

STATE OF ILLINOIS )  
)  
COUNTY OF McLEAN )  
)  
THE PEOPLE OF THE )  
STATE OF ILLINOIS )  
)  
VS. )  
)  
BARTON MCNEIL )

IN THE CIRCUIT COURT THE  
ELEVENTH JUDICIAL CIRCUIT

NO. 98 CF 633

FILED  
McLEAN COUNTY  
DEC 28 1998  
CIRCUIT CLERK

MEMORANDUM OF LAW CONCERNING ADMISSIBILITY  
OF EVIDENCE WHICH SUGGESTS GUILT OF ANOTHER

Now come THE PEOPLE OF THE STATE OF ILLINOIS, by Charles G. Reynard, through Assistant State's Attorney Stephanie M. Wong, and file this memorandum of law in support of its Motion in Limine.

FACTS:

On June 16, 1998 at 7:40 a.m. the defendant reported the victim, his 3 year old daughter Christina McNeil, to be deceased. The defendant recounts the events preceding the victim's death as follows:

On June 15, 1998 at approximately 7:00 p.m. the defendant picked up Christina from Tita McNeil, Christina's mother and the defendant's former wife, and took her to McDonalds. Defendant and Christina arrived back at defendant's one bedroom apartment at approximately 8:00 p.m. where they ate dinner. The defendant put the victim to sleep in the bedroom at approximately 10:30 p.m. At 12:00 a.m. he heard Christina singing to herself and looking at books, at which time he again told her to go to sleep. He returned to his computer until about 2:00 a.m. when he decided to go to sleep, at which time he checked on Christina and saw her sleeping. The defendant then laid down on the couch located in the living room but did not fall asleep until about 2:45 a.m. due to the severe thunder and lightening. No other persons were in the apartment with the victim and defendant. When the defendant went to sleep, he left the front door open so he could hear the thunder and lightening but locked the screen door. When he went to wake the victim up at 7:40 a.m. he found her in a deceased condition. Police officers have not found any evidence of unauthorized entry.

In a series of interviews, the defendant asserted that Misook Nowlin, his on again, off again girlfriend, was the murderer. The defendant claims that Misook Nowlin was obsessed with the defendant, resentful of defendant's relationship with Christina and the child support being paid to Christina. Defendant claims that Misook murdered Christina to be alone with defendant and he reports at length the domestic problems between himself and Misook, none of which involved Christina.

The defendant then told officers that Misook Nowlin crawled through the bedroom window during the night, strangled the victim and then left again through the window. When confronted with evidence that no one could have gained entry in that manner, defendant then asserted that Misook Nowlin came in through the front door. When reminded that the screen door was locked, defendant then asserted that some person might have come through another window in the apartment. None of the windows or the area below the windows showed any signs of disturbance and there is no evidence showing unauthorized entry into the apartment.

ADMISSIBILITY OF EVIDENCE SUGGESTING GUILT OF ANOTHER

The appellate courts and the Illinois Supreme Court have established and applied a clear standard for the admissibility of evidence suggesting guilt of another. If evidence that another person committed the crime charged against the defendant is too remote or speculative or if it fails to link a third person *closely* with the commission of the crime, the

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trial court should exclude it. People v. Howard, 147 Ill. 2d 103, 1991, P. v. Bruce 185 Ill. App. 3d 356, 541 NE2d 708 (1989 5<sup>th</sup> Dist). People v. Columbo, 118 Ill. App. 3d 882, 455 N.E2d 733 (1<sup>st</sup> Dist. 1983). Evidence that someone else committed the crime is relevant and admissible only if and when a *close connection* can be demonstrated between the third person and the commission of the crime. People v. Maberry, 193 Ill. App 3d 250, 549 NE2d 974 (4<sup>th</sup> Dist. 1990). Evidence of motive, without more, is insufficient to require admission of the evidence. People v. Whalen, 238 Ill. App.3d 994, 605 N.E2d 604 (4<sup>th</sup> Dist. 1992).

A review of the facts of the fourth district and Illinois Supreme Court cases indicate that the defendant must be able to demonstrate the third person's connection to the crime charged. In People v. Maberry, the victim was sexually assaulted on 8/1/86 by a person wearing a mask and armed with a knife. The victim provided a physical description and further indicated that it was the defendant. The victim was acquainted with defendant from having attended school with him and working with him at the same retail store.

Defendant attempted to show that on the evening before the attack, the victim had reported her former boyfriend to authorities on a charge of burglary and requested extra police patrol after making this report. The former boyfriend was also seen in the area on the evening of 7/31/86. The trial court precluded the introduction of this evidence and on appeal defendant argued that the former boyfriend had a motive to commit the crime and was in the general area shortly before the attack. The appellate court affirmed the ruling of the trial court and held that this evidence was insufficient to establish any link between the boyfriend and the attack that occurred on 8/1/86 and therefore inadmissible.

People v. Whalen stands for the proposition that motive alone is insufficient to require admission of evidence to show that a third person may have committed the crime for which defendant is charged.

In Whalen, the defendant was charged with the murder of his father after the victim's body was found in the victim's tavern. Evidence showed that the tavern safe was found open and empty. Furthermore, the defendant had an expensive cocaine habit, had been recently ejected from the family residence and one month prior to the murder, defendant and victim had been involved in a fight. The defense sought to introduce evidence that a patron, Robert McElvany may have murdered the victim. The defense argued that McElvany had motive as he had been asked by the decedent to leave the tavern shortly before the murder after McElvany had a confrontation with other patrons. When detectives interviewed McElvany shortly after the murder, they discovered that he was fully dressed which was unusual based on their prior contacts with McElvany. Furthermore, when advised that there was a disturbance at the tavern, McElvany replied "I wouldn't hurt Bill Whalen, Bill Whalen is my buddy. What did I do?"

The appellate court affirmed the trial court's refusal to allow this evidence, finding that motive alone was insufficient to allow the introduction of this evidence.

People v. Howard also supports the proposition that evidence of motive alone is insufficient to allow its introduction. In this case the victim was shot while he was sitting in his car. His passenger escaped injury and was able to identify the shooter in a lineup and also at trial. Prior to trial, the court granted the State's motion in limine to preclude cross examination of whether the witness had a romantic relationship with the victim. The defense argued that both victim and the witness were married to other people at the time of the offense and during the initial stages of the investigation, the police had investigated the shooting as a family related homicide. Police also questioned the witness' husband and subjected him to a lie detector test. The defense argued that the cross examination was relevant because it suggested that the witness's husband, or even the victim's wife had a motive to commit the offense charged. The Court affirmed the trial court's ruling on the ground that the information would have been completely speculative. Furthermore, the defendant's theory was groundless in that they provided no evidence linking either spouse to the murder.

The appellate court and Illinois Supreme Court has refused the admission of evidence which suggests guilt of another where the facts were much more compelling than in the case at bar. In this case, the defendant's assertions against Misook are founded entirely on speculation and unsupported by the evidence. Applying the principles set forth in

Maberry, Whalen and Howard, . . . court must exclude any evidence, v . . . tends to suggest that Misook was involved in the murder of Christina McNeil.

Respectfully submitted,

*S. M. Wong*  
Stephanie M. Wong

# PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing the same in an envelope addressed to such attorney at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U. S. Post Office Mail Box in Bloomington, Ill.

51701, on the 24 day of December 1998

Wamp Murphy

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STATE OF ILLINOIS  
 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
 COUNTY OF MCLEAN

THE PEOPLE OF THE STATE OF )  
 ILLINOIS, )  
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 PLAINTIFF, )  
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 VS. )  
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 DEFENDANT. )

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**FILED**  
**JAN 22 1999**  
 MCLEAN COUNTY  
 CIRCUIT CLERK

MEMORANDUM IN OPPOSITION TO STATE'S MOTION IN LIMINE

NOW COMES the Defendant, by and through his attorneys, TRACY SMITH and KIM CAMPBELL, Assistant Public Defenders, and file this written objection to the State's motion in limine concerning the admissibility of evidence which suggests guilt of another. In support thereof, Defendant states as follows:

I. The right to offer evidence and testimony of witnesses is essential to the right to present a defense itself, and "stands on no lesser footing than the other 6<sup>th</sup> Amendment rights." *Washington v. Texas*, 388 U.S. 14, 18-19, 87 S.Ct. 1920 (1967). Few rights are more fundamental than the right of an accused to present evidence in his own defense. *Taylor v. Illinois*, 484 U.S. 400, 408, 108 S.Ct. 646 (1988). A defendant is entitled to all reasonable opportunities to present evidence which might tend to create doubt as to his guilt. *People v. Cole*, 30 Ill.2d 375 (1964).

An accused may attempt to prove that someone else committed the crime with which he is charged as long as the evidence is relevant. *People v. Ward*, 101 Ill.2d 443, 455 (1984).

II. The cases cited by the State are distinguishable from the case at bar.

Evidence that someone other than the defendant may have committed the crime is relevant and admissible when a close connection can be shown between the third person and the commission of the offense. *People v. Maberry*, 549 N.E.2d 974 (4<sup>th</sup> Dist. 1990). In *Maberry*, the appellate court held the evidence of defendant's guilt in this rape case was overwhelming, including a 99% positive identification from the victim. Thus, it was not an abuse of discretion on the trial court's part when it disallowed evidence that a

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former boyfriend of the victim had committed the crime---the former boyfriend was seen in the area on the night of the crime and had similar clothes as the defendant. The court held this evidence failed to establish any link between the former boyfriend and the crime. Also, the victim stated she did not believe it was the former boyfriend who raped her, the police stated he was never a suspect in the case, he could not be placed on the scene the night of the crime, and he physically did not match the detailed description given by the victim.

In *People v. Whalen*, 605 N.E.2d 604 (4<sup>th</sup> Dist. 1992), the only evidence linking a person other than the defendant to the murder of a man at a tavern was that a patron of the tavern exclaimed to detectives that he would not have hurt the victim before he was told the victim was deceased. The majority held that no evidence of animosity was presented between the patron and the victim, and affirmed the denial of the evidence. Justice Knecht dissented, however, noting that the defendant should be able to present evidence supporting his theory of the case---his offer of proof showed the patron was ejected from the bar hours before the murder, and when detectives came to his home, they found him fully dressed and awake a few hours after the murder, and the first thing he said was he did not hurt the victim.

### III. Facts in this case linking Misook Nowlin to the murder of Christina McNeil:

1. On State's Discovery page 12, Detective Marvin Arnold states that when he was first at the scene, he "did see one hole in the screen on the lower west side of the screen.
2. On State's Discovery page 13, Sgt. Randall McKinley states that he "noted two holes in the lower corner of the screen which is near the locks on the inside of the screen." Sgt. McKinley later states that he spoke with Crime Scene Technician Tom Sanders who "stated that he had observed and photographed a hole in the screen when at the scene that morning."
3. On State's Discovery page 17, CST Tom Sanders stated that he "observe a small hole in each lower corner of the screen... and may not have noticed the hole in the West corner." On receipt of the photographs, CST Sanders stated that the photos taken earlier "confirmed from an exterior photograph that both holes were in the screen at the time of our initial response."
4. On State's Discovery page 23, Officer Michael Burns states that Clarence Frisch (1108 ½ N. Evans) told him that "a while ago and oriental lady was outside of the apartment banging on the door at night."
5. On State's Discovery page 28, Officer Michael Burns states that he went to Avanti's to identify employees that had contact with Nowlin and McNeil. Robin Butler stated to Burns that she was their waitress and that she "recalled the couple because they

were arguing at the table.” Robin told Burns that the female had looked up the males phone records and she thought their argument was “unusual because most people try and hide their arguments when the waitress arrives but they did not... they left after 15-20 minutes.”

6. On State’s Discovery page 33, Detective Clay Wheeler assisted Burns in a neighborhood canvas. Neighbor Robert L. Sims (1105 N. Evans) said “one night a couple of weeks ago he heard someone pounding and or kicking on his door and looked out and saw his wife or girlfriend pounding on the door.”
7. On State’s Discovery page 33, Detective Wheeler is told by neighbor Mona Rains (1104 N. Evans) that on Tuesday morning, “an oriental woman she (Mona) thought might be the girls mother came to her window and asked what was going on next door, because the police and ambulance were there.”
8. On State’s Discovery page 58, CST Tom Sanders processed the area around the bedroom window for latent prints and developed latent print lift S1 (exhibit 39) room midway up the East inside trim board. This information has not been given to the defendant.
9. On State’s Discovery page 103, Detective Shepard is told that Misook told Lang Wilson that “if Bart hadn’t left her this would not have happened.”
10. Misook Nowlin has been considered a suspect by the police: Detective Shepard (p. 48) asked Nowlin to take a polygraph that produced “erratic and inconsistent results” on questions regarding the death of Christina McNeil (p. 119-120); Nowlin has been extensively questioned by the Bloomington Police Department and provided inconsistent answers as to her whereabouts on the night of Christina McNeil’s death that do not correspond to others’ statements.

IV. Defendant will be precluded from asserting his theory of the case if this evidence is not allowed at a trial of this cause. The sufficiency of the evidence is a matter for the jury to determine, (*People v. Wilson*, 500 N.E. 2d 128 (3<sup>rd</sup> Dist. 1986), but the facts connecting Misook Nowlin to the murder in this case are sufficient enough to allow the evidence to be heard.


In *Wilson*, the court held that evidence offered by the defendant to show that someone else committed the offense of murder should have been admitted. Evidence that neighbors of the victim saw a heated argument between the victim and another person on the day of the homicide or the day before the homicide and that there were threats to kill were relevant to show that someone other than the defendant committed the crime. The court held that, “Certainly, an argument on the day before, or the day of, the actual murders is not too remote. Neither is the evidence merely speculative.” 500 N.E.2d at 131.

In *People v. Ortiz*, 586 N.E.2d 1384 (5<sup>th</sup> Dist. 1992), trial counsel was held to be ineffective for failing to present evidence that another person had committed the aggravated battery, although defense counsel had mentioned this person in his opening statement.

WHEREFORE, Defendant respectfully requests that this Honorable Court deny the State's motion in limine.

Respectfully submitted,

Barton McNeil, Defendant

BY: 

Tracy Smith  
Assistant Public Defender

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