

1 BE IT REMEMBERED AND CERTIFIED, that
2 heretofore on to-wit: The 28th day of August, 2000,
3 the same being one of the regular judicial days of
4 said Court, said cause entitled as hereinabove set
5 forth, came on for hearing before the Honorable James
6 Hackett, one of the Associate Judges of said Third
7 Judicial Circuit, at the Courthouse, in the City of
8 Edwardsville, Madison County, Illinois.

9 Whereupon the following proceedings were
10 held of record, to-wit:

11 COURT CONVENED: August 28, 2000.

12 THE COURT: The matter before the Court is
13 96-CF-2295, being People of the State of Illinois vs.
14 Jeffrey A. Ewing. Mr. Ewing is present in court with
15 his attorney Jack Daugherty. The State is present by
16 Attorney Keith Jensen.

17 Specifically set this afternoon is a
18 Post-Trial Motion filed on behalf of Mr. Ewing.

19 Mr. Daugherty, are you ready?

20 MR. DAUGHERTY: Yes, your Honor. I'm ready.

21 THE COURT: Would you start with paragraph A
22 and then we'll do paragraphs individually after that.

23 MR. DAUGHERTY: Okay. Paragraph A, and I'll
24 read from it, "The State failed to disclose

1 consideration given to witnesses in exchange for
2 testimony for or cooperation with the State and
3 knowingly allowed its witnesses to commit perjury."

4 And what I'm talking about there
5 specifically is a witness, Demond Spruill. It's our
6 understanding after the trial that Demond Spruill was
7 given a deal to cooperate with the State, and the deal
8 was he got an eight year sentence shortened in
9 cooperation for the State, and it was in cooperation
10 with the prosecution of Jeffrey Ewing.

11 In pretrial motions I made a specific
12 discovery request asking for any deals given between
13 the State and any of the witnesses it intended to
14 call. There was no response from the State. In
15 direct -- in cross-examination of Mr. Spruill, it was
16 asked of him on several occasions if he had any
17 dealings with the State. Mr. Spruill each time
18 responded in the negative.

19 It was not until the closing arguments of
20 the State, and I have provided both the Court and
21 counsel with copies of Mr. Jensen's closing argument,
22 that any reference to a deal was made.

23 And as it reads in pertinent parts, "Sure, I
24 admit he got out early." And then he says it again.

1 Mr. Jensen does. "He got out early, but he told you
2 he was cooperating with the police. He was on tape.
3 He consented to a court order and lo and behold the
4 defendant's wife gives him a gun, et cetera."

5 So -- this is line 20, page 24, "So if
6 you're involved in the investigation of other crimes,
7 yeah, you do get out a little early sometimes. It's a
8 fact of life. I'm sorry."

9 He wants to be really, really ugly about the
10 fact that Demond Spruill cooperated on an eight year
11 sentence and got out and you think he wouldn't be
12 somewhat different if the State went to the killer in
13 this case and had to bring him to you. What do you
14 think that would take -- that would take? I'm sorry.
15 I won't bring in your friend that you gave the gun and
16 I won't make a deal."

17 Well, Mr. Jensen states in pretty clear
18 terms that Spruill cooperated and got an eight year
19 sentence reduced. I don't think that this quite
20 qualifies as correct and perjured testimony because
21 Mr. Jensen does not make any mention of this until his
22 rebuttal version of his own closing argument in trial,
23 which, of course, at that point I have no opportunity
24 to respond.

1 He has a duty under Brady. He has a duty
2 under People vs. Giglio, which is also a U.S. Supreme
3 Court case to disclose any and all such facts. There
4 are also Illinois Supreme Court cases that involve the
5 same issue. I am referring specifically to People vs.
6 Jimerson. It's a Supreme Court case. It's 1995. And
7 I'll recite the pertinent parts.

8 "If a prosecutor knowingly permits perjured
9 testimony to be used in a prosecution and it is
10 uncontrovertible that the defendant's trial lacked the
11 defendant the fundamental fairness implicit in the
12 constitutional guarantees of due process of law."

13 What that basically means is when Spruill
14 said he did not have a deal, he lied. That was
15 untruthful and no one made any attempts to correct
16 that. I was entitled to have that disclosed to me
17 before trial because it's a proper subject of
18 cross-examination. As I was not allowed to expand, as
19 I was prevented from properly cross-examining one of
20 the State's key witnesses, my defendant -- my client
21 was denied a fair trial.

22 In Jimerson, an Illinois case that is
23 referred to, another Illinois Supreme -- well, the
24 U.S. Supreme Court dealing with an Illinois case is

1 considered in which the principal statement of the
2 State of Illinois, a principal witness for the
3 prosecution got a deal, and it was not disclosed
4 exactly what the deal was at trial. And when asked on
5 direct and cross-examination at trial, the witness
6 denied having any deal.

7 The big difference between these two cases
8 is that like Napue vs. Illinois, the witness denied
9 getting a deal. However, unlike Napue, in Napue the
10 prosecution at least disclosed that a deal was made
11 prior to trial. That was not even done in this case.

12 THE COURT: Mr. Jensen.

13 MR. JENSEN: Your Honor, I'm a little
14 unclear as to what Mr. Daugherty thinks the deal is.
15 For the record, Demond Spruill was in the
16 penitentiary. He
17 was -- he went to trial. He exercised his
18 constitutional rights, was convicted, was sentenced by
19 the judge, was brought back on a post-conviction, and
20 while he was in the Madison County Jail, he was
21 approached by not this man but another man, Mr. James
22 Evans, and he cooperated at that point in time. He
23 was cooperating in the investigation into the murder
24 of Nekemar Pearson.

1 He was released in cooperation of that
2 murder and was wired in that murder, and in fact was
3 successful in the prosecution of not only the murder
4 of Nekemar Pearson but solicitation to kill two
5 witnesses. And so his sentence was reduced on a
6 post-conviction for his cooperation in that case. Not
7 in this case.

8 As I recall, Mr. Daugherty had the
9 opportunity to fully and completely cross-examine Mr.
10 Spruill and did so at length. I don't think he was
11 prohibited from asking any questions, and there was
12 not any deal for Mr. Spruill to testify. I think the
13 court records would show that Mr. Spruill had a charge
14 pending or has a charge pending, that he went in and
15 he pled guilty to it against the advice of his
16 counsel, that he flat out has pled guilty and he's
17 awaiting sentencing.

18 There is no deal with Demond Spruill. There
19 has been no perjury. Nothing was offered to him. No
20 charges were dismissed. There wasn't any
21 consideration other than the fact that he would -- the
22 fact that he was cooperating would be taken into
23 account I assume by a judge or he could go into the
24 judge and say listen, I cooperated in this other case.

1 I do not think that at page 24 and page 25
2 that Mr. Daugherty has cited indicate that there was
3 any kind of deal at all. He got up and he wailed on
4 Demond Spruill for the longest time about how he was
5 unbelievable, how he was -- had a terrible record and
6 everything else, and so I simply responded that yes,
7 he didn't get a long sentence. He got out a little
8 early because he was cooperating with the police. I
9 don't think I said there was a deal. I don't think I
10 said that he was receiving specific cooperation or
11 specific -- a specific deal in regards for this.

12 Of course, he was hopeful that the State
13 would be very optimistic to him, but there was no
14 deal. And further on page 25 where Mr. Daugherty
15 talks, I'm not referring to Demond Spruill. I was
16 referring to Clifton Wheeler. Clifton Wheeler is the
17 one that Mr. Daugherty said would get up and would
18 testify to all those things and that the jury would be
19 somewhat amazed by his testimony and then he didn't
20 call him.

1 So my reference there was the idea that, I
2 think he even got up and mentioned in his closing
3 argument, that the fact that the State had not called
4 Clifton Wheeler and that simply was a response to

1 that. I do not feel that there has been any showing
2 of any perjury nor has there been any showing of any
3 deal with Mr. Spruill.

4 Mr. Daugherty.

5 MR. DAUGHERTY: If I could respond very
6 quickly. If you look at the facts surrounding Mr.
7 Spruill testifying in the case against Jeffrey Ewing,
8 it took place at holiday time. Mr. Spruill was
9 incarcerated in jail. At Thanksgiving Mr. Spruill was
10 allowed to go home for two days for Thanksgiving and
11 come back and testify. Just after testifying he was
12 released.

13 Mr. Jensen in his own argument reveals and
14 admits the violation. I requested any deals made
15 between the State and this witness. He just admitted
16 again that there were deals being made between the
17 witness and the State. I was entitled to have that
18 disclosed to me. It was not disclosed to me.

19 THE COURT: Anything else, Mr. Jensen?

MR. JENSEN: No, your Honor.

THE COURT: Okay. B, Mr. Daugherty.

MR. DAUGHERTY: Let's see. Okay. B, Fifth
Amendment objection against self-incrimination was not
available to Clifton Wheeler. During the trial I