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PEOPLE OF THE STATE OF
ILLINOIS,

VS.

Defendant-Appellant.

Honorable
Ann Callis,
Judge Presiding.

DANIEL D. YUHAS
Deputy Defender
Office of the State Appellate Defender
Fourth Judicial District
400 South Ninth Street, Suite 102
P.O. Box 5750
Springfield, IL 62705-5750
(217) 782-3654

COUNSEL FOR DEFENDANT-APPELLANT

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Fletcher. (People's Exhibit 20) Eventually, Mr. Greer made statements that he had been told of the murder for hire plan ahead of time and implicated himself in the crime. (Vol. III, R. 475-91)

On January 20, 2000, the defendant refused to testify in the trial of Robert Fletcher. (Vol. III, R. 496) The following day he was charged with the murder of Brian Warr. (Vol. I, C. 1) Mr. Greer was tried by jury and convicted of the murder of Mr. Warr under an accountability theory. He was sentenced to a term of forty years imprisonment. (Vol. V, R. 790) This appeal follows.

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ARGUMENT

I.

LARRY GREER'S CONVICTION FOR MURDER MUST BE VACATED BECAUSE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT HE WAS LEGALLY ACCOUNTABLE FOR THE CONDUCT OF ROBERT FLETCHER.

On September 12, 1998, Robert Fletcher shot and killed Brian Warr as Mr. Warr sat in his vehicle in the parking lot of the Chess Club in Alton. Following a jury trial, the defendant, Larry Greer, was convicted of this murder under an accountability theory. Because the State failed to prove beyond a reasonable doubt that Larry Greer was legally responsible for the actions of Robert Fletcher in the murder of Brian Warr, the defendant's conviction cannot stand.

Due process protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which the accused is charged. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 370, 375 (1970); U.S. Const., amend. XIV. When presented with a challenge to the sufficiency of the evidence, the reviewing court must carefully examine the evidence, giving due consideration to the trier of fact's opportunity to observe and hear the witnesses. After such consideration, if the reviewing court is of the opinion that the evidence is not sufficient to create an abiding conviction that the defendant is guilty of the crime charged, then the reviewing court must reverse the finding of guilt. *People v. Young*, 128 Ill.2d 1, 538 N.E.2d 461, 472 (1989).

The standard of review regarding the sufficiency of the evidence is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of

the crime proved beyond a reasonable doubt. *People v. Collins*, 106 Ill.2d 237, 478 N.E.2d 267, 277 (1985).

Evidence Presented at Trial

In the early morning hours of September 12, 1998, the defendant, Larry Greer, and the victim, Brian Warr, were seated in Mr. Warr's vehicle when Robert Fletcher walked up to the car and fired six shots. Five of these shots struck Mr. Warr, and he died as a result of his injuries. (Vol. III, R. 348-49) Following the shooting, Mr. Greer drove the victim to the hospital where he was pronounced dead. (Vol. III, R. 265-66; 328-30) The police then asked Mr. Greer to come down to the station and give a statement as a witness to the murder. He was not a suspect in the murder at this time. (Vol. III, R. 273-74)

In his initial statements to the police, Mr. Greer claimed he did not see the shooter and did not know who had killed Brian Warr. (Vol. III, R. 275, 281) Because the officers did not believe the defendant was being truthful, he was charged with obstruction of justice and booked at around 6:00 a.m. on the morning of the 12th. (Vol. III, R. 294-95) Later that same day, Mr. Greer gave a second statement in which he suggested that Brian Warr had been having problems with James Evans ("Raven"), and maintained that he had not seen the shooter. (Vol. III, R. 342)

On the night of October 7, 1998, the defendant was arrested on a look-alike substance charge. (Vol. III, R. 351) He asked to speak to Detective Al Adams and gave a statement at around 1:15 a.m. on October 8th. (People's Exhibit 16) In this statement, Mr. Greer admitted he had not been truthful in his earlier statements to the police. He identified the shooter as Robert Fletcher (D-Run). He had not told the truth earlier because he was scared. (Vol. III,

R. 347-49; People's Exhibit 16) Following the giving of this statement, Mr. Greer was released from custody. (Vol. III, R. 367, 438)

On October 29, 1998, Mr. Greer testified before the Grand Jury. (People's Exhibit 18) During his testimony, Mr. Greer identified Robert Fletcher as the shooter. He indicated that Fletcher and Brian Warr had been having problems which stemmed from the murder of Nekemar Pearson in 1995. (People's Exhibit 18, p. 13) Brian Warr told Mr. Greer that James Evans had killed Pearson. Warr had walked in on the murder and was present when it happened. Mr. Greer relayed this information to Fletcher. (People's Exhibit 18, pp. 13-16) While he and Brian Warr were sitting in the car at the Chess Club, Mr. Warr had a gun with a laser sight. The gun did not work, but Mr. Warr had been pointing it at Robert Fletcher so that the red dot from the laser sight was on Mr. Fletcher at several points in time. Fletcher did not know the gun was inoperable. (People's Exhibit 18, pp. 25-27, 29-30)

The defendant later admitted that he had made up the story about the gun and laser sight at Fletcher's request. (Vol. III, R. 378-79) In exchange for the defendant agreeing to tell this story, Mr. Fletcher had arranged for Mr. Greer's bond to be posted by a man named Walter Dent.

Mr. Greer next spoke with the police regarding the Warr murder on March 31, 1999. Detective Jason Simmons testified that he and Detective Wells interviewed Mr. Greer following his receiving a threatening note from Robert Fletcher. (Vol. III, R. 357, 369; Defendant's Exhibit 5) The three men spoke again on April 1, 1999, and Mr. Greer testified before the Grand Jury later that day. (Vol. III, R. 380)

In his testimony before the Grand Jury on April 1st, Mr. Greer stated that he had made up the previous story about Brian Warr having a gun with a laser sight. He told that story at Robert Fletcher's request in exchange for Fletcher arranging for Mr. Greer's bond to be posted. (People's Exhibit 19, p. 83) He also stated that back in 1996, Mr. Fletcher believed that James Evans had arranged to have Nekemar Pearson killed. (People's Exhibit 19, p. 85-86) James Evans and Brian Warr had been dealing drugs together. In 1998, Warr wanted to get his money from Evans and go out on his own. Evans would not give Warr his share of the proceeds from their operation. (People's Exhibit 19, p. 87) James Evans had gained influence with the gangs in Alton by supplying them with crack cocaine. (People's Exhibit 19, p. 88) James Evans told Fletcher that Brian Warr had killed Nekemar Pearson, but the defendant told Fletcher that it was in fact Evans who had killed Mr. Pearson. (People's Exhibit 19, p. 90-91) Evans had offered money to Fletcher to kill Brian Warr. Mr. Greer told Fletcher to take the money but not to kill Mr. Warr. However, Fletcher said that for the right price Brian Warr was a dead man. (People's Exhibit 19, p. 91-92)

⊗ Three days before the murder, Fletcher told Mr. Greer that Evans had offered him \$3000 to kill Brian Warr. (People's Exhibit 19, p. 92-93) Mr. Greer did not see Fletcher again until the night of the murder at the Chess Club. (People's Exhibit 19, p. 93-94) When the defendant and Mr. Warr arrived at the Chess Club, Brian went inside. Fletcher walked up to the car and told Mr. Greer "that it was on tonight." (People's Exhibit 19, p. 94) Mr. Greer then stated:

So basically in so many words he was telling me that they had the change from dude, and that they were going to do it tonight.

And he asked me where we were going when we left. I told him that I didn't know. He asked me to find out, and I told him okay.

At first I tried to tell him not to do it. I told him to inform me. I was trying to prevent the thing the whole time.

But at the same time, I'm not going to die with Brian. Because, you know, if they want him bad enough, they would kill us both.

(People's Exhibit 19, p. 95)

When Brian Warr returned to the car, he and Mr. Greer left to go look for a briefcase. (People's Exhibit 19, p. 95-96) They later returned to the Chess Club. (People's Exhibit 19, p. 96) Brian went back inside. Robert Fletcher came over to the car and accused the defendant of telling Warr about the plan. Mr. Greer responded "that if I told him, then we wouldn't be back down here." Fletcher then left. (People's Exhibit 19, p. 98) Brian Warr came back outside and returned to the car, where he and the defendant smoked some marijuana. (People's Exhibit 19, p. 98-99)

Robert Fletcher then drove into the parking lot. He got out of the vehicle and walked over to Brian Warr's car. Fletcher said, "I'm tired of you all playing with me," and he reached inside the car and shot Warr five times. (People's Exhibit 19, p. 99) Fletcher then walked away up a hill. (People's Exhibit 19, p. 99-100) The defendant went inside the Chess Club and asked someone to call 9-1-1. Because it was taking too long for help to arrive, Mr. Greer decided to drive Warr to the hospital himself. (People's Exhibit 19, p. 100) The defendant did not receive any of the money that Fletcher received for shooting Brian Warr, although Fletcher did arrange to post the defendant's bond. Walter Dent had posted \$1500 bond for the defendant, which he had received from Fletcher.

(People's Exhibit 19, p. 101-03) Following this testimony, Mr. Greer was released on his own recognizance. (Vol. III, R. 381)

On December 16, 1999, while in custody on an unrelated matter, Mr. Greer sent a note to Captain Spaul of the Madison County Sheriff's Department. (Vol. III, R. 397; People's Exhibit 20) The note read as follows:

I'm ready to admit my guilt in the Brayin Warr. Raven paid me a long time ago to set Brayin up. He told me to get the crips to do it so it will look like revenge from the crips. I didn't give the crips any of the money told them I just got dope. They didn't know I got any money till somebody said that. I really need protection, because they know I played them like fools. I'm ready to tell the whole story.

Larry Greer-El

(People's Exhibit 20) 

Following the receipt of this note, Mr. Greer was interviewed by Detective Simmons of the Alton Police and Detective McLemore of the Madison County Sheriff's Department. (Vol. III, R. 398) At this meeting, the defendant did not give a formal statement, but rather asked to speak with Keith Jensen of the State's Attorney's Office. (Vol. III, R. 400, 449)

Mr. Greer next spoke with the authorities on January 18, 2000, the eve of Robert Fletcher's trial for the murder of Brian Warr. (Vol. III, R. 474) On that date the defendant was interviewed by Detective Golike and Detective Simmons.

(Vol. III, R. 474, 478) According to Detective Golike, Mr. Greer elaborated on his previous statements by indicating that he had spoken with James Evans directly regarding the planned murder of Brian Warr. Evans had told him that Robert Fletcher would do the murder and that Evans would be sending money and drugs to the defendant which Mr. Greer was to deliver to Fletcher as payment for the hit. (Vol. III, R. 477-78)

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Later in the week, Evans came to the defendant's house and gave him \$5000 and four and one-half ounces of crack cocaine as payment to be given to Robert Fletcher. (Vol. III, R. 478) However, Mr. Greer told the detective that he kept the money, did not mention it to Fletcher, and passed along only the crack cocaine. (Vol. III, R. 479) Shortly thereafter, Mr. Greer was present during a conversation between Brian Warr and Robert Fletcher. Warr indicated to Fletcher that it was James Evans who was responsible for the death of Nekemar Pearson. The conversation was not heated and ended without incident. (Vol. III, R. 480-81)

Seven to ten days later, Fletcher came to the defendant's house along with two members of Fletcher's gang. They were looking for James Evans, and were upset because Evans had promised Fletcher \$3000 as payment for the murder which he had not received. This made the defendant nervous because he feared they would discover that he had kept the money himself. (Vol. III, R. 481-82) At this point Mr. Greer suggested to Fletcher that if he was going to kill someone he ought to kill James Evans instead of Brian Warr. (Vol. III, R. 482) This suggestion angered Fletcher who asked the defendant whose side he was on. (Vol. III, R. 483)

ⓧ Detective Golike further testified the defendant stated that on the night of the murder he and Brian Warr arrived in the parking lot of the Chess Club sometime after 1:00 a.m. (Vol. III, R. 484-85) Fletcher walked up to the car and had a friendly conversation with Brian Warr and Mr. Greer. Brian even borrowed \$20 from Fletcher at that time. (Vol. III, R. 485) After Fletcher walked away from the car, Brian Warr went inside the club while the defendant stayed in the car. Fletcher walked back over to the car and told the defendant "it's on

tonight." (Vol. III, R. 486) Fletcher asked where they were going when they left the Chess Club because he didn't want to shoot Brian Warr at that location. Mr. Greer stated that he told Fletcher he would find out where they were going if Fletcher gave him some time. (*Ibid.*)

After Fletcher again walked away from the car, Brian Warr returned to the vehicle. The two men left the Chess Club to look for Warr's briefcase at a residence on Elizabeth Street. (Vol. III, R. 487) They did not find the briefcase and returned to the Chess Club at around 1:30 a.m. (Vol. III, R. 487-88) Brian Warr immediately entered the club to get a beer and to ask Suntrina Price about his briefcase. At this point, Fletcher again returned to the car and accused Mr. Greer of telling Brian about the plan and suggested that they had left the lot to go get a gun. (Vol. III, R. 488) Mr. Greer calmed Fletcher down by saying, "It's all good," and telling him that they would not have returned to the lot if the defendant had told Warr of Fletcher's intentions. Fletcher walked away somewhat upset, and Brian Warr returned to the car. (Vol. III, R. 489)

Mr. Greer then told the detectives that at this point he knew Fletcher was going to shoot Brian Warr on that night, but did not think he would do it while they were in the Chess Club lot. Shortly thereafter, Fletcher pulled into the lot in a maroon Oldsmobile, and Warr asked the defendant "how do you feel about him?" Mr. Greer told Warr that Fletcher was cool, and Warr responded, "if he's cool with you, he's cool with me." (Vol. III, R. 490)

After exiting the maroon car, Fletcher walked up to Warr's vehicle and said, "I'm tired of you all playing with me." He then fired six rounds into the car and at Brian Warr. Following the shooting, Fletcher turned and walked up a hill toward Martin Luther King Street. (Vol. III, R. 491) Mr. Greer went inside the

club to have someone call 9-1-1. (Vol. III, R. 492) He then went back outside and asked DeDe Brown to call 9-1-1. He returned to Brian's car where Tonya Brown and Jimmy Dupree were attempting to assist Warr. The three of them moved Warr over and Mr. Greer drove Brian to the hospital with Tonya Brown also in the car. (Vol. III, R. 493)

According to Detective Golike, the defendant detailed the route he took to the hospital. Based on the detective's experience, it was not the most direct route from the Chess Club to the hospital. (Vol. III, R. 494-95)

The defendant again reviewed these facts in Judge Hackett's chambers in the presence of his then attorney, Tom Hildebrand. At that point he declined to testify in the trial of Robert Fletcher. (Vol. III, R. 496) However, Detective Golike did not prepare a report of that conversation. (Vol. III, R. 497)

On cross-examination, Detective Golike testified that Mr. Greer told him he knew Fletcher was planning to kill Brian Warr, but that he didn't know it would happen that night until Fletcher approached him in the car while at the Chess Club. (Vol. IV, R. 510-11) Mr. Greer was "surprised" that the shooting took place in the parking lot at the Chess Club. (Vol. IV, R. 511) The defendant also stated that he "still had no idea [Fletcher] was going to kill him on the lot of the Chess Club." (Vol. IV, R. 512)

The State also called as a witness Mr. Jody Wesley. (Vol. III, R. 421) Mr. Wesley is a convicted felon who has done time in a federal penitentiary for conspiracy to distribute cocaine and filing fraudulent tax returns. (Vol. III, R. 422) In addition to these crimes, Mr. Wesley was arrested on State charges sometime in June of 1998 and was placed in the Madison County Jail. (*Ibid.*) During that time, Mr. Wesley was located in F South Cell Block where he alleged

he spoke with Larry Greer and Robert Fletcher, "[s]ometime in September probably." (Vol. III, R. 423) Mr. Greer talked to Mr. Wesley "about various things, but he also talked about the murder of Brian Warr." (Vol. III, R. 423) There were no other inmates present for these conversations until a few days later when Robert Fletcher was assigned to the same cell block. (Vol. III, R. 424)

Mr. Wesley testified that the defendant and Fletcher talked "extensively" in his presence. Mr. Greer told him that "he was paid \$1,500.00 and an ounce of cocaine to set his best friend up, take — make sure that Brian Warr got down to a place called the Chess Club or the Crap House and so that Fletcher could kill him." (Vol. III, R. 424) The defendant also told Mr. Wesley that he drove the victim to the hospital the long way, to "make sure he bled out." (Vol. III, R. 425) This statement was contradicted by the testimony of Tonya Brown, another witness called by the State. Ms. Brown rode in the car with the defendant and the victim to the hospital following the shooting. When asked how long it took to get to the hospital, Ms. Brown replied, "About two or three minutes." (Vol. III, R. 335) In response to a question about how fast the defendant was driving, Ms. Brown stated, "He was driving fast. He didn't run any stop signs or anything, but he was driving fast enough to get there." (*Ibid.*) Ms. Brown did indicate that it would have been possible to take a somewhat quicker route to the hospital than the one taken by the defendant, but reiterated that the drive took only two to three minutes. (Vol. III, R. 336)

According to Mr. Wesley, it was common at the jail for inmates to discuss their offenses. He felt Mr. Greer "was trying to probably unburden himself maybe." (Vol. III, R. 425) Mr. Wesley didn't really know the defendant or Mr. Fletcher before talking to them in the jail, though he "had seen [Mr. Greer]

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around." (Vol. III, R. 423, 427) The defendant remained in jail with Mr. Wesley "[f]rom probably — I would say less than a week." (Vol. III, R. 426, 433-34) Mr. Greer told him "he was kind of mad about" the money he received, "because he got it and he had to post bond for an obstruction of justice charge with it. It was \$1500.00 or something." (*Ibid.*) It is unclear how Mr. Greer could have told Mr. Wesley about the \$1500 used to bond him out of jail since, if Mr. Wesley is to be believed, the jailhouse conversation must have taken place prior to Mr. Greer's posting bond and leaving the Madison County Jail.

Mr. Wesley testified he was not receiving any consideration for testifying. He had no charges pending against him, and he had not been threatened with any charges if he did not testify. He had not been promised anything in exchange for his testimony. (Vol. III, R. 428) The State did not introduce any records from the Madison County Jail showing housing assignments or what days Jody Wesley, Larry Greer and Robert Fletcher were in custody together.

On cross-examination, Mr. Wesley testified that he remained in the Madison County Jail until February 9, 2000. (Vol. III, R. 429, 432-33) When asked if any felony charges had been dismissed against him in Madison County during the year, Mr. Wesley replied, "No, not that I know of." (Vol. III, R. 431) Defense counsel then showed Mr. Wesley two Madison County Court files indicating charges of unlawful restraint and aggravated battery which were dismissed on February 9, 2000. (Vol. III, R. 431-32) This dismissal date was less than three weeks after the conclusion of the Robert Fletcher trial and the filing of the information against the defendant in the instant case. (Vol. I, C. 1; Vol. IV, R. 524) The witness maintained, however, that the dismissal of the

above charges had nothing to do with his testimony in the instant case or his testimony in the trial of Robert Fletcher. (Vol. III, R. 433)

During the defendant's case-in-chief, three witnesses testified. The first was Steve Thomas, the stepfather of Nekemar Pearson. (Vol. IV, R. 537-38) Mr. Thomas testified that during the afternoon following the shooting of Brian Warr, Robert Fletcher came into Mr. Thomas's home unannounced. (Vol. IV, R. 537) Mr. Fletcher said "he smoked that fool last night, and he put six into him." Mr. Fletcher also stated that "Eight Ball" (Larry Greer) was in the car with Brian Warr, but Fletcher did not indicate that the defendant had anything to do with the murder. (Vol. IV, R. 538) Mr. Fletcher told Mr. Thomas that he killed Warr because he couldn't "let them get away with what they done to [Mr. Thomas's] stepson, Nekemar." Fletcher further indicated that prior to the murder he and Warr had argued over twenty dollars. (Vol. III, R. 539)

Also called was Kristina Mendez. She was sitting in a car in the parking lot of the Chess Club on the night of the murder. (Vol. IV, R. 544) An angry man got into the car "[j]ust saying he was going to kill somebody, he was really mad." (Vol. IV, R. 545) After a few minutes, the man drove Kristina and a friend to the friend's house and dropped them off. (Vol. IV, R. 545-46) She later found out the man's name was Robert Fletcher. (Vol. IV, R. 546)

Mr. Greer testified on his own behalf. (Vol. IV, R. 552) Brian Warr was the defendant's best friend. Prior to the murder of Mr. Warr, Nekemar Pearson had been killed in 1995. Pearson was a close friend of Robert Fletcher. (Vol. IV, R. 553) The defendant told Fletcher that Brian Warr had not taken part in the murder of Mr. Pearson. (Vol. IV, R. 553-54)

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The statements the defendant had previously made indicating that Fletcher had told him of plans to kill Brian Warr were not true. That story had been created by Detective Simmons. (Vol. IV, R. 554) On the night of the murder, Mr. Greer and Mr. Warr were together in Brian's car. The defendant did not know of Fletcher's plan to kill Brian. He was aware that Fletcher wanted to know who was responsible for Nekemar Pearson's death. Warr was not responsible for that murder. The defendant and Fletcher had not discussed a plan to kill Warr. That story was made-up. (Vol. IV, R. 555)

On the night of the murder, Fletcher came up to the car and Brian asked to borrow \$20, which Fletcher gave him. Fletcher then gave the two men a marijuana blunt which they proceeded to smoke. Mr. Greer and Mr. Warr left the lot after Brian had an argument with his girlfriend, Suntrina Price over a briefcase containing Warr's fake identification. (Vol. IV, R. 556) They left to find the briefcase, but did not recover it and returned to the Chess Club. Brian went inside to talk to Suntrina. At that point, Fletcher returned to the car and spoke with the defendant, but he did not indicate any plan to harm Warr. The story he gave to Detective Golike saying Fletcher told him he was going to kill Warr that night was created by Detective Simmons. (Vol. IV, R. 557) He agreed to make those statements in exchange for his release on April 1, 1999. (Vol. IV, R. 557-58)

After Brian Warr returned to the car, Fletcher pulled into the parking lot in another vehicle, "and the next thing you know he just come over around to the driver's side and put his gun in the car and started shooting." Mr. Greer was "scared to death." When he looked up, Fletcher was walking up the hill. Brian

wasn't moving, so Mr. Greer went inside to get someone to call 9-1-1. (Vol. IV, R. 559)

Prior to firing the shots, Fletcher said, "I'm tired of you all playing with me," and then started shooting. (Vol. IV, R. 560) After going inside and asking people to call 9-1-1, the defendant returned to the car and decided that "we wasn't responding fast enough. So I decided to get in the car and take him to the hospital myself." (Vol. IV, R. 561) The defendant, Tonya Brown and another man moved Brian over and the defendant drove the car to the hospital. Tonya was also in the car. They took a left on Belle Street, turned left onto Ninth, and then took another left onto Alby to get to St. Anthony's Hospital. The defendant described himself as "in a state of shock." (Vol. IV, R. 562)

They pulled up to the emergency room exit and Mr. Greer ran inside and told them Warr had been shot. He was instructed to pull around to the ambulance bay, which he did. At that point, the hospital workers put Brian "on the bed and they hurried up and rushed him in there in the hospital." (Vol. IV, R. 563)

④ The defendant denied receiving \$5000 or four and one-half ounces of crack cocaine from James Evans. That story was created by Detective Simmons and the prosecutor, Keith Jensen. He and Fletcher did not discuss taking Warr to another location to be killed later on that night. "That's — that's their version. What they made up and wanted me to say when they held my freedom over my head, you know, and money and different things like that." (Vol. IV, R. 564)

Mr. Greer admitted that he first told Detective Golike that he did not see the shooter. He was afraid he would also be killed if he identified Fletcher. (Vol. IV, R. 565) Fletcher was still at large at that time. After making his initial statement he was charged with obstructing justice and placed in the Madison

County Jail. (Vol. IV, R. 566) He was told that if the police found out he knew the identity of the shooter they were "going to make my life a living hell." (Vol. IV, R. 567) On the afternoon of September 12th, he gave a second statement again indicating he did not know the identity of the shooter. The defendant remained in jail for a period of eight days. (Vol. IV, R. 568) After eight days, his bond of \$1500 was posted by Walter Dent, a friend of Mr. Fletcher's. (Vol. IV, R. 569)

While Mr. Greer was still in custody, Mr. Fletcher turned himself in and was assigned to the same cell block as the defendant. Fletcher told him not to say anything and told Mr. Greer he would have someone post bond for him if he would say that Warr had a gun with an infrared laser sight. Mr. Greer was scared of Fletcher and agreed to go along with this story. (Vol. IV, R. 570-71) Following his posting bond, he was again arrested on October 8, 1999, by Detective Al Adams. (Vol. IV, R. 571)

When Adams and the other officers pulled up, the defendant did not run because "I didn't have no reason to run. I wasn't even in possession of any drugs." (Vol. IV, R. 571) The officers found something which appeared to be crack cocaine on the ground while frisking another person. Al Adams said the item belonged to the defendant. Mr. Greer told Detective Adams, "man, you know that ain't mine, and he said you know how the game goes." Mr. Greer was arrested and gave a statement to Detective Adams in which he "told him exactly what happened." (Vol. IV, R. 572) In this statement, the defendant named Robert Fletcher as the shooter. (Vol. IV, R. 573; People's Exhibit 16) After making this statement, the defendant was released. (Vol. IV, R. 574; Vol. III, R. 438)

On October 29, 1998, the defendant testified before the Grand Jury. (Vol. IV, R. 574) During this testimony, Mr. Greer identified Fletcher as the shooter and told the false story about the gun with the laser sight. (Vol. IV, R. 575-76) Following this testimony, Mr. Greer was given the bond money (\$1500) posted earlier by Walter Dent. (Vol. IV, R. 576) Earlier in October, the defendant had also been given \$100 by Captain Spaul and Detective Brad Wells. (Vol. IV, R. 577-78)

Mr. Greer acknowledged that Jody Wesley was in the same cell block with him for about three days. He denied making any statements to Mr. Wesley: "The whole time I was there I hadn't said two words to him." Fletcher was also in the same cell block and remained there when the defendant bonded out, as did Mr. Wesley. (Vol. IV, R. 579-80)

The defendant was re-arrested on the look-alike substance charge from October of 1998 in February of 1999. He spoke with Detectives Simmons and Brad Wells on March 31, 1999. (Vol. IV, R. 580) At that time Detective Simmons instructed him to change his story to "this murder for hire plot that Jason Simmons orchestrated." (Vol. IV, R. 581) The defendant continued:

He told me he wanted me to say that Raven [James Evans] paid me and Fletcher to have it done, and I told them I — Raven ain't paid me nothing, and it ain't what — nothing like that, and then he said, well, there's going to be a lot of people in the near future that's going to get on the band wagon and go along with this story. You might as well get on. I said I'm not innocent [sic]. I said this statement that I gave out to the Alton Police was the true statement. It's really what happened. He didn't want the truth. He said innocent people go to jail all the time. That's what he told me.

(Vol. IV, R. 581)

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Mr. Greer met again with Detectives Simmons and Wells the next morning (April 1, 1999), prior to testifying before the Grand Jury later that day. (Vol. IV, R. 583) Following the first meeting, Mr. Greer was instructed to go back to his cell and draw up a statement detailing the murder for hire story. He then testified before the Grand Jury on April 1, 1999. During this testimony, the defendant stated that Fletcher had told him that Evans was going to pay Fletcher \$3000 to kill Brian Warr. (Vol. IV, R. 584-87; People's Exhibit 19) Following his appearance before the Grand Jury the defendant was released on his own recognizance. (Vol. IV, R. 585-86)

Mr. Greer testified he was again arrested on June 21, 1999, for unlawful possession of a weapon by a felon. (Vol. IV, R. 586) While in custody on this charge, the defendant had a meeting with Keith Jensen during the first week in July at the Madison County Jail. (Vol. IV, R. 586-87) Only Mr. Greer and Mr. Jensen were present. The defendant asked Mr. Jensen to help him get probation on the weapons charge. Mr. Jensen asked, "why should I give you probation?" The defendant replied, "I done corroborated with you all and went before the Grand Jury and all that stuff." (Vol. IV, R. 587) Mr. Jensen responded that he was considering charging the defendant with murder, and that he believed the defendant was holding back information. The defendant testified, "He [Keith Jensen] said what happened to the \$10,000.00 and the four and a half ounces that you suppose to receive from Raven and distribute to the Crypt gang. Some garbage." Mr. Greer told Mr. Jensen he would not go along with such a story. Mr. Jensen told the defendant he would get back with him and the meeting ended. (Vol. IV, R. 588)

The defendant remained in custody on the weapons charge:

I'm sitting up here and then every time I go to court or docket call, I get over here because my lawyer Hildebrand say, well, they putting it off. They putting it off, and then come to find out I talk to Don Weber. I said, man, — I said can I get some probation. He said, no, you can't get no probation. I said, well, how much time was you talking about me doing in jail from this — for this pistol's case. He said I was thinking about giving you two years off of — you do six months off the two year sentence, and then he said Keith Jensen is handling your case anyway.

(Vol. IV, R. 588-89)

After nearly six months, on December 16, 1999, Mr. Greer wrote a note saying he wanted to admit his involvement in the Brian Warr case. (People's Exhibit 20) According to the defendant, "Yeah, I wrote a letter. They broke me down. They broke me." (Vol. IV, R. 589)

Following the sending of the note, the defendant was interviewed the next day by Jason Simmons and Brad Wells. The defendant told them, "okay, I'm ready to do it your all way." (Vol. IV, R. 590) Another meeting with Keith Jensen was arranged, and Mr. Greer was promised that he would not be charged with murder. He was told, "We just want you to go along with this story because, you know, we want to get Raven — we're trying to get Raven convicted on this, and we need you. The only way we're going to get Raven tied in for this murder is we need you." (Vol. IV, R. 590-92)

On January 18, 2000, the defendant spoke with Detective Golike. (Vol. IV, R. 592-93) The additional information he provided the detective on that date regarding the alleged conversations Mr. Greer had with Mr. Fletcher prior to the murder and what happened on the night of the murder was not true:

No, it was — it was Keith Jensen and Jason Simmons' story put together. Every time that — every time I gave them a story, they let me go. They wanted me to — then I'd get locked up again. They say, well, you want

— you want to go, just give us a little bit more. Give — just make yourself a little bit more involved. We're not going to charge you, but they would always say we've got enough evidence to charge you with murder right now, but we're not. He'd say we're not going to charge you with murder. We just want this. We want this \$10,000.00 murder for hire story . . .

(Vol. IV, R. 593)

The day after refusing to testify to this version of events in the Robert Fletcher trial, Mr. Greer was charged with murder. (Vol. IV, R. 594-95; Vol. I, C. 1)

In rebuttal, the State called three witnesses. Thomas Hildebrand, the defendant's attorney prior to his being charged with the murder of Brian Warr, testified that he had helped arrange for Mr. Greer to receive the \$1500 which had been posted as bond in his case. The proceedings were expedited and he "jumped through all kinds of hoops and got the money released so [Mr. Greer] could get the money and get out of Dodge." This occurred on October 29, 1998, after the defendant's first appearance before the Grand Jury. (Vol. IV, R. 640-42) According to Mr. Hildebrand, the State did not give Mr. Greer the money, but he was allowed to change bond from cash that had already been posted to a recognizance bond. Mr. Hildebrand noted that "it doesn't happen very often."

(Vol. IV, R. 643)

To Mr. Hildebrand's knowledge, he had never left the defendant alone with Mr. Jensen. The witness denied any involvement or cooperation with the State. (Vol. IV, R. 646) Mr. Hildebrand stated that it was his recollection that, if the defendant agreed to testify against Mr. Fletcher, "there wouldn't be any other prosecution because there was a question of whether or not he was involved with the Fletcher murder, and my understanding at that point and time was that the State was not going to go ahead and file any charges involving his involvement —

we use the word, alleged involvement, in the Fletcher situation." This was dependant on Mr. Greer testifying truthfully. (Vol. IV, R. 648) Mr. Greer never told Mr. Hildebrand that he had been asked to lie about the murder. (Vol. IV, R. 649)

According to Mr. Hildebrand, Mr. Greer "wouldn't have been charged in the — with any involvement in the murder that Mr. Fletcher was charged with if he came in here, told the truth, and then we'd work out the other cases that he had floating around." (Vol. IV, R. 649-50) Mr. Greer "absolutely refused to cooperate," and wanted to be out of jail that day in exchange for his testimony. (Vol. IV, R. 650-51)

On cross-examination, Mr. Hildebrand stated that at some point a deal for six years was discussed: "I think that figure came up, but either way it was going to be something where he wouldn't spend a whole lot more time because he already had a lot of credit for time served in the county jail, and he was facing a potential of getting whacked for murder which would have been a whole lot more time." (Vol. IV, R. 651-52) When Mr. Hildebrand negotiated the case, he dealt with Mr. Jensen. (Vol. IV, R. 652)

Detective Jason Simmons was re-called to the stand and denied creating the story told by Mr. Greer. (Vol. IV, R. 655) To his knowledge, Mr. Greer had not spoken to anyone from the State's Attorney's office without a police officer present. (Vol. IV, R. 656) However, Detective Simmons was not with Mr. Greer at all times and could not say for sure whether the defendant had contact with Mr. Jensen. (Vol. IV, R. 657)

Detective Golike was also re-called to testify during rebuttal. When he spoke with Mr. Greer on January 18, 2000, the defendant did not tell him that

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anyone had asked him to make up the murder for hire story. To Detective Golike's knowledge, Mr. Greer was not threatened with a murder charge if he refused to testify. (Vol. IV, R. 662)

Analysis

"A defendant is legally responsible for the conduct of another person, when either before or during the commission of an offense, and with the intent to promote or facilitate the commission of that offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of the offense." (Illinois Pattern Jury Instruction, No. 5.03; Vol. I, C. 68) In the case at bar, the State failed to prove beyond a reasonable doubt that Larry Greer was legally responsible for the conduct of Robert Fletcher when Fletcher shot and killed Brian Warr. Therefore, Mr. Greer's conviction must be vacated.

Aside from the defendant's own statements to the police, which he acknowledged making but denied the truthfulness of, the State offered no corroborating evidence to support the theory that Mr. Greer intended to promote or facilitate the murder of Brian Warr, or that he aided or abetted Robert Fletcher before or during the commission of the offense. The State produced no outside evidence of the transfer of drugs or money to Mr. Greer as payment for the murder of Brian Warr. No evidence, not even the defendant's own statements, suggested that he brought Brian Warr to the Chess Club for the purpose of killing him. In fact, Detective Golike testified that Mr. Greer, in his most incriminating statement, made on January 18, 2000, stated he was "surprised" that the shooting took place in the parking lot at the Chess Club. (Vol. IV, R. 511) The defendant also stated that he "still had no idea [Fletcher]

was going to kill him on the lot of the Chess Club." (Vol. IV, R. 512) Further, the State did not call any witnesses, such as Robert Fletcher or James Evans, to corroborate any of the facts alleged in Mr. Greer's January 18, 2000, statement, the statement which the State alleged to be the true version of events.

Because of this lack of evidence, the State argued that Larry Greer aided and abetted Robert Fletcher by driving to the hospital in a slow fashion so that Brian Warr would bleed to death. (Vol. IV, R. 744) This was contradicted by the only two witnesses who were actually present and observed the events in question, the defendant and State's witness Tonya Brown. Ms. Brown, who rode in the car to the hospital with the defendant and Brian Warr, testified that it took only "two or three minutes" to arrive at the hospital. (Vol. III, R. 335) In response to a question about how fast the defendant was driving, Ms. Brown stated, "He was driving fast. He didn't run any stop signs or anything, but he was driving fast enough to get there." (*Ibid.*) While Ms. Brown did indicate that it would have been possible to take a somewhat more direct route to the hospital than the one taken by the defendant, she reiterated that the drive took only two to three minutes. (Vol. III, R. 336)

To counter the testimony of Ms. Brown, a citizen witness who was present at the scene and who rushed to the aid of the victim in this case, the State relied on convicted felon and jailhouse informant Jody Wesley. Mr. Wesley, who did not know the defendant or Robert Fletcher prior to their brief alleged encounter in the Madison County Jail, testified that Mr. Greer "was trying to probably unburden himself maybe," when he allegedly told this man, whom he did not know, all about his involvement in the murder of Brian Warr. (Vol. III, R. 425) Mr. Wesley testified that the defendant told him "he was paid \$1,500.00 and an

ounce of cocaine to set his best friend up, take — make sure that Brian Warr got down to a place called the Chess Club or the Crap House and so that Fletcher could kill him.” (Vol. III, R. 424) The defendant also told Mr. Wesley that he drove the victim to the hospital the long way, to “make sure he bled out.” (Vol. III, R. 425)

As noted above, Mr. Wesley is a convicted felon who has done time in a federal penitentiary for conspiracy to distribute cocaine and filing fraudulent tax returns. (Vol. III, R. 422) In addition to these crimes, Mr. Wesley was arrested on State charges sometime in June of 1998 and was placed in the Madison County Jail. (*Ibid.*) However, Mr. Wesley maintained that he was not receiving any consideration for his testimony. He had no charges pending against him, and he had not been threatened with any charges if he did not testify. He had not been promised anything in exchange for his testimony. (Vol. III, R. 428)

When asked on cross-examination if any felony charges had been dismissed against him in Madison County during the year, Mr. Wesley replied, “No, not that I know of.” (Vol. III, R. 431) Following this denial, defense counsel showed Mr. Wesley two Madison County Court files indicating charges of unlawful restraint and aggravated battery which were dismissed on February 9, 2000. (Vol. III, R. 431-32) This dismissal date was less than three weeks after the conclusion of the Robert Fletcher trial and the filing of the information against the defendant in the instant case. (Vol. I, C. 1; Vol. IV, R. 524) The witness maintained, however, that the dismissal of the above charges had nothing to do with his testimony in the instant case or his testimony in the trial of Robert Fletcher. (Vol. III, R. 433)

When not making inaccurate statements about his previous charges and their timely dismissal, Mr. Wesley testified that Mr. Greer told him "he was kind of mad about" the money he received, "because he got it and he had to post bond for an obstruction of justice charge with it. It was \$1500.00 or something." (Vol. III, R. 424) As noted above, it is unclear how Mr. Greer could have told Mr. Wesley about the \$1500 used to bond him out of jail since, if Mr. Wesley is to be believed, the jailhouse conversation with the defendant must have taken place prior to Mr. Greer's posting bond and leaving the Madison County Jail. Of course, since Mr. Greer has acknowledged that Mr. Fletcher agreed to post \$1500 bond for him in exchange for the story about the laser sighted gun, and since Fletcher was still in custody with Mr. Wesley following Mr. Greer's release, it is entirely possible that Mr. Wesley learned about the \$1500 in bond money from Fletcher after the fact and conveniently wove it into his version of events. This would also explain the discrepancy between Mr. Wesley's statement that the defendant was paid only \$1500 for his role in the murder and the \$5000 Mr. Greer allegedly received as payment according to the State.

Further, while the defendant's final statements regarding the night of the murder indicate a prominent role in the crime, the defendant denied the truthfulness of those statements and pointed to his October 8, 1998, statement to Detective Adams as the true version of events. (Vol. IV, R. 572; People's Exhibit 16) While Detective Simmons expressly denied the defendant's charge that he fabricated the murder for hire plot and told the defendant what to say (Vol. IV, R. 655, 657), there is no doubt that each time the defendant gave a statement the authorities liked he was rewarded with his release and even with money. When he gave statements the authorities did not like he was punished,

first with an arrest for obstruction of justice, later with the refusal to deal with him on a weapons charge, and then finally by charging him with murder. This pattern casts grave doubt on the truthfulness of the defendant's statements detailing the alleged murder for hire plan and supports his claim that the version of events laid out in those later statements was not accurate.

In sum, the State presented no credible evidence whatsoever that Larry Greer was legally responsible for the actions of Robert Fletcher in killing Brian Warr. Because the State failed to prove beyond a reasonable doubt that Larry Greer either intended to promote or facilitate the murder of Brian Warr or that he aided or abetted Robert Fletcher before or during the commission of that offense, Mr. Greer's conviction for murder must be vacated.

II.

THE DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHERE DEFENSE COUNSEL FAILED TO TENDER JURY INSTRUCTIONS ON THE LESSER INCLUDED OFFENSE OF CONSPIRACY.

During the jury instruction conference, the State initially tendered instructions on both murder and conspiracy to commit murder. Defense counsel objected to the conspiracy instruction because he was "not sure the conspiracy is a lesser included offense of first degree murder." (Vol. IV, R. 677) After a brief discussion off the record, the decision was reserved until the following morning. (Vol. IV, R. 678-79) The next morning the prosecutor withdrew the conspiracy instructions "because I feel on the record that it is not a technical lesser included offense." (Vol. IV, R. 687) The court then stated: "And upon his tendering, you decided to accept the conspiracy instruction. So, now you are then going to ask those to be tendered, and then the Court will accept them." (Vol. IV, R. 687-88) After discussion, defense counsel decided that if, as the State had suggested, conspiracy was not a lesser included offense then the instructions regarding conspiracy should not be given. (Vol. IV, 687-92) Because conspiracy to commit murder is a lesser included offense of murder by accountability, defense counsel's failure to request an instruction on conspiracy to commit murder amounted to the ineffective assistance of counsel and requires the reversal of Mr. Greer's conviction. *People v. Soto*, __ Ill.App.3d __, __ N.E.2d __, 2003 Ill.App. LEXIS 44 (2nd Dist. No. 2-01-0119, January 15, 2003).

In order to demonstrate ineffective assistance of counsel a defendant must show that: 1) counsel's representation fell below an objective standard of reasonableness; and 2) counsel's deficient performance resulted in prejudice to the defendant. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052,

2064, 80 L.Ed. 2d 674, 693 (1984). To show prejudice, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed. 2d at 698.

The *Strickland* court noted that review of trial counsel's performance must be "highly deferential." *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065, 80 L.Ed. 2d at 694. Furthermore, "the decision of whether to submit an instruction on a lesser included offense is typically considered to be one of trial strategy, which has no bearing on the competency of counsel." *People v. McIntosh*, 305 Ill. App.3d 462, 471, 712 N.E.2d 893, 900 (5th Dist. 1999). However, the *Strickland* court also noted that a "thorough investigation of law and facts relevant to plausible options" is required to craft a trial strategy. *People v. Gibson*, 244 Ill.App.3d 700, 703-04, 612 N.E.2d 1372, 1374 (4th Dist. 1993), citing *Strickland*, 466 U.S. at 690, 104 S.Ct. at 2066, 80 L.Ed. 2d at 695.

In the case at bar, the record reflects that defense counsel failed to conduct a "thorough investigation of law and facts relevant to plausible options." Rather, he simply accepted the prosecutor's assertion that conspiracy to commit murder was not a lesser included offense of murder by accountability. (Vol. IV, R. 687-92) Defense counsel accepted this premise despite the State's failure to present any case law directly on point and despite one of the prosecutors noting that in discussions with the State's Attorney's Appellate Prosecutor, he had been informed that conspiracy to commit murder might in fact be a lesser included offense of murder by accountability. (Vol. IV, R. 689-90)

The Second District has recently found that conspiracy to commit murder is a lesser included offense of murder by accountability. *People v. Soto*, __

Ill.App.3d ___, ___ N.E.2d ___ (2nd Dist. No. 2-01-0119, January 15, 2003). In Soto, the court stated:

In our view, when the State sought to meet its burden by employing a theory of accountability, it prompted the inference that if a person, with the intent to promote the commission of an offense, aids in its commission, then that person also intends that the offense be committed and agrees to its commission. Obviously, the requirement that "no person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement is alleged and proved to have been committed by him or by a co-conspirator" (720 ILCS 5/8-2 (West 1998)) is met by the State's allegation that the victims were shot with a handgun. Thus, a charge of murder amplified by an accountability instruction implicitly describes the offense of conspiracy.

Soto, 2003 Ill.App. LEXIS 44 at 16.

Once a lesser included offense is identified, a defendant is entitled to an instruction on the lesser included offense "if an examination of the evidence reveals that it would permit a jury to rationally find the defendant guilty of the lesser offense yet acquit the defendant of the great offense." *People v. Hamilton*, 179 Ill.2d 319, 324, 688 N.E.2d 1166 (1997). In the case at bar, given the many different statements made by the defendant which detailed his level of involvement, the jury could have determined from the evidence that the defendant had agreed to assist in the murder of Brian Warr at a later time and location, but believed the defendant's statements that he did not know about Fletcher's plan to kill Warr at the Chess Club on the evening in question. In other words, the jury could have rationally believed that Larry Greer agreed to take part in a murder plan and that an act in furtherance of that plan had occurred, but also have found that Mr. Greer had not taken part in the murder plan which actually occurred when Robert Fletcher, angered and acting on his

own, walked up to the car and shot Brian Warr. See *Soto*, 2003 Ill.App. LEXIS 44 at 21. This reading of the evidence is strongly supported by the fact that even in his most incriminating statement, Mr. Greer stated he was "surprised" that the shooting took place in the parking lot at the Chess Club. (Vol. IV, R. 511) The defendant also stated that he "still had no idea [Fletcher] was going to kill him on the lot of the Chess Club." (Vol. IV, R. 512)

Because the jury could rationally have found from the evidence that Larry Greer was guilty of the lesser included offense of conspiracy to commit murder but not guilty of the greater charge of murder, the defendant was entitled to an instruction on the offense of conspiracy. Because defense counsel failed to conduct an adequate inquiry into the question of whether conspiracy to commit murder is a lesser included offense of murder by accountability, but rather accepted the State's assertion that it was not, the defendant was denied the effective assistance of counsel. Therefore, Mr. Greer's conviction must be reversed and his cause remanded for a new trial.

III.

THIS CASE SHOULD BE REMANDED FOR A HEARING PURSUANT TO PEOPLE v. KRANKEL BECAUSE THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY NOT INQUIRING INTO MR. GREER'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.

On December 18, 2000, after his trial but before the sentencing hearing, Larry Greer filed a "Motion for Ineffective Assistance of Counsel" with the trial court.¹ (Vol. I, C. 120-21) The motion alleged, among other things, that defense counsel had failed to call witnesses whose names the defendant had provided and whose testimony "would have been enough to clear me." (Vol. I, C. 121) The motion also alleged that the victim's father and sister told defense counsel that they had been asked to lie about the defendant's involvement by the Alton police, and that defense counsel failed to call these witnesses as well. (*Ibid.*)

At his sentencing hearing on April 6, 2001, Mr. Greer told the trial court that he had filed "some post trial motions of my own about things that I disagreed the way my lawyer done things." (Vol. V, R. 787) Defense counsel informed the court that he was not aware of any motions, and suggested that the court should "allow me to withdraw and appoint a new counsel so he can argue the points against me." (Vol. V., R. 788) The court responded, "I don't think any — there wasn't anything like that in the letters . . . as far as I can see." (*Ibid.*) After Mr. Greer again protested that he had filed a motion claiming ineffective assistance of trial counsel, and defense counsel again expressed that he had not seen such a motion, the trial court stated, "No, I received your motions.

¹ On July 13, 2001, Mr. Greer filed a "Post Trial Motion for Ineffective Assistance of Counsel." (Vol. I, C. 173-74) This motion further elaborated on the defendant's claims of defense counsel's ineffectiveness. The trial court denied the motion in a handwritten order on July 24, 2001, which stated: "Cause is on appeal. *Pro se* Post Conv. Petition is dismissed without prejudice." (Vol. I, C. 180)

Everything I had I sent to [defense counsel], and then he incorporated that into his Amended Post-Trial Motion.” (Vol. V, R. 788-89) The court then proceeded to sentence Mr. Greer. (Vol. V, R. 790-92)

On May 30, 2001, at a hearing on the defendant’s motion to reduce sentence, the following discussion took place:

MR. GREER: Okay, but — and something I didn’t understand about us withdrawing the appeal.

THE COURT: Well, because — because Mr. Hale wanted to argue your motion to reduce your sentence. So, now, it’s all together, and it can go up all together.

MR. GREER: Okay, and then I — at my sentencing I was trying to file certain motions, but I don’t know what happened to them.

THE COURT: Your lawyer took care of all that. Okay, right now it’s going to be on appeal.

MR. GREER: I mean it was *pro se* I was trying to file because me and my lawyer wasn’t agreeing on some things.

[DEFENSE COUNSEL]: Well, and my understanding was I asked the Court about that and there was nothing — I was informed there was nothing in the file that came to the level of a *pro se* motion.

THE COURT: Right. Right. We handled all that beforehand, okay.

MR. GREER: I did file a motion though. I filed a motion, and I did never — it didn’t get heard. I didn’t even get responded to, and I filed a motion.

THE COURT: We took —

MR. GREER: And — and this motion is very important to my case.

THE COURT: We took care of all of that prior to this, okay.

(Vol. V, R. 800-01)

In Illinois, a trial court is required to conduct an inquiry into a defendant's *pro se* allegations of ineffective assistance of counsel. *People v. Johnson*, 159 Ill.2d 97, 636 N.E.2d 485, 497 (1994); *People v. Krankel*, 102 Ill.2d 181, 464 N.E.2d 1045, 1049 (1984). The trial court must examine the factual matters underlying the defendant's claim to determine if new counsel must be appointed. *Johnson*, 636 N.E.2d at 497; *People v. Williams*, 147 Ill.2d 173, 588 N.E.2d 983, 1014 (1991). The question on appeal is whether the trial court conducted an adequate inquiry. See *People v. Bull*, 185 Ill.2d 179, 705 N.E.2d 824, 839-40 (1998).

In the instant case, no examination or inquiry was conducted by the trial court. Despite the defendant raising the issue with the court on two separate occasions, the trial court did nothing to ascertain the reasons for Mr. Greer's dissatisfaction with defense counsel. Instead of inquiring into his allegations, the trial court disregarded the defendant's concerns summarily. (Vol. V, R. 787-89, 800-01) Contrast with *Bull*, 705 N.E.2d at 839-40 (trial court investigated defendant's concerns and heard from defendant and his two trial counsel before finding no ineffectiveness); *Johnson*, 636 N.E.2d at 497-98; *Williams*, 588 N.E.2d at 1015.

Because the trial court failed to consider the defendant's claim of ineffective assistance of counsel, this cause should be remanded for further proceedings. The type of relief the defendant is requesting was recognized in *Krankel*, 464 N.E.2d at 1049, and *People v. Jackson*, 131 Ill.App.3d 128, 474 N.E.2d 466 (4th Dist. 1985). In *Krankel*, the Illinois Supreme Court remanded for a hearing on the defendant's *pro se* post-trial motion alleging that he received ineffective assistance of counsel when counsel failed to call additional witnesses

at trial. *Krankel*, 464 N.E.2d at 1049. Similarly, in *Jackson*, the Fourth District stated that a trial court should first examine the factual matters underlying the defendant's claim of ineffective assistance of counsel. After conducting an inquiry, if a court determines the possibility of neglect of the defendant's case, new counsel should be appointed to undertake an independent evaluation of the defendant's claim and to present the matter to the court from a detached, yet adversarial position. *Jackson*, 474 N.E.2d at 474-75.

Following the rationale of *Krankel* and *Jackson*, the trial court in this case should have examined the factual matters underlying the defendant's concerns that he was receiving ineffective assistance. Because the trial court committed reversible error by ignoring Mr. Greer's allegations of ineffective assistance, this Court should remand the cause to allow for such an inquiry.

CONCLUSION

Because the State failed to prove beyond a reasonable doubt that Larry Greer was guilty of the murder of Brian Warr, the defendant respectfully requests that this Court vacate his conviction. Alternatively, the defendant respectfully requests that this Court reverse his conviction and remand his cause to the trial court for a new trial and the opportunity to instruct the jury on the lesser included offense of conspiracy to commit murder. As a less favored alternative, the defendant respectfully requests that this Court remand his cause to the trial court for a hearing on his post-trial motion alleging the ineffective assistance of counsel.

Respectfully submitted,

DANIEL D. YUHAS
Deputy Defender
Office of the State Appellate Defender
400 South Ninth Street, Suite 102
P.O. Box 5750
Springfield, IL 62705
(217) 782-3654

JOSHUA D. CARTER
Assistant Defender

COUNSEL FOR DEFENDANT-APPELLANT