No. 127732

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- SAMUEL SAULS, Defendant-Appellant.	)	Appeal from the Appellate Court of Illinois, No. 4-19-0667. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 18-CF-1153. Honorable Thomas J. Difanis, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

E-FILED
7/28/2022 8:53 AM
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SUPREME COURT CLERK

ARGUMENT

I.

Samuel Sauls's conviction must be reversed because the State failed to prove his guilt beyond a reasonable doubt.

Contrary to the State's assertions, the prosecution's only occurrence witness in this case made no "prompt outcry" and gave evidence that was too unsatisfactory to eliminate a reasonable doubt of Sam Sauls's guilt. See *People v. Brown*, 2013 IL 114196, ¶ 48. The testimony given by this sole occurrence witness to the events that are alleged to have occurred during any sleep-over at Sam's house was incomplete, unreliable, and contradicted by previous statements. (R. 470-71, 481-87; E. 2). In contrast, the exculpatory evidence put forth by the defense was clear, consistent. (R. 928, 951). As this court must consider all of the evidence, it should find that the evidence was so unsatisfactory as to justify a reasonable doubt of Sauls's guilt. *People v. Wheeler*, 226 Ill. 2d 92,117 (2007).

The State's assertion that LGP made a "prompt outcry," (State's Br. 12), following the sleep-over is contradicted by the evidence in this case. The hearsay evidence from her mother, Mercedes, indicated that on the day after the purported sleep-over, LGP simply told her mother that she did not want to go back to Sam's house. (R. 542). It was days later that, according to Mercedes, when LGP told her mother about waking up to find her hand around Sam's finger. (R. 543). No allegation of sexual contact was made until nine months later, according to Mercedes, and not until after Mercedes and Sam had gotten into a physical altercation. (R. 550, 862-64, 921).

Just as there was no "prompt outcry," LGP was not "consistent in her allegations against [Sam] from the time of her initial outcry through to her testimony at trial," as described by the State. (State's Br. 12). Her initial statement was that she woke up holding his finger. (R. 543). Nine months later, after Mercedes and Sam had gotten into that physical altercation, (R. 862-64, 921), Mercedes claimed that LGP's story changed to allege that it was Sam's "private"that

she was holding, rather than his finger. (R. 550, 552). On the stand, LGP testified that Sam's hands were on his phone during the offense, (R. 486-87), but during her CAC interview, she said that he was laying with his hands under his head. (E. 2 16:09). According to Mercedes, LGP said that Sam was not wearing a shirt. (R. 544). On the stand, however, LGP said that he was wearing a t-shirt. (R. 471). Dr. Buetow testified that LGP told her that she slept in the bed, and that Naomi and JGP were sleeping on a pallet on the floor. (R. 604). In the recording of her CAC interview with Chad Turner, though, LGP described how there was a bed and a pallet, and how she slept on the pallet. (E. 2, 10:29).

The State's assertion that "the jury watched LGP's interview with Turner, in which she recounted that night's events almost exactly as she did at trial," (State's Br. 13), is similarly contradicted by the record. On the stand, LGP testified that she slept on the floor, but then woke up in the bed. (R. 466). As mentioned above, however, in her interview with Turner, she said that she slept on the pallet on the floor. (E. 2, 10:29). On the stand, LGP claimed that Sam's hands were on his phone, (R. 471, 487), but in the interview with Turner, she said that he was laying on them. (E. 2 16:12). LGP's recounting of the events in her interview with Turner was not, therefore, "almost exactly" the way she testified at trial. (State's Br. 13).

It is informative that, in attempting to argue that LGP's "account of the defendant's offense remained clear and consistent throughout," the State can only point to the same two easily-memorized bullet-points that LGP *was* consistent about. (State's Br. 15). These bullet points, that she awoke to find a private part in her hand and then had to wash, were first purportedly disclosed to her mother after her mother had a physical altercation with Sam. (R. 862-64, 921). They were then repeated to different interviewers, but the facts surrounding them changed with each telling. Any detail outside of the allegation of the essential act changed or was missing from each re-telling; in addition to the inconsistencies regarding where his

hands were, (R. 486-87; E. 2 16:09), and where LGP slept, (R. 604; E. 2 10:29), there were inconsistent or missing details regarding the lighting, television, bedding, and pillows. (R. 472-73, 481-83).

The State's position that "the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant," (State's Br. 16), is correct. The converse is also be true, though. Positive and credible testimony by the defendant, contrasted with inconsistent and un-detailed statements by a State's witness, must be enough to establish reasonable doubt. See *People v. White*, 56 Ill. App. 3d 757, 759 (2nd Dist. 1978).

The State also misapprehends Sam's argument when it states that Appellant "effectively concedes that the evidence was sufficient when he admits that 'a rational trier of fact could have found that the state proved beyond a reasonable doubt the necessary elements of Count I.'" (State's Br. 14). Sam makes no such concession. As stated in the Appellant's Brief:

> "If the above were all the evidence relevant to elements three and four, or if this Court were permitted to consider only the evidence that advanced the State's theory of the case, then a rational trier of fact could have found that the state proved beyond a reasonable doubt the necessary elements of Count I. But this Court must consider all the evidence, not just the evidence that advanced the State's theory of the case." (Appellant's Br. 15-16).

Acknowledging that this Court must consider all of the evidence in the case, including the evidence put forth by the defense, is not a concession that the State has proven its case. The State's suggestion to the contrary is in total opposition to this Court's holding in *Wheeler*, 226 Ill. 2d at 117. The State may cherry-pick the only two consistent points in LGP's otherwise-inconsistent re-tellings, (State's Br. 12), but this Court is required to view all of the evidence, including the inconsistencies and the clear and consistent testimony by the defense, in assessing whether the State had provided sufficient evidence to sustain a conviction beyond a reasonable doubt. *Id*.

Finally, in the interest of clarification, Appellant's position that the State failed to prove that any contact was made "for the purpose of sexual gratification" is simply a logical consequence of the argument that the State failed to prove that any contact occurred at all. (See Appellant's Br. 17). Appellant does not otherwise challenge the sufficiency of proof of that element.

As argued in the Appellant's Brief and above, and contrary to the State's assertion, LGP did not provide "the same description of defendant's assault to her mother, a doctor, and a DCFS investigator, as well as at trial." (State's Br. 17). Every recounting of the story differed slightly from the others. This unreliable testimony must be viewed together with Sam's consistent and unequivocal denials, (R. 928, 951), and in light of the history of conflict between Mercedes and Sam, which escalated to the two pushing each other in front of the children. (R. 735, 862-64, 921). When all of this evidence is taken together, as it must be, the evidence of guilt is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt" of Sam's guilt. *Brown*, 2013 IL 114196, ¶ 48.

For these reasons, and further relying on all arguments made in the Appellant's Brief, this Court should vacate Sam's conviction. His federal and State constitutional rights against double jeopardy preclude the State from retrying him. *Burks v. United States*, 437 U.S. 1, 18 (1978); *People v. Drake*, 2019 IL 123734, ¶ 20; see U.S. Const. amends. V, XN; Ill. Const. 1970 art. I, § 10.

II.

This case should be remanded for the trial court to perform an *in camera* review for materiality of the documents subpoenaed from DCFS.

The State has conceded that the contents of the documents sought by the defense are discoverable if they contain material and exculpatory evidence. (State's Br. 18 n.2). The State also concedes that the Illinois statute in question, 325 ILCS § 5/1, *et seq*. (2017), does not bar all disclosure of the documents, and thus that the statute falls within *Ritchie*'s holding. (State's Br. 19).

The State's position is simply that *Pennsylvania v. Ritchie*, 480 U.S. 89 (1987), imposes a duty on defendants seeking *in camera* review of confidential documents to make a heightened showing of materiality than is required for other documents sought via a subpoena *duces tecum*. (State's Br. 20-28). Further, the State argues that Sam Sauls failed to make that heightened showing. (State's Br. 28-32). As argued in the Appellant's Brief and discussed below, *Ritchie* imposed no new burdens on defendants seeking such information, and Sam made a sufficient showing to trigger *in camera* review of the requested documents under any proposed standard.

Pennsylvania v. Ritchie does impose the any greater showing of materiality for "confidential" or "privileged" documents than any other subpoena duces tecum

Contrary to the State's argument in this case, *Ritchie* did not establish a procedure in which a "defendant must establish a basis for his belief that the information is material" (State's Br. 20) that is any higher than what must be demonstrated in any challenged subpoena. See *id*. The plurality opinion in *Ritchie* only became the controlling holding due to a concurrence in the section in question by Justice Blackmun, who thought that the holding did not go far enough in protecting a defendant's right to confront witnesses. *Ritchie*, 480 U.S. at 61-66, Blackmun, J., concurring. As that necessary concurrence explained, the actual procedure to

be followed was that the trial judge was directed to review the confidential file for "material" information. *Id*., at 65. The *Ritchie* court, as outlined in this concurrence, held that the trial court had an ongoing obligation to review the confidential record for information whose materiality was evident or which may only become evident during trial. *Id*., at 65-66. This renders any ability to make a "particularized" showing of what information was sought or how it might be material impossible, which is why footnote fifteen rejected such a requirement. *Id*., at 58 n.15.

Indeed, all of the concerns expressed by the State regarding materiality, (State's Br. 18-23), and burdensome review, (State's Br. 24-25), are already addressed in the laws that govern all subpoenas *duces tecum*. To justify a pretrial subpoena, a defendant must show that (1) the documents are evidentiary and relevant, (2) the documents are not otherwise procurable reasonably in advance of trial by the exercise of due diligence, (3) the party cannot properly prepare for trial without production and inspection in advance of trial and the failure to obtain an inspection may tend to unreasonably delay the trial, and (4) the application is made in good faith and is not intended as a general "fishing expedition." *People v. Shukovsky*, 128 Ill.2d 210, 225 (1988). Any material sought by subpoena is to be sent directly to the court rather than the party who caused the subpoena to issue. *People ex rel. Fisher v. Carey*, 77 Ill. 2d 259, 265 (1979). The court then reviews the documents *in camera* and decides whether the documents are relevant, material, or privileged and whether the request is unreasonable or oppressive, prior to allowing the moving party to view the subpoenaed material. *Id*. A court should grant a motion to quash a subpoena if a request is oppressive, unreasonable, or overbroad. *Id*., at 270.

Therefore, *Ritchie* did not establish any new procedure for the *in camera* review of restricted documents than what already existed in Illinois law. See *Ritchie*, 480 U.S. at 58; *Carey*, 77 Ill. 2d at 265.

The State's argument that Sam was required to make a heightened showing of materiality for the documents in question relies on an aside that the *Ritchie* court made in a footnote: "Ritchie, of course, may not require the trial court to search through the CYS file without first establishing a basis for his claim that it contains material evidence." *Ritchie*, 480 U.S. at 58 n.15. This footnote, as highlighted by the State, (State's Br. 20), in turn cites *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982), with the parenthetical "('He must at least make some plausible showing of how their testimony would have been both material and favorable to his defense.'). *Ritchie*, 480 U.S. at 58 n.15, quoting *Valenzuela-Bernal*, 458 U.S. at 867. However, *Valenzuela-Bernal* was a case about compulsory process, in which the government had deported potential witnesses for the defense. *Valenzuela-Bernal*, 458 U.S. at 861. The holding relied upon by the footnote in *Ritchie* was simply that the defendant was not entitled to a new trial solely on the basis of witness unavailability, without demonstrating the materiality of the potential witness's testimony. *Id*., at 867. *Valenzuela-Bernal* had nothing to do with subpoenas *duces tecum* or pre-trial discovery. *Id*. But even in that context, the onus that the United States Supreme Court put on defendants to prove a deprivation of the right to compulsory process was only that the defense make some plausible showing of how [the deportees'] testimony would have been both material and favorable to his defense. *Id*.

As discussed in the Appellant's Brief, the *Ritchie* footnote that the State relies upon is, in context, dispensing entirely with the State's argument that a defendant must make a particularized showing of what information was sought or how it would be material. *Ritchie*, 480 U.S. at 58 n.15. The section preceding the footnote stated, quite directly, that "Ritchie is entitled to have the [confidential file] reviewed by the trial court to determine whether it contains information that probably would have changed the outcome of his trial." *Id*., at 58. Nothing in the following footnote abrogated that entitlement. See *id*., at 58 n.15.

Contrary to the State's framing, Sam Sauls is not asking this Court to require that every subpoena *duces tecum* request of a confidential document "automatically trigger[]" *in camera* review. (State's Br. 20). Appellant's argument is that the law does not require any higher showing for these documents, under *Ritchie*, than Illinois already requires for any subpoenaed document. See *Ritchie*, 480 U.S. at 58; *Carey*, 77 Ill. 2d at 265. When a defendant subpoenas a document, whether it is "confidential" or not, the document is to be provided to the trial court. *Carey*, 77 Ill. 2d at 265. A party may then move to quash the subpoena, and may argue that the request is oppressive, unreasonable, or overbroad. *Id*., at 270. Unless the court finds those or any other legal grounds for quashing the subpoena to be proven, the court must then perform an *in camera* review of the subpoenaed document for materiality. *Ritchie*, 480 U.S. at 58. As pointed out in the *Ritchie* footnote, the trial court may have some difficulty identifying what information may be material without clarification from the party that subpoenaed the documents, and so the greater the defendant's specificity and grounds for materiality, the better the chances that the trial court will correctly identify material information in the document. *Id*., at 58 n.15.

In order to argue that other States have read *Ritchie* to impose a higher burden on a defendant seeking *in camera* review of confidential documents, the State cites several cases that disagree among themselves as to whether a defendant must make a stronger showing for confidential documents. (State's Br. 20-21). The first of these, *People v. Stanaway*, 446 Mich. 643, 677 (Mich., 1994), is not even clear as to what the heightened standard should be. The majority opinion would require, under Michigan law, that the defendant must make a showing that he has a good-faith belief, grounded on some demonstrable fact, that there is a reasonable probability that the records are likely to contain material information necessary to the defense. *Stanaway*, 446 Mich. at 677. The concurrence, though, by Justice Boyle, does not agree that *Ritchie* does requires a "particularized" need for the documents, but instead would only require that a defendant makes "a plausible showing of materiality and favorability" to get *in camera* review. *Id*., at 705.

Many of the cases cited by the State similarly relied on the unclear footnote found in *Ritchie.* (State's Br. 20-21). *Zapata v. People*, 2018 CO 82, ¶ 54, relied on that footnote and existing Colorado law to hold that defendants must make more than a vague assertion that the documents may contain impeachment material. *Zapata*, 2018 CO 82, ¶¶ 54-55. This holding, relying partially as it does on prior Colorado cases, is unhelpful to this Court. *Id*. In the Washington case of *State v. Gregory*, 158 Wn. 2d 759, 792 (Wash., 2006) (overruled on other grounds by *State v. W.R.*, 181 Wn.2d 757 (Wash., 2014)), also cited by the State, (State's Br. 20-21), likewise relied on Washington law, and, specifically, the statutory language protecting rape crisis center records, to hold that a particularized showing is required to support review of those records. *Gregory*, 158 Wn. 2d at 792.

The State also cited *State v. Peseti*, 101 Haw. 172, 186 (Hawai'i, 2003) extensively. (State's Br. 21-22, 25, 26, 29). It is important to note that in *Peseti*, the trial court had conducted an *in camera* review of the requested documents, and that the Supreme Court of Hawai'i vacated the defendant's conviction and remanded the case on other grounds. In that case, the defendant argued that *Ritchie* should not apply in the first place, and that the trial court erred in conducting an *in camera* review and then sealing the documents that it did not find to be relevant and material. *Peseti*, 101 Haw. at 183-84. *Peseti* gives no guidance at all to this Court on the question of whether a heightened showing of materiality must be made to acquire *in camera* review, and the portions of that opinion that were cited by the State are not responsive to the premises for which the State cites them. For example, the State argues that:

> "Without requiring a defendant to articulate some basis to believe that a privileged record might be material, the trial court's *in camera* review would 'be conjectural and would risk the unnecessary disclosure of the privileged material in question,' *Peseti*, 101 Haw. at 186, and frustrate legitimate interests in confidentiality." (State's Br. 26).

But that is not what *Peseti* says. Here is the full version of the *Peseti* passage that was truncated by the State:

> "As the *Ritchie* Court observed, the trial court will often lack sufficient information — *e.g.*, whether the complainant will testify at trial or what the substance of that testimony would be — at the pretrial stage adequately to determine whether the defendant's need for the privileged information outweighs the witness' right to assert a statutory privilege. Such pretrial determinations would, by their very nature, often be conjectural and would risk the unnecessary disclosure of the privileged material in question." *Peseti*, 101 Haw. at 186.

This section of the *Peseti* opinion was simply restating the concern expressed in Justice Blackmun's concurrence in *Ritchie* that sometimes *in camera* review of the documents may be necessary *after* other evidence has already been admitted, to better determine if information in the subpoenaed document is material. *Id*., see also *Ritchie*, 480 U.S. at 65-66, Blackmun, J., concurring. The section quoted by the State has nothing to do with how specific a basis for materiality a defendant must articulate, despite the State's representation. See *id*., see also (State's Br. 25-26).

State v. Hummel, 483 N.W.2d 68, 72 (Minn. 1992), also cited by the State, (State's Br. 20), suggests that *some* showing of relevance was necessary to trigger *in camera* review of confidential documents, but disagreed with the trial court that the burden was so high as to require an "offer of proof that the material sought was relevant and contained exculpatory information." The holding in *Stripling v. State*, 261 Ga. 1, 6 (Georgia, 1991), turned entirely on the document being requested. In that case, the Georgia Supreme Court ruled that a defendant's request for access to his own parole file would automatically trigger *in camera* review of the documents for potentially mitigating evidence, but that in the absence of a reasonably specific request for relevant and competent information, the trial court may decline to conduct an *in camera* inspection of parole files of other people. *Stripling* 261 Ga. at 6.

The rest of the cases cited by the State, (State's Br. 20-21), including *State v. Sanders*, 92 Ohio St. 3d 245, 261 (Ohio 2001), and *State v. Gagne*, 136 N.H. 101, 105 (N.H., 1992), as well as several of the federal cases all relied upon the same footnote in *Ritchie* to require a plausible showing that the documents in question contained materially favorable evidence. The differences in procedure and substantive law, though, prevent them from being particularly useful to this Court in determining whether confidential documents are subject to heightened requirements than other documents responsive to a subpoena *duces tecum*. For example, in *United States v. Lee*, 660 F. App'x 8, 14 (2d Cir. 2016) a non-precedential case cited by the State, the defendant did not even request *in camera* review, and in which the prosecution represented that no exculpatory material existed. Similarly, in *United States v. Stampe*, 994 F.3d 767, 771 (6th Cir. 2021) (overruled on other grounds by *Stampe v. United States*, 142 S. Ct. 1356 (2021)) the government made an affirmative representation that no material evidence existed in the requested documents, and the trial court was forced to accept that representation, and thus there was no need for *in camera* review. The Fourth Circuit and Seventh Circuit cases cited by the State, (State's Br. 20-21), all rely on the "plausible showing" language that was used for compulsory process guarantees in *Valenzuela-Bernal*, 458 U.S. at 867, and subsequently, if, perhaps, off-handedly, referenced in the *Ritchie* footnote. *Ritchie*, 480 U.S. at 58 n.15.

The State next argues that "this Court has already recognized that a preliminary showing of materiality is relevant in determining whether a defendant may receive an *in camera* review of otherwise privileged documents." (State's Br. 22). To support this assertion, though, the State cites *People v. Foggy*, 121 Ill. 2d 337 (1988), which says no such thing. In that case, as argued in the Appellant's Brief, this Court found that a defendant's right to *in camera* review of subpoenaed documents, as provided for in *Ritchie*, is not implicated when the documents are protected by an absolute privilege against disclosure. *Foggy*, 121 Ill. 2d at 348. After holding that *Ritchie* was inapplicable in that case, this Court went on to analyze the balance of interests

between the defendant's due process right to exculpatory evidence and the patients' privacy rights in the non-disclosure of privileged treatment notes. *Id*., at 349. In addressing that question, this Court pointed out that the defendant in *Foggy* did not even allege that information existed in the privileged documents that would be subject to disclosure. *Id*. This is not the same thing as saying that this Court has previously recognized that a "preliminary showing of materiality is relevant to determining whether a defendant may receive an *in camera* review of otherwise privileged documents." (State's Br. 22). In *Foggy*, this Court found the complete privilege of the documents in question sufficient to exclude the case from the type contemplated by *Ritchie*, and separately found that the defendant did not even allege the existence of discoverable evidence is different from requiring a preliminary showing of materiality. See *Foggy*, 121 Ill. 2d at 348-49. As the case at bar *does* fall under *Ritchie*, as conceded by the State, this Court's analysis of what kind of showing was necessary in *Foggy* is not on point. That analysis in *Foggy* also does not necessarily suggest that the required showing of materiality is higher than what is normally required in a subpoena *duces tecum*. *Id*.

The footnote in question in *Ritchie* is responsive to the State's argument in that case that the documents could not be turned over to the defendant, because he did not make a particularized showing of what he wanted or how it was material. *Ritchie*, 480 U.S. at 58 n.15. The Court's response to that argument, begins with the phrase "of course," signaling that what follows that phrase is a premise that already exists in law, rather than a new requirement: "Ritchie, of course, may not require the trial court to search through the CYS file without first establishing a basis for his claim that it contains material evidence. *Ritchie*, 480 U.S. at 58 n.15. By using that phrase, the Court is reminding the reader that such a requirement is already in place, for any subpoena *duces tecum*. In Illinois, that requirement is laid out in *Shukovsky*, 128 Ill.2d at 225 and *Carey*, 77 Ill. 2d at 265, 270. *Ritchie*, therefore, did not create any new or heightened requirement for *in camera* review of subpoenaed confidential documents, but simply held

that such documents (if not protected by complete privilege) are subject to *in camera* review, just like the documents responsive to any subpoenas that meet the existing criteria. See *id*; see also *Shukovsky*, 128 Ill.2d at 225; *Carey*, 77 Ill. 2d at 265, 270.

The State's Position Would Be An Unnecessary Change Of Illinois Law

As argued in the Opening Brief, Illinois courts have been applying *Ritchie* consistently and workably. This Court has explicitly approved of the *in camera* review of a victim's confidential mental health records in *People v. Bean*: "The in camera review procedure prescribed by the Court in *Ritchie* was precisely the procedure used by the trial judge." *People v. Bean*, 137 Ill. 2d 65, 99 (1990). The State argues, though, that *Bean* is inapplicable because this Court was not asked to opine about the showing required to trigger an *in camera* review. (State's Br. 27). There would have been no reason for either the trial court or this Court to opine on what showing would be required, though, when the *Ritchie* Court did not introduce any "showing" necessary to trigger an *in camera* review that is any different than what is required for any subpoena *duces tecum*. See *Ritchie*, 480 U.S. at 58.

The Third District also understood this Court's ruling in *Bean* to impose no stricter requirement on *in camera* review of confidential records in *People v. Escareno*, 2013 IL App (3d) 110152, ¶ 20. "Therefore, even though unfounded DCFS reports are made privileged by section 7.14 of the Act (325 ILCS 5/7.14 (West 2008)), defendant has a constitutional right to all material information contained within the report. See *Bean*, 137 Ill.2d at 97, 147 Ill.Dec. 891, 560 N.E.2d 258." *Id*. The State argue that *Escareno* was wrongly decided, though it gives no specific reasons applicable to that case, other than "for the reasons explained." (State's Br. 28).

In *Bean*, this Court correctly read *Ritchie* to require the exact procedure followed by the trial court in *Bean*, which was an *in camera* review of privileged records, and this Court read no extra requirement of a heightened showing being necessary. See *Bean*, 137 Ill. 2d at 99.

The Third District properly relied upon that ruling to order a similar procedure, without any new requirements for a heightened showing being necessary. See *Escareno*, 2013 IL App (3d) 110152, ¶ 20. If this Court adopts the State's argument, and institutes a higher burden for a defendant to satisfy in order to earn his due process right to potentially exonerating material, it will be making a change to Illinois law and overruling cases that have relied upon the current laws of subpoenas *duces tecum*.

Sam Sauls made a sufficient showing that the DCFS report contained material evidence, under both current subpoena duces tecum law, and under Ritchie, regardless of the standard used.

The subpoena *duces tecum* issued in this case was proper, and was not challenged at the trial court on any actual, legal, basis upon which such a subpoena can be quashed. (See R. 223-258; C. 130-36). Further, the showing of materiality demonstrated by the defense in this case, to the extent that one was necessary, was more robust than the United States Supreme Court found to be sufficient in *Ritchie.* See *Ritchie*, 480 U.S. at 44, 58.

At the hearing on this motion to the subpoena *duces tecum* in this case, defense counsel argued that the information in the subpoenaed reports goes to the interest and bias of the witnesses, and may include contradictory statements that would qualify as *Brady* material. (R. 223). The State's Attorney relied on the Attorney General's motion to quash the subpoena, and the confidentiality of the documents in question. (R. 224). The State also professed a belief that there was no *Brady* material in the documents, but also confessed that it had no knowledge of the contents of the documents on which to base that opinion. (R. 224). The only legal basis to quash the *subpoena* in the Attorney General's motion was based on the document's confidentiality. (C. 130). That same basis was reiterated in the accompanying Memorandum of Law. (C. 133-36). In granting the motion to quash, the trial court said "in reviewing the [motion] and the memorandum attached thereto, I believe the law is in favor of the Department." (R. 225). Thus, the subpoena was only challenged based on a belief that the information should not be disclosed, even for *in camera* review. (R. 223-25, C. 130-36).

Neither the parties, nor the trial court, expressed any concern that the documents sought by the subpoena *duces tecum* was not evidentiary and relevant other than the State's baseless guess that there was no *Brady material.* (See R. 224). Nobody argued that the documents are not otherwise procurable reasonably in advance of trial by the exercise of due diligence, or that the defense can properly prepare for trial without production and inspection of the documents. (See R. 223-25, C. 130-36). Nobody argued that the application was not made in good faith or was intended as a general "fishing expedition." (See R. 223-25, C. 130-36). Nobody argued at the trial court that compliance with the subpoena would be unreasonable or oppressive, or overbroad. (See R. 223-25; C. 130-36). Most importantly to this analysis, though, nobody objected to the subpoena or moved to quash it on the basis of whether the documents were relevant and material. (See R. 223-25; C. 130-36). Therefore, none of the legitimate bases for quashing the subpoena were argued to the trial court. See *Shukovsky*, 128 Ill.2d at 225; *Carey*, 77 Ill. 2d at 265, 270. The sole basis for the motion to quash the subpoena was that the documents were statutorily protected, and this basis is obviated by *Ritchie*, 480 U.S. at 58.

In *Ritchie*, the defendant argued "that he was entitled to the information because the file might contain the names of favorable witnesses, as well as other, unspecified exculpatory evidence." *Id*., at 44. That defendant did not even specify the type of exculpatory evidence that they were seeking, or how it may be "material" or "materially relevant." See *id*. He did nothing to establish "a reasonable probability that the records contain information relevant to his defense" in order to trigger *in camera* review of the subpoenaed documents, as some courts in other States have required. See *Stanaway*, 446 Mich. at 677. All he alleged was that the documents *might* contain the names of potential witnesses or other unspecified evidence. *Ritchie*, 480 U.S. at 44. That was sufficient, in the opinion of the United States Supreme Court, to require the trial court to conduct an *in camera* review of the documents. *Id*., at 58.

In contrast, Sam Sauls argued that information in the subpoenaed documents may contain contradictory statements of one of the State's primary witnesses, a witness known to be hostile to Sam, and who would be permitted to offer hearsay testimony under Section 115-10. (R. 223). This information was also necessary to investigate any further bias or interest that the witness may have in the case, the grounds of which were known to the defense and elicited at trial. (R. 862-64). This was not a fishing expedition for possible, unnamed, witnesses, the contents of whose testimony was unknown, as appears to have been the case in *Ritchie*, 480 U.S. at 44.

Prior statements of one of the State's primary witnesses regarding abuse of a child in her care, who may have been the same purported victim as the one in this case, have more than a reasonable probability of being relevant to the defense. Sam therefore demonstrated that it is probable that the documents contained material evidence that could be useful in his defense and impeachment of important witnesses. (R. 223). Thus, under either the appropriate standard, which is co-terminal with the requirements of any other subpoena *duces tecum*, or under the "plausible showing of materiality" standard proposed by the State, Sam Sauls made the requisite showing of materiality necessary to trigger *in camera* review of the documents in question.

The State's argument that the trial court *could* reasonably conclude that the investigation would not plausibly contain evidence material to the defendant's case was not made below and is speculative. (State's Br. 32). It also implicitly concedes that the trial court *could* reasonably conclude that the results of the investigation may contain evidence material to the defense's case, which would satisfy the standard urged by the State, as discussed above. If the trial court had made such a speculation without conducting the *in camera* review required by *Ritchie*, that determination would have been arbitrary and therefore an abuse of discretion. *People v. Ortega*, 209 Ill. 2d 354, 359 (2004).

As the trial court in this case was required to conduct an *in camera* review, the State is correct that this Court should remand the case for the purpose of allowing the trial court to review the DCFS report in camera for materiality. (State's Br. 33, citing *Escareno*, 2013 IL App (1st) 110152, ¶ 21. If the report contained material information, Sam should be given a new trial. *Ritchie*, 480 U.S. at 58.

CONCLUSION

For the foregoing reasons, Samuel Sauls, defendant-appellant, respectfully requests that this Court reverse the trial court's judgment of guilt and vacate his conviction. In the alternative, if this Court grants relief only on Argument II, Samuel Sauls respectfully requests that this Court remand the case for an in camera review of any documents responsive to the subpoena *duces tecum* issued to DCFS on April 11, 2019, (C. 128), with directions that, if the documents contain information that probably would have changed the outcome of trial if disclosed to the defense, his conviction be vacated and a new trial be ordered.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is eighteen pages.

/s/James Henry Waller
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Assistant Appellate Defender

No. 127732

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- SAMUEL SAULS, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 4-19-0667. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 18-CF-1153. Honorable Thomas J. Difanis, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 28, 2022, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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