

No. 1-22-0322

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Thomas D. Palella  
Clerk of the Appellate Court  
APPELLATE COURT 1ST DISTRICT

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT – FIRST DIVISION

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
Plaintiff-Appellee,	)	
	)	
-vs-	)	No. 20 CR 03050-01
	)	
JUSSIE SMOLLETT,	)	Honorable
	)	James B. Linn
Defendant-Appellant.	)	Judge Presiding.

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**DEFENDANT-APPELLANT’S MOTION FOR LEAVE TO FILE OVERSIZED BRIEF**

Now comes Defendant-Appellant, JUSSIE SMOLLETT, by and through one of his attorneys, Heather A. Widell of The Law Office of Heather A. Widell, pursuant to Illinois Supreme Court Rule 341(b)(2) (Ill. Sup. Ct. R 341(b)(2)), and hereby moves this Honorable Court for leave to file Appellant Brief in excess of 50 pages in the above-captioned matter and in support thereof, and pursuant to penalties as provided by 735 ILCS 5/1-109, hereby certifies/states as follows:

1. Defendant-Appellant is well aware that this Court does not favor Appellant briefs in excess of 50 pages. However, the circumstances surrounding this case firmly necessitate a brief in excess of 50 pages. For example, this appeal involves matters related to three different case numbers (19 CR 03104-01, 19 MR 00014-01, 20 CR 03050-01) and

involves at least four different defense law firms at various times throughout all proceedings. Putting aside the current case number (20 CR 03050-01), the Constitutional issues and litigation surrounding 19 CR 03104-01 and 19 MR 00014-01 alone span thousands of pages.

2. The constitutional issues related to 19 CR 03104-01 and 19 MR 00014-01 are significant. For instance, one Constitutional issue implicates Due Process involving the State of Illinois' contractual promise to dismiss Mr. Smollett's first prosecution; a promise that was executed and enforced. The second significant Constitutional issue involves what appears to the defense to be a novel issue in the State of Illinois, regarding whether double jeopardy attached, within the context of the Fifth Amendment bar on multiple punishments, when Mr. Smollett performed community service and forfeited his bail bond as part of an executed pre-trial agreement. (This issue has been resolved in other jurisdictions). The third significant issue involves the validity of the appointment of a special prosecutor pursuant to Ill. Sup. Ct. R. Prof. Conduct 1.18 (West. 2016) and relevant case law. Further, this particular issue involved an extensive investigation by the Office of the Special Prosecutors into the contractual agreement between Mr. Smollett and the Cook County State's Attorney's Office in the 19 CR 03104-01 case.
3. Additionally, the aforementioned significant issues were heavily litigated and carried over into case number 20 CR 03050-01, the source of the current appeal. To be sure, within 20 CR 03050-01, the other case number issues were re-litigated on more than one occasion.
4. Apart from the significant issues surrounding 19 CR 03104-01 and 19 MR 00014-01 which were carried over into this case, multiple issues are ripe for appeal within 20 CR 03050-01 itself. For instance, this case addresses a significant Constitutional pre-trial

issue involving a motion to Disqualify lead defense attorney, and a subsequent ruling prohibiting lead defense attorney from cross-examining certain prosecution witnesses. This issue and subsequent ruling implicated Mr. Smollett's Fourteenth Amendment right to Due Process as well as his Sixth Amendment right to counsel of his choice. Finally, multiple trial and post-trial issues involving statutory and Constitutional interpretation arose during the trial and post-trial proceedings. In fact, the post-trial motion filed by the defense was 83 pages not including prior briefings of the significant Constitutional and statutory pre-trial issues involved in 19 CR 03104-01 and 19 MR 00014-01 and litigated throughout 20 CR 03050-01.

5. Perhaps it is fair to say that the length and breadth of the current Record on Appeal, Impounded Record, Supplemental Records, and Reports of Proceedings, speak for themselves to capture the significance of litigated issues in this case. The cumulative total of these records is approximately 9,000 pages.
6. Finally, it is in the public domain that this case received outsized and significant international, national, and local mass media and public attention. As a result, public policy and interest necessitate that all issues litigated should be thoroughly briefed.
7. Since the Appellant is effectively dealing with three different cases, Appellant finds it impossible to keep all of these issues within 50 pages. If Appellant is limited to 50 pages he will be forced to dispose of and waive legitimate and ripe issues for appeal, thereby compromising his appeal. As a result, Appellant is requesting an additional 30 pages (for a total of 80 pages) in order to appropriately brief this Court on every appellate issue for review.

WHEREFORE, for all the reasons stated above, Defendant/Appellant, JUSSIE SMOLLETT, respectfully requests this Honorable Court grant his motion and allow counsel leave to file an Appellant Brief in excess of 50 pages to a total of 80 pages, and any/all other relief the Court shall deem fit in the interests of justice.

Respectfully Submitted,

BY:           /s/ Heather A. Widell            
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JUSSIE SMOLLETT,	)	Honorable
	)	James B. Linn
Defendant-Appellant.	)	Judge Presiding.

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**NOTICE OF FILING**

To: Attorney(s) for Plaintiff/Appellee:  
Office of Special Prosecutor  
% Dan Webb ([DWebb@winston.com](mailto:DWebb@winston.com))  
Sean G. Wieber ([SWieber@winston.com](mailto:SWieber@winston.com))  
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PLEASE TAKE NOTICE that on January 15, 2023, I electronically submitted to be filed to the Clerk of the Illinois Appellate Court, 1st District, 160 North LaSalle Street, Room S1400, Chicago, Illinois 60601, *Defendant-Appellant's Motion for Leave to File Oversized Brief*, for filing in the above-captioned case.

By:           /s/ Heather A. Widell            
Attorney for Defendant-Appellant

Heather A. Widell (ARDC #6311451)  
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This 15th day of January, 2023.

CERTIFICATE OF SERVICE

NOW COMES, Heather A. Widell, attorney for Defendant-Appellant, and hereby certifies that she has on this date served the foregoing Notice of Filing by filing the same electronically with the Clerk of the Court through an authorized electronic filing service vendor of the Illinois courts, and requesting and thereby causing service to be effected electronically to:

Office of Special Prosecutor  
c/o Dan Webb ([DWebb@winston.com](mailto:DWebb@winston.com))  
Sean G. Wieber ([SWieber@winston.com](mailto:SWieber@winston.com))  
Sam Mendenhall ([SMendenh@winston.com](mailto:SMendenh@winston.com))  
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So certified, 15th day of January 2023

/s/ Heather A. Widell

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	)	James B. Linn
Defendant-Appellant.	)	Judge Presiding.

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**ORDER**

This cause coming before this Court on the *Defendant-Appellant’s Motion for Leave to File Oversized Brief*, with all parties having been notified, the Court having jurisdiction and having been fully advised in the premises,

IT IS HEREBY ORDERED:

- ( ) Defendant-Appellant’s Motion is ALLOWED
- ( ) Defendant-Appellant’s Motion is DENIED.

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Justice

Heather A. Widell (ARDC# 6311451)  
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Justice

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Justice