No. 128676

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- TRENTON JEFFERSON, Petitioner-Appellant.	)	Appeal from the Appellate Court of Illinois, No. 5-20-0185. There on appeal from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, No. 11-CF-378. Honorable John J. O'Gara, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

This case arises from a State appeal of a trial court order granting in part and denying in part a defense motion to bar the State from presenting certain evidence and proceeding on a theory of principal liability in a retrial of a criminal offense. (C605-15) The motion and order were based on the direct estoppel effect of a prior jury's special interrogatory finding. The appellate court reversed the trial court's order and ordered that, on remand, the State would not be barred from retrying defendant Trenton Jefferson on a theory of principal liability. Mr. Jefferson then appealed to this Court. No issue is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

I. Whether the appellate court erroneously asserted jurisdiction under Supreme Court Rule 604(a)(1), where the trial court order that the State sought to appeal did not bar the State from presenting any identifiable item of evidence?

II. Whether a jury's finding on a special interrogatory directly estops the State from presenting evidence or argument that conflicts with that finding, in a retrial for the same criminal offense?

STATUTES AND RULES INVOLVED

Illinois Supreme Court Rule 604(a)(1) (2020) states:

(1) In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence.

STATEMENT OF FACTS

Petitioner-appellant Trenton Jefferson was indicted for the offense of first-degree murder in 2011, for the shooting death of Marcus Gosa. (C32) The indictment alleged that, with the intent to kill or do great bodily harm to Gosa, Mr. Jefferson shot him with a pistol, thereby causing his death. Mr. Jefferson's first trial ended in a hung jury. (C192) He was convicted of first-degree murder on retrial. (C210; R.915) However, in the second trial, the State requested and was granted a series of jury instructions and a verdict form on a special interrogatory, asking the jury to determine whether Mr. Jefferson had personally discharged the firearm that proximately caused the death of the victim, for purposes of possible sentencing enhancement, based on Illinois Pattern Jury Instructions - Criminal Nos. 28.01 - 28.06. (C255-62; R.835-37,848,907-11)

It was undisputed that the cause of Gosa's death was a gunshot wound to the chest. (R.787)

In its closing argument, the State argued that Mr. Jefferson should be found guilty under the theory that he acted as the principal, by personally discharging the firearm that killed Gosa, but that the jury could also find him guilty, in the alternative, under the theory that he was legally accountable for Gosa's death. (R.858-61,895-96) It stated: "If you believe he's only guilty by accountability, then he didn't personally discharge the firearm that caused the death, in which case you would find that that was not proven." (R.860-61) In its verdict, the jury found that "the allegation that the defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa was

not proven." (C211)

On direct appeal, the appellate court reversed Mr. Jefferson's conviction and remanded the cause for a new trial, primarily because the trial court improperly admitted several irrelevant and/or prejudicial statements by State witness Rochelle Davis, in a case where the evidence was closely balanced. *People v. Jefferson*, 2016 IL App (5th) 130289-U, ¶¶ 25-44. (C346-70) In the course of coming to the latter conclusion, the court observed:

> We cannot ignore that the jury's verdict was inconsistent with the testimony of the State's only occurrence witness, [Kiyanna] Howard. According to Howard, the defendant drove the car and was the sole shooter of Gosa, and yet, the jury determined that the defendant was not guilty of personally discharging the firearm that caused Gosa's death. Further, Howard provided no testimony to support the defendant's conviction of first degree murder on a theory of accountability. . . . Thus, based upon the record before us, it appears that the jury rejected Howard's testimony regarding her version of events that led to Gosa's death. Accordingly, the jury's verdict, when compared to Howard's testimony, does not make the evidence in this case overwhelming.
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> *Jefferson*, 2016 IL App (5th) 130289-U, ¶ 41.

On remand, Mr. Jefferson filed what was styled as an "Omnibus Pretrial Motion," seeking to bar all evidence that he acted as the principal, based on the jury's special interrogatory finding. (C383-88) The court ruled in his favor (C401-02), and the State appealed. (C403-05)

The appellate court reversed the trial court's order, rejecting Mr. Jefferson's argument that collateral and direct estoppel principles barred the State from presenting any evidence on retrial that he acted as the principal. *People v. Jefferson*, 2019 IL App (5th) 170221-U, ¶¶ 33-51. (C445-68) However, the court faulted both parties for not clearly identifying exactly what evidence the trial court had excluded

on retrial, and the defense for not describing "with particularity the basis for his argument." *Id.* at ¶¶ 47-48. Accordingly, it did not consider its order to be a final determination on the merits of the issue, and did not foreclose Mr. Jefferson "from raising and relitigating the application of direct estoppel and issue preclusion as it relates to his case on remand." *Id.* at ¶ 50.

On remand, Mr. Jefferson filed a "collateral estoppel motion to bar evidence," asking the trial court to "preclude the State from introduction of any evidence, argument, question, or insinuation tending to show that Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa," based on the jury's special interrogatory finding and the application of collateral estoppel to that finding. (C477-86) His motion specifically identified five items or categories of testimony offered in the previous trial that he asked the court to bar on retrial. One of these items was testimony by witness Howard that Mr. Jefferson "was covering something up when he reentered the vehicle" in which Howard had been riding on the night of the murder. (C485-86)

After the filing of a State response (C590-94), and a hearing (R.985-1036), the trial court entered an order that granted the motion in part, but did not actually bar any item of evidence as requested by the defense. (C605-15) Applying the direct/collateral estoppel doctrine, it barred the State from "proceeding on a theory, and presenting evidence or argument that proof exists beyond a reasonable doubt that the Defendant was armed with a firearm *and* personally discharged the firearm *that proximately caused the death of Marcus Gosa.*" (Emphasis in original; C613) This mirrored the language of the jury's finding on the special interrogatory. (C211)

The court also stated that, upon request of the defense, it would be willing to instruct the new jury that there was insufficient evidence to find that Mr. Jefferson personally discharged the firearm that proximately caused Gosa's death. (C614)

However, the court denied Mr. Jefferson's request to bar the specific items of testimony identified in his motion, on the grounds that the same testimony was also consistent with a theory of accountability. (C613-15) There were only two exceptions. The court failed to specifically address Howard's testimony that Mr. Jefferson "was covering something up when he reentered the vehicle," although it appeared to allow all of her testimony regarding everything she witnessed while in the vehicle, without mentioning that particular observation. (C613) It also failed to rule on the admissibility of testimony by informant witness Reshon Farmer, because it correctly noted that it is now "required, pursuant to 725 ILCS 5/115-21, to conduct a hearing to determine whether the testimony of the informant is reliable." (C615)[1] It added that, if his testimony were to be allowed, it would, at *that* time, "determine the scope of his testimony," consistent with the rest of its order.

Thus, despite its language that evidence in support of a theory that Mr. Jefferson was the actual shooter would be barred, the court did not actually bar any item of evidence, other than those portions of testimony already barred by the appellate court in *Jefferson*, 2016 IL App (5th) 130289-U. (C614).

The State filed a timely notice of appeal and certificate of substantial

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[1] The hearing requirement for such an informant witness did not go into effect until January 1, 2019, pursuant to Public Act 100-1119, well after the conclusion of the second trial in this cause on February 27, 2013.

impairment, claiming jurisdiction pursuant to Illinois Supreme Court Rule 604(a)(1). (C624,641) The appellate court reversed and remanded. *People v. Jefferson*, 2022 IL App (5th) 200185, ¶ 25.

The appellate court first determined that it had jurisdiction to hear the appeal pursuant to Supreme Court Rule 604(a)(1), because the trial court's order had the "substantive effect" of suppressing evidence. *Jefferson*, 2022 IL App (5th) 200185, ¶¶ 18-20. With respect to the merits, the court held that, since the purpose of the special interrogatory was to comply with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and enable the State to obtain a sentence enhancement, it could not be used for any other purpose. *Jefferson*, 2022 IL App (5th) 200185, ¶ 24. It held that the special interrogatory finding had no issue preclusive effect and the doctrine of direct estoppel did not apply to it. *Id.* In support of this proposition, the court cited to *People v. Jackson*, 372 Ill. App. 3d 605, 612 (4th Dist. 2007); *People v. Reed*, 396 Ill. App. 3d 636, 646 (4th Dis. 2009); and *People v. Allen*, 2022 IL App (1st) 190158, ¶ 45. *Jefferson*, 2022 IL App (5th) 200185, ¶ 24.

This Court granted leave to appeal on September 28, 2022.

ARGUMENT

I. The appellate court did not have jurisdiction to consider the merits of this State appeal.

This Court's Rule 604(a)(1) (2020) provides, in pertinent part: "In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in . . . suppressing evidence." The appellate court held that it had jurisdiction to consider the State's appeal on the basis of that provision. *Jefferson*, 2022 IL App (5th) 200185, ¶¶ 18-20.

Standard of Review: The question of whether the appellate court had jurisdiction over this appeal is a question of law, which this Court reviews *de novo*. *People v. Salem*, 2016 IL 118693, ¶ 11.

The trial court order at issue in this appeal declared that it *would* bar any evidence in support of the theory that Mr. Jefferson "was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa" (C613), but it did not *actually* bar *any* evidence – at all. It did not do so because it drew the extremely strained conclusion that the same testimony that pointed to Mr. Jefferson as being the shooter was not *in*consistent with the theory that he was guilty under an accountability theory. (C613-15) It apparently failed to recall that the appellate court had come to the contrary conclusion in the 2016 appeal. *Jefferson*, 2016 IL App (5th) 130289-U, ¶ 41.

There are two caveats to this point of fact (that the trial court did not actually bar any evidence) that must be addressed. First, in discussing the testimony of

witness Howard (C613-14), the trial court apparently overlooked Howard's statement that Mr. Jefferson "was covering something up when he reentered the vehicle," which was one of the statements that the defense, in its motion, sought to prohibit. (C485) However, since the trial court allowed every other piece of testimony by Howard, under the questionable rationale that her testimony could be reconciled with the proposition that Mr. Jefferson was guilty under a theory of accountability, and since it stated that Howard's testimony generally did not necessarily "infer that the defendant was the only shooter" (C613), it is extremely unlikely that the trial court intended to bar that testimony.

In any event, it was the State's burden to establish that the court's ruling had the substantive effect of suppressing evidence, and such a conclusion cannot be drawn from the trial court's silence. The State could have easily requested a clarification from the trial court as to this point before taking its complaint to the appellate court, yet it failed to do so.

Second, the trial court, out of necessity, did not address the question of whether it would permit the prospective testimony of Reshon Farmer, since it might be barred under the recently amended § 115-21 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-21 (2020)), and this could not be determined without holding the hearing required under § 115-21(d). (C.615) Since Farmer testified only as to what Mr. Jefferson purportedly told him while they were both jailed, and Farmer testified that Mr. Jefferson admitted being the shooter (R.662), it might be more difficult for the trial court to justify allowing such testimony under the rationale that it could also support an accountability theory. However,

it is also highly probable that Farmer's testimony (R.658-87) will be barred under § 115-21. It was, as the appellate court observed in its 2016 order, "highly suspect" for several reasons. *Jefferson*, 2016 IL App (5th) 130289-U, ¶ 42.[2]

As with the uncertainty about one of Howard's statements, the salient point here is that the trial court had not actually barred Farmer's testimony. At most, the State can only speculate that it *might* eventually be barred pursuant to the court's order. The State did not wait to learn the outcome of the § 115-21(d) hearing before filing its interlocutory appeal. Thus, the court's order did not have the "substantive effect" of barring this evidence.

The only party substantially aggrieved by the court's order is Mr. Jefferson, not the State, but that may be an issue for another day. The order *declared* that it was barring "evidence or argument that proof exists beyond a reasonable doubt that the Defendant was armed with a firearm *and* personally discharged the firearm *that proximately caused the death of Marcus Gosa*." (Emphasis in original; C613) Yet it did not bar a single identifiable item of evidence. (C613-15)

Essentially, the court's declaration applied only to some hypothetical evidence that it *might* find it necessary to bar – *if* the State sought to present some heretofore unidentified piece of evidence that: a) supported a theory that Mr. Jefferson was armed with a firearm and personally discharged the fatal bullet, yet b) did not even

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[2] In addition to the reasons stated by the court, Farmer's testimony was not even consistent with that of the State's only occurrence witness, Howard. Howard testified that Mr. Jefferson had already exited the vehicle when she heard gunshots, after which Mr. Jefferson re-entered the vehicle. (R.573-76) According to Farmer's account of what Mr. Jefferson told him, Mr. Jefferson did not exit the vehicle until after the shooting, to see if Gosa was dead. (R.665)

remotely support the conclusion that he was guilty under an accountability theory, under the trial court's expansive interpretation of the latter. The principal effect of the order was not to limit evidence, but to limit the State's *arguments* at trial, in order to honor and give preclusive effect to the previous jury's finding of fact.

It does violence to the English language and logic to conclude that an order that did not prohibit any evidence at all, and merely left open a remote possibility that some unidentified evidence *might* be suppressed, had the "substantive effect" of "suppressing evidence." Yet that is what the appellate court concluded. *Jefferson*, 2022 IL App (5th) 200185, ¶¶ 19-20.

That conclusion cannot be reconciled with the plain meaning of the Rule. This plain meaning was upheld by this Court in *In re K.E.F.*, 235 Ill. 2d 530 (2009), where the Court reiterated the rule that the order at issue "must, in fact, be one that suppresses evidence." *In re K.E.F.*, 235 Ill. 2d at 537-38, *quoting People v. Truitt*, 175 Ill. 2d 148, 152 (1997). Although the central holding in *Truitt* was distinguished by this Court in *People v. Drum*, 194 Ill. 2d 485, 492 (2002), and abrogated on other grounds by *People v. Miller*, 202 Ill. 2d 328, 335 (2002), that fundamental proposition survives – as it should, given that it simply reflects the plain language of Rule 604(a)(1).

K.E.F. also followed *Truitt's* central holding that evidence is not suppressed, within the meaning of the Rule, where "the sole impact of the circuit court's order is on the *means* by which the information is to be presented." (Emphasis in original.) *K.E.F.*, 235 Ill. 2d at 540, following *Truitt*, 175 Ill. 2d at 152. That is what transpired here. Applying principles of direct estoppel, the trial court's order primarily barred

the State from *arguing* that proof existed beyond a reasonable doubt that Mr. Jefferson personally discharged the firearm that caused the death of the victim. The trial court did not bar a single item of evidence because the same body of evidence was, in the court's view, consistent with the State's alternative claim that Mr. Jefferson was guilty under a theory of accountability.

In *K.E.F.*, the State was not denied the opportunity to present the evidence that it wanted entered; it simply had to adhere to a statutory requirement for admission of a videotaped statement by a minor. *K.E.F.*, 235 Ill. 2d at 533-541. In *Truitt,* the State was not denied the opportunity to present the laboratory report that it wanted entered into evidence; it simply had to call the witness who prepared it. *Truitt*, 175 Ill. 2d at 149-153. In *People v. Crossley*, 2011 IL App (1st) 091893, to cite an instance in which the appellate court properly applied the rule, the State was not denied the opportunity to present evidence about the defendant's blood-alcohol level; it simply had to call the phlebotomist who tested the defendant's blood-alcohol level as a witness. *Crossley*, 2011 IL App (1st) 091893, ¶¶ 2-10.

In the case *sub judice*, the State has not been denied the opportunity to present any witness testimony (except the statements already barred by the appellate court); it simply cannot argue that the testimony proves beyond a reasonable doubt that Mr. Jefferson fired the fatal bullet. This case falls squarely within the same rule of law that determined the outcomes in *K.E.F.*, *Truitt*, and *Crossley*.

This is so notwithstanding the appellate court's citation to *Drum* as supporting authority. *Jefferson*, 2022 IL App (5th) 200185, ¶ 19. In *Drum*, there was no question

that the trial court's order barred the State from introducing prior witness testimony. *Drum*, 194 Ill. 2d at 487-492. In the instant case, no evidence has been barred at all. Contrary to the appellate court's assertion, the order did not prevent the State "from presenting the information to the fact finder." *Jefferson*, 2022 IL App (5th) 200185, ¶ 19. There is no authority for the proposition that jurisdiction is created based on some hypothetical ruling that the trial court might make in the future.

The facts and the applicable law are clear: The appellate court did not have jurisdiction to hear this State appeal. Its holding and order should be reversed on that basis.

II. Even assuming, *arguendo*, that the appellate court had jurisdiction, its ruling conflicts with well-established principles of collateral and direct estoppel, and should be reversed for that additional reason.

A. Standard of Review

The applicability of the doctrine of collateral estoppel is a question of law that this Court reviews *de novo*. *State Bldg. Venture v. O'Donnell*, 239 Ill. 2d 151, 158 (2010).

B. Well-settled federal and Illinois case law support the application of collateral or direct estoppel in criminal cases.

The doctrine of collateral estoppel[3], as applied to criminal law, was given firm definition in *Ashe v. Swenson*, 397 U.S. 436 (1970). In *Ashe*, three or four armed masked men broke into a basement and robbed six victims. *Ashe*, 397 U.S. at 437. The petitioner was first tried for armed robbery on the charge of robbing one of the victims. *Id.* at 438. There was no question that an armed robbery had occurred, and that the named victim was one of the victims. *Id.* However, the evidence that the petitioner was one of the robbers was weak. *Id.* The jury was instructed that the State did not have to prove that the petitioner personally robbed this particular victim in order to sustain a conviction, as long as it found that he was one of the participants in the armed robbery. *Id.* at 439. The jury found

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[3] As the appellate court here correctly noted, the application of collateral estoppel or issue preclusion principles within a single case is known as "direct estoppel," but the same rules of law apply. *Jefferson*, 2022 IL App (5th) 200185, ¶1, n.1, *citing People v. Wharton*, 334 Ill. App. 3d 1066, 1078 (4th Dist. 2002).

the petitioner not guilty. *Id.* The State then brought him to trial a second time on charges of committing armed robbery with respect to a second victim. *Id.*

At the second trial, the State put on different witness testimony that more strongly identified the petitioner as one of the robbers, declined to call one of the victims whose identification testimony was harmful to its case, and the petitioner was convicted. *Id.* at 439-40. He then filed a federal *habeas corpus* petition, claiming that the second prosecution had violated his right not to be twice put in jeopardy. *Id.*

The petition was denied by the district court, and the Eighth Circuit affirmed, but the U.S. Supreme Court reversed. *Id.* at 440-41, 447. It noted that "'[c]ollateral estoppel'... stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Id.* at 443. Applying the doctrine "requires a court to 'examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.'" *Id.* at 444. The Court held that:

> Straightforward application of the federal rule to the present case can lead to but one conclusion. For the record is utterly devoid of any indication that the first jury could rationally have found that an armed robbery had not occurred, or that Knight [the first victim] had not been a victim of that robbery. The single rationally conceivable issue in dispute before the jury was whether the petitioner had been one of the robbers. And the jury by its verdict found that he had not. The federal rule of law, therefore, would make a second prosecution

> for the robbery of Roberts [the second victim] wholly impermissible. *Id.* at 445.

The Court added that the doctrine of collateral estoppel was embodied in the Fifth Amendment guarantee of double jeopardy. *Id.*

In the case *sub judice*, the State's sole evidence with respect to the cause of death was that Marcus Gosa "died from [a] gunshot wound to the chest." (R.787) Therefore, the only way that Mr. Jefferson could have acted as the principal in the murder is if he personally discharged the firearm. However, a jury has already found that the State failed to prove beyond a reasonable doubt that he "personally discharged the firearm that proximately caused the death of Marcus Gosa." (C211) That means that "an issue of ultimate fact" has been "determined by a valid and final judgment," and, therefore, "that *issue* cannot again be litigated between the same parties." (Emphasis added.) *Ashe*, 397 U.S. at 443.[4]

Thus, under *Ashe*, the State may retry Mr. Jefferson for murder, but it may not reassert the issue of ultimate fact that he fired the fatal bullet, because that

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[4] This Court may have some concerns about the instant case presenting a "final judgment" in light of its longstanding rule that, "[f]or purposes of applying the doctrine of collateral estoppel, finality requires that the potential for appellate review must have been exhausted." *Ballweg v. City of Springfield*, 114 Ill. 2d 107, 113 (1986), *citing Relph v. Board of Education,* 84 Ill. 2d 436, 442-44 (1981). However, in both *Ballweg* and *Relph*, the lack of finality was based on the fact that the "*issues* . . . had not been finally adjudicated when the mandates of the appellate court issued." (Emphasis added.) *Relph*, 84 Ill. 2d at 442; see *Ballweg*, 114 Ill. 2d at 113. That principle might have applied if this case had come before this Court after the 2019 appeal, but it does not apply now that the appellate court has decisively ruled on the direct estoppel issue. *Jefferson*, 2022 IL App (5th) 200185, ¶ 25. Moreover, neither party has ever questioned the propriety, soundness or finality of the jury's special interrogatory finding itself, either in the trial court or the appellate court, and the appellate court never questioned the finality of that part of the trial court's judgment.

issue has already been resolved.

This Court, and the appellate court, have applied the same principles numerous times, and in a variety of contexts – even prior to *Ashe*. In *People v. Haran*, 27 Ill. 2d 229 (1963), for example, the defendant was charged with rape, along with two co-defendants. *Haran*, 27 Ill. 2d at 230. The co-defendants were convicted, but the defendant was acquitted. *Id.* However, the same defendants were also indicted for a "crime against nature," against the same victim, based on the same incident. *Id.* At the second trial, the victim was permitted to testify a second time that the defendant had forced her to submit to an act of intercourse, and he was convicted of that offense. *Id.*

This Court held that the issue was not double jeopardy *per se*, since it was "clear that the State was entitled to bring the defendant to trial on the second indictment since the acts in question constituted different crimes." *Haran*, 27 Ill. 2d at 231. Rather, the question was "whether the doctrine of estoppel by verdict precluded the State from introducing any evidence of the act of intercourse at the second trial." *Id.* "Estoppel by verdict" is an older term used to describe collateral estoppel. See *People v. Borchers*, 67 Ill. 2d 578, 583 (1978).

After reviewing use of the doctrine in criminal cases, and distinguishing some of the authorities cited by the State, *Haran*, 27 Ill. 2d at 232-235, this Court noted that the prior acquittal of the defendant on the rape charges necessarily "amounted to a determination by the jury that the defendant did not have intercourse" with the victim. *Id.* at 235. It held "that the State was estopped by this verdict from introducing evidence at the present trial that the defendant had

intercourse with her," and that the defendant's conviction must be reversed and the cause remanded for a new trial. (Emphasis added.) *Id.* at 235-36. The State was not barred from prosecuting the new *charge*, but it was barred from introducing evidence on the *issue* of whether the defendant had intercourse with the victim.

This Court again applied the principle of collateral estoppel in *Borchers*, where a defendant had been found not guilty by a federal jury on charges of mail fraud and was then charged and convicted in state court on three counts of theft. *Borchers*, 67 Ill. 2d at 580-81. The Court found that "[t]he controlling fact or question in both prosecutions was whether or not the defendant had an intent to commit a fraud. The verdict of acquittal in the Federal prosecution resolved this factual question in favor of the defendant, and his conviction under the State prosecution required that the same factual question be resolved in favor of the prosecution. Thus relitigating this factual question was violative of the doctrine of collateral estoppel." *Id.* at 588.

This Court's opinion in *People v. Carrillo*, 164 Ill. 2d 144 (1995), supports the further conclusion that collateral estoppel may have the effect of barring the State from pursuing a particular *theory* of the case, as the trial court determined in the case *sub judice*. In *Carillo*, one of two co-defendants ("Stacey") was convicted of home invasion and burglary on an accountability theory, but was acquitted of attempted murder, armed robbery, aggravated battery and armed violence. *Carrillo*, 164 Ill. 2d at 147. After the victim died, however, Stacey was re-indicted for murder. *Id.* at 146.

Because the trial court had already determined that there was reasonable

doubt that Stacey had the requisite intent to kill or cause great bodily harm to the victim, this Court concluded "that the murder charges based upon intent to kill or do great bodily harm are foreclosed as against Stacey based upon principles of collateral estoppel." *Id.* at 152. However, it further held that she could still be charged and tried for *felony* murder, based upon home invasion and burglary, as well as murder based upon the *knowledge* that her actions created a strong possibility of death or great bodily harm – because she had not been acquitted of the elements of murder under those theories. *Id.*

Thus, just like the trial court in the case at bar, this Court held that collateral estoppel principles barred the State from presenting a particular *theory* of murder to a successor jury without barring it from pursuing the murder charge altogether. Accord *People v. Brown*, 2015 IL App (1st) 134049, ¶¶ 45-46 (following *Carrillo*, the doctrine of collateral estoppel precluded first degree murder conviction "on the theory" that the defendant knew that his acts created a strong probability of death or great bodily harm, but did not foreclose subsequent prosecution for felony murder). See also *People v. Fort*, 2017 IL 118966, ¶ 34 ("When a defendant is charged with first degree murder but convicted of second degree murder, the State is prohibited by collateral estoppel from later retrying the defendant for first degree murder.").

Similarly, other jurisdictions have held that collateral estoppel may be used to bar the introduction of evidence and assertion of an issue in a subsequent trial against the same defendant, even where it does not necessarily bar the subsequent charge from being brought. A leading case for this proposition is *Wingate v.*

Wainwright, 464 F.2d 209 (5th Cir. 1972). In *Wingate*, the defendant had been acquitted in two separate cases of robbing a store and a gas station, respectively. *Wingate*, 464 F.2d at 210. He was subsequently tried for robbery of another small store, and, over defense objections, the State introduced testimony that the defendant had committed the earlier robberies, in order to establish its legal theory that the defendant had engaged in a "course of conduct." *Id.*

On appellate review of his *habeas* petition, the defendant argued that "collateral estoppel does not depend upon the cause of action or ultimate facts in question at a subsequent trial; it depends upon whether a particular *fact* arising in a subsequent trial was previously litigated and determined." (Emphasis added.) *Id.* at 212. He argued that the two prior judgments of acquittal precluded the State from re-asserting and submitting to the jury at a subsequent trial that he had committed those robberies. *Id.*

The Fifth Circuit agreed, noting that, in *Ashe*, "the Court speaks in terms of prohibiting a *relitigation* in any future lawsuit between the same parties of issues actually determined at a previous trial." (Emphasis in original.) *Id.* at 213, citing *Ashe*, 397 U.S. at 443, and other authorities. It added that it was unable to find "any basis for limiting the prohibited relitigation of a previously resolved issue to only those suits where the relitigation is essential for the maintenance of the subsequent lawsuit." *Id.*, citing several authorities. It further held:

> We do not perceive any meaningful difference in the quality of "jeopardy" to which a defendant is again subjected when the state attempts to prove his guilt by relitigating a settled fact issue which depends upon whether the relitigated issue is one of "ultimate" fact or merely an "evidentiary" fact in the second prosecution. In both instances the state is attempting to prove the defendant guilty of

> an offense other than the one of which he was acquitted. In both instances the relitigated proof is offered to prove some element of the second offense. In both instances the defendant is forced to defend again against charges or factual allegations which he overcame in the earlier trial.
> *Id.* at 213-14.

Apropos to the case at bar, the court concluded: "We hold that under *Ashe* where the state in an otherwise proper prosecution seeks for any purpose to relitigate an *issue* which was determined in a prior prosecution of the same parties, then the *evidence* offered for such a relitigation must be excluded from trial and *the state must be precluded from asserting that the issue should be determined in any way inconsistent with the prior determination.*" (Emphasis added.) *Id.* at 215.

Accord *Albert v. Montgomery*, 732 F.2d 865, 869-70 (11th Cir. 1984) (citing other cases); *Feela v. Israel*, 727 F.2d 151, 154 (7th Cir. 1984) (where defendants were acquitted of theft of a van, collateral estoppel barred introduction of van theft evidence as part of conspiracy charge); *United States v. Bailin*, 977 F.2d 270, 276 (7th Cir. 1992) (citing numerous federal cases holding that direct estoppel "bar[s] the Government from relitigating a question of fact that was determined in defendant's favor by a partial verdict"); *Jackson v. State*, 183 So. 3d 1211, 1214 (Fla. Dist. Ct. App. 2016) (where jury found that defendant did not assault victim, any prosecution on pending charge of possession of firearm must exclude evidence suggesting an assault); *Cercy v. State*, 2019 WY 131, ¶¶ 22-23, 28, 42, 455 P.3d 678, 686-693 (Wyo. 2019) (where defendant's acquittal on charges of first- and second-degree sexual assault required jury to find that he did not perform cunnilingus on victim, he could still be tried for third-degree sexual assault, and evidence of cunnilingus could still be admitted, but the jury must be instructed

that it cannot convict him based on a finding that he performed cunnilingus).

The doctrine of direct/collateral estoppel as it has evolved in Illinois jurisprudence was succinctly stated by this Court in *People v. Jones*, 207 Ill. 2d 122 (2003): "The party seeking to invoke collateral estoppel must show that: (1) the issue was raised and litigated in a previous proceeding; (2) that the determination of the issue was a critical and necessary part of the final judgment in a prior trial; and (3) the issue sought to be precluded in a later trial is the same one decided in the previous trial." It added that "the collateral estoppel rule requires a court to examine the record of the prior proceeding and determine whether a rational jury could have grounded its verdict on an issue other than the one which the defendant seeks to foreclose from consideration." *Jones*, 207 Ill. 2d at 139.[5]

The issue of whether Mr. Jefferson acted as the principal in the murder of Marcus Gosa was raised and litigated in his second trial, as the jury unanimously found that "the allegation that the defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa was not proven." (C211) The State requested the jury to make a finding as to this issue and it was a critical and necessary part of the final judgment.[6]

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[5] In its more recent opinion in *State Bldg. Venture*, the Court set forth a somewhat different three-part test, which included the requirement of identity of parties or persons in privity with the parties. *State Bldg. Venture*, 239 Ill. 2d at 158. That being a civil case, Mr. Jefferson assumes that the test stated in *Jones* is more apropos; however, he would just as clearly satisfy the test as stated in *State Bldg. Venture*.

[6] As the trial court noted at sentencing, "what the jury told me is that Mr. Jefferson did not actually pull the trigger that loosed the bullet that killed Mr. Gosa." (R.958) In determining the sentence, the court added: "[S]ince you were not the shooter, I'm not going to sentence you [to] forty-five years." (R.959-60)

Mr. Jefferson sought to preclude the same issue in his retrial. (C477-86) A rational jury could not have grounded its verdict on the special interrogatory on some other issue, since the special interrogatory was narrowly focused on a clear, singular, question of fact.

Straightforward application of the rules of direct/collateral estoppel requires reversing the appellate court's opinion and affirming the order of the trial court (except insofar as this Court may wish to review the trial court's very strained *denial* of much of the defense motion). The only remaining question is whether the appellate court below provided a sound legal basis for carving out a new *exception* to these rules. Mr. Jefferson examines this question in the next section.

C. There is no support in the case law for the appellate court's holding that direct estoppel does not apply to a jury's special interrogatory findings.

In its 2016 order reversing Mr. Jefferson's conviction following his second trial, the appellate court appropriately referred to the jury's special interrogatory finding as a part of its "verdict." 2016 IL App (5th) 130289-U, ¶¶ 41-42. Six years later, it took pains to differentiate the jury's special interrogatory finding from the "general verdict of guilt," holding that the doctrine of direct estoppel does not apply to the former. *Jefferson*, 2022 IL App (5th) 200185, ¶ 24.

There is no apparent reason to treat a special interrogatory finding differently from other parts of the verdict. As with the question of guilt, the jury was asked to deliberate upon a question of fact and reach a unanimous conclusion as to whether a defendant had committed a specified act, beyond a reasonable doubt. (C232-34;

R.907-08, following Illinois Pattern Jury Instructions - Criminal Nos. 28.01 - 28.04) There is nothing in the prior case law on collateral/direct estoppel that provides any reason to treat special interrogatory findings any differently than other jury findings of fact. The appellate court here appears to be the first to so hold, at least in Illinois.

The appellate court did so based on three cases recognizing the truism that special interrogatories serve a different *purpose* than other parts of the verdict, *Jefferson*, 2022 IL App (5th) 200185, ¶ 24 – yet none of them addressed the issue of whether collateral or direct estoppel applied to special interrogatory findings. In all three cases, the defendants were not even asserting claims of collateral or direct estoppel, but were attempting to use the special interrogatory verdicts to *overturn the general verdicts* finding them guilty, arguing that they were inconsistent. In all three cases, the terms "collateral estoppel" and "direct estoppel" are not mentioned.

In *Jackson*, the Fourth District was confronted with a special interrogatory virtually identical to the one at issue in this case, used to comply with *Apprendi*. *Jackson*, 372 Ill. App. 3d at 609 (compare C234). The court insinuated that special interrogatories should not even be used in criminal cases at all, stating that there was no statutory authority for using them, and asserting: "If we apply civil rules to this criminal case, the interrogatory should never have been submitted to the jury." *Id.* at 610-11. It criticized the practice of instructing a jury to make a *unanimous* special interrogatory finding, and, on those grounds, refused to consider the answer to a special interrogatory asking whether the defendant personally

discharged the murder weapon "beyond the purpose for which it was asked – whether there could be a sentence enhancement." *Id.* at 612.

Jackson has essentially been abrogated by subsequent developments in the law. It was decided *prior* to the adoption of Illinois Pattern Jury Instructions - Criminal 28.00 - 28.06 (Supp. 4th Ed., June 2011) – the instructions tendered by the State (C255-58), and given by the court in the case at bar. (C232-34; R.907-08) Instruction 28.04 explicitly directs trial courts to instruct the jury that: "Your agreement on your verdict as to the allegation must also be unanimous." This, again, is virtually identical to the text of the special interrogatory at issue in *Jackson*.

It bears recalling here that "[t]he Illinois pattern jury instructions have been painstakingly drafted, and trial courts should not take it upon themselves to second-guess the drafting committee where the instruction in question clearly applies." (Internal quotation marks omitted.) *People v. Durr*, 215 Ill. 2d 283, 301 (2005). This Court's Rule 451(a) provides that when an Illinois Pattern Jury Instruction applies, it "shall be used, unless the court determines that it does not accurately state the law." *People v. Smith*, 2017 IL App (1st) 143728, ¶ 97.

Reed simply adopted the rationale of *Jackson* – again, prior to the 2011 amendments to the IPI-Criminal jury instructions. *Reed*, 396 Ill. App. 3d at 645-46. As in *Jackson*, the defendant in *Reed* had raised an inconsistent verdict argument, contending that the answer to the special interrogatory was fatal to the verdict finding him guilty of murder. *Id.* at 637. Relying partly on *Jackson*, the court rejected that argument. *Reed*, 396 Ill. App. 3d at 645-648.

Although published after 2011, *Allen* is yet another case in which the defendant sought to challenge his murder conviction on the ground that it was inconsistent with the special interrogatory finding. *Allen*, 2022 IL App (1st) 190158, ¶¶ 1, 42. The *Allen* court, however, relied primarily on this court's holding in *Jones*, that "defendants cannot challenge convictions solely because they are legally inconsistent with acquittals on other charges." *Allen*, 2022 IL App (1st) 190158, ¶ 43, citing *Jones*, 207 Ill. 2d at133-34. It then cited to *Reed* and *Jackson*, arguably as *dicta*, and certainly as an afterthought.

Although the question posed here is admittedly unusual, and there was no prior Illinois case directly on point, these three authorities – two of which have been superseded by subsequent developments in the law, and none of which even mentioned collateral or direct estoppel – do not provide a sound legal basis for abandoning the established rules on direct or collateral estoppel.

Other jurisdictions *have found* that collateral estoppel applies to special interrogatories or jury questions. See, *e.g.*, *New York v. Julius Nasso Concrete Corp.*, 202 F.3d 82, 87 (2d Cir. 2000) (special jury verdict form in criminal matter had preclusive effect in subsequent civil case against defendant); *State v. Dial*, 122 N.C. App. 298, 306, 470 S.E.2d 84, 89 (1996) (where jury rendered a special verdict finding that North Carolina had jurisdiction prior to court declaring a mistrial, collateral estoppel precluded defendant from relitigating issue of jurisdiction at his second trial); *People v. Asbury*, 173 Cal. App. 3d 362, 364-66, 218 Cal. Rptr. 902 (Ct. App. 1985) (felony murder conviction was barred by the doctrine of collateral estoppel, as the original jury made a special finding that

the murder did not occur during the course of the robbery). In all three of these cases, the reviewing court simply applied the well-settled rules of collateral estoppel in a straightforward manner and did not even hint that there was any reason to treat special jury findings any differently than a general verdict.

Although the body of case law on the specific question of the estoppel effect of special interrogatories or special verdict findings is admittedly small, it favors Mr. Jefferson, in contrast to the complete absence of authority supporting the appellate court's holding. Perhaps more importantly, the appellate court failed to advance any rationale for *not* applying the doctrine of direct/collateral estoppel to special interrogatory findings, beyond making the mundane observation that they serve a different purpose than the general verdict. This prompts the obvious question – so what? *Why* should that matter? It's still a finding by a jury on an issue of fact, between the same parties, that has been fully litigated. It satisfies all the requisites for the application of direct estoppel. The appellate court's decision does not answer these elementary questions.

The Fifth District should not be permitted to rewrite the settled rules on collateral or direct estoppel, contrary to *Ashe*, *Haran*, *Carrillo*, *Brown* and the other authorities cited herein. It should not be permitted to create a new exception to that doctrine out of whole cloth, without citing to any applicable authority and without substantive legal reasoning. Accordingly, Mr. Jefferson respectfully urges this Court to reverse its ill-founded opinion.

CONCLUSION

For the foregoing reasons, petitioner-appellant Trenton Jefferson respectfully requests that this Court reverse the judgment of the appellate court, affirm the judgment of the trial court, and remand this cause for further proceedings accordingly.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 28 pages.

/s/Richard J. Whitney
RICHARD J. WHITNEY
Assistant Appellate Defender

No. 128676

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 5-20-0185.
Respondent-Appellant,	)	There on appeal from the Circuit Court of the Twentieth Judicial
-vs-	)	Circuit, St. Clair County, Illinois, No. 11-CF-378.
TRENTON JEFFERSON,	)	Honorable John J. O'Gara,
Petitioner-Appellant.	)	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 December 1, 2022, the Brief and Argument 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 petitioner-appellant in an envelope deposited in a U.S. mail box in Mt. Vernon, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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APPENDIX TO THE BRIEF

Trenton Jefferson No. 128676

2022 IL App (5th) 200185

NO. 5-20-0185

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 11-CF-378
	)	
TRENTON JEFFERSON,	)	Honorable
	)	John J. O'Gara,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court, with opinion.
Justices Welch and Moore concurred in the judgment and opinion.

OPINION

¶ 1 The State appeals the trial court's order, which precluded the State from retrying the defendant under a principal theory of guilt for the offense of first degree murder and from presenting evidence and argument in support of such theory. The trial court's order was based upon the doctrine of direct estoppel[1] and gave preclusive effect to a jury's finding on a special interrogatory submitted for sentencing enhancement purposes. This appeal involves a question of whether the doctrine of direct estoppel can be applied to preclude the State from retrying a defendant under both principal and accountability theories of first degree murder where a prior

[1]Throughout the proceedings, the parties and the trial court have used the terms "collateral estoppel," "direct estoppel," and "issue preclusion." The application of issue preclusion within a single claim or cause of action is known as direct estoppel, rather than collateral estoppel. People v. Wharton, 334 Ill. App. 3d 1066, 1078 (2002). The same rules apply to both collateral and direct estoppel. Wharton, 334 Ill. App. 3d at 1078.

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jury returned a general verdict of guilty but answered a special interrogatory for sentencing enhancement purposes in the negative. For the following reasons, we reverse and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 On April 11, 2010, Marcus Gosa was shot and killed in an alley in East St. Louis, Illinois. Nearly a year later, a grand jury indicted the defendant for first degree murder. Approximately one month later, the other suspect in Gosa's murder, Renaldo Brownlee, was killed during an armed robbery. The defendant's first trial resulted in a mistrial because of a hung jury.

¶ 4 At the defendant's second trial, Kiyanna Howard, Brownlee's girlfriend, testified that on the night of the incident, the defendant and Brownlee picked her up around midnight. The defendant drove the vehicle, while Brownlee rode in the front passenger seat. Howard rode in the back seat. At some point during the ride, Howard fell asleep. She awoke upon hearing a car door being slammed shut and observed the defendant standing in front of the car. Howard asked Brownlee what the defendant was doing. Howard lay back down, and seconds later, she heard three or four consecutive gunshots. Following the gunshots, the defendant ran back to the car, reentered the driver's side door, and drove off. According to Howard, as the defendant sped away, he said, "Let's go. Let's go. I think I got that n***." When the defendant got back into the car, Howard stated it appeared as if the defendant was holding something in his hands, but Howard did not see a gun.

¶ 5 Rochelle Davis, the defendant's ex-girlfriend and the mother of his child, testified that she saw the defendant on the night of April 10, 2010, when she was picked up by the defendant and three other individuals, including Brownlee. Davis noticed that the defendant, Brownlee, and one of the other individuals all had 9-millimeter guns. Additionally, Davis indicated that the defendant

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made several statements to her that led Davis to believe the defendant had killed Gosa. Davis testified that the defendant told her that, on the night of the murder, he saw two boys walking in the alley, he and Brownlee got out of the car, and both started shooting at the boys. Davis further testified that the defendant told her that he heard Gosa scream, and it sounded like he had had fallen over something. Davis also testified she eventually stopped dating the defendant and told him that she had started a new relationship with someone else. The defendant responded by saying, "You tell Dude don't end up like Marcus did."

¶ 6 Reshon Farmer, the defendant's former cellmate at the St. Clair County jail, testified that in May 2011, the defendant spoke about his indictment and admitted he "killed the dude" in a drive-by shooting. The defendant stated he rode in the passenger seat, while his friend drove the vehicle. According to Farmer, only the defendant fired shots. Farmer testified that the defendant never mentioned the victim's name but stated the victim "was from Washington Park and they were into it with Washington Park. So, he [(the defendant)] felt like he, you know, had to do what he did."

¶ 7 The autopsy revealed Gosa died of a single gunshot wound to the back. Police did not recover the bullet that killed Gosa. At the crime scene, police recovered two 9-millimeter shell casings, which ballistics testing demonstrated had been fired from the same gun. No fingerprints were found on the shell casings. The police investigation revealed that the area where the shell casings were found corresponded to the passenger side of the suspect vehicle but was not necessarily indicative of the exact location of where the shots had been fired. It was not known whether the shell casings were discharged from the firearm that caused Gosa's death.

¶ 8 After closing arguments, the trial court gave the following instruction to the jury:

"To sustain the charge of First Degree Murder, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible, performed the acts which caused the death of Marcus Gosa; and

Second Proposition: That when the defendant, or one for whose conduct he is legally responsible, did so,

he intended to kill or do great bodily harm to Marcus Gosa;

or

he knew that such acts would cause death to Marcus Gosa;

or

he knew that such acts created a strong probability of death or great bodily harm to Marcus Gosa.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty."

¶ 9 The State also requested that the trial court give the instructions for a sentencing enhancement pursuant to section 5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)). Based on this request, the trial court provided the following instructions to the jury:

"The State has also alleged that during the commission of the offense of First Degree Murder that the defendant was armed with a firearm and personally discharged the firearm that proximately caused death to another person.

* * *

To sustain the allegation made in connection with the offense of First Degree Murder, the State must prove the following proposition:

That during the commission of the offense of First Degree Murder, the defendant was armed with a firearm and personally discharged the firearm that proximately caused death to another person. A person is considered to have 'personally discharged a firearm' when he, while armed with a firearm, knowingly and intentionally fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm.

If you find from your consideration of all the evidence that the above proposition has been proved beyond a reasonable doubt, then you should sign the verdict form finding the allegation was proven.

If you find from your consideration of all the evidence that the above proposition has not been proved beyond a reasonable doubt, then you should sign the verdict form finding the allegation was not proven.

* * *

If you find the defendant is guilty of First Degree Murder, you should then go on with your deliberation to decide whether the State has proved beyond a reasonable doubt the allegation that the defendant was armed with a firearm and personally discharged the firearm that proximately caused death to another person.

Accordingly, you will be provided with two verdict forms: 'We, the jury, find the allegation that the defendant was armed with a firearm and personally discharged the firearm that proximately caused death to another person was not proven[']and 'We, the jury, find the allegation that the defendant was armed with a firearm and personally discharged the firearm that proximately caused death to another person was proven.'

From these two verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other verdict form. Sign only on these verdict forms.

Your agreement on your verdict as to the allegation must also be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson."

¶ 10 The jury found the defendant guilty of first degree murder and answered the special interrogatory in the negative. The trial court sentenced the defendant to 30 years' imprisonment. The defendant appealed.

¶ 11 On appeal, this court determined that portions of Davis's testimony, which are not relevant to this appeal, were improperly admitted and unfairly prejudicial to the defendant. We reversed and remanded for a new trial. See People v. Jefferson, 2016 IL App (5th) 130289-U.

¶ 12 On remand, the defendant filed a pretrial motion to limit the State's evidence on retrial. Following a hearing, the trial court issued its order, holding that Howard and Farmer were "limited and precluded from offering any testimony alleging or suggesting that defendant *** fired a gun causing [Gosa's death]." The trial court also ruled the testimony of Davis was limited to exclude statements specifically addressed in this prior court's order, as well as any testimony suggesting or implicating that the defendant acted as the principal. The State appealed pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Mar. 8, 2016).

¶ 13 On appeal, this court held that the trial court erred in granting the defendant's pretrial motion barring the State from presenting evidence supporting a principal liability theory for first degree murder. We reversed and remanded for further proceedings. In doing so, this court declined to decide whether direct estoppel applied to the circumstances of this case. We found that the parties had not provided adequate analysis of the relevant law or how the law should be applied to the facts of this case. We stated: "Although the State has 'successfully' contested the pretrial order, in the absence of a final determination on the merits by this court, defendant is not prevented from raising and relitigating the application of direct estoppel and issue preclusion as it relates to his case on remand." People v. Jefferson, 2019 IL App (5th) 170221-U, ¶ 50.

¶ 14 On remand, the defendant filed a "Collateral Estoppel Motion to Bar Evidence" (estoppel motion) to preclude the State from introducing evidence or making argument that the defendant was armed with a firearm and personally discharged the firearm that caused the death of Gosa. The defendant asserted that this issue had been conclusively decided in the jury's prior "verdict" within the context of the special interrogatory. The defendant argued that the doctrine of collateral estoppel barred the State from relitigating or introducing any evidence weighing on the issue of whether the defendant was guilty of first degree murder as a principal because the undisputed evidence was that Gosa died from a single gunshot wound. The defendant contended that the State was collaterally estopped from introducing the following evidence: (1) testimony by Howard that the defendant was "covering something up" when he reentered the vehicle, (2) testimony by Davis that the defendant shot Gosa or that the defendant made statements, the substance of which led Davis to believe the defendant shot Gosa, (3) testimony by Davis that the defendant possessed or was at any time armed with a firearm, and (4) testimony by Farmer that the defendant shot Gosa.

¶ 15 Following a hearing on the defendant's motion, the trial court issued its order granting the

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defendant's estoppel motion "in part." In its order, the trial court found the issue of whether the defendant personally discharged the firearm that caused Gosa's death was raised and litigated in the defendant's previous trial and was the same issue the defendant now sought to preclude. The trial court further found the jury's negative finding as to the special interrogatory was a "critical and necessary" part of the final judgment. The trial court ordered that the State was collaterally estopped from proceeding with evidence, argument, or a theory that proof exists, beyond a reasonable doubt, that the defendant was armed with a firearm and personally discharged the firearm that proximately caused Gosa's death.

¶ 16 The trial court determined, however, that the testimony of Howard and Davis was admissible because it was consistent with a theory of accountability. As to Farmer's testimony, the trial court indicated in its order that it was required to hold a hearing pursuant to section 115-21 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-21 (West 2020)) to determine whether, as an informant, Farmer's testimony was reliable. The trial court further indicated that if Farmer's testimony was allowed, the trial court would determine the scope of the testimony consistent with its order. The State filed an interlocutory appeal pursuant to Rule 604(a)(1).

¶ 17 II. ANALYSIS

¶ 18 Before we may address the merits of the State's appeal, we must determine whether this court has jurisdiction to hear this appeal. The State asserts two bases for this court's jurisdiction under Rule 604(a)(1). First, the State contends the trial court's order was grounded upon double jeopardy principles and was, "for all intents and purposes," an order of dismissal pursuant to section 3-4 of the Criminal Code of 2012 (720 ILCS 5/3-4 (West 2018)). Alternatively, the State contends we have jurisdiction because the trial court's order effectively suppresses evidence. The defendant argues that this court lacks jurisdiction because the trial court's order does not bar the

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State from prosecuting the defendant for first degree murder and does not have the substantive effect of dismissing that charge or suppressing evidence. Whether a reviewing court has jurisdiction to consider an appeal is a question of law, which we review de novo. People v. Brindley, 2017 IL App (5th) 160189, ¶ 15.

¶ 19 Rule 604(a)(1), in relevant part, allows the State to bring an interlocutory appeal from a pretrial order that has the "substantive effect" of suppressing evidence. Ill. S. Ct. R. 604(a)(1) (eff. Mar. 8, 2016). Evidence is suppressed within the meaning of Rule 604(a)(1) if the trial court's order prevents the State from presenting information to the fact finder. People v. Drum, 194 Ill. 2d 485, 492 (2000).

¶ 20 Here, the trial court ordered that the State was precluded from pursuing a theory of principal liability and from presenting evidence or argument that the defendant was armed with a firearm and personally discharged the firearm that proximately caused Gosa's death. Accordingly, the trial court's order had the "substantive effect" of suppressing evidence, and the State may appeal therefrom pursuant to Rule 604(a)(1). Thus, we find we have jurisdiction to consider the substantive issue raised in this appeal.

¶ 21 We now turn to the merits of the State's appeal. The parties dispute whether, under the doctrine of direct estoppel, the jury's negative finding on the special interrogatory submitted in this case can preclude the State from pursuing a principal theory of guilt on the charge of first degree murder at the defendant's retrial.

¶ 22 Under the doctrine of direct estoppel, "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." Ashe v. Swenson, 397 U.S. 436, 443 (1970). The party seeking to invoke direct estoppel must show that (1) the issue sought to be precluded was raised and litigated

in a previous proceeding, (2) the determination of the issue was a critical and necessary part of the final judgment in a prior trial, and (3) the issue is the same one decided in the previous trial. People v. Jones, 207 Ill. 2d 122, 139 (2003). Where a defendant claims that a previous acquittal bars a subsequent prosecution for a related offense, the court must examine the record of the prior proceedings and determine whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration. Jones, 207 Ill. 2d at 139. The State's inability to appeal adverse judgments in criminal cases calls for "guarded application" of the doctrine of direct estoppel. See Bravo-Fernandez v. United States, 580 U.S. 5, ___, 137 S. Ct. 352, 358 (2016).

¶ 23 Here, the defendant sought to preclude the State from prosecuting a principal theory of guilt on the charge of first degree murder and from presenting evidence in support of that theory, on retrial. The trial court found that the issue the defendant sought to preclude—that the defendant was armed with a firearm and discharged the firearm that killed Gosa—was raised and litigated in the defendant's previous trial. The trial court further found that this issue was the same issue the defendant now sought to preclude and that the jury's determination was a critical and necessary part of the final judgment in the defendant's previous trial. The trial court concluded that the State was estopped from proceeding, and presenting evidence and argument, on a principal theory of first degree murder. Thus, the trial court found that, under the doctrine of direct estoppel, the jury's negative finding on the special interrogatory had a preclusive effect on the State's ability to retry the defendant as a principal. We disagree.

¶ 24 The purpose of special interrogatories, like the one here, is to comply with Apprendi v. New Jersey, 530 U.S. 466 (2000), and enable the State to obtain a sentence enhancement. See People v. Jackson, 372 Ill. App. 3d 605, 610 (2007). Apprendi requires that any fact, other than a

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prior conviction, increasing the penalty for an offense beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. Apprendi, 530 U.S. at 490. The appellate court has consistently refused "to consider the answer to the 'special interrogatory' beyond the purpose for which it was asked—whether there could be a sentence enhancement." Jackson, 372 Ill. App. 3d at 612; see also People v. Reed, 396 Ill. App. 3d 636, 646 (2009); People v. Allen, 2022 IL App (1st) 190158, ¶ 45. Because the special interrogatory here applied only to whether a sentence enhancement should be applied, and not to the general verdict of guilt, the special interrogatory did not have the effect of precluding the defendant from being retried under both principal and accountability theories of first degree murder. See Allen, 2022 IL App (1st) 190158, ¶ 83 ("[T]he jury's responses to the special interrogatory related only to defendant's sentence enhancement and not to the general verdicts of guilt and, as such, those responses have no bearing on the State's ability to retry [the defendant] for first degree murder on the same basis as in the original trial."). Therefore, the doctrine of direct estoppel does not apply to the circumstances presented in this case.

¶ 25 In sum, we reverse the judgment of the trial court and remand for further proceedings. In the event of a retrial, the State is not estopped from prosecuting a principal theory of guilt for the offense of first degree murder or from presenting evidence and argument of such theory because of the jury's finding on the special interrogatory. The State may not introduce Davis's testimony that this court found was improperly admitted and unfairly prejudicial in Jefferson, 2016 IL App (5th) 130289-U.

¶ 26 Reversed and remanded.

2022 IL App (5th) 200185

Decision Under Review:	Appeal from the Circuit Court of St. Clair County, No. 11-CF-378; the Hon. John J. O'Gara, Judge, presiding.
Attorneys for Appellant:	James A. Gomric, State's Attorney, of Belleville (Patrick Delfino and Patrick D. Daly, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Attorneys for Appellee:	James E. Chadd, Ellen J. Curry, and Richard J. Whitney, of State Appellate Defender's Office, of Mt. Vernon, for appellee.

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
v.	)	No. 11-CF-378
TRENTON JEFFERSON,	)	
Defendant.	)	

COLLATERAL ESTOPPEL MOTION TO BAR EVIDENCE

COMES NOW the Defendant, by his undersigned counsel, and for his Motion to Bar Collaterally Estopped Evidence states:

1. On February 27, 2013, the jury in Defendant's second trial in this matter reached a verdict finding Defendant guilty of first degree murder **and** finding that Defendant was **not** armed with a firearm discharge of which proximately caused the death of Marcus Gosa. JURY TRIAL TRANSCRIPT, *State v. Jefferson*, 11-CF-378, Feb. 27, 2013, *filed* Mar. 27, 2013, pp. 375-376, *attached as* Exhibit C.[1]

2. On appeal, the first degree murder conviction was reversed for erroneously admitted irrelevant and prejudicial

[1] "(THE COURT:) And the verdicts are as follows … 'We, the jury, find the allegation that the defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa was not proven.'" *Id.*, 375:20, 23-24, 376:1-2.

testimony by Defendant's ex-girlfriend Rochelle Davis, and remanded for a new trial. [2]

3. The issue of whether or not Defendant is guilty of first degree murder therefore remains undecided, per the Fifth District's Nov. 15, 2016 reversal.

4. The issue of whether or not Defendant was armed and discharged the firearm that proximately caused Mr. Gosa's death, however, has been conclusively decided.

5. The doctrine of collateral estoppel bars the State from relitigating or introducing any evidence weighing on the issue of whether or not Defendant shot Mr. Gosa.

6. Practically, as the undisputed evidence is that Mr. Gosa died from a single gunshot, the verdict as to the firearm interrogatory forecloses the State from putting on any evidence that Defendant is guilty of first degree murder as the shooter - as the principal. In the February 2013 trial, the State even told the jury in closing argument:

> [I]f you find that [Defendant] was a principal, the actual shooter, then you would find, we argue, that he also had an enhancement proven. And you'll get another set of jury verdict forms for that. It says

[2] 2016 IL App (5th) 130289-U, Nov. 15, 2016. In its March 14, 2019 opinion reversing this Court's 'law of the case'-based pretrial order, the Court of Appeals for the Fifth District stated that it had "no opinion" on the merits of collateral estoppel application to Defendant's forthcoming trial. *State v. Jefferson*, 2019 IL App (5th) 170221-U ¶50. The Fifth District expressly recognized Defendant's right to argue for the application of collateral estoppel. *Id.*

> we find that the defendant - we find that the defendant knowingly personally discharged the firearm--personally discharged the firearm and that personal discharge of the firearm proximately caused the death of Marcus Gosa. If you believe he's only guilty by accountability, then he didn't personally discharge the firearm that caused the death, in which case you would find that that was not proven.

TRANSCRIPT, Feb. 27, 2013, 320:16-24, 321:1-2. As the Court is required to apply collateral estoppel in criminal cases with "realism and rationality" "in a practical frame and viewed with an eye to all the circumstances of the proceedings", the State is now limited to evidence of first degree murder under a 720 ILCS 5/5-2 accountability theory. *Bravo-Fernandez v. United States*, 137 S.Ct. 352, 359 (2016), *internal citations omitted.*[3] Any evidence that Defendant was armed with a gun and fired that gun, striking and killing Mr. Gosa, is irrelevant, of no

[3]The circumstances of Defendant's retrial significantly differ from those of the recent First District Court of Appeals opinion in *People v. Ealy*. 2019 IL App (1st) 161575. The issue of collateral estoppel was not raised or considered in *Ealy*. Instead, the defendant argued the evidence was insufficient to convict him of murder by accountability. *Id.* ¶23. The State had tried Ealy and his co-defendant together and argued that the jury had sufficient evidence before it to find Ealy guilty as a principle. *Id.* ¶25. Ealy contended that the jury's verdict - guilty of murder but also finding the firearm enhancement verdict not proven - necessarily meant the jury found him guilty only on a theory of accountability. *Id.* ¶25. The First District disagreed with the defendant because the jury had been instructed on a theory of accountability not only on the murder charge *but also* as to the firearm enhancement. *Id.* Here, there was no such instruction. TRANSCRIPT Feb. 27, 2013, p. 368.

probative value to any outstanding material issue, overly prejudicial, and inadmissible.

7. Collateral estoppel is a component part of the constitutional guarantee against double jeopardy. *Ashe v. Swenson*, 397 U.S. 436, 445 (1970). Collateral estoppel "comes into effect only where it can be ascertained with certainty that the verdict in the first case necessarily determined a particular fact." *People v. Haran*, 27 Ill.2d 229, 235 (1963). While a general verdict might muddy the inquiry into which facts were necessarily determined, here, the Feb. 27, 2013 verdict expressly stated the jury's factual finding as to the firearm interrogatory. With those facts already determined (i.e., Defendant was not armed with a firearm which he discharged to proximately caused the death of Marcus Gosa) "that issue cannot again be litigated between the same parties in any future lawsuit." *Ashe*, 397 U.S. at 443.

8. Defendant sustains his burden for application of collateral estoppel by showing:

> (1) the issue was raised and litigated in a previous proceeding;
>
> (2) that the determination of the issue was a critical and necessary part of the final judgment in a prior trial; and
>
> (3) the issue sought to be precluded in a later trial is the same one decided in the previous trial.

People v. Jones, 207 Ill.2d 122, 139 (2003), *emphasis added*. The 2013 jury could not have issued their verdict, finding that Defendant was **not** armed with a firearm and personally discharged the firearm that proximately caused Mr. Gosa's death, without necessarily determining that Defendant did not shoot, and therefore did not directly kill, Mr. Gosa.

9. The preclusive effect of the jury's finding (Defendant did not shoot Mr. Gosa) is **not** dependent on whether that finding was technically "an acquittal." In *People v. Kondo*, the Fifth District recognized:

> [I]n Illinois, the doctrine of collateral estoppel has been applied to adjudications other than judgments of conviction or acquittal. Generally, so long as an issue of ultimate fact has been finally and conclusively determined on its merits, collateral estoppel will bar the relitigation of that issue based on the same evidence.

51 Ill.App.3d 874, 877 (5th Dist. 1977), *collecting cases; see also People v. Brown*, 2015 IL App (1st) 134049 (noting that in the context of collateral estoppel and double jeopardy, a directed verdict functions as an 'acquittal.'). In *Kondo*, the defendant contended that factual findings made in a revocation of probation hearing (finding the defendant was carrying a non-functioning firearm) precluded a later criminal charge for unlawful use of a weapon. *Id.* at 875-76. The State argued that the revocation hearing findings were not binding, as those findings did not result in a conviction or acquittal as to

elements of the later-charged offense. *Id.* at 877. The Fifth District found no merit in the State's argument, stating: "It is not the form that the prior adjudication assumes, but the substance of the prior adjudication which is determinative of whether collateral estoppel may be properly applied." *Id.* Whether or not the defendant possessed a "weapon" had been conclusively determined despite the lack of an 'acquittal'; the State was barred from relitigating the issue. *Id.* at 878.

10. Similarly here, Defendant was not charged with the crime of, or therefore 'acquitted' of, 'use of a firearm.' However, the jury did enter a verdict specifically finding that Defendant did **not** use a firearm to shoot Mr. Gosa. **Once that fact was determined, the State is estopped from introducing evidence contradicting that finding.** *See People v. Haran*, 27 Ill.2d 229 (1963); *People v. Borchers*, 67 Ill.2d 578, 588 (1977) ("The verdict of acquittal … resolved this factual question in favor of the defendant, and his [later] conviction … required that the same factual question be resolved in favor of the prosecution. Thus relitigating this factual question was violative of the doctrine of collateral estoppel.")[4].

[4]The Fifth District Court of Appeals March 14, 2019 opinion indicated that the United States Supreme Court recently signaled certain Justices' potential misgivings about specific applications of collateral estoppel in the criminal context. 2019 IL App (5th) 170221-U, *citing Currier v. Virginia*, 138 S.Ct. 2144 (2018). This potential "state of flux about issue

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11. In *Haran*, a jury acquitted the defendant on rape charges, including a charge of statutory rape. *Id.* at 235. The State then charged and tried defendant with a 'crime against nature' of which he was convicted. *Id.* On appeal, the defendant argued that collateral estoppel should have precluded the State from putting on any evidence during the second trial that he had intercourse with the complaining witness. *Id.* at 230. The Supreme Court found that the first jury's verdict necessarily included the factual determination that the defendant had *not* had intercourse with the complaining witness - because the only fact necessary to prove statutory rape had been intercourse. *Id.* at 235. Therefore, the State "was estopped by this verdict from introducing evidence at the present trial that the defendant had intercourse with [the complaining witness]." *Id.* at 236.

12. A previous factual determination precludes, not only future charges, but also precludes prosecutorial **theories** that inherently require evidence on those already-determined issues. *People v. Brown*, 2015 IL App (1st) 134049. In *Brown*, the trial court entered a directed verdict for the defendant on an attempted murder charge. *Id.* ¶11. Later, after the victim died, the defendant was tried and found guilty of first degree murder.

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preclusion in criminal cases" however, has yet to alter any Supreme Court or Illinois precedent. *United States v. Morgan*, 929 F.3d 411, 423 (7th Cir. 2019) (discussing the *Currier* "majority and dissent struggling with *Ashe v. Swenson*").

Id. ¶18. The defendant argued that the directed verdict should have collaterally estopped the State from presenting evidence that he acted with the requisite intent for a first degree murder conviction. *Id.* ¶38. The Court of Appeals disagreed, but found:

> The defendant is correct only to the extent that the State was estopped from prosecuting him for *intentional* first degree murder after his 2009 acquittal … As attempted murder requires specific intent, an acquittal of attempted murder may have a collateral estoppel effect as to whether the defendant possessed the intent to kill or do great bodily harm in order to support an intentional murder conviction.

Id. ¶42, *emphasis in original, internal quotations omitted.* Though estopped from proving *intentional* first degree murder, the State *could* proceed against the defendant as to felony murder. *Id.* ¶43. Collateral estoppel precluded "a first degree murder conviction **on the theory** that the defendant knew that his acts created a strong probability of death". *Id.* ¶45. *emphasis added, internal quotations omitted.* The court cited the Illinois Supreme Court decision of *People v. Carrillo,* where a previous attempted murder acquittal did not preclude subsequent prosecution for first degree murder under a theory other-than intentional killing. *Id.* ¶43, *citing* 164 Ill.2d 144 (1995). The *Brown* defendant's previous directed verdict had also "established a preclusive finding that the defendant did not fire the bullet that injured, and eventually killed, [the

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victim]." *Id.* ¶48. The State was limited to prosecuting first degree murder under a theory that did **not** entail the defendant himself shooting the victim. *Id.* ¶49. Likewise here, the State can proceed against Defendant only under a theory that does not introduce evidence that Defendant shot the victim.

13. The State is collaterally estopped from introducing any evidence contradicting the jury's determination of fact. The state is precluded from putting on evidence which weighs on whether or not Defendant was armed with a firearm on April 10th/11th 2010, discharged a firearm, and shot Mr. Gosa, including but not limited to the following evidence adduced during the jury trial on February 26, 2013: Testimony by Kiyanna Howard that Defendant was covering something up when he reentered the vehicle on April 10th–11th, 2010 (the State insinuates the item was a gun; Ms. Howard never saw a gun; a jury already found that Defendant was not armed with a gun with which he shot Mr. Gosa); Testimony by Rochelle Davis that Defendant shot Mr. Gosa; Testimony by Rochelle Davis that Defendant ever said anything to her, or that he said anything to any other person which Ms. Davis overheard, the substance or circumstance of which made her think that Defendant shot Mr. Gosa; Testimony by Rochelle Davis that Defendant possessed or was at any time armed with a firearm; Testimony by Reshon Farmer that Defendant shot Mr. Gosa. *See* JURY TRIAL TRANSCRIPT, *State v.*

Jefferson, 11-CF-378, Feb. 26, 2013, *filed* Mar. 27, 2013, pp. 375-376, *attached as* Exhibits A, B.

14. Defendant further moves the Court to preclude and bar the State from introduction of any evidence heretofore deemed irrelevant or overly prejudicial by Opinion of the Court of Appeals or by previous Order of this Court.

WHEREFORE, Defendant prays the Court preclude the State from introduction of any evidence, argument, question, or insinuation tending to show that Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa.

/s/ Thomas Q. Keefe, III
Thomas Q. Keefe, III
Assistant Public Defender
No. 6294376
Attorney for Defendant

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

v.

TRENTON JEFFERSON,

Defendant.

No. 11-CF-378

ORDER

This matter comes before the Court on Defendant Trenton Jefferson's Collateral Estoppel Motion to Bar Evidence, for the following reasons, and considering briefing and oral argument on the motion by both Defendant and the State, the Court grants Defendant's motion in part.

A jury previously found Defendant guilty of first degree murder in the death of Marcus Gosa. The jury also determined, by special "VERDICT" form submitted by the State that the State failed to prove beyond a reasonable doubt that the Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa. The jury was specifically instructed that a person is considered to have "personally discharged a firearm" when he, while armed with a firearm, knowingly and intentionally fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm.

Defendant appealed the conviction and the Fifth District Appellate Court of Illinois reversed, finding error in the admission of portions of a witness's testimony. After the case was cack on that remand, Defendant successfully moved to exclude evidence pertinent to a theory of principal liability. Defendant's motion was based on the law of the case doctrine. The Fifth District reversed, finding law of the case doctrine inapplicable in that nothing in *its previous*

holding forbade the State from trying Defendant as the principal. *People v. Jefferson,* 2019 IL App (5th) 170221-U ¶31.

The Fifth District's opinion also addressed a theory Defendant raised only on appeal – the State was estopped from relitigating an issue already decided by the jury, i.e. whether Defendant shot Mr. Gosa. The Court of Appeals found that Defendant's argument failed to apply issue preclusion analysis with the requisite level of specificity and failed to cite adequate authority for application of issue preclusion. *Id.* ¶¶49-50. The Fifth District specifically held that Defendant could raise and litigate the application of estoppel and issue preclusion on remand. *Id.* ¶50. Defendant has now done so, specifying the evidence, argument, and instruction from the first trial pertinent to the jury's special interrogatory determination, and specifying the evidence that the State should be estopped from introducing in retrial, based on the jury's previous special interrogatory determination.

Estoppel/issue preclusion is a component part of the constitutional guarantee against double jeopardy. *Ashe v. Swenson,* 397 U.S. 436, 445 (1970). A criminal defendant sustains his burden for application of collateral estoppel by proving the issue was raised and litigated in a previous proceeding; determination of the issue was a critical and necessary part of the final judgment in a prior trial; and the issue sought to be precluded in a later trial is the same one decided in the previous trial. *People v. Jones,* 207 Ill.2d 122, 139 (2003).

While a general verdict might muddy the inquiry into which facts were necessarily determined, here, the Feb. 27, 2013 verdict expressly stated the jury's factual finding as to the firearm interrogatory. After finding Mr. Jefferson guilty, the jury was instructed, and in fact required to "go on with" their deliberations to decide whether the State had proved beyond a reasonable doubt the allegation that the Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa. This determination

was a critical and necessary part of the final judgment in the first trial. The issue of "personally discharging a firearm" was raised and litigated in a previous proceeding, moreover, the issue sought to be precluded in this trial is the same one decided in the previous trial. The first jury previously determined that the allegation that the Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa was not proven beyond a reasonable doubt, and "that issue cannot again be litigated between the same parties in any future lawsuit." *Ashe*, 397 U.S. at 443.

The preclusive effect of the jury's finding the State did not prove beyond a reasonable doubt that the Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa is not dependent on whether that finding was technically "an acquittal." In *People v. Kondo*, the Fifth District recognized:

> [I]n Illinois, the doctrine of collateral estoppel has been applied to adjudications other than judgments of conviction or acquittal. Generally, so long as an issue of ultimate fact has been finally and conclusively determined on its merits, collateral estoppel will bar the relitigation of that issue based on the same evidence.

51 Ill.App.3d 874, 877 (5th Dist. 1977), *collecting cases; see also People v. Brown*, 2015 IL App (1st) 134049 (noting that in the context of collateral estoppel and double jeopardy, a directed verdict functions as an 'acquittal.'). In *Kondo*, the defendant contended that factual findings made in a revocation of probation hearing (finding the defendant was carrying a non-functioning firearm) precluded a later criminal charge for unlawful use of a weapon. *Id.* at 875-76. The State argued that the revocation hearing findings were not binding, as those findings did not result in a conviction or acquittal as to elements of the later-charged offense. *Id.* at 877. The Fifth District found no merit in the State's argument, stating: "It is **not the form** that the prior adjudication assumes, but the **substance of the prior adjudication** which is determinative of whether collateral estoppel may be properly applied." *Id.* (Emphasis added).

Whether the defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa beyond a reasonable dount has been conclusively determined despite the lack of an 'acquittal'; the State was barred from relitigating the issue. *Id.* at 878.

Here, the jury entered a verdict specifically finding that the State failed to prove beyond a reasonable doubt that the Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa. Consequently, the State is now estopped from attempting to contradict that explicit finding. *See People v. Haran,* 27 Ill.2d 229 (1963); *People v. Borchers,* 67 Ill.2d 578, 588 (1977) ("The verdict of acquittal ... resolved this factual question in favor of the defendant, and his [later] conviction ... required that the same factual question be resolved in favor of the prosecution. Thus relitigating this factual question was violative of the doctrine of collateral estoppel."). In *Haran,* a jury acquitted the defendant on rape charges, including a charge of statutory rape. *Id.* at 235. The State then charged and tried defendant with a 'crime against nature' of which he was convicted. *Id.* On appeal, the defendant argued that collateral estoppel should have precluded the State from putting on any evidence during the second trial that he had intercourse with the complaining witness. *Id.* at 230. The Supreme Court found that the first jury's verdict *necessarily* included the factual determination that the defendant had *not* had intercourse with the complaining witness – because the only fact necessary to prove statutory rape had been intercourse. *Id.* at 235. Therefore, the State "was estopped by this verdict from introducing evidence at the present trial that the defendant had intercourse with [the complaining witness]." *Id.* at 236.

A previous factual determination can preclude prosecutorial theories that inherently require evidence on those already-determined issues. *People v. Brown,* 2015 IL App (1st) 134049. In *Brown,* the trial court entered a directed verdict for the defendant on an attempted

murder charge, but after the victim died, the defendant was tried for murder. *Id.* ¶11. Based on the directed verdict, the Court of Appeals found that the prosecution was estopped from trying the defendant on intentional first degree murder, but the defendant could be tried on a theory of felony murder. *Id.* ¶42-43. The defendant's previous directed verdict had also "established a preclusive finding that the defendant did not fire the bullet that injured, and eventually killed, [the victim]." *Id.* ¶48. The State's murder prosecution, therefore, could not proceed on any theory in which the defendant himself shot the victim. *Id.* ¶49. Likewise here, the State can proceed against Defendant only under a theory that does not rely upon a finding that beyond a reasonable doubt the defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa.

Currier v. Virginia, the State's primary source of opposition to Defendant's issue preclusion motion, is distinguishable. 138 S.Ct. 2144 (2018). In part III of the main *Currier* opinion, Justice Gorsuch did raise concerns about application of issue preclusion to a second criminal prosecution (particularly one involving a different though-related offense). *Id.* at 2152-53. That section of the opinion, however, was not part of the majority ruling and is therefore, not precedential. *Id.* at 2146; *see People v. Negron,* 2012 IL App (1st) 101194 ¶58.

The *Currier* defendant **agreed** to sever trial of his burglary and felon-in-possession charges. 138 S.Ct. at 2148. The defendant was acquitted on the burglary charge, then argued that the acquitting jury had necessarily concluded he had not possessed a firearm; so, he argued, double jeopardy barred trial on the second offence. *Id.* The Supreme Court majority noted:

> To say that the second trial is tantamount to a trial of the same offense as the first and thus forbidden by the Double Jeopardy Clause, we must be able to say that it would have been *irrational* for the jury in the first trial to acquit without finding in the defendant's favor on a fact essential to a conviction in the second.

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Id. at 2150, *emphasis in original, internal citations and quotations omitted.* The Court then honed in on the fact that Mr. Currier consented to two trials; he had *agreed* to try the firearm charge later. *Id.* If Mr. Currier had instead insisted on one trial for the two charged offenses, there would not have been any double jeopardy concerns. *Id.* at 2150-51.

Mr. Jefferson did not consent to two trials; nor will his retrial be on a different offence than the first. Defendant will be retried on the same offense – murder. The first jury's determination that the State failed to prove beyond a reasonable doubt that the Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa, limits the issues that can be relitigated and thereby limits the theory under which the State can prove murder.

Further distinguishing *Currier,* Mr. Currier could only surmise that the first jury 'must' have determined he was not in possession of a firearm in order to acquit on the burglary charge. That was not enough; citing *Ashe v. Swenson,* the *Currier* Court noted that "*Ashe* forbids a second trial only if to secure a conviction the prosecution must prevail on an issue the jury necessarily resolved in the defendant's favor in the first trial." *Currier,* 138 S.Ct. at 2150, *citing* 397 U.S. 436, 460-61 (1970). In Mr. Jefferson's case, the first jury did necessarily, and in fact, explicitly, resolve the issue of whether proof exists beyond a reasonable doubt that the Defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa. *Compare Ex Parte Adams,* 586 S.W.3d 1, 5-8 (Tex.Crim.App.2019) (a post-*Currier* opinion in which the Texas Court of Appeals considered the transcript and jury instructions of the defendant's first trial and determined that the jury's not guilty verdict plainly meant that the defendant had been justified in his use of force against one victim, but did not *necessarily* mean that the jury determined use of force had been justified

against the second victim; the State was therefore not precluded from retrying the issue of unlawful force as against the second victim).

Moreover, the record in this case reflects that the jury resolved the issue of whether, beyond a reasonable doubt Mr. Jefferson was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa, because the State specifically asked the jury to resolve that issue. The Court must be guarded in applying issue preclusion in a criminal case, but the particulars of this case, as evidenced by the trial transcript and the record, justify precluding the State from retrying Defendant on a theory, or using testimony and argument, that proof exists beyond a reasonable doubt that he was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa.

The Court must apply issue preclusion in criminal cases "in a practical frame and viewed with an eye to all the circumstances of the proceeding." *Bravo-Fernandez v. United States,* 137 S.Ct. 352, 359 (2016). In this case the State instructed the jury that if they determined the Defendant was guilty by accountability – as opposed to guilty as a principal – then they should return a guilty murder verdict and find the special interrogatory not-proven:

> [I]f you find that [Defendant] was a principal, the actual shooter, then you would find, we argue, that he also had an enhancement proven. And you'll get another set of jury verdict forms for that. It says we find that the defendant – we find that the defendant knowingly personally discharged the firearm—personally discharged the firearm and that personal discharge of the firearm proximately caused the death of Marcus Gosa. If you believe he's only guilty by accountability, then he didn't personally discharge the firearm that caused the death, in which case you would find that that was not proven.

TRANSCRIPT, *Closing Argument by The People of the State of Illinois,* Feb. 27, 2013, 320:16-24, 321:1-2.

As opposed to *People v. Jackson,* here the issue is not that the guilty murder verdict and the not-proven sentencing enhancement verdict are inconsistent. 372 Ill.App.3d 605, 609 (4th Dist. 2007). The State told the jury to complete the verdict this way if Defendant was guilty by accountability. The jury did just that.

This case is likewise distinguishable from *People v. Ealy.* 2019 IL App (1st) 161575. The issue of collateral estoppel was not raised or considered in *Ealy.* Instead, the defendant argued the evidence was insufficient to convict him of murder by accountability. *Id.* ¶23. The State had tried Ealy and his co-defendant together and argued that the jury had sufficient evidence before it to find Ealy guilty as a principle. *Id.* ¶25. Ealy contended that the jury's verdict – guilty of murder but also finding the firearm enhancement verdict not proven – necessarily meant the jury found him guilty only on a theory of accountability. *Id.* ¶25. The First District disagreed with the defendant because the jury had been instructed on a theory of accountability not only on the murder charge *but also* as to the firearm enhancement. *Id.* Here, there was no such instruction. The State presented the sentencing enhancement to the jury as part of the verdict form that they should find 'proven' if they found Defendant, beyond a reasonable doubt, was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa, or that they should find 'not proven' if they found Defendant "guilty of murder by accountability, that he didn't personally discharge the firearm that caused the death". Again, it is significant to the Court that the jury was also instructed, at the State's request and consistent with I.P.I 28.03, that a person is considered to have "personally discharged a firearm" when he, while armed with a firearm, knowingly and intentionally fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm. The jury found, after argument and instructions, that this was not proven beyond a reasonable doubt.

The jury's deliberations at the first trial are not a legal nullity- their determination as required by the Court after being requested by the People are not limited to a mere sentencing determination. They made a factual determination which carries the weight and effect of issue preclusion.

The Court hereby orders that the prosecution is collaterally estopped from proceeding on a theory, and presenting evidence or argument that proof exists beyond a reasonable doubt that the Defendant was armed with a firearm **and** personally discharged the firearm **that proximately caused the death** of Marcus Gosa.

The Court at the outset of this order indicated that the Defendant's Motion is granted "in part". This is so because the People are still allowed to argue or present evidence and testimony that the Defendant is ACCOUNTABLE for the murder of Marcus Gosa. This includes testimony as the State notes in their proposed order to the Court:

Kiyanna Howard's testimony can be said to imply that the only shooter had to have been the Defendant, based on her limited observations. The State shall not be allowed to argue that the jury can infer this conclusion. Moreover, her testimony does not establish this inference and it would be misleading and improper for the State to argue that based on her testimony the jury can infer that the defendant was the only shooter and that he personally discharged the firearm that proximately caused the death of Marcus Gosa, even without the jury's prior verdict on this issue. At some point during the ride, Howard fell asleep in the back seat of the car. She awoke out of her sleep after hearing a car door being slammed shut. Howard sat up, observed the defendant standing in front of the car, and asked Brownlee what the defendant was doing. She laid back down, it appears to the Court that she does not know conclusively where Brownlee is, and seconds later, Howard heard three or four consecutive gunshots. Following the gunshots, the defendant ran back to the car, reentered the driver's side door, and drove off. Howard stated

when defendant got back into the car, it appeared as if he was holding something in his hands, but she did not observe a gun. According to Howard, as the defendant sped away, he said, says either " Let's go, I think I got that nigger" or "I think I hit somebody" or "I think I hit dude.".

Howard did not witness the shooting, and in light of other proffered evidence in this matter (for example Rochelle Davis' testimony that the defendant admitted that he and Renaldo Brownlee got out of the car and opened fire), the Defendant's statement about thinking he hit someone is also not confined to principal liability, and does not dishonor the jury's previous verdict on this issue. This testimony is, consequently, admissible.

Further, the jury, upon request of the defendant, can be cautioned and instructed that there is insufficient evidence that proof exists beyond a reasonable doubt that the Defendant was armed with a firearm **and** personally discharged **the** firearm **that proximately caused the death** of Marcus Gosa, a cautionary measure which does not eliminate the theory of accountability, but nevertheless honors the jury's previous verdict on the issue.

Rochelle Davis testified about a variety of things, many of which have been deemed inadmissible on retrial by the Fifth District Appellate Court and are, accordingly barred in the trial of this case. The remaining admissible testimony of Ms. Davis includes the following things she heard the Defendant say to her:

-"You tell dude, don't end up like Marcus (victim) did".

- A conversation in which the Defendant tells Ms. Davis that there were two boys in the alley, **that both he and Renaldo Brownlee got out of the car** and **both opened fire**. (Which, if Brownlee's shot was the fatal shot would be consistent with the verdict in the first trial- that insufficient evidence existed beyond a reasonable doubt that Mr. Jefferson was armed with a firearm AND personally discharged the firearm that proximately

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caused Mr. Gosa's death, it could have been a shot fired by Brownlee that proximately caused the death of Marcus Gosa). Davis' testimony that Mr. Jefferson heard the victim scream and it sounded like the victim fell over something (presumably the trash can found at the scene near the victim's body) is similarly admissible to show presence and on a theory that Mr. Jefferson is ACOUNTABLE for the murder of Marcus Gosa. Additionally, Davis' testimony that the defendant exited a car with a **weapon as did Mr. Brownlee** is consistent with a theory of ACCOUNTABILITY.

As to the testimony of Reshon Farmer, who has been identified as an informant, the Court is required, pursuant to 725 ILCS 5/115-21, to conduct a hearing to determine whether the testimony of the informant is reliable. If the prosecution fails to show by a preponderance of the evidence that the informant's testimony is reliable, the court shall not allow the testimony to be heard at trial. At this hearing, the court shall consider the factors enumerated in subsection (c) of 725 ILCS 5/115-21 as well as any other factors relating to reliability. The Court expects that at a minimum, Mr. Farmer will testify at this hearing, and the scheduling of that hearing shall be determined by the parties on or before June 1, 2020. Additionally, if the Court rules that Mr. Farmer's testimony will be allowed, the Court, shortly thereafter will determine the scope of his testimony consistent with this ORDER GRANTING IN PART, the Defendant's Motion to Bar Evidence.

John J. O'Gara

Hon. John J. O'Gara

Dated May 26, 2020

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

People of the State of Illinois,	)	
	)	
Vs.	)	11-CF-378
	)	
Trenton Jefferson,	)	
Defendant.	)	

NOTICE OF APPEAL

An appeal is taken from the Order described below:

1. Court to which appeal is taken: Illinois Court of Appeals, Fifth District.

2. Name of appellant: People of the State of Illinois.

3. Name and address of appellant's attorney on appeal:

James A. Gomric	State's Attorney Appellate Prosecutor
State's Attorney	Route 15 East
St. Clair County Bldg.	P.O. Box 2249
Belleville, IL 62220	Mt. Vernon, IL 62864

4. Date of Order(s): The Court's ruling, of May 27, 2020, that the People were collaterally estopped from proceeding on a theory, and presenting evidence or argument, that proof exists beyond a reasonable doubt that the defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa.

5. Offense(s) of which appellee is charged: First Degree Murder.

6. Sentence: 30 years Illinois DOC (Reversed and remanded 12/30/16).

7. If appeal is not from a conviction, nature of order appealed from: Pre-trial motion order precluding the People from proceeding on a theory and presenting evidence or argument that proof exists beyond a reasonable doubt that the defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa.

8. Said Order is attached.

The notice of appeal may be amended as provided in Rule 303(b).

FILED
ST. CLAIR COUNTY
JUN 25 2020
20 CIRCUIT CLERK

James A. Gomric
State's Attorney
St. Clair County, Illinois

By: Judith E. Dalan
Judith E. Dalan
Assistant State's Attorney

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

People of the State of Illinois,)
)
Vs.) 11-CF-378
)
Trenton Jefferson,)
Defendant.)

FILED
ST. CLAIR COUNTY
JUN 25 2020
20 CIRCUIT CLERK

AFFIDAVIT

I, Judith E. Dalan, Assistant State's Attorney, in and for the People of the State of Illinois, County of St. Clair, being first duly sworn and under oath, depose and state:

1. On May 27, 2020, the Trial Court in the above cause ordered that the State was collaterally estopped from proceeding on a theory, and presenting evidence or argument that proof exists beyond a reasonable doubt that the defendant was armed with a firearm and personally discharged the firearm that proximately caused the death of Marcus Gosa.

2. The People appeal this Order pursuant to Illinois Supreme Court Rule 604(a)(1).

3. This appeal is not taken for the purpose of delay.

4. The Order of May 27, 2020, substantially impairs the People's ability to prosecute the above case.

5. The above statements are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Judith E. Dalan
Assistant State's Attorney

Subscribed and sworn to before me this 25th day of June, 2020.

NOTARY PUBLIC

OFFICIAL SEAL
CYNTHIA A PRICHARD
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/21

C 641

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

V.

JEFFERSON, TRENTON A.

Defendant/Respondent

Appellate Count No: **5-20-0185**
Circuit Count No: **11-CF-378**
Trial Judge: **HON. JOHN O'GARA**

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Appellate Count No: **5-20-0185**
Circuit Count No: **11-CF-378**
Trial Judge: **HON. JOHN O'GARA**

V.

JEFFERSON, TRENTON A.

Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

V.

JEFFERSON, TRENTON A.

Defendant/Respondent

Appellate Count No: **5-20-0185**
Circuit Count No: **11-CF-378**
Trial Judge: **HON. JOHN O'GARA**

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

V.

JEFFERSON, TRENTON A.

Defendant/Respondent

Appellate Count No: **5-20-0185**
Circuit Count No: **11-CF-378**
Trial Judge: **HON. JOHN O'GARA**

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

V.

JEFFERSON, TRENTON A.

Defendant/Respondent

Appellate Count No: **5-20-0185**
Circuit Count No: **11-CF-378**
Trial Judge: **HON. JOHN O'GARA**

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Appellate Count No: **5-20-0185**
Circuit Count No: **11-CF-378**
Trial Judge: **HON. JOHN O'GARA**

V.

JEFFERSON, TRENTON A.

Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

STATE OF ILLINOIS
Plaintiff/Petitioner

5-20-0185
Appellate Count No: **5-20-0185**
Circuit Count No: **11-CF-378**
Trial Judge: **HON. JOHN O'GARA**

E-FILED
Transaction ID: 5-20-0185
File Date: 8/17/2020 4:23 PM
John J. Flood, Clerk of the Court
APPELLATE COURT 5TH DISTRICT

V.

JEFFERSON, TRENTON A.
Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

5-20-0185

STATE OF ILLINOIS

Plaintiff/Petitioner

V.

JEFFERSON, TRENTON A.

Defendant/Respondent

Appellate Count No: **5-20-0185**
Circuit Count No: **11-CF-378**
Trial Judge: **HON. JOHN O'GARA**

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Brian Clay	R.295-303	R.303-319	R.319-323
Todd Schultze	R.323-327		
Abby Keller	R.328-352	R.352-362	R.362-363
Susan Bolen	R.364-372	R.372-375	
Ronald Locke	R.376-384	R.385	
Dr. Raj Nanduri	R.394-404	R.404-408	
Juliette Gosa	R.409-410		
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Witness	Direct Examination	Cross-Examination	Re-Direct/Cross
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Todd Schultze	R.703-708	R.708-713	
Brian Clay	R.714-732	R.732-743	R.743-745

Abby Keller	R.746-768	R.768-774	R.774-775
Dr. Raj Nanduri	R.777-787	R.788-791	
Susan Bolen	R.794-803	R.803-805	R.805
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