and the case had been set for a bench trial. (R. 3, 10, 11-53) Consequently, there is no reason to conclude that a continuance would have presented an inconvenience to the court, parties, or witnesses. Reviewing courts have also routinely upheld the denial of a continuance when it appears that the request is made solely for the purpose of delay. *People v. Cross*, 77 Ill. 2d 396, 413 (1979). However, the judge never indicated that counsel’s request was for the purpose of delay, and nothing in the record supports such a conclusion. Again, the half-sheet indicates that every prior continuance had been by agreement and the case had not previously been set for trial. (C. 2-4)

Although in a slightly different context, the appellate court has reversed Judge Morrissey for abusing his discretion where private counsel attempted to enter an appearance on the date the case had been scheduled for trial, but needed a continuance to prepare. *People v. Childress*, 276 Ill. App. 3d 402, 412-23 (1st Dist. 1995); *See also*, *People v. Green*, 42 Ill. 2d 555 (1969)(trial judge abused discretion by failing to grant a continuance of the trial date and forcing defendant to proceed with unprepared counsel). The appellate court noted that the defendant did not realize the case had been set for trial on the day in question, none of the prior 14 continuances were made by defendant, and Judge Morrissey failed to even inquire as to how long of a continuance private counsel would need to prepare for trial. *Id.*

In this case, like *Childress*, Judge Morrissey never even asked counsel how long of a continuance she would need to prepare. (R. 8) Since counsel's lack of preparedness resulted from a scheduling error, she thought the case had been set for trial the following week, six days later, it is reasonable to conclude that counsel would have needed less than a week to prepare. (R. 8) Again, like *Childress*, all prior continuances had been by agreement, Terrance had never sought to delay the proceedings by filing either a motion for substitution of judge or counsel, and the case had not previously been set for trial. (C. 2-3) The error in *Childress* resulted in Judge Morrissey denying the defendant representation of his choice, the error in this case denied Terrance Walker his right to a fair trial and effective assistance of counsel as he was forced to proceed with admittedly and demonstrably unprepared trial counsel.

This Court is allowed to view the denial of the continuance from hindsight, and assess the competency of counsel, and the degree to which the denial of the continuance prejudiced the defendant's rights. *People v. Jefferson*, 35 Ill. App. 3d 424, 426 (1st Dist.

1976). The trial judge's abuse of discretion in failing to order a continuance prejudiced Terrance Walker, because he was forced to proceed to trial on charges of double murder with an attorney who was demonstrably unprepared, and demonstrated neither diligence nor skill in representing her client. *Tyler*, 128 Ill. App. 3d at 1097. Counsel failed to raise a single objection. (R. 13-46) Counsel raised only 19 questions on cross-examination, the majority of which focused on the previously filed motion to suppress which had been entered and continued to be heard in conjunction with the trial, but counsel failed to ever ask for a ruling on the motion. (R. 2-3, 22, 28, 39-41) (C. 33) In rendering his verdict, the trial judge stated that the admitted statement was undisputed. (R. 50) The State's case hinged on the statement, as the only other evidence connecting Terrance Walker to the crime was a single fingerprint on the outside of the automobile in which the decedents were shot. (R. 27-8) Defense counsel, despite failing to obtain a ruling on the motion to suppress, and being forced to defend Terrance Walker while unprepared for trial, failed to file any post-trial motions. The entire double murder trial consumed less than 43 pages of transcripts. (R. 11-53) The trial resulted in a 16-year-old boy being sentenced to 60 and 15 years in the Illinois Department of Corrections. Viewed from hindsight, the prejudice is palpable as the laconic proceedings constituting Terrance Walker's trial were devoid of any advocacy, and the interests of justice required a continuance.

The appellate court's order makes two fundamental errors. First, the Appellate court concluded that since Terrance cannot demonstrate that his suppression motion would have been granted had trial counsel been better prepared, and, presumably had remembered to ask for a ruling on the motion, he cannot establish prejudice. Order at 12. Before responding directly to the appellate court's reasoning, some context is

needed. Specifically, it must be understood that defense counsel failed to litigate the motion to suppress in any meaningful manner. While defense counsel raised questions concerning the presence of a youth officer during police questioning, defense counsel asked those questions of Assistant State's Attorney Bernard who was not present during that interrogation. (R. 40) Defense counsel did not call the officers themselves to establish this fact, nor did defense counsel seek to have this fact included in the stipulation concerning the officers. (R. 46-7) Since defense counsel's motion to suppress includes the allegation that a youth officer was not present at this time, the oversight is inexplicable. (C. 33) Similarly, defense counsel failed to present any evidence concerning voluntariness as argued in paragraph four of her motion to suppress statements. (C. 33)

Thus, the appellate court's reasoning places Terrance in a Catch-22 – he has to demonstrate that his motion to suppress would have been granted by relying on the record created by wholly unprepared counsel who failed to litigate the issue in any meaningful manner. The prejudice brought forth from the refusal to order a continuance in this case is that it operated to deny the 16-year-old his Sixth Amendment right to counsel, as evidenced by counsel's entire lack of advocacy – she could not even remember to request a ruling on a motion to suppress statements that had constituted the majority of her otherwise limited cross-examination. Counsel's representation amounted to form over substance.

Second, the appellate court, stated “[m]ost notably, defense counsel agreed to the trial date at the prior court proceeding and then maintained that she put it on her calendar for January 26, not January 20. The trial court clearly did not accept this excuse.” Order at 12. This reasoning is repugnant. The issue is not whether the trial court accepted

appointed counsel's "excuse," the issue is whether a 16-year-old child received the type of representation and trial required by both the Illinois and United States Constitutions. If the trial judge thought appointed counsel had fabricated an "excuse," the trial judge should have held appointed counsel responsible, not the child defendant. *See, Martinez v. Mancusi*, 409 U.S. 959 (1972), Marshall, J., dissenting from the denial of certiorari ("whatever the justification for defense counsel's unpreparedness, it was the petitioner, not his counsel, whom the trial judge forced to bear the consequences. I cannot accept this penalizing of petitioner for the conduct of his attorney, given the importance of the rights at stake"). It is the obligation of all courts at all levels to uphold "the integrity and reputation of the judicial process." *People v. Lambert*, 288 Ill. App. 3d 450, 463 (2nd Dist. 1997). To this end, a trial court judge has the obligation to avoid even the appearance of impropriety. *People v. Bradshaw*, 171 Ill. App. 3d 971, 975 (1st Dist. 1988) (stating there must be a concerned interest in ascertaining whether public impression will be favorable and the rights of an accused protected). Here, Judge Morrissey impugned the integrity of the judicial process by stating publicly that appointed counsel's unpreparedness was irrelevant and forcing a 16-year-old facing two counts of first degree murder to proceed to trial with unprepared counsel.

In conclusion, instead of relying on any of the reasons proffered for the continuance by defense counsel, and expressly discounting several factors deemed appropriate for consideration in the exercise of sound discretion by both statutory and case law, the trial judge refused to grant a continuance based on the singular and arbitrary fact that since the case had been set for trial, it would proceed to trial. (R. 9) The judge's statement that the case would proceed to trial solely because it had been set for trial constitutes an abuse of discretion. The result of the trial judge's actions was to

force a 16-year-old boy, on trial for two counts of first degree murder, to proceed to trial with an admitted, and demonstrably unprepared attorney. Judge Morrissey told appointed counsel that it was “irrelevant” and a “dirty shame” that she had failed to prepare to represent her 16-year-old client on charges of double murder. (R. 9) Contrary to the trial judge’s conclusion, and the appellate court’s reasoning, the “dirty shame” constituted the resultant proceedings that placed a 16-year-old in the custody of the Illinois Department of Corrections for a term of 60 years after a hasty trial devoid of basic constitutional protections. In short, the proceedings that resulted in Terrance Walker’s convictions, are, quite simply, that which justice abhors.

This Court should hold, under these specific factual circumstances, that the trial judge abused his discretion in failing to order a continuance, and thereby prejudiced Terrance Walker by denying him his right to counsel and a fair trial. This Court should reverse Terrance’s convictions and remand the case for a new, fair trial.

II. Terrance Walker received ineffective assistance of counsel when his court appointed attorney informed the court prior to the start of the juvenile’s double-murder trial that she was unprepared, that she could not proceed, and, during the ensuing trial, failed to provide any meaningful adversarial testing of the State’s case as evidenced by her failure to develop a theory of the case, submitting a legally deficient defense, failing to request a ruling on a motion to suppress, and failing to file any post-trial motion or notice of appeal after a trial that consumed less than 43 pages of transcripts.

Terrance Walker appeared in court for his double-murder trial to learn that his court appointed attorney, by her own admission, had not prepared for trial. (R. 8-9) Counsel informed the court, in no uncertain terms, that she was “not ready to go to trial” and that she “will not be able to go to trial today.” (R. 8-9) Counselor had made a scheduling error – she had the trial set for the following week. (R. 8-9) In addition, Terrance’s attorney had spent the previous two days on a different trial which lasted until 7:10 p.m. the previous night. (R. 8) The trial judge responded by informing Terrance and his attorney that it is “irrelevant” that she is not prepared, that “it is a dirty shame,” but that the case would proceed to trial as scheduled. (R. 9)

The laconic proceedings that followed failed to constitute an adversarial process, and represent the type of unique situation where even competent counsel could not have provided effective assistance of counsel. Initially, defense counsel informed the court that she failed to prepare for trial, and, yet, was forced to proceed with only a short recess to prepare. Defense counsel demonstrated her lack of preparedness by foregoing an opening statement, indicating that counsel did not develop a theory of the case. Defense counsel failed to attack the State’s two key pieces of evidence. During defense counsel’s closing argument, she expressed a legally deficient theory of self-defense. Lastly, counsel did not file a post-trial motion, and did not file a notice of appeal. The entire double-murder trial of 16-year-old Terrance Walker consumed less than 43 pages of transcripts. (R. 11-53) When it was over, the court found Terrance Walker guilty on

one count of first-degree murder and one count of second-degree murder, and sentenced the 16-year-old to 60-years in the Illinois Department of Corrections. (CL. 69) Terrance Walker's Sixth Amendment rights were violated when his appointed attorney arrived for trial unprepared to proceed and, consequently, unable to provide any meaningful adversarial testing of the State's case. United States Const. Amend. VI, and XIV.

The United States Supreme Court has identified three situations in which the prejudice component of an ineffective assistance of counsel claim could be presumed. *United States v. Cronin*, 466 U.S. 648, 659-60 (1985); *Bell v. Cone*, 535 U.S. 685, 695-96 (2002). First, prejudice is presumed in cases in which the defendant was actually denied counsel at a critical stage of the proceedings. *Id.*, *See e.g.*, *Geders v. United States*, 425 U.S. 80 (1976). Second, "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable." *Id.* *See e.g.*, *People v. Halawa*, 291 Ill. App. 3d 373 (1st Dist. 1997). If a trial loses "its character as a confrontation between adversaries, the constitutional guarantee is violated." *Id.* at 657. Third, prejudice is presumed when conditions unique to the trial render it unlikely that any counsel, even competent counsel, could have been able to provide effective assistance. *Id.* at 659-60, *See e.g.*, *Powell v. Alabama*, 287 U.S. 45 (1932). These three circumstances, "are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified," and, thus, prejudice is presumed. *Id.*

Based on the actual conduct of Terrance Walker's trial, which constituted a fundamental breakdown of the adversarial system, this case falls under both the second and third situations described in *Cronin*, 466 U.S. at 659-60. Prior to the start of trial, defense counsel explained to the court that she mistakenly had calendared the double-

murder trial of 16-year-old Terrance Walker for the following week, and only discovered her error the prior day. (R. 8) In addition, defense counsel had been on other trials all week – until 7:10 p.m. the day before in a different court room. (R. 8) The following dialog occurred between the court and defense counsel:

COURT: Ms. Rouse, this has been set. I am sorry. We will pass this case for trial.

MS. ROUSE: I am not ready for trial, Judge, and I will not be able to go to trial today.

COURT: It is irrelevant. There isn't a private attorney in the business who hasn't tried to pull something like this.

MS. ROUSE: As the Court knows, I was not originally assigned to Mr. Walker's case.

COURT: I know, but it is a dirty shame.

(R. 9) The court subsequently recalled the case, and proceedings resembling a trial in form only, followed.

While counsel had been appointed to represent Terrance Walker previously, she was admittedly unprepared to do so on the date of his trial. (R. 9) Consequently, defense counsel had only a short recess to prepare for the defense of a 16-year-old boy facing two counts of first-degree murder and a possible sentence of natural life. (R. 9) No attorney, not even a competent attorney, having failed to prepare to represent a 16-year-old defendant on two counts of first-degree murder could have prepared during the course of the recess given by the trial judge. *Cf., Cronin*, 466 U.S. at 663-65 (holding that 25 days to prepare was adequate for competent attorney given the nature of the charges); *Powell v. Alabama*, 287 U.S. 52, 58 (1932) (presuming prejudice when a

defendant is forced by a state to trial in such a way as to deprive him of the effective assistance of counsel). Defense counsel's total lack of preparedness is represented by her failure to present opening statements, and, thus, her failure to articulate a theory of defense. (R. 12-3)

Next, defense counsel failed to reasonably attack the State's two key pieces of evidence, Terrance Walker's fingerprint on the outside of the automobile and his statement. With respect to the fingerprint on the outside of the vehicle, defense counsel used her cross-examination of the State's expert, James Brewer, to establish that which the State brought out on direct – that one of the 16 lifts removed from the vehicle matched Terrance Walker. (R. 25-7). Despite the fact that counsel did nothing on cross, save repeat the most damning aspect of the witness' testimony, the appellate court incorrectly concluded that this line of inquiry subjected the State's case to meaningful adversarial testing. Order at 8. The appellate court specifically argued that "counsel called into question defendant's guilt where she elicited, through cross-examination, that only 1 of 16 fingerprints lifted from the Chevy was a match to defendant." Order at 8. As stated above, Argument I, the appellate court does not explain how "eliciting" that the State recovered her client's fingerprint from an automobile in which two people were discovered killed, constitutes calling "into question defendant's guilt." Order at 8. Moreover, as stated above, that is the exact same evidence the State elicited from the same witness on direct. (R. 25-7) Consequently, defense counsel's questioning did nothing to advance a theory of defense, and the appellate court's conclusion to the contrary requires a breach of reason.

With respect to Terrance Walker's purported statement, defense counsel failed to litigate the issue. Trial counsel's motion had been entered and continued to be heard in

conjunction with Terrance's bench trial. (R. 2-3) At trial, defense counsel devoted the overwhelming majority of her otherwise limited cross-examination to the singular issue of whether a youth officer attended the police officer's interrogation of 15-year-old Terrance Walker. (R. 22, 28, 39-41) Indeed, the appellate court found that defense counsel's questioning of ASA Bernard concerning the presence of a youth officer during Terrance Walker's discussion with Detective Fleming constituted meaningful adversarial testing. Order at 8. The appellate court overlooks the obvious problem that ASA Bernard was not present during the interrogation at issue. (R. 40) Notably, defense counsel did not call the officers themselves to establish the absence of a youth officer, nor did defense counsel seek to have this fact included in the stipulation concerning the officers. (R. 46-7) Moreover, defense counsel never even asked for a ruling on the motion to suppress, and the trial judge, while rendering his verdict, relied on the fact that the statement had not been disputed. (R. 50) Consequently, according to the appellate court, defense counsel provided meaningful adversarial testing of the State's case by devoting the majority of her limited cross-examination to elicit facts bearing on the admissibility of Terrance Walker's purported statement, despite the fact that counsel never asked for a ruling on the statement's admissibility, and failed to present available competent evidence concerning the motion. To paraphrase a popular colloquialism, with advocacy like this, who needs a prosecution.

Lastly, defense counsel put forth a legally deficient theory of self-defense. Specifically, defense counsel presented a stipulation indicating that Terrance Walker informed the detectives that the two deceased men accused him of stealing their dope, he knew these individuals had a gun, he feared the individuals, and thought they would hurt him or his family. (R. 47) During closing, counsel argued that Terrance Walker feared

the two men. (R. 49) In affirming Terrance Walker's convictions, the appellate court pointed out that the stipulation "evidenced that defendant was not guilty of first-degree murder because he was acting in self-defense." Order at 9. An individual is entitled to use deadly force in defense of a person when the defendant can show that unlawful force was threatened against him or another, that the person threatened was not the aggressor, that the danger of harm was imminent, that the use of force was necessary to avert the danger, and that the amount of force used was justified. *People v. Hawkins*, 296 Ill. App. 3d 830, 837 (1st Dist. 1998). As an initial matter, neither the stipulation nor defense counsel's closing argument ever specifically references self-defense. (R. 46-7) Second, both the stipulation and counsel's argument are legally deficient as a theory of self defense because neither ever asserts that the two men threatened Terrance with unlawful force, never asserts that harm was imminent, and, in fact, does not even address the circumstances of the actual shooting. Consequently, the appellate court appears to hold that counsel subjected the State's case to meaningful adversarial testing by putting forth a legally deficient self-defense theory.

In this case, this Court should presume prejudice based on the fact that defense counsel repeatedly informed the court that she was not prepared for trial due to an error in calendaring the case, had spent the previous two days on another trial in a different courtroom, and did not learn that the case was set until the previous day. (R. 8-9) Defense counsel went so far as to inform the court that she "will not be able to go to trial today." (R. 9) Forced to defend a juvenile on double murder charges while wholly unprepared for the trial, defense counsel failed to provide any meaningful adversarial testing of the State's case. Defense counsel waived opening statements, failed to develop a theory of the case, failed to introduce any evidence concerning paragraph four

of her previously filed motion to suppress, failed to introduce competent evidence concerning the absence of a youth officer during police questioning, failed to ever ask for a ruling on the motion, allowed the judge to render a verdict under the mistaken belief that the statement had not been disputed, put forth a legally deficient theory of self-defense, and despite being forced to defend Mr. Walker while she was unprepared for trial, failed to file any post-trial motions or a notice of appeal.

It is the obligation of all courts at all levels to uphold “the integrity and reputation of the judicial process.” *People v. Lambert*, 288 Ill. App. 3d 450, 463 (2nd Dist. 1997). “While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators.” *United States v. Cronin*, 466 U.S. 648, 659-60 (1985), quoting, *United States ex rel. Williams v. Twomey*, 510 F.2d 634, 640 (CA7), cert. denied sub nom. *Sielaff v. Williams*, 423 U.S. 876 (1975). Here, unprepared counsel substituted acquiescence for advocacy, and by so doing, placed this case squarely in the later scenario. The proceedings resulting in Terrance Walker’s convictions are farcical, and sadly reminiscent of the “swift justice,” handed out in *Powell v. Alabama*, 287 U.S. 45 (1932). What cannot be measured is the impact of this kind of management of a criminal trial on the onlooker. It demeans the solemnity of a proceeding where a person’s liberty is at stake, it demeans the role of counsel, and it demeans the entire judicial system. *People v. Stevens*, 338 Ill. App. 3d 806 (1st Dist. 2003).

Under the specific factual circumstances presented in this case, prejudiced should be presumed, and the case reversed and remanded for a new, fair trial.

CONCLUSION

For the foregoing reasons, Terrance Walker, Defendant-Appellant, respectfully requests that this Court reverse his convictions, and remand the case for a new, fair trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Robert M. Stephenson, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding the appendix is 30 pages.

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