

**In the
Supreme Court of the United States**

ESTEBAN MARTINEZ,
PETITIONER,

v.

ILLINOIS,
RESPONDENT,

**On Petition for a Writ of Certiorari
to the Illinois Supreme Court**

PETITION FOR REHEARING

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF FACTS	1
ARGUMENT	6
CONCLUSION	11
CERTIFICATE OF COUNSEL	12

TABLE OF CONTENTS TO APPENDIX

Slip opinion, <i>Martinez v. Illinois</i> , No. 13-5967 (May 27, 2014)	A1
Docket sheet, <i>People v. Martinez</i> , No. 2006 CF 001731 (Kane Cnty. Cir. Ct.)	A12
Docket sheet, <i>People v. Martinez</i> , No. 2012 CF 000733 (Kane Cnty. Cir. Ct.)	A30
Order, <i>People v. Martinez</i> , No. 2006 CF 1731 (Kane Cnty. Cir. Ct.) (Apr. 14, 2014)	A40
Hearing Transcript, <i>People v. Martinez</i> , Nos. 12 CF 733 & 06 CF 1731 (Kane Cnty. Cir. Ct.) (Apr. 14, 2014)	A41
Affidavit of Karl Triebel	A61

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Already, LLC v. Nike, Inc.</i> , 133 S. Ct. 721 (2013)	7
<i>Alvarez v. Smith</i> , 558 U.S. 87 (2009)	8, 9
<i>ASARCO, Inc. v. Kadish</i> , 490 U.S. 605 (1989)	11
<i>Buchanan v. Snedeker</i> , 588 F.3d 1281 (10th Cir. 2009)	9
<i>Chafin v. Chafin</i> , 133 S. Ct. 1017 (2013)	6
<i>Claiborne v. United States</i> , 127 S. Ct. 2245 (2007)	8
<i>DeFunis v. Odegaard</i> , 416 U.S. 312 (1974)	6
<i>Genesis Healthcare Corp. v. Symczyk</i> , 133 S. Ct. 1523 (2013)	7
<i>Lewis v. Cont'l Bank Corp.</i> , 494 U.S. 472 (1990)	6
<i>Lewis v. United States</i> , 216 U.S. 611 (1911)	7, 8
<i>North Carolina v. Rice</i> , 404 U.S. 244 (1971)	6, 7
<i>Parr v. United States</i> , 351 U.S. 513 (1956)	7
<i>United States v. Martin</i> , 682 F.2d 506 (5th Cir. 1982)	7
<i>United States v. Mujahid</i> , 491 Fed. Appx. 859 (9th Cir. 2012)	7
<i>United States v. Munsingwear, Inc.</i> , 340 U.S. 36 (1950)	8
<i>United States v. Rutledge</i> , 448 F.3d 1080 (9th Cir. 2006)	9
<i>U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship</i> , 513 U.S. 18 (1994)	<i>passim</i>
<i>U.S. Parole Comm'n v. Geraghty</i> , 445 U.S. 388 (1980)	8
<i>Walling v. James V. Reuter, Co., Inc.</i> , 321 U.S. 671 (1944)	7

Statutes, Constitutional Provisions, and Rules:

28 U.S.C. § 2106 8, 11

Ill. Const., Art. VI, § 19 2

15 ILCS 205/4 2

55 ILCS 5/3-9005(a) 2

Ill. S. Ct. R. 402 10

INTRODUCTION

On May 27, 2014, this Court issued a per curiam opinion summarily reversing the Illinois Supreme Court's judgment in this case and holding that the Double Jeopardy Clause precluded any further prosecution of respondent Esteban Martinez on the underlying charges. However, due to events in the trial court that occurred after all of the parties' filings in this Court, the case became moot on April 14, 2014, approximately six weeks before the Court's opinion issued and unbeknownst to the Illinois Attorney General. Therefore, through this Petition for Rehearing, the People of the State of Illinois ("the State") ask this Court to vacate its May 27, 2014 judgment. Additionally, because of the unique circumstances of this case, the Court should also vacate the judgments of the Illinois Supreme Court and Illinois Appellate Court, pursuant to its authority under 28 U.S.C. § 2106.

STATEMENT OF FACTS

1. A grand jury in the Circuit Court of Kane County, Illinois, indicted Esteban Martinez in August 2006 on charges of aggravated battery and mob action. See A1;¹ Pet. App. C2. After nearly four years of delay, much of it due to Martinez, trial was set for May 17, 2010. A2 & n.1; Pet. App. C2-3.² But on the morning of May

¹ The Appendix to this Petition contains this Court's May 27, 2014, slip opinion, as well as relevant materials not previously part of the record provided to this Court. Pages of the Appendix are consecutively numbered, beginning with A1.

² Martinez filed a speedy trial demand in September 2008, Common Law Record at 52, but his subsequent failure to appear at a July 2009 court date, *id.* at 80, waived that demand, see 725 ILCS 5/103-5(b) (2006).

17, 2010, the State's two key witnesses, Martinez's alleged victims, were not present, even though the State had issued subpoenas for their appearance. A2; Pet. App. C3. The State, represented by the Kane County State's Attorney,³ Pet. App. B4, moved for a continuance. A2; Pet. App. C3. The trial court denied the request and directed the parties to begin jury selection, but offered to delay swearing in any jurors until a complete panel was selected. A2; Pet. App. C3.

At the close of jury selection, the State's witnesses were still absent. A2; Pet. App. C3-4. The trial court delayed the matter again, calling other cases on its docket, but the State's witnesses still failed to appear. A2; Pet. App. C4. The State then filed a written motion for a continuance, which the trial court denied. A2-A3. The trial court offered to delay the start of trial for several more hours, but when the State expressed doubt about its ability to locate its witnesses, the trial court concluded that any further delay would be a waste of time. A3; Pet. App. C4-5. When the court then announced that it would swear in the jury immediately, A3, the State informed the court that it would "not be participating in the trial," A4 (quoting Tr.10-11); Pet. App. C5.

The trial court then swore in and instructed the jury. A4; Pet. App. C5. The State declined to deliver an opening statement or to call any witnesses, reiterating that it was not participating in the trial. A4; Pet. App. C5. The defense then moved for

³ In Illinois, individual State's Attorneys, elected at the county level, Ill. Const., Art. VI, § 19, represent the State in most criminal prosecutions in the trial courts. 55 ILCS 5/3-9005(a). The Illinois Attorney General represents the State in the Supreme Court. 15 ILCS 205/4.

“directed findings of not guilty to both counts,” which the trial court granted. A4; Pet. App. C6.

2. The State appealed to the Illinois Appellate Court, arguing that the trial court should have granted its motion for a continuance. See A4; Pet. App. C6. Martinez challenged the appellate court’s jurisdiction to hear the appeal, contending that the trial court’s order was an acquittal on the merits that could not be appealed. A4; Pet. App. B6. The appellate court rejected that contention, holding that jeopardy had not attached. A4; Pet. App. B11, 15. On the merits, the appellate court held that the trial court abused its discretion in denying the State’s continuance motion and remanded the case for trial. Pet. App. B15-21.

3. The Illinois Supreme Court granted Martinez’s petition for leave to appeal and, over one dissent, affirmed the appellate court’s judgment. A5; Pet. App. C12. The court recognized that jeopardy “[g]enerally * * * attaches when a jury is empaneled and sworn, as that is the point when the defendant is ‘put to trial before the trier of the facts.’” Pet. App. C9 (quoting *Serfass v. United States*, 420 U.S. 377, 394 (1975)) (some internal quotation marks omitted); see also A5. But the court also believed that this Court’s cases cautioned against applying “rigid, mechanical rules” to the jeopardy analysis. Pet. App. C9 (quoting *Serfass*, 420 U.S. at 390) (some internal quotation marks omitted); see also A5. The court concluded that here—where “the State clearly indicated that it would not participate any further in the proceedings” before the jury had been sworn and thereafter made no opening statement, called no witnesses, and presented no evidence—Martinez had “not yet been subjected to jeopardy, much less

double jeopardy” because he “was at no time in danger of being found guilty of any offense.” Pet. App. C10 (quoting *People v. Deems*, 410 N.E.2d 8, 10 (Ill. 1980)); see also A5. The Illinois Supreme Court issued its decision on April 18, 2013, and denied Martinez’s petition for rehearing on May 28, 2013. See Pet. App. C1. The court’s order denying rehearing indicated that the mandate would issue on July 2, 2013. Pet. App. D1.

4. On August 16, 2013, Martinez filed a petition for a writ of certiorari seeking review of the Illinois Supreme Court’s judgment. On September 20, 2013, this Court ordered the State to respond to Martinez’s petition. The State, represented by the Illinois Attorney General, as it was in the Illinois Supreme Court, filed its response on December 20, 2013. Martinez replied on December 30, 2013, and on January 24, 2014, this Court requested the record from the lower courts.

5. Despite seeking this Court’s review, Martinez did not move to stay or recall the Illinois Supreme Court’s mandate pending resolution of his cert petition. As a result, the Illinois Supreme Court’s mandate was filed in the trial court on July 5, 2013, A26, but, pursuant to standard practice, the Illinois Supreme Court did not serve it on the Illinois Attorney General. In the trial court, the State was again represented by the Kane County State’s Attorney. A41. On September 10, 2013, Martinez filed a speedy trial demand. A27. On October 10, 2013, a trial date was set for February 24, 2014, *ibid.*, but on February 13, 2014, the case was continued by agreement, A28. On February 20, 2014, the court set a new trial date of April 21, 2014. *Ibid.* On April 14, 2014, however, the State entered a nolle prosequi (or voluntary dismissal) on both

charges. A29, A40.

The State's voluntary dismissal of the 2006 aggravated battery and mob action charges was pursuant to a plea agreement between the State (represented by the Kane County State's Attorney) and Martinez that resolved other, unrelated charges. In 2012, Martinez was charged with being a felon in possession of a firearm and with possessing a firearm without a Firearm Owner's Identification Card, both felonies. See A30. On April 14, 2014, in exchange for the State dismissing those charges, Martinez pleaded guilty to a misdemeanor count of resisting a peace officer. See A38-A39, A49-A52. With respect to the pending 2006 charges, the State informed the court that, "somewhat pursuant to the plea, but also because repeated attempts to try to find [the] two named victims * * * have not been fruitful," it was moving to dismiss those charges as well. A52; see also *ibid.* ("so we're moving to nol pros. [sic] that file, close it out, and vacate other dates on that file, too"). The court asked Martinez and his counsel whether that was their "understanding of the agreement as it relates to the new charges as well as the [2006 charges]," and both Martinez and his lawyer responded that it was. A52-A53.

6. On May 27, 2014, this Court issued its decision granting Martinez's petition for a writ of certiorari and summarily reversing the Illinois Supreme Court's judgment. The Court reaffirmed "the bright-line rule that 'jeopardy attaches when the jury is empaneled and sworn.'" A1 (quoting *Crist v. Bretz*, 437 U.S. 28, 35 (1978)). The Court thus concluded both that "Martinez was subjected to jeopardy because the jury in his case was sworn," A8, and that the trial court's order granting Martinez's motion

for directed findings of not guilty was “a textbook acquittal” barring re-trial, A9. The Illinois Attorney General’s office learned of the April 14, 2014, dismissal of charges on May 30, 2014. A61.

ARGUMENT

1. This Court should vacate its judgment because the case became moot when the State dismissed its prosecution of Martinez, which was before this Court issued its opinion. When the case became moot, there was no longer a case or controversy as required by Article III of the Constitution to invoke the jurisdiction of a federal court. *Chafin v. Chafin*, 133 S. Ct. 1017, 1023 (2013). For there to be a case or controversy within the meaning of Article III, a litigant “must have suffered, or be threatened with, an actual injury traceable to the defendants and likely to be redressed by a favorable judicial decision.” *Ibid.* (quoting *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477 (1990)). The case-or-controversy requirement “subsists through all stages of federal judicial proceedings, trial and appellate.” *Ibid.* (quoting *Lewis*, 494 U.S. at 477). In other words, a party must continue to have a personal stake in the disposition of the lawsuit throughout the entire litigation process. *Ibid.* These principles apply to cases, like this one, that arise in state court, but are reviewed by this Court. See *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971).

If factual developments “deprive[a party] of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must

be dismissed as moot.” *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1528 (2013) (internal quotation marks omitted); see *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 726-727 (2013) (case becomes moot when issues presented are no longer live or parties lack legally cognizable interest in outcome). See also *U.S. Bancorp Mortgage Co. v. Bonner Mall P’ship*, 513 U.S. 18, 21 (1994) (If a case becomes moot, “this Court may not consider its merits * * *.”) (quoting *Walling v. James V. Reuter, Co., Inc.*, 321 U.S. 671, 677 (1944)); *Rice*, 404 U.S. at 246 (“Mootness is a jurisdictional question because the Court is not empowered to decide moot questions or abstract propositions.”) (internal quotation marks omitted).

This case became moot when the State dismissed the charges against Martinez. When criminal charges against a defendant are dismissed, that defendant has not been injured and may not pursue an appeal from that litigation. *Parr v. United States*, 351 U.S. 513, 516-517 (1956); see also *United States v. Mujahid*, 491 Fed. Appx. 859, 860 (9th Cir. 2012) (court lacks jurisdiction to review criminal case where charges dismissed without prejudice); *United States v. Martin*, 682 F.2d 506, 507 (5th Cir. 1982) (criminal defendant not aggrieved when indictment dismissed and thus appellate court lacks jurisdiction over matter). In *Lewis v. United States*, 216 U.S. 611, 612 (1911), a criminal defendant sought to appeal a nolle prosequi that discharged him from prosecution on an indictment, apparently because he instead sought a “discharge” order from the trial court. Because the defendant was not “legally aggrieved,” the Court lacked jurisdiction over his appeal: “The indictment having been dismissed, the

question as to plaintiff in error's constitutional right to a speedy trial is not involved in such a real sense as to give this court jurisdiction." *Ibid.* Similarly, here, because the charges against Martinez have been dismissed, he is not aggrieved and he has no personal stake in the outcome of the appeal. See *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 396-397 (1980) (describing "personal-stake" requirement of Article III). This Court, therefore, should vacate its judgment because it lacked jurisdiction over the matter once the charges against Martinez were dismissed on April 14, 2014.

2. In addition to vacating its own judgment, the Court also should vacate the judgments of the lower courts concerning the double jeopardy claim. This Court has the authority to vacate the judgments of lower courts properly before it. 28 U.S.C. § 2106; see *Alvarez v. Smith*, 558 U.S. 87, 94 (2009) ("Applying [28 U.S.C. § 2106], we normally do vacate the lower court judgment in a moot case * * *"). When a case becomes moot during the pendency of an appeal, this Court often vacates the lower court judgment "because doing so 'clears the path for future relitigation of the issues between the parties,' preserving 'the rights of all parties,' while prejudicing none 'by a decision which * * * was only preliminary.'" *Ibid.* (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950)). This rule applies equally to criminal and civil cases. See *Claiborne v. United States*, 127 S. Ct. 2245 (2007) (vacating lower court judgment in moot criminal case); 28 U.S.C. § 2106.

Vacatur is an equitable remedy, and this Court has discussed several considerations that make it appropriate. Generally, the mootness must result either

from happenstance or the unilateral action of the party who prevailed below. See *U.S. Bancorp*, 513 U.S. at 25; *id.* at 24 (“The principal condition to which we have looked is whether the party seeking relief from the judgment below caused the mootness by voluntary action.”). Thus, where mootness “results from settlement * * * the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur.” *Id.* at 25. Applying this general rule, circuit courts have concluded that vacatur of lower court judgments is not justified when a case becomes moot on appeal as the result of a plea agreement. See *Buchanan v. Snedeker*, 588 F.3d 1281, 1283 (10th Cir. 2009); *United States v. Rutledge*, 448 F.3d 1080, 1081 (9th Cir. 2006).

But this Court has cautioned that vacatur may nonetheless be proper in the face of a settlement where equitable considerations so require. *U.S. Bancorp*, 513 U.S. at 29. And the circumstances here justify vacatur of the Illinois Supreme Court and Appellate Court judgments for four reasons. First, similar to the situation in *Alvarez*, in which this Court vacated the lower court judgment, the plea agreement here more closely resembles happenstance than it does a forfeiture. In *Alvarez*, the parties settled the underlying property disputes “on substantive grounds [rather than federal due process grounds] in the ordinary course of such state proceedings,” and there was no indication that the resolution of those claims was in any way related to the pending federal lawsuit. 558 U.S. at 96. The same is true here, where the dismissal of the 2006 charges against Martinez occurred in a different court, with different lawyers, and on

different grounds than raised in the petition for certiorari. As in *Alvarez*, then, this Court should treat the dismissal of the charges against Martinez as happenstance and should vacate the lower court judgments.

Second, unlike a traditional settlement, a plea agreement under Illinois law requires the concurrence of the trial court. Ill. S. Ct. R. 402(b), (c). Therefore, it was not the parties' conduct alone that mooted the case, for the court was required to concur in the plea agreement. But see *U.S. Bancorp*, 513 U.S. at 20 (rejecting vacatur in case where settlement was approved by Bankruptcy Court). Third, this is not a case where the party challenging the decision below is asking to have it vacated. In other words, this is not a situation where a party is seeking "the secondary remedy of vacatur as a refined form of collateral attack on the judgment." *Id.* at 27. Here, the State prevailed in both the Illinois Supreme Court and the Illinois Appellate Court and is nonetheless asking this Court to vacate those lower court judgments.

Fourth, vacatur best serves the public interest where this Court announced its judgment reversing the Illinois Supreme Court's judgment before learning that it lacked Article III jurisdiction. Should the Court vacate its own judgment but leave the lower courts' judgments intact, Illinois trial and appellate courts would find themselves bound by a precedent that this Court has already disapproved. Vacatur of the lower courts' judgments would allow the issue, should it ever arise again, to be relitigated and resolved in the state courts.

For this last reason, vacatur of the state courts' judgments is appropriate despite this Court's past reticence to vacate lower *state* court judgments when a matter

becomes moot on appeal. *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 620 n.1 (1989). Unlike the situations discussed in *ASARCO*, here the Court has announced its decision, making clear that it disagrees with the lower state court judgment. Thus, it would be anomalous to leave that judgment standing if this Court vacates its own opinion. Under these circumstances and for the reasons explained above, the Court should exercise its authority under 28 U.S.C. § 2106 and vacate the state court judgments.

CONCLUSION

This Court should vacate its judgment in this case, as well as the judgments of the Illinois Supreme Court and the Illinois Appellate Court.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay.



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APPENDIX

TABLE OF CONTENTS TO APPENDIX

Slip opinion, <i>Martinez v. Illinois</i> , No. 13-5967 (May 27, 2014).....	A1
Docket sheet, <i>People v. Martinez</i> , No. 2006 CF 001731 (Kane Cnty. Cir. Ct.)	A12
Docket sheet, <i>People v. Martinez</i> , No. 2012 CF 000733 (Kane Cnty. Cir. Ct.)	A30
Order, <i>People v. Martinez</i> , No. 2006 CF 1731 (Kane Cnty. Cir. Ct.) (Apr. 14, 2014).....	A40
Hearing Transcript, <i>People v. Martinez</i> , Nos. 12 CF 733 & 06 CF 1731 (Kane Cnty. Cir. Ct.) (Apr. 14, 2014).	A41
Affidavit of Karl Triebel.	A61

Per Curiam

SUPREME COURT OF THE UNITED STATES

ESTEBAN MARTINEZ, PETITIONER v. ILLINOIS

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF ILLINOIS

No. 13–5967. Decided May 27, 2014

PER CURIAM.

The trial of Esteban Martinez was set to begin on May 17, 2010. His counsel was ready; the State was not. When the court swore in the jury and invited the State to present its first witness, the State declined to present any evidence. So Martinez moved for a directed not-guilty verdict, and the court granted it. The State appealed, arguing that the trial court should have granted its motion for a continuance. The question is whether the Double Jeopardy Clause bars the State’s attempt to appeal in the hope of subjecting Martinez to a new trial.

The Illinois Supreme Court manifestly erred in allowing the State’s appeal, on the theory that jeopardy never attached because Martinez “was never at risk of conviction.” 2013 IL 113475, ¶39, 990 N. E. 2d 215, 224. Our cases have repeatedly stated the bright-line rule that “jeopardy attaches when the jury is empaneled and sworn.” *Crist v. Bretz*, 437 U. S. 28, 35 (1978); see *infra*, at 6. There is simply no doubt that Martinez was subjected to jeopardy. And because the trial court found the State’s evidence insufficient to sustain a conviction, there is equally no doubt that Martinez may not be retried.

We therefore grant Martinez’s petition for certiorari and reverse the judgment of the Illinois Supreme Court.

I

A

The State of Illinois indicted Martinez in August 2006 on charges of aggravated battery and mob action against

Per Curiam

Avery Binion and Demarco Scott. But Martinez's trial date did not arrive for nearly four years.¹

The story picks up for present purposes on July 20, 2009, when the State moved to continue an August 3 trial date because it had not located the complaining witnesses, Binion and Scott. The State subpoenaed both men four days later, and the court rescheduled Martinez's trial to September 28. But the State sought another continuance, shortly before that date, because it still had not found Binion and Scott. The court rescheduled the trial to November 9, and the State reissued subpoenas. But November 9 came and went (the court continued the case when Martinez showed up late) and the trial was eventually delayed to the following March 29. In early February, the State yet again subpoenaed Binion and Scott. When March 29 arrived, the trial court granted the State another continuance. It reset the trial date for May 17 and ordered Binion and Scott to appear in court on May 10. And the State once more issued subpoenas.²

On the morning of May 17, however, Binion and Scott were again nowhere to be found. At 8:30, when the trial was set to begin, the State asked for a brief continuance. The court offered to delay swearing the jurors until a complete jury had been empaneled and told the State that it could at that point either have the jury sworn or move to dismiss its case. When Binion and Scott still had not shown up after the jury was chosen, the court offered to call the other cases on its docket so as to delay swearing the jury a bit longer. But when all these delays had run out, Binion and Scott were still nowhere in sight. The State filed a written motion for a continuance, arguing

¹Much of that delay was due to Martinez and his counsel. See 2013 IL 113475, ¶4, n. 1, 990 N. E. 2d 215, 216, n. 1 (summarizing the lengthy procedural history).

²These facts are set forth in the opinion of the Illinois Appellate Court. 2011 IL App (2d) 100498, ¶¶5-7, 969 N. E. 2d 840, 842-843.

Per Curiam

that it was “unable to proceed” without Binion and Scott.
Tr. 7. The court denied that motion:

“The case before the Court began on July 7, 2006. In two months we will then be embarking upon half a decade of pending a Class 3 felony. Avery Binion, Jr., and Demarco [Scott] are well known in Elgin, both are convicted felons. One would believe that the Elgin Police Department would know their whereabouts. They were ordered to be in court today. The Court will issue body writs for both of these gentlemen.

“In addition, the State’s list of witnesses indicates twelve witnesses. Excluding Mr. Scott and Mr. Binion, that’s ten witnesses. The Court would anticipate it would take every bit of today and most of tomorrow to get through ten witnesses. By then the People may have had a chance to execute the arrest warrant body writs for these two gentlemen.

“The Court will deny the motion for continuance. I will swear the jury in in 15, 20 minutes. Perhaps you might want to send the police out to find these two gentlemen.” *Id.*, at 8–9.

After a brief recess, the court offered to delay the start of the trial for several more hours if the continuance would “be of any help” to the State. *Id.*, at 9. But when the State made clear that Binion and Scott’s “whereabouts” remained “unknown,” the court concluded that the delay “would be a further waste of time.” *Id.*, at 10. The following colloquy ensued:

“THE COURT: It’s a quarter to eleven and [Binion and Scott] have not appeared on their own will, so I’m going to bring the jury in now then to swear them.

“[The Prosecutor]: Okay. Your Honor, may I approach briefly?

“THE COURT: Yes.

Per Curiam

"[The Prosecutor]: Your Honor, just so your Honor is aware, I know that it's the process to bring them in and swear them in; however, the State will not be participating in the trial. I wanted to let you know that.

"THE COURT: Very well. We'll see how that works." *Id.*, at 10-11.

The jury was then sworn. After instructing the jury, the court directed the State to proceed with its opening statement. The prosecutor demurred: "Your Honor, respectfully, the State is not participating in this case." *Id.*, at 20. After the defense waived its opening statement, the court directed the State to call its first witness. Again, the prosecutor demurred: "Respectfully, your Honor, the State is not participating in this matter." *Ibid.* The defense then moved for a judgment of acquittal:

"[Defense Counsel]: Judge, the jury has been sworn. The State has not presented any evidence. I believe they've indicated their intention not to present any evidence or witnesses.

"Based on that, Judge, I would ask the Court to enter directed findings of not guilty to both counts, aggravated battery and mob action.

"THE COURT: Do the People wish to reply?

"[The Prosecutor]: No, your Honor. Respectfully, the State is not participating.

"THE COURT: The Court will grant the motion for a directed finding and dismiss the charges." *Id.*, at 21.

B

The State appealed, arguing that the trial court should have granted a continuance. Martinez responded that the State's appeal was improper because he had been acquitted. The Illinois Appellate Court sided with the State, holding that jeopardy had never attached and that the trial court had erred in failing to grant a continuance.

Per Curiam

2011 IL App (2d) 100498, ¶¶46, 53–56, 969 N. E. 2d 840, 854, 856–858.

The Illinois Supreme Court granted review on the jeopardy issue and affirmed. 2013 IL 113475, 990 N. E. 2d 215. It began by recognizing that “[g]enerally, in cases of a jury trial, jeopardy attaches when a jury is empaneled and sworn, as that is the point when the defendant is “put to trial before the trier of the facts.”” *Id.*, ¶23, 990 N. E. 2d, at 222 (quoting *Serfass v. United States*, 420 U. S. 377, 394 (1975)). But it reasoned that under this Court’s precedents, ““rigid, mechanical” rules” should not govern the inquiry into whether jeopardy has attached. 2013 IL 113475, ¶24, 990 N. E. 2d, at 222 (quoting *Serfass, supra*, at 390). Rather, it opined, the relevant question is whether a defendant “was “subjected to the hazards of trial and possible conviction.”” 2013 IL 113475, ¶24, 990 N. E. 2d, at 222 (quoting *Serfass, supra*, at 391).

Here, the court concluded, Martinez “was never at risk of conviction”—and jeopardy therefore did not attach—because “[t]he State indicated it would not participate prior to the jury being sworn.” 2013 IL 113475, ¶39, 990 N. E. 2d, at 224. And because Martinez “was not placed in jeopardy,” the court held, the trial “court’s entry of directed verdicts of not guilty did not constitute true acquittals.” *Id.*, ¶40, 990 N. E. 2d, at 225. Indeed, the court remarked, the trial court “repeatedly referred to its action as a ‘dismissal’ rather than an acquittal.” *Ibid.*

Justice Burke dissented, writing that the majority’s conclusion “that impaneling and swearing the jury had no legal significance” ran “contrary to well-established principles regarding double jeopardy.” *Id.*, ¶57, 990 N. E. 2d, at 227. Moreover, she argued, its assertion that Martinez was not in danger of conviction was “belied by the actions of the court and the prosecutor.” *Id.*, ¶63, 990 N. E. 2d, at 229. She explained that under the majority’s holding, the State could “unilaterally render a trial a ‘sham’ simply by

Per Curiam

refusing to call witnesses after a jury has been selected.”
Id., ¶64, 990 N. E. 2d, at 229.

II

This case presents two issues. First, did jeopardy attach to Martinez? Second, if so, did the proceeding end in such a manner that the Double Jeopardy Clause bars his retrial? Our precedents clearly dictate an affirmative answer to each question.

A

There are few if any rules of criminal procedure clearer than the rule that “jeopardy attaches when the jury is empaneled and sworn.” *Crist*, 437 U. S., at 35; see also *United States v. Martin Linen Supply Co.*, 430 U. S. 564, 569 (1977); *Serfass*, *supra*, at 388; 6 W. LaFave, J. Israel, N. King, & O. Kerr, *Criminal Procedure* §25.1(d) (3d ed. 2007).

Our clearest exposition of this rule came in *Crist*, which addressed the constitutionality of a Montana statute providing that jeopardy did not attach until the swearing of the first witness. As *Crist* explains, “the precise point at which jeopardy [attaches] in a jury trial might have been open to argument before this Court’s decision in *Downum v. United States*, 372 U. S. 734 [(1963)],” in which “the Court held that the Double Jeopardy Clause prevented a second prosecution of a defendant whose first trial had ended just after the jury had been sworn and before any testimony had been taken.” 437 U. S., at 35. But *Downum* put any such argument to rest: Its holding “necessarily pinpointed the stage in a jury trial when jeopardy attaches, and [it] has since been understood as explicit authority for the proposition that jeopardy attaches when the jury is empaneled and sworn.” *Crist*, *supra*, at 35.

The Illinois Supreme Court misread our precedents in suggesting that the swearing of the jury is anything other

Per Curiam

than a bright line at which jeopardy attaches. It relied on *Serfass*, understanding that case to mean “that in assessing whether and when jeopardy attaches, “rigid, mechanical’ rules’ should not be applied.” 2013 IL 113475, ¶24, 990 N. E. 2d, at 222. Under *Serfass*, the court reasoned, the relevant question is whether a defendant was as a functional matter ““subjected to the hazards of trial and possible conviction.”” 2013 IL 113475, ¶24, 990 N. E. 2d, at 222.

But *Serfass* does not apply a functional approach to the determination of when jeopardy has attached. As to that question, it states the same bright-line rule as every other case: Jeopardy attaches when “a defendant is ‘put to trial,’” and in a jury trial, that is “when a jury is empaneled and sworn.” 420 U. S., at 388. Indeed, *Serfass* explicitly rejects a functional approach to the question whether jeopardy has attached. See *id.*, at 390 (refuting the defendant’s argument that “‘constructiv[e] jeopardy had attached’” upon the pretrial grant of a motion to dismiss the indictment, which the defendant characterized as “the ‘functional equivalent of an acquittal on the merits’”). The *Serfass* Court acknowledged “that we have disparaged ‘rigid, mechanical’ rules in the interpretation of the Double Jeopardy Clause.” *Ibid.* But it was referring to the case of *Illinois v. Somerville*, 410 U. S. 458 (1973), in which we declined to apply “rigid, mechanical” reasoning in answering a very different question: not whether jeopardy had attached, but whether the manner in which it terminated (by mistrial) barred the defendant’s retrial. *Id.*, at 467. By contrast, *Serfass* explains, the rule that jeopardy attaches at the start of a trial is “by no means a mere technicality, nor is it a ‘rigid, mechanical’ rule.” 420 U. S., at 391. And contrary to the Illinois Supreme Court’s interpretation, *Serfass* creates not the slightest doubt about when a “trial” begins.

The Illinois Supreme Court’s error was consequential,

Per Curiam

for it introduced confusion into what we have consistently treated as a bright-line rule: A jury trial begins, and jeopardy attaches, when the jury is sworn. We have never suggested the exception perceived by the Illinois Supreme Court—that jeopardy may not have attached where, under the circumstances of a particular case, the defendant was not genuinely at risk of conviction.³ Martinez was subjected to jeopardy because the jury in his case was sworn.

B

“[T]he conclusion that jeopardy has attached,” however, “begins, rather than ends, the inquiry as to whether the Double Jeopardy Clause bars retrial.” *Id.*, at 390. The remaining question is whether the jeopardy ended in such a manner that the defendant may not be retried. See 6 LaFare §25.1(g) (surveying circumstances in which retrial is and is not allowed). Here, there is no doubt that Martinez’s jeopardy ended in a manner that bars his retrial: The trial court acquitted him of the charged offenses. “Perhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that ‘[a] verdict of acquittal . . . could not be reviewed . . . without putting [a defendant] twice in jeopardy, and thereby violating the Constitution.’” *Martin Linen, supra*, at 571.

“[O]ur cases have defined an acquittal to encompass any ruling that the prosecution’s proof is insufficient to establish criminal liability for an offense.” *Evans v. Michigan*, 568 U. S. ___, ___ (2013) (slip op., at 4–5). And the trial

³Some commentators have suggested that there may be limited exceptions to this rule—*e.g.*, where the trial court lacks jurisdiction or where a defendant obtains an acquittal by fraud or corruption. See 6 W. LaFare, J. Israel, N. King, & O. Kerr, *Criminal Procedure* §25.1(d) (3d ed. 2007). The scope of any such exceptions is not presented here. Nor need we reach a situation where the prosecutor had no opportunity to dismiss the charges to avoid the consequences of empanelling the jury. Cf. *People v. Deems*, 81 Ill. 2d 384, 387–389, 410 N. E. 2d 8, 10–11 (1980).

Per Curiam

court clearly made such a ruling here. After the State declined to present evidence against Martinez, his counsel moved for “directed findings of not guilty to both counts,” and the court “grant[ed] the motion for a directed finding.” Tr. 21. That is a textbook acquittal: a finding that the State’s evidence cannot support a conviction.

The Illinois Supreme Court thought otherwise. It first opined that “[b]ecause [Martinez] was not placed in jeopardy, the [trial] court’s entry of directed verdicts of not guilty did not constitute true acquittals.” 2013 IL 113475, ¶40, 990 N. E. 2d, at 225. But the premise of that argument is incorrect: Martinez was in jeopardy, for the reasons given above. The court went on to “note that, in directing findings of not guilty,” the trial court “referred to its action as a ‘dismissal’ rather than an acquittal.” *Ibid.* Under our precedents, however, that is immaterial: “[W]e have emphasized that what constitutes an ‘acquittal’ is not to be controlled by the form of the judge’s action”; it turns on “whether the ruling of the judge, whatever its label, actually represents a resolution . . . of some or all of the factual elements of the offense charged.” *Martin Linen*, 430 U. S., at 571; see also *Evans*, *supra*, at ____ (slip op., at 11) (“Our decision turns not on the form of the trial court’s action, but rather whether it ‘serve[s]’ substantive ‘purposes’ or procedural ones”); *United States v. Scott*, 437 U. S. 82, 96 (1978) (“We have previously noted that ‘the trial judge’s characterization of his own action cannot control the classification of the action’”).

Here, as in *Evans* and *Martin Linen*, the trial court’s action was an acquittal because the court “acted on its view that the prosecution had failed to prove its case.” *Evans*, *supra*, at ____ (slip op., at 11); see *Martin Linen*, *supra*, at 572 (“[T]he District Court in this case evaluated the Government’s evidence and determined that it was legally insufficient to sustain a conviction”). And because

Per Curiam

Martinez was acquitted, the State cannot retry him.⁴

III

The functional rule adopted by the Illinois Supreme Court is not necessary to avoid unfairness to prosecutors or to the public. On the day of trial, the court was acutely aware of the significance of swearing a jury. It repeatedly delayed that act to give the State additional time to find its witnesses. It had previously granted the State a number of continuances for the same purpose. See *supra*, at 2. And, critically, the court told the State on the day of trial that it could “move to dismiss [its] case” before the jury was sworn. Tr. 3. Had the State accepted that invitation, the Double Jeopardy Clause would not have barred it from recharging Martinez. Instead, the State participated in the selection of jurors and did not ask for dismissal before the jury was sworn. When the State declined to dismiss its case, it “took a chance[,] . . . enter[ing] upon the trial of the case without sufficient evidence to convict.” *Downum v. United States*, 372 U. S. 734, 737 (1963). Here, the State knew, or should have known, that an acquittal forever bars the retrial of the defendant when it occurs after jeopardy has attached. The Illinois Supreme Court’s holding is understandable, given the significant consequence of the State’s mistake, but it runs directly counter to our precedents and to the protection conferred by the Double Jeopardy Clause.

⁴Indeed, even if the trial court had chosen to dismiss the case or declare a mistrial rather than granting Martinez’s motion for a directed verdict, the Double Jeopardy Clause probably would still bar his retrial. We confronted precisely this scenario in *Downum v. United States*, 372 U. S. 734 (1963), holding that once jeopardy has attached, the absence of witnesses generally does not constitute the kind of “extraordinary and striking circumstanc[e]” in which a trial court may exercise “discretion to discharge the jury before it has reached a verdict.” *Id.*, at 736; see also *Arizona v. Washington*, 434 U. S. 497, 508, n. 24 (1978).

Per Curiam

* * *

The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment of the Supreme Court of Illinois is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
ALL CASE ENTRIES PRINTED
Criminal Felony

1 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 1
From 0/00/0000 To 99/99/9
User: SAOMLM
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2006 CF 001731 Judge:

From 0/00/0000 To 99/99/9

Case Names _____ Attorney Names _____
VS
MARTINEZ ESTEBAN DIXON LIAM
MARTINEZ STEVE
LALLEY JAMES C SHEEN SCOTT WILLIAM
THOMAS TIM

Date
7/06/2006 Charge 01 Count 001 AGG BATTERY/GREAT BODILY HARM Jun 19,2006
Judge WEGNER Defendant MARTINEZ ESTEBAN
Statute 720 5/12-4(a) Class 3 Orig.
Agency: ELGIN POLICE DEPT Charge Instr: FELONY COMPLAINT AND WARRANT

7/06/2006 Warrant issued Agency Issuing ELGIN POLICE DEPT
Warrant issued Agency Issuing ELGIN POLICE DEPT
COURT WARRANT REVIEW Jul 06,2007 Rm313 Judge WEGNER

7/06/2006 Charge 02 Count 002 MOB ACTION/FORCE/2+ PERSONS Jun 19,2006
Defendant MARTINEZ ESTEBAN
Statute 720 5/25-1(a)(1) Class 4 Orig.
Agency: ELGIN POLICE DEPT Charge Instr: FELONY COMPLAINT AND WARRANT

7/06/2006 Copy of original warrant - Not part of permanent record.

8/02/2006 No Bond Defendant MARTINEZ ESTEBAN
ARRAIGNMENT Jul 06,2007 09:00AM Rm313

8/02/2006 No Bond Defendant MARTINEZ ESTEBAN
ARRAIGNMENT Jul 06,2007 09:00AM Rm313

8/09/2006 Charge 03 Count 001 AGG BATTERY/GREAT BODILY HARM Jun 19,2006
Defendant MARTINEZ ESTEBAN
Statute 720 5/12-4(a) Class 3 Orig.
Agency: ELGIN POLICE DEPT Charge Instr: Indictment

8/09/2006 Charge 04 Count 002 MOB ACTION/FORCE/2+ PERSONS Jun 19,2006
Defendant MARTINEZ ESTEBAN
Statute 720 5/25-1(a)(1) Class 4 Orig.
Agency: ELGIN POLICE DEPT Charge Instr: Indictment

8/09/2006 Disposition 01/00 Count 001 No Fine & Cost Signed
Judge WEGNER GRANT S Asst States Attorney ASA 3 STATE ILCS
Disposition: Dismissed/Superseded by Indictment or Information AGG BA
Disposition Type: Court Action Defendant Plea: No Plea Entered
Statute 720 5/12-4(a) Class 3 Orig.
Sentence: 08/09/2006
Status:Pre-trial Aug 09,2006

8/09/2006 Disposition 02/00 Count 002 No Fine & Cost Signed
Judge WEGNER GRANT S Asst States Attorney ASA 3 STATE ILCS
Disposition: Dismissed/Superseded by Indictment or Information MOB AC
Disposition Type: Court Action Defendant Plea: No Plea Entered
Statute 720 5/25-1(a)(1) Class 4 Orig.
Sentence: 08/09/2006
Status:Pre-trial Aug 09,2006

CONTINUED ON NEXT PAGE

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

2 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 2
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

Date	
8/17/2006	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
8/17/2006	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
11/02/2006	Order remand custody; filed STATUS HEARING Nov 09,2006 09:00AM Rm313 Judge MCCANN Judge:MCCANN TIMOTHY J Clerk:JA2 M
11/02/2006	Defendant's rights and penalties explained; filed Judge:MCCANN TIMOTHY J Clerk:JA2 M
11/02/2006	Order defendant remanded with order to transport Judge:MCCANN TIMOTHY J Clerk:JA2 M
11/02/2006	Warrant served - copy filed Judge:MCCANN TIMOTHY J Clerk:JA2 M
11/07/2006	Order remand custody served; filed
11/09/2006	Court Reporter this date - Jackie Weltmer
11/09/2006	Defendant's rights and penalties explained; filed Judge:DI MARZIO PHILIP L Clerk:JLS M
11/09/2006	In absentia explained Judge:DI MARZIO PHILIP L Clerk:JLS M
11/09/2006	Not guilty plea; filed Judge:DI MARZIO PHILIP L Clerk:JLS M
11/09/2006	Defendant arraigned this date; filed Judge:DI MARZIO PHILIP L Clerk:JLS M
11/09/2006	State's Attorney tenders documents in court* gj trans Judge:DI MARZIO PHILIP L Clerk:JLS M
11/09/2006	PRETRIAL CONFERENCE Dec 07,2006 09:00AM Rm313 Judge DI MARZIO Judge:DI MARZIO PHILIP L Clerk:JLS M
11/09/2006	Order defendant remanded with order to transport Judge:DI MARZIO PHILIP L Clerk:JLS M
11/09/2006	Motion for continuance by agreement Judge:DI MARZIO PHILIP L Clerk:JLS M
12/07/2006	Appearance; filed Atty WILLETT BRENDA M.
12/07/2006	Court reporter this date - Kathi LeComte
12/07/2006	Defendant present in open court Judge:WEGNER GRANT S Clerk:SLP M

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

3 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 3
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

From 0/00/0000 To 99/99/9
User: SAOMLM

Date
12/07/2006 Order defendant remanded with order to transport
Judge:WEGNER GRANT S Clerk:SLP M
12/07/2006 STATUS HEARING Dec 21,2006 09:00AM Rm313 Judge WEGNER
12/07/2006 Motion for continuance by agreement
12/07/2006 Public defender withdrawn
Judge:WEGNER GRANT S Clerk:SLP M
12/07/2006 State's Attorney tenders documents in court* P RPT, CR HISTORY, G.J.
12/07/2006 Order grant motion petition for bond reduction; filed
Judge:WEGNER GRANT S Clerk:SLP M
12/07/2006 Conditions of bond deft to be full time employedand no contact w/gang
Judge:WEGNER GRANT S Clerk:SLP M
12/07/2006 Motion petition for bond reduction; filed
Judge:WEGNER GRANT S Clerk:SLP M
12/18/2006 Bail Bond; filed 10% Cash Bond Bail \$500.00 Bond \$5000.00
Defendant MARTINEZ ESTEBAN
STATUS HEARING Dec 21,2006 09:00AM Rm313
12/18/2006 Bail bond; filed
Judge:WEGNER GRANT S Clerk:CJS M
12/21/2006 Court reporter this date - Kathi LeComte
12/21/2006 Defendant present in open court
Judge:WEGNER GRANT S Clerk:JME M
12/21/2006 Motion for discovery; filed
12/21/2006 Answer to discovery; filed
12/21/2006 Motion for continuance by agreement
12/21/2006 CONFERENCE HEARING Feb 15,2007 09:00AM Rm313
1/29/2007 Notice of motion; filed
1/29/2007 Proof of service; filed
1/29/2007 Motion petition to withdraw as attorney; filed
2/15/2007 Court reporter this date - Kathi LeComte
2/15/2007 Defendant present in open court
Judge:WEGNER GRANT S Clerk:MWN M

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

4 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 4
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

From 0/00/0000 To 99/99/9
User: SAOMLM

Date
2/15/2007 PRETRIAL CONFERENCE Apr 12,2007 09:00AM Rm313 Judge WEGNER
2/15/2007 Motion for continuance by agreement
2/15/2007 Order grant leave to withdraw; filed
atty sheen granted leave
Judge:WEGNER GRANT S Clerk:MWN M
4/12/2007 Court reporter this date - Kathi LeComte
4/12/2007 Defendant present in open court
Judge:WEGNER GRANT S Clerk:JME M
4/12/2007 Motion for continuance by agreement
4/12/2007 Defendant to return with attorney
4/12/2007 TRIAL SETTING May 24,2007 09:00AM Rm313
5/24/2007 TRIAL SETTING Jun 21,2007 09:00AM Rm313 Judge WEGNER
5/24/2007 Defendant present in open court
Judge:WEGNER GRANT S Clerk:LAS M
5/24/2007 Motion for continuance by agreement
5/24/2007 Order appoint public defender; filed
Judge:WEGNER GRANT S Clerk:LAS M
5/24/2007 State's Attorney tenders documents in court* dsl-163,mr131-163
5/24/2007 Court reporter this date - Kathi LeComte
6/06/2007 Internal audit warrant completed/NA
6/21/2007 Court reporter this date - Kathi LeComte
6/21/2007 Defendant present in open court
Judge:WEGNER GRANT S Clerk:JME M
6/21/2007 CONFERENCE HEARING Aug 02,2007 09:00AM Rm313
8/02/2007 Defendant not appearing in open court
Judge:WEGNER GRANT S Rep:LE COMTE KATHLEEN D Clerk:MG2 M
8/02/2007 TRIAL SETTING Aug 23,2007 09:00AM Rm313 Judge WEGNER
Judge:WEGNER GRANT S Rep:LE COMTE KATHLEEN D Clerk:MG2 M
8/02/2007 Motion for continuance by agreement
Judge:WEGNER GRANT S Rep:LE COMTE KATHLEEN D Clerk:MG2 M
8/02/2007 Order defendant must appear; filed

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

5 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 5
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

Date
8/02/2007 or wrnt w/b issue
Judge:WEGNER GRANT S Rep:LE COMTE KATHLEEN D Clerk:MG2 M

8/23/2007 Disposition 03/00 Count 001 Warrant Ordered Signed
Judge WEGNER GRANT S Asst States Attorney ASA 3 STATE ILCS
Disposition: Cash Bond Forfeiture Notice & Warrant AGG BATTERY/GREAT
Disposition Type: Court Action Defendant Plea: No Plea Entered
Statute 720 5/12-4(a) Class 3 Orig.

8/23/2007 Cash Bond Forfeiture and Warrant Notice
Document TR38 Was Printed
CASH BOND FORFEITURE Oct 11,2007 09:00 Rm313 Judge WEGNER
Judge:WEGNER GRANT S

8/23/2007 Order issue warrant; filed Bond \$10000.00 10% Cash Bond
Agency Issuing ELGIN POLICE DEPT
Document WARRANTC Was Printed
COURT WARRANT REVIEW Aug 22,2008 09:00AM Rm313 Judge WEGNER Canceled
Judge:WEGNER GRANT S M

8/23/2007 Warrant Service Copy Amt \$10000.00 10% Cash Bond
Document WARRANTS Was Printed

8/23/2007 Defendant not appearing in open court
Status:Pre-trial Aug 23,2007
Judge:WEGNER GRANT S

8/23/2007 Warrant Service Copy
Document WARRANTS Not Printed

8/23/2007 Defendant not appearing in open court
Judge:WEGNER GRANT S M

8/30/2007 DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN

10/11/2007 Disposition 03/01 Count 001 No Fine & Cost Signed
Judge WEGNER GRANT S Asst States Attorney ASA 3 STATE ILCS
Disposition: Cash Bond Forfeiture (notice) AGG BATTERY/GREAT BODILY H
Disposition Type: Court Action Defendant Plea: No Plea Entered
Statute 720 5/12-4(a) Class 3 Orig.
Sentence: 10/11/2007

10/11/2007 Cash Bond Forfeiture Notice
Document TR18 Was Printed
CASH BOND FORFEITURE Nov 29,2007 09:00AM Rm313 Judge WEGNER
Judge:WEGNER GRANT S

10/11/2007 Defendant not appearing in open court
Status:Pre-trial Oct 11,2007
Judge:WEGNER GRANT S

10/11/2007 Court reporter this date - Kathi LeComte

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

6 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 6
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

From 0/00/0000 To 99/99/9

User: SAOMLM

Date	Description
10/11/2007	Defendant not appearing in open court Judge:WEGNER GRANT S Clerk:SLP M
10/11/2007	STATUS HEARING Nov 29,2007 09:00AM Rm313 Judge WEGNER
10/15/2007	Mail returned; filed *
10/31/2007	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
11/29/2007	Disposition 03/02 Count 001 Bond Forfeiture Fee \$450.00 Signed Judge WEGNER GRANT S Asst States Attorney ASA 3 STATE ILCS Disposition: Judgment on Forfeiture AGG BATTERY/GREAT BODILY HARM Disposition Type: Court Action Defendant Plea: No Plea Entered Statute 720 5/12-4(a) Class 3 Orig. Sentence: 11/29/2007 Bond Forfeiture 450.00
11/29/2007	Court Order Bond Used Amt \$450.00 Defendant MARTINEZ ESTEBAN
11/29/2007	Court reporter this date - Kathi LeComte
11/29/2007	Defendant not appearing in open court
12/13/2007	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
12/19/2007	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
7/13/2008	Warrant served - copy filed Judge:WEGNER GRANT S M
7/13/2008	Order remand custody; filed STATUS HEARING Jul 24,2008 09:00AM Rm313 Judge MUELLER Judge:MUELLER THOMAS E M
7/13/2008	Defendant's rights and penalties explained; filed Judge:WEGNER GRANT S M
7/13/2008	In absentia explained Judge:WEGNER GRANT S M
7/13/2008	Order defendant remanded with order to transport. Judge:WEGNER GRANT S M
7/13/2008	Probable cause found; filed Judge:WEGNER GRANT S M
7/15/2008	Order remand custody served; filed
7/16/2008	Bail Bond; filed 10% Cash Bond Bail \$1000.00 Bond \$10000.00 Defendant MARTINEZ ESTEBAN Assignment THOMAS TIM
7/16/2008	Bail bond; filed Judge:WEGNER GRANT S Clerk:CJS M

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

7 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 7
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

Date
7/16/2008 Notice to surety; filed
Judge:WEGNER GRANT S Clerk:CJS M
7/24/2008 Court Reporter this date -Jeanine Fassnacht
7/24/2008 Defendant present in open court
Judge:SHELDON TIMOTHY Q Clerk:JME M
7/24/2008 Motion for continuance by defense
7/24/2008 Defendant to return with attorney
7/24/2008 STATUS HEARING Aug 28,2008 09:00AM Rm319
8/28/2008 Court Reporter this date - Mary Trezzo
8/28/2008 Defendant present in open court
Judge:SHELDON TIMOTHY Q Clerk:SLP M
8/28/2008 STATUS HEARING Sep 26,2008 09:00AM Rm319 Judge SHELDON
8/28/2008 Motion for continuance by agreement
8/28/2008 Defendant arraigned this date; filed
Judge:SHELDON TIMOTHY Q Clerk:SLP M
8/28/2008 Order appoint public defender; filed
Judge:SHELDON TIMOTHY Q Clerk:SLP M
9/08/2008 Speedy trial demand; filed
9/08/2008 Motion for discovery; filed
9/08/2008 Notice of filing; filed
9/08/2008 Proof of service; filed
9/26/2008 Court reporter this date - Jill Gasparaitis
9/26/2008 Defendant present in open court
Judge:SHELDON TIMOTHY Q Clerk:JLS M
9/26/2008 PRE TRIAL Nov 07,2008 09:00AM Rm319 Judge SHELDON
9/26/2008 Motion for continuance by agreement
11/07/2008 Court reporter this date - Dana Bollman
11/07/2008 Defendant present in open court
Judge:SHELDON TIMOTHY Q Clerk:SLP M
11/07/2008 STATUS HEARING Jan 09,2009 09:00AM Rm319 Judge SHELDON

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

8 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 8
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

Date
11/07/2008 Motion for continuance by agreement
1/09/2009 Court reporter this date - Marge Ledvora
1/09/2009 Defendant present in open court
Judge:SHELDON TIMOTHY Q Clerk:SLP M
1/09/2009 STATUS HEARING Feb 26,2009 09:00AM Rm319 Judge SHELDON
1/09/2009 Motion for continuance by agreement
1/15/2009 Notice of hearing; filed
STATUS HEARING Jan 30,2009 09:00AM Rm319
1/15/2009 Proof of service; filed
1/30/2009 Court reporter this date - Kathy Nielsen
1/30/2009 DEFT'S PRESENCE WAIVED
1/30/2009 Order deny motion/petition request
STATE'S MOTION TO TRANSFER CASE TO 313
1/30/2009 PRE TRIAL Feb 26,2009 09:00AM Rm319 Judge SHELDON
1/30/2009 Motion for continuance by agreement
2/26/2009 Motion for continuance by agreement
2/26/2009 STATUS HEARING Mar 19,2009 09:00AM Rm319 Judge SHELDON
2/26/2009 Defendant present in open court
Judge:SHELDON TIMOTHY Q
2/26/2009 Court reporter this date - Dana Bollman
3/19/2009 Court reporter this date - Jill Gasparaitis
3/19/2009 STATUS HEARING May 07,2009 09:00AM Rm319 Judge SHELDON
3/19/2009 Court reporter this date - Jill Gasparaitis
3/19/2009 STATUS HEARING May 07,2009 09:00AM Rm319 Judge SHELDON
3/19/2009 Motion for continuance by agreement
5/07/2009 Court reporter this date - Peggy Steinberg
5/07/2009 Defendant present in open court
Judge:SHELDON TIMOTHY Q Clerk:MIS M
5/07/2009 JURY TRIAL Aug 03,2009 08:30AM Rm319 Judge SHELDON Canceled

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

9 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 9
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

From 0/00/0000 To 99/99/9
User: SAOMLM

Date
5/07/2009 Motion for continuance by agreement
5/07/2009 JURY TRIAL STATUS Jul 31,2009 01:15PM Rm319 Judge SHELDON Canceled
5/19/2009 People's omnibus discovery motion; filed
5/19/2009 Disclosure statement; filed
5/20/2009 Proof of service; filed
Judge:HALLOCK JAMES C
6/04/2009 Proof of service; filed
6/08/2009 Proof of service; filed
7/20/2009 Affidavit; filed
7/20/2009 Motion continue; filed
7/20/2009 Notice of motion; filed
7/20/2009 Proof of service; filed
7/27/2009 Criminal subpoena returned found; filed
7/27/2009 Criminal subpoena returned found; filed
7/27/2009 Criminal subpoena returned found; filed
7/27/2009 Criminal subpoena returned found; filed
7/27/2009 Criminal subpoena returned found; filed
7/27/2009 Criminal subpoena returned found; filed
7/31/2009 STATUS HEARING Aug 03,2009 09:00AM Rm319 Judge SHELDON
7/31/2009 Order grant
7/31/2009 Defendant not appearing in open court
Judge:SHELDON TIMOTHY Q
7/31/2009 Court reporter this date - Mariann Busch
8/03/2009 Court reporter this date - Peggy Steinberg
8/03/2009 Jury trial order; filed
JURY TRIAL Sep 28,2009 08:30AM Rm319 Judge SHELDON Canceled
Judge:SHELDON TIMOTHY Q Clerk:LMF M
8/03/2009 Motion for continuance by prosecution; filed
JURY TRIAL STATUS Sep 25,2009 01:15PM Rm319 Judge SHELDON Canceled
Judge:SHELDON TIMOTHY Q

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

10 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 10
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

<u>Date</u>				
8/27/2009	Criminal subpoena returned found; filed			
8/27/2009	Criminal subpoena returned found; filed			
9/25/2009	Jury trial order; filed			
	JURY TRIAL Nov 09,2009 08:30AM Rm319	Judge SHELTON		
	Judge:SHELDON TIMOTHY Q	Clerk:MIS	M	
9/25/2009	JURY TRIAL STATUS Nov 06,2009 01:15PM Rm319	Judge SHELTON		
	Judge:SHELDON TIMOTHY Q	Clerk:MIS	M	
9/25/2009	Notice of filing; filed			
	Judge:SHELDON TIMOTHY Q	Clerk:MIS	M	
9/25/2009	Proof of service; filed			
	Judge:SHELDON TIMOTHY Q	Clerk:MIS	M	
9/25/2009	Motion for continuance			
	Judge:SHELDON TIMOTHY Q	Clerk:MIS	M	
9/25/2009	Affidavit; filed			
	Judge:SHELDON TIMOTHY Q	Clerk:MIS	M	
9/25/2009	Motion to admit prior convictions			
	Judge:SHELDON TIMOTHY Q	Clerk:MIS	M	
9/25/2009	Motion to admit gang evidence			
	Judge:SHELDON TIMOTHY Q	Clerk:MIS	M	
10/13/2009	Criminal subpoena returned found; filed			
10/13/2009	Criminal subpoena returned found; filed			
10/15/2009	Criminal subpoena returned found; filed			
10/15/2009	Criminal subpoena returned found; filed			
11/04/2009	Proof of service; filed			
11/06/2009	Defendant present in open court			
	Judge:SHELDON TIMOTHY Q	Clerk:JLD	M	
11/06/2009	Motion for continuance by prosecution; filed			
	Judge:SHELDON TIMOTHY Q	Clerk:JLD	M	
11/06/2009	JURY TRIAL Nov 09,2009 08:30AM Rm319	Judge SHELTON		
	Judge:SHELDON TIMOTHY Q	Clerk:JLD	M	
11/06/2009	List of witnesses; filed			
	Judge:SHELDON TIMOTHY Q	Clerk:JLD	M	
11/06/2009	List of witnesses; filed			
	Judge:SHELDON TIMOTHY Q	Clerk:JLD	M	

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

11 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 11
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

From 0/00/0000 To 99/99/9
User: SAOMLM

Date
11/06/2009 Motion in limine; filed
Judge:SHELDON TIMOTHY Q Clerk:JLD M
11/06/2009 Court reporter this date - Kathi LeComte
Judge:SHELDON TIMOTHY Q Clerk:JLD M
11/09/2009 Jury trial order; filed
JURY TRIAL Nov 30,2009 08:30AM Rm319 Judge SHELDON Canceled
Judge:SHELDON TIMOTHY Q Clerk:MG2 M
11/24/2009 Criminal subpoena returned found; filed
11/25/2009 Court Reporter this date - Ernest C Scola
11/25/2009 Defendant present in open court
Judge:SHELDON TIMOTHY Q Clerk:JLS M
11/25/2009 Motion continue; filed
Judge:SHELDON TIMOTHY Q Clerk:JLS M
11/25/2009 Affidavit; filed/WILLETT
11/25/2009 Order grant
11/25/2009 Jury trial order; filed
JURY TRIAL Mar 08,2010 08:30AM Rm319 Judge SHELDON Canceled
Judge:SHELDON TIMOTHY Q Clerk:JLS M
12/15/2009 Motion continue; filed
12/15/2009 Notice of motion; filed
MOTION/PETITION HEARING Jan 13,2010 09:00AM Rm319
12/15/2009 Proof of service; filed
12/15/2009 Affidavit; filed
1/13/2010 Court reporter this date - Debbie Hogan
1/13/2010 Order grant/cont trial
1/13/2010 Jury trial order; filed
JURY TRIAL Mar 29,2010 08:30AM Rm319 Judge SHELDON
Judge:SHELDON TIMOTHY Q Clerk:JLS M
1/13/2010 Motion for continuance by agreement
2/01/2010 Criminal subpoena returned found; filed
2/01/2010 Criminal subpoena returned found; filed
2/18/2010 Criminal subpoena returned found; filed

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

12 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 12
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

Date
3/17/2010 Criminal subpoena returned found; filed
3/25/2010 Notice of filing; filed
3/25/2010 Proof of service; filed
3/25/2010 List of witnesses; filed
3/29/2010 Court Reporter this date -Jeanine Fassnacht
3/29/2010 Jury trial order; filed
JURY TRIAL May 17,2010 08:30AM Rm319 Judge SHELDON
Judge:SHELDON TIMOTHY Q Clerk:LMF M
3/29/2010 Motion for continuance by prosecution; filed
STATUS HEARING May 10,2010 08:30AM Rm319 Judge SHELDON
Judge:SHELDON TIMOTHY Q Clerk:LMF M
3/29/2010 Defendant present in open court
3/29/2010 DEFT'S PRESENCE WAIVED CRT DATE 05/10/10
3/30/2010 Supplemental disclosure; filed
3/30/2010 Notice of filing; filed
3/30/2010 Proof of service; filed
4/20/2010 Criminal subpoena returned found; filed
5/10/2010 Defendant not appearing in open court
Judge:SHELDON TIMOTHY Q Clerk:JLD M
5/10/2010 Motion for continuance by defense
Judge:SHELDON TIMOTHY Q Clerk:JLD M
5/10/2010 JURY TRIAL May 17,2010 08:30AM Rm319 Judge SHELDON
Judge:SHELDON TIMOTHY Q Clerk:JLD M
5/14/2010 Criminal subpoena returned found; filed
5/17/2010 Bail Bond; filed Transfer To 2001TR050850 MARTINEZ ESTEBAN Bail \$8
Defendant MARTINEZ ESTEBAN
5/17/2010 Disposition 03/03 Count 001 No Fine & Cost Signed
Judge SHELDON TIMOTHY Q Asst States Attorney ASA 3 STATE ILCS
Disposition: Dismissed by the Court AGG BATTERY/GREAT BODILY HARM
Disposition Vacated: Juvenile Pre-Trial Diversion Discharged Unsatisf
Disposition Type: By Jury Defendant Plea: Not Guilty
Statute 720 5/12-4(a) Class 3 Orig.
Sentence: 05/17/2010
Status:Post- Sentence May 17,2010

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

13 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 13
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

Date	Description
5/17/2010	Disposition 04/00 Count 002 No Fine & Cost Signed Judge SHELDON TIMOTHY Q Asst States Attorney ASA 3 STATE ILCS Disposition: Dismissed by the Court MOB ACTION/FORCE/2+ PERSONS Disposition Vacated: Juvenile Pre-Trial Diversion Discharged Unsatisf Disposition Type: By Jury Defendant Plea: Not Guilty Statute 720 5/25-1(a)(1) Class 4 Orig. Sentence: 05/17/2010 Status:Closed May 17,2010
5/17/2010	Bail Bond; filed Transfer To 2003TR030149 MARTINEZ ESTEBAN Bail \$164.45 Defendant MARTINEZ ESTEBAN
5/17/2010	Motion/Petition to CONTINUANCE Judge:SHELDON TIMOTHY Q Clerk:JLD M
5/17/2010	Minute order; filed Judge:SHELDON TIMOTHY Q Clerk:JLD M
5/17/2010	Defendant present in open court Judge:SHELDON TIMOTHY Q Clerk:JLD M
5/17/2010	Sentencing order; filed Judge:SHELDON TIMOTHY Q Clerk:JLD M
5/17/2010	B o n d R e f u n d Fee \$645.85 Amt \$645.85 Bond Applied Defendant MARTINEZ ESTEBAN
5/17/2010	Criminal subpoena returned found; filed
5/17/2010	Criminal subpoena returned found; filed
5/17/2010	Criminal subpoena returned found; filed
5/17/2010	Criminal subpoena returned found; filed
5/19/2010	Certification; filed of Impairment Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/19/2010	Request for preparation of common law record; filed Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/19/2010	Request for transcript; filed Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/19/2010	Notice of filing; filed Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/19/2010	Appeal notice; filed APPEAL DUE Jul 21,2010 08:00AM RmAPP Judge ADMIN CIRCUIT CLE Canceled Judge:ADMIN CIRCUIT CLERK Clerk:LC1 M
5/19/2010	Appeal report of proceedings due APPEAL REPORT OF PROCEEDINGS DUE Jul 07,2010 08:00AM RmAPP Judge ADMIN CIRCUIT CLE

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

14 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 14
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

<u>Date</u>	
5/19/2010	Certification; filed of Question for appeal Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/24/2010	Appeal record receipt; filed from Appellate Court Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/24/2010	Appeal record receipt; filed from Appellate Defender Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/24/2010	Appeal record receipt; filed from Appellate Prosecutor Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/24/2010	Appeal record receipt; filed from Chief Judges Office Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/26/2010	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
5/26/2010	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
5/28/2010	Order appoint Appellate Defender; filed Judge:SHELDON TIMOTHY Q Clerk:LC1 M
5/28/2010	Petition for appointment of counsel; filed Judge:SHELDON TIMOTHY Q Clerk:LC1 M
6/03/2010	Correspondence from Appellate Court; fld Appellate Court # 2-10-0498
6/07/2010	Appeal record receipt; filed from Chief Judges Office Judge:SHELDON TIMOTHY Q Clerk:LC1 M
6/07/2010	Appeal record receipt; filed from Appellate Court Judge:SHELDON TIMOTHY Q Clerk:LC1 M
6/07/2010	Appeal record receipt; filed from Appellate Prosecutor Judge:SHELDON TIMOTHY Q Clerk:LC1 M
7/06/2010	Verification of filing; filed of Kathi LeComte
7/06/2010	Report of proceedings with appeal, court reporter* from kathi LeComte 5-17-10
7/21/2010	Appeal record receipt; filed from Appellate Court Judge:SHELDON TIMOTHY Q Clerk:LC1 M

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

15 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 15
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

Date
7/21/2010 AP07 LETTER - RECEIPT FOR ATTY PICK-UP; FLD
Judge:SHELDON TIMOTHY Q Clerk:LC1 M

7/21/2010 CERTIFICATE IN LIEU OF RECORD ;FLD copy of
Judge:SHELDON TIMOTHY Q Clerk:LC1 M

9/17/2010 AP08 LETTER - CLERK' CERTIFICATION

2/02/2012 CERTIFICATE IN LIEU OF RECORD ;FLD copy of for copy of clr

2/02/2012 Affidavit of Lost Document; fld
From Appellate Court that common law record has been misplaced and
not located
Judge:SHELDON TIMOTHY Q M

2/22/2012 Order to Accept Copy(s) as Original filed
to replace originals
Judge:SHELDON TIMOTHY Q Clerk:JLD M

9/17/2012 Case note
originals of common law record have been returned to file.
No receipt received from Appellate Court returned- 1 clr

7/05/2013 Mandate With Instructions; filed
Supreme Court Mandate- Appellate Court Judgment affirmed,
Judgment of Circuit Court Vacated and remanded
Judge:SHELDON TIMOTHY Q Clerk:LC1 M

7/05/2013 Disposition 04/01 Count 002 No Fine & Cost Signed
Judge APPELLATE COURT Asst States Attorney ASA 3 STATE ILCS
Disposition: Remanded/ Reviewing Court MOB ACTION/FORCE/2+ PERSONS
Disposition Type: Court Action Defendant Plea: No Plea Entered
Statute 720 5/25-1(a)(1) Class 4 Orig.
Sentence: 07/05/2013
Status:Closed Report:Reinstated Jul 05,2013

7/16/2013 Mandate Reversing and Remanding; fld
Status:Open Report:Re-Opened Jul 16,2013
Judge:SHELDON TIMOTHY Q Clerk:LC1 M

7/24/2013 Court reporter this date - Debbie Schweer

7/24/2013 Order case to chief judge for reassignment; filed
Judge:BARSANTI JOHN A Clerk:KL5 M

7/24/2013 STATUS HEARING Jul 25,2013 09:00AM Rm305 Judge CLANCY BOLES

7/25/2013 Court reporter this date - Peggy Steinberg Defendant MARTINEZ ESTEBAN

7/25/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN

7/25/2013 Defendant present in open court Defendant MARTINEZ ESTEBAN

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

16 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 16
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

<u>Date</u>	
7/25/2013	Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
7/25/2013	STATUS HEARING Sep 05, 2013 09:00AM Rm305
7/25/2013	Bail Bond; filed Transfer From 2012CF000733 MARTINEZ ESTEBAN Bail \$1000.00 Defendant MARTINEZ ESTEBAN
7/25/2013	Motion petition to file to set bail Judge:CLANCY BOLES SUSAN Clerk:SLP M
7/25/2013	Answer to discovery; filed Judge:CLANCY BOLES SUSAN Clerk:SLP M
7/25/2013	Bond set at \$ \$1450.00 Judge:CLANCY BOLES SUSAN Clerk:SLP M
7/31/2013	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
8/06/2013	Bail Bond; filed Transfer From 2013CM000359 MARTINEZ ESTEBAN Bail \$450.00 Defendant MARTINEZ ESTEBAN
9/05/2013	Court reporter this date - Mariann Busch Defendant MARTINEZ ESTEBAN
9/05/2013	COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
9/05/2013	Defendant present in open court Defendant MARTINEZ ESTEBAN
9/05/2013	Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
9/05/2013	STATUS HEARING Oct 10, 2013 09:00AM Rm305
9/05/2013	Appearance; filed Atty DIXON LIAM
9/05/2013	Public defender withdrawn Judge:CLANCY BOLES SUSAN Clerk:MIS M
9/10/2013	Motion for discovery; filed Judge:CLANCY BOLES SUSAN Clerk:GRH M
9/10/2013	Speedy trial demand; filed Judge:CLANCY BOLES SUSAN Clerk:GRH M
10/10/2013	Court reporter this date - MaryJo D Avola Defendant MARTINEZ ESTEBAN
10/10/2013	COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
10/10/2013	Jury trial order; filed Defendant MARTINEZ ESTEBAN
10/10/2013	PRETRIAL CONFERENCE Feb 13, 2014 01:30PM Rm305
10/10/2013	JURY TRIAL Feb 24, 2014 08:30AM Rm305 Canceled

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

17 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 17
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

Date
10/22/2013 Proof of service; filed
Judge:CLANCY BOLES SUSAN Clerk:JMH M
2/13/2014 Court Reporter this date - Lisa A Larsen Defendant MARTINEZ ESTEBAN
2/13/2014 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
2/13/2014 Defendant present in open court Defendant MARTINEZ ESTEBAN
2/13/2014 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
2/13/2014 Court Reporter this date - Lisa A Larsen Defendant MARTINEZ ESTEBAN
2/13/2014 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
2/13/2014 Defendant present in open court Defendant MARTINEZ ESTEBAN
2/13/2014 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
2/20/2014 Court reporter this date - Debbie Schweer
Judge:CLANCY BOLES SUSAN Clerk:JME M
2/20/2014 Defendant present in open court
2/20/2014 No file in court this date
2/20/2014 Order grant motion petition to continue
2/20/2014 Election to proceed on 12CF733
2/20/2014 Jury trial order; filed
JURY TRIAL Apr 21,2014 08:30AM Rm305 Canceled
2/20/2014 Motion continue; filed
2/20/2014 Affidavit; filed
2/20/2014 Order Subpoena(s) previously issued continued; filed
2/20/2014 PRETRIAL CONFERENCE Apr 17,2014 01:30PM Rm305 Canceled
2/21/2014 Correspondence; filed copy of letter sent from Supreme Court
4/14/2014 Court Reporter this date -Jeanine Fassnacht
4/14/2014 Defendant present in open court
4/14/2014 Sentencing order; filed
4/14/2014 Order vacate court date; filed
4/14/2014 Order Cash Bond * to be held until further order of court

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

18 CSP048
Date: 6/02/2014
Time: 17/02/03
Page: 18
From 0/00/0000 To 99/99/9
User: SAOMLM

2006 CF 001731 Judge:

<u>Date</u>	
4/14/2014	Disposition 03/05 Count 001 No Fine & Cost Signed Judge CLANCY BOLES SUSAN Asst States Attorney ASA 3 STATE ILCS Disposition: Nolle Prosequi AGG BATTERY/GREAT BODILY HARM Disposition Type: Court Action Defendant Plea: No Plea Entered Statute 720 5/12-4(a) Class 3 Orig. Sentence: 04/14/2014 Status:Post- Sentence Report:Re-Closed Apr 14,2014
4/14/2014	Disposition 04/02 Count 002 No Fine & Cost Signed Judge CLANCY BOLES SUSAN Asst States Attorney ASA 3 STATE ILCS Disposition: Nolle Prosequi MOB ACTION/FORCE/2+ PERSONS Disposition Type: Court Action Defendant Plea: No Plea Entered Statute 720 5/25-1(a)(1) Class 4 Orig. Sentence: 04/14/2014 Status:Post- Sentence Report:Terminated Apr 14,2014
4/23/2014	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
4/23/2014	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
5/14/2014	Copy of Appeal Receipt filed - returned lclr/ lrop
5/28/2014	Images of Entire File prior to this date

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

1 CSP048
Date: 6/19/2014
Time: 13/47/48
Page: 1
User: SAOGAS
Wsid: SAON488G0
All Entries Fo

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Case Names _____ Attorney Names _____
VS

MARTINEZ ESTEBAN DIXON LIAM
BISCEGLIE JAMES
GARCIA MERCEDES
GARCIA MERCEDES
LAW OFFICES OF LIAM DIXON LAW OFFICES OF LIAM DIXON

Date
4/14/2012 Charge 01 Count 001 FELON POSS/USE FIREARM PRIOR Apr 12, 2012
Judge AKEMANN Defendant MARTINEZ ESTEBAN
Statute 720 5/24-1.1(a) Class 2 Orig.
Agency: ELGIN POLICE DEPT Charge Instr: FELONY BOND CALL

4/14/2012 No Bond Defendant MARTINEZ ESTEBAN Judge AKEMANN DAVID
PRELIMINARY HEARING Apr 16, 2012 09:00AM Rm305 Judge AKEMANN Canceled

4/14/2012 Charge 02 Count 002 POSS FIR FOID EXPIRED/NOT ELIG Apr 12, 2012
Defendant MARTINEZ ESTEBAN
Statute 430 65/2(a)(1) Class 3 Orig.
Agency: ELGIN POLICE DEPT Charge Instr: FELONY BOND CALL

4/14/2012 Bail Bond; filed Bond On Companion Case Defendant MARTINEZ ESTEBAN
PRELIMINARY HEARING Apr 16, 2012 09:00AM Rm305 Canceled

4/14/2012 Order remand custody; filed
STATUS HEARING Apr 20, 2012 09:00AM Rm305 Judge AKEMANN
Judge: AKEMANN DAVID Clerk: JK5 M

4/14/2012 In absentia explained
Judge: AKEMANN DAVID Clerk: JK5 M

4/14/2012 Order defendant remanded with order to transport
Judge: AKEMANN DAVID Clerk: JK5 M

4/14/2012 Criminal Filing Complaint Order; fld
Judge: AKEMANN DAVID Clerk: JK5 M

4/17/2012 Order remand custody served; filed

4/20/2012 Court reporter this date - Peggy Steinberg Defendant MARTINEZ ESTEBAN

4/20/2012 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN

4/20/2012 Defendant present in custody
Judge: AKEMANN DAVID Clerk: JLS M

4/20/2012 Order appoint public defender; filed
Judge: AKEMANN DAVID Clerk: JLS M

4/20/2012 Motion petition for bond reduction; filed
Judge: AKEMANN DAVID Clerk: JLS M

4/20/2012 Pre-trial release order; filed
Judge: AKEMANN DAVID Clerk: JLS M

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
ALL CASE ENTRIES PRINTED
Criminal Felony

2 CSP048
Date: 6/19/2014
Time: 13/47/48
Page: 2
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date	
4/20/2012	BOND REDUCTION HEARING Apr 25,2012 08:30AM Rm305 Judge AKEMANN Judge:AKEMANN DAVID Clerk:JLS M
4/20/2012	Order defendant remanded with order to transport Judge:AKEMANN DAVID Clerk:JLS M
4/20/2012	Motion for continuance by defense Judge:AKEMANN DAVID Clerk:JLS M
4/25/2012	Pre-trial release court report - impounded
4/25/2012	Speedy trial demand; filed Judge:AKEMANN DAVID Clerk:MG2 M
4/25/2012	Motion for discovery; filed Judge:AKEMANN DAVID Clerk:MG2 M
4/25/2012	Court Reporter this date - Ernest C Scola Defendant MARTINEZ ESTEBAN
4/25/2012	COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
4/25/2012	Defendant present in custody Judge:AKEMANN DAVID Clerk:MG2 M
4/25/2012	Order defendant remanded with order to transport Judge:AKEMANN DAVID Clerk:MG2 M
4/25/2012	Motion for continuance by agreement Judge Akemann to inquire of presiding judge in criminal division as to proper assignment of this case STATUS HEARING May 10,2012 09:00AM Rm305 Judge AKEMANN Judge:AKEMANN DAVID Clerk:MG2 M
4/25/2012	Order deny motion petition for bond reduction; filed Judge:AKEMANN DAVID Clerk:MG2 M
5/10/2012	Court reporter this date - Marge Ledvora Defendant MARTINEZ ESTEBAN
5/10/2012	COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
5/10/2012	Defendant present in custody Judge:AKEMANN DAVID Clerk:MG2 M
5/10/2012	Order defendant remanded with order to transport Judge:AKEMANN DAVID Clerk:MG2 M
5/10/2012	Motion for continuance by agreement STATUS HEARING May 30,2012 09:00AM Rm305 Judge AKEMANN Judge:AKEMANN DAVID Clerk:MG2 M
5/10/2012	Appearance; filed Atty DIXON LIAM

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

3 CSP048
Date: 6/19/2014
Time: 13/47/48
Page: 3
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date	
5/29/2012	Charge 03 Count 001 FELON POSS/USE FIREARM PRIOR Apr 12,2012 Defendant MARTINEZ ESTEBAN Statute 720 5/24-1.1(a) Class 2 Orig. Agency: ELGIN POLICE DEPT Charge Instr: Indictment
5/29/2012	Charge 04 Count 002 POSS FIR FOID EXPIRED/NOT ELIG Apr 12,2012 Defendant MARTINEZ ESTEBAN Statute 430 65/2(a)(1) Class 3 Orig. Agency: ELGIN POLICE DEPT Charge Instr: Indictment
5/29/2012	Disposition 01/00 Count 001 No Fine & Cost Signed Judge SHELDON TIMOTHY Q Asst States Attorney ASA 3 STATE ILCS Disposition: Dismissed/Superseded by Indictment or Information FELON Disposition Type: Court Action Defendant Plea: No Plea Entered Statute 720 5/24-1.1(a) Class 2 Orig. Sentence: 05/29/2012 Status:Pre-trial May 29,2012
5/29/2012	Disposition 02/00 Count 002 No Fine & Cost Signed Judge SHELDON TIMOTHY Q Asst States Attorney ASA 3 STATE ILCS Disposition: Dismissed/Superseded by Indictment or Information POSS F Disposition Type: Court Action Defendant Plea: No Plea Entered Statute 430 65/2(a)(1) Class 3 Orig. Sentence: 05/29/2012 Status:Pre-trial May 29,2012
5/29/2012	Criminal Filing Complaint Order; fld
5/30/2012	Court reporter this date - Debbie Hogan Defendant MARTINEZ ESTEBAN
5/30/2012	COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
5/30/2012	Defendant present in custody Defendant MARTINEZ ESTEBAN
5/30/2012	Order transport the defendant; filed Defendant MARTINEZ ESTEBAN
5/30/2012	Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
5/30/2012	STATUS HEARING Jun 07,2012 09:00AM Rm305
6/06/2012	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
6/06/2012	DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN
6/07/2012	Court reporter this date - Jill Gasparaitis Defendant MARTINEZ ESTEBA
6/07/2012	COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
6/07/2012	Defendant present in custody Judge:AKEMANN DAVID Clerk:SLP M
6/07/2012	Order defendant remanded with order to transport Judge:AKEMANN DAVID Clerk:SLP M

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

4 CSP048
Date: 6/17/2014
Time: 15/40/13
Page: 4
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date
6/07/2012 Motion for continuance by agreement
Judge:AKEMANN DAVID Clerk:SLP M
6/07/2012 STATUS HEARING Jun 28,2012 09:00AM Rm305 Judge AKEMANN
Judge:AKEMANN DAVID Clerk:SLP M
6/07/2012 Defendant arraigned this date; filed
Judge:AKEMANN DAVID Clerk:SLP M
6/07/2012 In absentia explained
Judge:AKEMANN DAVID Clerk:SLP M
6/07/2012 Answer to discovery; filed
Judge:AKEMANN DAVID Clerk:SLP M
6/11/2012 Answer to discovery; filed
6/11/2012 Supplemental answer to discovery; filed
Judge:KLIMENT DAVID P Clerk:MG2 M
6/18/2012 Supplemental answer to discovery; filed
Judge:AKEMANN DAVID Clerk:JLL M
6/28/2012 Court reporter this date - Mariann Busch Defendant MARTINEZ ESTEBAN
6/28/2012 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
6/28/2012 Defendant present in custody Defendant MARTINEZ ESTEBAN
6/28/2012 Order transport the defendant; filed Defendant MARTINEZ ESTEBAN
6/28/2012 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
6/28/2012 STATUS HEARING Jul 25,2012 09:00AM Rm305
7/10/2012 Bail Bond; filed 10% Cash Bond Bail \$10000.00 Bond \$100000.00
Defendant MARTINEZ ESTEBAN Assignment GARCIA MERCEDES
STATUS HEARING Jul 25,2012 09:00AM Rm305
7/10/2012 Bail bond; filed
Judge:AKEMANN DAVID Clerk:JV7 M
7/10/2012 Notice to surety; filed
Judge:AKEMANN DAVID Clerk:JV7 M
7/11/2012 Supplemental answer to discovery; filed
Judge:AKEMANN DAVID M
7/25/2012 Court Reporter this date - Ernest C Scola
7/25/2012 Defendant present in open court
Judge:AKEMANN DAVID Clerk:JLS M

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

5 CSP048
Date: 6/17/2014
Time: 15/40/13
Page: 5
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date
7/25/2012 PRE TRIAL Aug 30,2012 09:00AM Rm305 Judge AKEMANN
7/25/2012 Motion for continuance by agreement
8/30/2012 Court reporter this date - Debbie Hogan Defendant MARTINEZ ESTEBAN
8/30/2012 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
8/30/2012 Defendant present in open court Defendant MARTINEZ ESTEBAN
8/30/2012 Motion for continuance by defense Defendant MARTINEZ ESTEBAN
8/30/2012 Motion for continuance by agreement
8/30/2012 STATUS HEARING Oct 11,2012 09:00AM Rm311
10/11/2012 Court reporter this date - Marge Ledvora Defendant MARTINEZ ESTEBAN
10/11/2012 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
10/11/2012 Defendant present in open court Defendant MARTINEZ ESTEBAN
10/11/2012 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
10/11/2012 STATUS HEARING Nov 08,2012 09:00AM Rm305
11/08/2012 Court reporter this date - Marge Ledvora Defendant MARTINEZ ESTEBAN
11/08/2012 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
11/08/2012 Defendant present in open court Defendant MARTINEZ ESTEBAN
11/08/2012 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
11/08/2012 STATUS HEARING Dec 13,2012 09:00AM Rm305
12/13/2012 Court reporter this date - Jill Gasparaitis Defendant MARTINEZ ESTEBAN
12/13/2012 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
12/13/2012 Defendant present in open court Defendant MARTINEZ ESTEBAN
12/13/2012 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
12/13/2012 STATUS HEARING Jan 17,2013 09:00AM Rm305 Canceled
1/11/2013 No file in court - not a scheduled date
1/11/2013 Agreed order
Judge:CLANCY BOLES SUSAN Clerk:MG2 M
1/11/2013 Motion for continuance by agreement
STATUS HEARING Feb 28,2013 09:00AM Rm305 Judge CLANCY BOLES

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

6 CSP048
Date: 6/17/2014
Time: 15/40/13
Page: 6
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date
1/11/2013 Order court date stricken *01-17-13
Judge:CLANCY BOLES SUSAN Clerk:MG2 M
2/28/2013 Court reporter this date - Debbie Hogan Defendant MARTINEZ ESTEBAN
2/28/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
2/28/2013 Defendant not appearing in open court Defendant MARTINEZ ESTEBAN
2/28/2013 Order transport the defendant; filed Defendant MARTINEZ ESTEBAN
2/28/2013 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
2/28/2013 STATUS HEARING Mar 14,2013 09:00AM Rm305
3/06/2013 Motion to increase bond
3/06/2013 Affidavit; filed
3/14/2013 Court reporter this date - Jill Gasparaitis Defendant MARTINEZ ESTEBA
3/14/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
3/14/2013 Defendant present in open court Defendant MARTINEZ ESTEBAN
3/14/2013 Order defendant remanded with order to transport
Defendant MARTINEZ ESTEBAN
3/14/2013 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
3/14/2013 STATUS HEARING Apr 05,2013 09:00AM Rm305
3/14/2013 Order grant to increase bond to \$50,000 10%
Judge:CLANCY BOLES SUSAN M
3/14/2013 Order remand custody; filed
Judge:CLANCY BOLES SUSAN M
3/18/2013 Order remand custody served; filed
3/20/2013 Notice of motion; filed
MOTION/PETITION HEARING Mar 22,2013 09:00AM Rm305 Judge CLANCY BOLES
Judge:CLANCY BOLES SUSAN Clerk:JLL M
3/20/2013 Proof of service; filed
Judge:CLANCY BOLES SUSAN Clerk:JLL M
3/20/2013 Motion to reconsider increase of defendants bond
Judge:CLANCY BOLES SUSAN Clerk:JLL M
3/22/2013 Order grant
DEFENDANT'S MOTION TO RECONSIDER INCREASE IN BOND IS GRANTED

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

7 CSP048
Date: 6/17/2014
Time: 15/40/13
Page: 7
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date
3/22/2013 \$10,000/10% TO APPLY
3/22/2013 Court Reporter this date -Jeanine Fassnacht Defendant MARTINEZ ESTEBA
3/22/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
3/22/2013 Defendant present in custody Defendant MARTINEZ ESTEBAN
3/22/2013 Order transport the defendant; filed Defendant MARTINEZ ESTEBAN
3/22/2013 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
3/22/2013 STATUS HEARING Apr 05,2013 09:00AM Rm305
3/28/2013 Bail Bond; filed 10% Cash Bond Bail \$1000.00 Bond \$10000.00
Defendant MARTINEZ ESTEBAN Assignment GARCIA MERCEDES
STATUS HEARING Apr 05,2013 09:00AM Rm305
3/28/2013 Bail bond; filed
Judge:CLANCY BOLES SUSAN Clerk:RL1 M
3/28/2013 Notice to surety; filed
Judge:CLANCY BOLES SUSAN Clerk:RL1 M
4/05/2013 Court reporter this date - Dana Bollman Defendant MARTINEZ ESTEBAN
4/05/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
4/05/2013 Defendant present in open court Defendant MARTINEZ ESTEBAN
4/05/2013 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
4/05/2013 STATUS HEARING May 10,2013 09:00AM Rm305
4/23/2013 Speedy trial demand; filed
Judge:CLANCY BOLES SUSAN Clerk:DJH M
5/10/2013 Court reporter this date - Marge Ledvora Defendant MARTINEZ ESTEBAN
5/10/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
5/10/2013 Defendant present in open court Defendant MARTINEZ ESTEBAN
5/10/2013 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
5/10/2013 STATUS HEARING Jun 13,2013 09:00AM Rm305
6/13/2013 Court reporter this date - Peggy Steinberg
6/13/2013 Defendant present in open court
Judge:CLANCY BOLES SUSAN Clerk:SLP M

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

8 CSP048
Date: 6/17/2014
Time: 15/40/13
Page: 8
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date
6/13/2013 STATUS HEARING Jul 25,2013 09:00AM Rm305 Judge CLANCY BOLES
6/13/2013 Motion for continuance by agreement
7/25/2013 Court reporter this date - Peggy Steinberg Defendant MARTINEZ ESTEBAN
7/25/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
7/25/2013 Defendant present in open court Defendant MARTINEZ ESTEBAN
7/25/2013 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
7/25/2013 STATUS HEARING Sep 05,2013 09:00AM Rm305
7/25/2013 Bail Bond; filed Transfer To 2006CF001731 MARTINEZ ESTEBAN
Bail \$1000.00 Defendant MARTINEZ ESTEBAN
7/25/2013 Status order
Judge:CLANCY BOLES SUSAN Clerk:SLP M
9/05/2013 Court reporter this date - Mariann Busch Defendant MARTINEZ ESTEBAN
9/05/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
9/05/2013 Defendant present in open court Defendant MARTINEZ ESTEBAN
9/05/2013 Motion for continuance by agreement Defendant MARTINEZ ESTEBAN
9/05/2013 STATUS HEARING Oct 10,2013 09:00AM Rm305
9/05/2013 Public defender withdrawn
Judge:CLANCY BOLES SUSAN Clerk:MIS M
10/10/2013 Court reporter this date - MaryJo D Avola Defendant MARTINEZ ESTEBAN
10/10/2013 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
10/10/2013 Jury trial order; filed Defendant MARTINEZ ESTEBAN
10/10/2013 PRETRIAL CONFERENCE Feb 13,2014 01:30PM Rm305
10/10/2013 JURY TRIAL Feb 18,2014 08:30AM Rm305
11/13/2013 Supplemental answer to discovery; filed
Judge:CLANCY BOLES SUSAN Clerk:JLL M
2/13/2014 Court Reporter this date - Lisa A Larsen Defendant MARTINEZ ESTEBAN
2/13/2014 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
2/13/2014 Defendant present in open court Defendant MARTINEZ ESTEBAN

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

9 CSP048
Date: 6/17/2014
Time: 15/40/13
Page: 9
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date
2/13/2014 Court Reporter this date - Lisa A Larsen Defendant MARTINEZ ESTEBAN
2/13/2014 Motion for continuance by defense Defendant MARTINEZ ESTEBAN
2/13/2014 COURT ORDER entered this date Defendant MARTINEZ ESTEBAN
2/13/2014 Defendant present in open court Defendant MARTINEZ ESTEBAN
2/13/2014 STATUS HEARING Feb 18,2014 09:00AM Rm305
2/13/2014 Motion for continuance by defense Defendant MARTINEZ ESTEBAN
2/13/2014 STATUS HEARING Feb 18,2014 09:00AM Rm305
2/18/2014 Order Subpoena(s) previously issued continued; filed
2/18/2014 BENCH TRIAL Apr 14,2014 09:00AM Rm305
4/09/2014 Bond Refund/INSTANTER* Fee \$8500.00 Amt \$8500.00 Bond Applied
Defendant MARTINEZ ESTEBAN
4/14/2014 Court Reporter this date -Jeanine Fassnacht
4/14/2014 Guilty plea; filed
4/14/2014 Defendant acknowledgement of non citizen consequences; filed
4/14/2014 Petition and order for bond refund to attorney; filed
4/14/2014 Judgment order; filed
4/14/2014 Case Closed
4/14/2014 Order bond refunded to attorney
4/14/2014 Motion petition to reconsider; filed
4/14/2014 Charge 05 Count 003 RESIST/PC OFF/CORR EMP/FRFTR Apr 12,2012
Defendant MARTINEZ ESTEBAN
Statute 720 5/31-1(a) Class A Orig.
Agency: ELGIN POLICE DEPT Charge Instr: Complaint
4/14/2014 Disposition 03/00 Count 001 No Fine & Cost Signed
Judge CLANCY BOLES SUSAN Asst States Attorney ASA 3 STATE ILCS
Disposition: Nolle Prosequi FELON POSS/USE FIREARM PRIOR
Disposition Type: Court Action Defendant Plea: No Plea Entered
Statute 720 5/24-1.1(a) Class 2 Orig.
Sentence: 04/14/2014
Status:Post- Sentence Apr 14,2014
4/14/2014 Disposition 04/00 Count 002 No Fine & Cost Signed
Judge CLANCY BOLES SUSAN Asst States Attorney ASA 3 STATE ILCS

C O N T I N U E D O N N E X T P A G E

COURT DOCKET - KANE COUNTY CIRCUIT CLERK
A L L C A S E E N T R I E S P R I N T E D
Criminal Felony

10 CSP048
Date: 6/17/2014
Time: 15/40/13
Page: 10
User: SAOGAS

2012 CF 000733 Judge: CLANCY BOLES SUSAN From 0/00/0000 To 99/99/9

Date
4/14/2014 Disposition: Nolle Prosequi POSS FIR FOID EXPIRED/NOT ELIG
Disposition Type: Court Action Defendant Plea: No Plea Entered
Statute 430 65/2(a)(1) Class 3 Orig.
Sentence: 04/14/2014
Status: Post- Sentence Apr 14, 2014

4/14/2014 Disposition 05/00 Count 003 Fine & Cost Total of Fee \$400.00 Signe
Judge CLANCY BOLES SUSAN Asst States Attorney ASA 3 STATE ILCS
Disposition: Guilty Conviction RESIST/PC OFF/CORR EMP/FRFTR
Disposition Type: Guilty Plea Defendant Plea: Guilty
Statute 720 5/31-1(a) Class A Orig.
Sentence: 04/14/2014
Sentence: Fines and/or Cost/Penalties and Fees Sentence In Force
Sentence: County Jail 48Hrs Sentence In Force
Sentence: Credit For Time Served 48Hrs Sentence In Force
Fine & Cost Total o 300.00 TRAUMA FUND 100.00

4/14/2014 Court Order Bond Used Amt \$400.00 Defendant MARTINEZ ESTEBAN
Status: Post- Sentence Report: Terminated Apr 14, 2014

4/23/2014 DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN

4/23/2014 DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN

4/23/2014 DISPOSITION REPORTED TO AOIC SPT Defendant MARTINEZ ESTEBAN

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

Case No. 06CF1731

FILED 04152014 14:37

Plaintiff(s) <u>People</u>	Defendant(s) <u>ESTEBAN MARTINEZ</u>	<div style="border: 1px solid black; padding: 5px;"> <p><i>He was M. J. Youth</i> Clerk of the Circuit Court Kane County, IL</p> <p align="center">APR 14 2014</p> <p align="center">FILED 081 81</p> <p align="center">ENTERED</p> </div>	
Plaintiff(s) Atty. <u>SAMS for BAXTER</u>	Defendant(s) Atty. <u>DIXON</u>		
Judge <u>Bols</u>	Court Reporter <u>JAMM</u>		<input type="checkbox"/> None (NCRP)
A copy of this order <input type="checkbox"/> should be sent to: <input type="checkbox"/> has been sent to:			Deputy Clerk
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____		File Stamp	

ORDER

- | | |
|--|--|
| <input checked="" type="checkbox"/> Defendant is present in Open Court (DPOC)
<input type="checkbox"/> Defendant is present via Closed Circuit TV (CCTV)
<input type="checkbox"/> Defendant did not appear (DNAOC)
<input type="checkbox"/> Interpreter present (INTPR)
<input type="checkbox"/> Other _____ | <input type="checkbox"/> Defendant has been advised of his rights and penalties (DFRPE)
<input type="checkbox"/> Inabsentia explained (IAE)
<input type="checkbox"/> Defendant remanded for transport by sheriff (OROT)
<input type="checkbox"/> Defendant remanded for CCTV appearance (ORCTV)
<input type="checkbox"/> Defendant to appear in street clothes and bring lunch (DFASC) |
|--|--|

CASE CONTINUED TO _____ at _____ m. room _____

- | | |
|--|---|
| <input type="checkbox"/> By agreement (MAGRE)
<input type="checkbox"/> On Motion of State (MPROS)
<input type="checkbox"/> On Motion of Defendant (MDEFN)
<input type="checkbox"/> On Motion of Court (MCORT) | <input type="checkbox"/> Pre-trial/status _____
<input type="checkbox"/> Bench trial
<input type="checkbox"/> Jury trial
<input type="checkbox"/> Attorney
<input type="checkbox"/> VOP Hearing
<input type="checkbox"/> Hearing on Motion for _____
<input type="checkbox"/> _____ |
|--|---|

THE CLERK IS ORDERED TO:

- Recall outstanding warrants on this file only (WRNTC)
 - Send bail forfeiture notice returnable _____ at _____ m. room _____ (BN)
 - Issue summons returnable _____ at _____ m. room _____ (OISUM)
 - Take Judgment on forfeiture
 - Send failure to pay notice returnable _____ at _____ m. room _____
 - Send failure to pay notice and close upon non-payment
 - Send final notice returnable _____ at _____ m. room _____
 - Issue warrant forthwith (OIWAR)(504)
- Bail set at _____ 10% to apply Full Cash Hold Without Bond No Recog.
- Strike court date of _____ (OCDST) Vacate all other court dates
- Other no coll. case file. VACATE all other dates

Date 4/14/14

Judge *[Signature]*

STATE OF ILLINOIS)

) ss:

COUNTY OF K A N E)

IN THE CIRCUIT COURT FOR THE
SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

THE PEOPLE OF THE)	
STATE OF ILLINOIS,)	
Plaintiff,)	
vs.)	Gen. No. 12 CF 733
)	06 CF 1731
ESTEBAN MARTINEZ,)	
)	
Defendant.)	

TRANSCRIPT OF THE REPORT OF PROCEEDINGS had at the
Hearing of the above-entitled case before the HONORABLE JUDGE
SUSAN CLANCY BOLES, at the Kane County Courthouse, St.
Charles, Illinois, on the 14th day of April, A. D., 2014.

PRESENT:

MR. JOSEPH MC MAHON,
State's Attorney for Kane County, by:
MR. GREG SAMS,
Assistant State's Attorney,

appeared on behalf of the People
of the State of Illinois;

MR. LIAM DIXON,

appeared on behalf of the Defendant.

JEANINE H. FASSNACHT, CSR, RPR, OCR

1 (Whereupon, the following
2 proceedings were had in open
3 court:)

4 THE COURT: People versus Esteban Martinez, 12-CF-733.
5 I'll have you each of you state your names, please starting
6 with the State.

7 MR. SAMS: Greg Sams and Kaitlyn Barclay, 711, for the
8 People.

9 MR. DIXON: Liam Dixon for the Defendant, who's present
10 before Your Honor.

11 THE COURT: Okay. I have this up for a bench trial this
12 morning, is that correct?

13 MR. SAMS: Yes.

14 MR. DIXON: Yes, Your Honor.

15 THE COURT: Both sides answering ready?

16 MR. SAMS: Judge, we're answering ready, I do need to
17 make an oral disclosure that I've spoken with Mr. Dixon about
18 this morning. One of our witnesses, Officer Craig Tucker
19 from the Elgin Police Department does have a past
20 disciplinary action against him, so I'm making that oral
21 disclosure as a part of the record right now. I spoke to
22 Mr. Dixon about it and I believe we're asking at this point
23 in time, instead of a continuance to subpoena the records, to
24 have a conversation with yourself back in Chambers -- uhm --

1 about that, and I can give what I know about it and we can
2 probably do that with the Court Reporter there so it's on the
3 record as to what it is, but I would ask that that part of
4 the record be sealed, pending your ruling on the information.

5 THE COURT: Okay. Mr. Dixon, do you wish to be heard
6 with that procedure, and thoughts?

7 MR. DIXON: No. I did have a discussion with Mr. Sams
8 this morning regarding that, he did disclose that and that
9 was the suggestion that we both agreed to.

10 THE COURT: Okay. You are otherwise answering ready?

11 MR. DIXON: Yes.

12 THE COURT: Okay. Then why don't we go ahead and deal
13 with that, first. Let's go ahead and handle that back in my
14 Chambers, and then we'll come back and begin and deal with
15 any other preliminary things we need to.

16 (Whereupon, proceedings were
17 had that were sealed by the
18 Court and are not a part of
19 the record.)

20 THE COURT: People versus Esteban Martinez.

21 We did have a brief discussion that was on the
22 record, that portion of which will be sealed for purposes
23 going forward, here.

24 Gentlemen, before we begin, is there any or

1 preliminary matter or matters that need to be addressed?

2 MR. SAMS: Yes, Your Honor, the State is now filing a
3 Motion to Reconsider your ruling.

4 THE COURT: Okay, thank you.

5 Are you in receipt of that, Mr. Dixon?

6 MR. DIXON: I just got that, Your Honor.

7 THE COURT: All right, so one moment.

8 (Whereupon, there was a
9 brief pause in the trial;
10 and the following
11 proceedings were had in
12 open court:)

13 MR. DIXON: Your Honor, I'm sorry to interrupt, we have a
14 request, is it all right that Mr. Martinez speaks to his wife
15 while we're reading?

16 THE COURT: Sure.

17 (Whereupon, there was a
18 brief pause in the trial;
19 and the following
20 proceedings were had in
21 open court:)

22 THE COURT: Okay. Mr. Dixon, do you want Mr. Martinez
23 back in here?

24 MR. DIXON: We can. I'll go talk to him. Give me two

1 minutes.

2 (Whereupon, there was a
3 brief pause in the trial;
4 and the following
5 proceedings were had in
6 open court:)

7 THE COURT: Okay. Mr. Sams I've had an opportunity to
8 read your Motion to Reconsider, do you have any additional
9 arguments?

10 MR. SAMS: Judge, I just wanted to say that the ruling
11 that you gave, Judge, I believe would -- uhm -- be considered
12 to be contrary to the law of the Illinois Rules of Evidence
13 for the similar reasoning -- for the mostpart it's a specific
14 act impeachment which the law does not allow and limiting it
15 to the extent that you did in the ruling -- uhm -- Judge,
16 it's -- it is specific act impeachment -- uhm -- and the
17 Illinois Rules of Evidence specifically prohibit that.

18 THE COURT: Thank you.

19 Mr. Dixon?

20 MR. DIXON: And Your Honor did make a ruling back in
21 Chambers limiting that specifically to not going into those
22 specific acts, and I think that Your Honor narrowly tailored
23 it, and I think that the credibility of the witness is always
24 in question -- uhm -- and how it was limited would allow us

1 to at least go into credibility without going into a specific
2 act.

3 THE COURT: Okay.

4 MR. SAMS: Judge, may I respond to that?

5 THE COURT: You may.

6 MR. SAMS: Mr. Dixon's argument basically what -- what it
7 says is since you've specifically limited it -- uhm -- it's
8 not specific act impeachment, but this is really nothing more
9 than asking a witness on the stand, "Isn't it true at some
10 point in time, you were dishonest", or, "You lied about
11 something", limiting it so that we -- we can't get into it --
12 uhm -- we're not going to get into the facts of when you
13 lied, but just asking that question: "Isn't it true that at
14 some point in time in the past you've lied about something."
15 Judge, that is specific act impeachment, whether you get into
16 the specific act of that or not, and it's actually even more
17 dangerous -- uhm -- because it doesn't give you any relevancy
18 as to how it applies to the case and because of that, the
19 relevancy, that is why specific act impeachment on something
20 like this is prohibited.

21 THE COURT: Okay, thank you -- uhm -- as I indicated back
22 in Chambers and after hearing the background that led to a
23 particular disciplinary action that was taken that involved
24 veracity, my ruling was that that could come in or Mr. Dixon

1 could inquire into that for that sole purpose that there, in
2 fact, was a disciplinary action in the past, and that it had
3 to deal with truth or veracity. That ruling will stand. The
4 State's Motion to Reconsider will be denied.

5 MR. SAMS: Your Honor, based upon that, we're asking for
6 a recess to 10:45.

7 THE COURT: Okay. Tell me, let's talk scheduling, here,
8 then, for -- are we -- how long -- I've got one day set for
9 this, we're going to start at 10:45, are we still on track as
10 far as that goes?

11 MR. SAMS: Judge, if the case goes to trial, today, I
12 think -- uhm -- it's probably at the longest an
13 hour-and-a-half of evidence. That's stretching it.

14 THE COURT: Any issue with starting at 10:45?

15 MR. DIXON: I don't, Your Honor. I can inform Your Honor
16 that we received another offer, that's why he was out in the
17 hallway talking, so --

18 THE COURT: Okay. Well, it seems like both sides have
19 some talking to do. Let's meet back here at 10:45 with the
20 intent to begin at that time if it's going forward, okay?

21

22

23

24

1 (Whereupon, there was a
2 brief pause in the trial;
3 and the following
4 proceedings were had in
5 open court:)

6 THE COURT: People versus Esteban Martinez.

7 I want to make a brief statement. During the
8 last 20 minutes or so, I had a chance to look up a couple of
9 the cases that the State has cited, and -- in its Motion to
10 Reconsider and specifically, People versus Cookson, 215 Il.
11 2d., 194, and it is a 2005 case and a couple of the cases
12 that were cited in that case and the Court has reconsidered
13 its ruling on the State's Motion to Reconsider the State's
14 Motion, which initially I denied; I'm going to grant that
15 Motion to Reconsider after reading those cases, the specific
16 instance of dishonesty that this potential witness was
17 disciplined for would be an improper method of impeachment,
18 so I didn't know if that affected going forward this morning
19 and if either side would like more time based on that,
20 obviously, I'll give you a little bit more time.

21 MR. SAMS: Your Honor, for -- from the State's
22 perspective, we appreciate that, we thank you for the ruling.
23 I believe we have a negotiated disposition for the Court's
24 approval.

1 THE COURT: Okay.

2 MR. SAMS: I don't know whether Mr. Dixon and his client
3 would like to ask for a 402 conference so we can present that
4 to you in Chambers first, or if you want to just hear it
5 first?

6 THE COURT: Okay.

7 Mr. Dixon, how do you wish to proceed?

8 MR. DIXON: Your Honor, I -- having had a conversation
9 with Mr. Sams, I think we can just proceed with the plea
10 based on how we're going to put the plea in.

11 THE COURT: Okay. Then why doesn't everybody approach
12 here, then, and I will have one of you, if you would, please
13 detail for me what the proposed agreement would be.

14 MR. SAMS: Yes, Your Honor.

15 On 12-CF-733, which is the case that is set
16 for -- here for trial, today, by agreement of the parties,
17 the State is going to file in Count 3 which is contained on a
18 long-form order which I'll give Your Honor, the Defendant
19 hereby waives any speedy trial or Statute of Limitations
20 issues on this, Judge -- uhm -- I just need to add one thing
21 to it.

22 Judge we'd add in Count 3 which is a charge of
23 resisting a peace officer, and it would read that: "On or
24 about April 12, 2012, the Defendant committed the offense of

1 resisting a peace officer in that he knowingly resisted the
2 performance of Elgin police officers by struggling as
3 officers attempted to put him into custody", and that would
4 be in violation of 720 ILCS 5/1 hyphen 1, and if I could --
5 Judge, get the Defendant or Defense Counsel to state on the
6 record that that they're waiving any speedy trial and Statute
7 of Limitations issues.

8 MR. DIXON: We'd be so waiving, Your Honor, any speedy
9 trial formal defects and Statute of Limitation issues.

10 THE COURT: So no objection to the filing of this
11 Amendment adding Count 3?

12 MR. DIXON: Correct.

13 THE COURT: Is this Class 4 or Class 4-A?

14 MR. SAMS: Class A.

15 THE COURT: Okay. And then Mr. Martinez, I want to make
16 sure that you understand that the State is amending the
17 Indictment adding Count Number 3, a Class A misdemeanor,
18 resisting a peace officer, and that is a probationable
19 offense, sir, and it's also punishable with potential jail
20 time up to a year and fines of -- up to one year in jail and
21 fines of up to \$2500. Now understand that just like the
22 other charges that are pending, you're presumed innocent of
23 the newest charges and the State would have to prove that
24 against you beyond a reasonable doubt; and as you know, you

1 would have a right to be represented by an attorney and
2 Mr. Dixon obviously has filed his Appearance on your behalf,
3 and you would have a right to plead not guilty. You would
4 have a right to trial like we were going to have today,
5 either before a judge or a jury where 12 citizens would
6 decide your guilt or innocence, and you would have the right
7 to defend yourself, you could confront and cross-examine any
8 witnesses that the State may bring to court that may testify
9 against you, and using the subpoena power of the Court you
10 may bring in your own witnesses to court to testify in your
11 behalf. You, yourself, may choose or not to testify on your
12 own behalf.

13 Now sir, those are your rights, do you
14 understand those?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. And the Agreement as it relates to
17 this, then, would be, what?

18 MR. SAMS: Judge, on that -- uhm -- filing of that
19 charge, the Defendant would be entering a plea of guilty to
20 that Count 3, Class A Misdemeanor charge of resisting a peace
21 officer; and in exchange for that, Judge, Counts 1 and 2
22 would be nol prossed, and the Defendant would be sentenced to
23 pay \$300 in costs which would come from bond -- uhm -- and
24 he would be ordered to serve, per Statute, 48 consecutive

1 days in jail and given credit for time served. That would
2 mean that he has completed that sentence, so he would have no
3 more time to do, Judge, on that file; and on that file we'd
4 also dismiss Counts 1 and 2 and that file would be nol
5 prosessed, Your Honor.

6 In addition, Judge, the other file that you're
7 aware of that is pending that I don't think is up today is
8 06-CF-1731. At this time, it would be Motion State to nol
9 pros. that case and close that file and vacate other dates.
10 this is done somewhat pursuant to the plea, but also because
11 repeated attempts to try to find two named victims from that
12 file have still done -- still gone -- or have not been
13 fruitful, so we do not believe when the case is set for trial
14 which I believe is next Monday and it's another ASA that's
15 handling the file for the State, but I'm aware of what's
16 going on as well as other supervisors in the office; so we're
17 moving to nol pros. that file, close it out, and vacate other
18 dates on that file, too.

19 THE COURT: Okay. Mr. Dixon, is that your understanding
20 of the agreement as it relates to the new charges as well as
21 the 06-CF file?

22 MR. DIXON: It is, Your Honor.

23 THE COURT: Mr. Martinez, is that your understanding of
24 the Agreement as well, sir?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Now sir, I just went through with you what
3 your rights are related to all charges pending against you
4 and you told me that you understood those, is that right?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you understand that you're going to be
7 entering a plea of guilty on this new Count 3, the Class A
8 misdemeanor resisting charge, that you're waiving all of
9 those rights?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And so there will be no trial, you do not get
12 to confront any witnesses, none of that, do you understand
13 that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. Now obviously, you showed up here
16 today with the intent of having a trial on this, on these two
17 charges that were pending. Do you feel like you've had an
18 adequate period of time to discuss all of your different
19 options with Mr. Dixon, here, today?

20 THE DEFENDANT: Yes.

21 THE COURT: And has he been able to answer any and all
22 questions that you've had concerning it.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. And you understand that what is

1 involved in the agreement, today, would be the 48 hours that
2 you would already been given credit for, but then you still
3 have the costs of \$300 which bond would apply to, so in
4 essence, this would close it?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Do you have any questions about any of
7 that?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Knowing that to be true, do you wish to go
10 forward and plead guilty to the Class A Misdemeanor of --
11 offense of resisting a peace officer?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Factual basis, Mr. Sams?

14 MR. SAMS: Your Honor, if this case proceeded to trial,
15 the State would present evidence that on the date that is
16 listed in the charging document -- uhm -- the Elgin Police
17 Department had a search warrant -- uhm -- based upon a
18 confidential informant to search a residence that the
19 Defendant, the evidence would show, was a resident of. They
20 went there at a point in time when the Defendant was not
21 there. They did find evidence there of a weapon there, and
22 the Defendant giving them probable cause to arrest the
23 Defendant for a crime -- uhm -- not just because of that but
24 because of his past criminal history, Judge, based upon that

1 probable cause and attempting to find the Defendant, they
2 found him. He was not at the residence at that time, they
3 found him at another place in Elgin, and tried to place him
4 into custody based upon that probable cause that they
5 believed that they had and at that point in time -- uhm --
6 the Defendant struggled with the police officers as they
7 attempted to place him in custody to take him to the Elgin
8 Police Department and -- for further questions.

9 MR. DIXON: Judge, for the purposes of this plea, we'd
10 stipulate that Officers would testify consistent with that
11 proffer.

12 THE COURT: Okay. Mr. Martinez, how far in school have
13 you gone?

14 THE DEFENDANT: College.

15 THE COURT: Okay, degree?

16 THE DEFENDANT: Yes.

17 THE COURT: What I'm showing you is a plea of guilty to
18 the Class A Misdemeanor charge, resisting a peace officer,
19 sir, and there is a signature at the bottom, is that your
20 signature?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And did you read this document before you
23 signed it?

24 THE DEFENDANT: Yes.

1 THE COURT: Did you have an adequate opportunity to
2 discuss it with your attorney, Mr. Dixon?

3 THE DEFENDANT: Yes.

4 THE COURT: Was he able to answer any questions that you
5 have concerning it?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand this document?

8 THE DEFENDANT: Yes.

9 THE COURT: And has anyone forced you or do you feel
10 forced in any way to plead guilty to this new charge?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Has anyone promised you anything in exchange
13 for your plea of guilty that has not been stated in open
14 court before me, this morning?

15 THE DEFENDANT: No.

16 THE COURT: Are you under the influence of any illegal
17 substance or alcohol at this time?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Are you on any medication?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Do you hold a prescription for any medication
22 that you're choosing not to take?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Is it fair to say that you know what you're

1 doing?

2 THE DEFENDANT: Yes.

3 THE COURT: You wish to go forward?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Criminal history, Mr. Sams?

6 MR. SAMS: In 92-CF-1971, the Defendant was convicted of
7 attempted first degree murder, was sentenced to 11 years in
8 the Illinois Department of Corrections. Also that year --
9 uhm -- before that happened -- uhm -- he did have three
10 battery charges in which he received supervision for. In
11 '93, while awaiting sentencing on the attempt charge, it
12 shows another battery in which he received a conviction for;
13 and that's all the State's aware of at this point in time.

14 THE COURT: Mr. Dixon, do you take any issue with that
15 criminal history recitation?

16 MR. DIXON: No, Your Honor.

17 THE COURT: Mr. Martinez, based on your plea of guilty to
18 the criminal offense and the adequate factual basis that the
19 State set forth for that charge, I am going to accept your
20 plea. I find that you're giving it freely and voluntarily,
21 and with full knowledge of the potential consequences and
22 penalties associated with your plea of guilty to this charge.
23 So understand that a conviction enters on that Class A
24 Misdemeanor, Judgment will enter as has been outlined here on

1 the record, today.

2 Today's order is considered final and
3 appealable so what that means is if you to wish to appeal,
4 first what you would have to do is file a written Motion
5 before me within 30 days and in that Motion you would have to
6 state every reason why you would be seeking to withdraw your
7 plea of guilty and vacate that Judgment, here, today, and
8 understand that any reason not stated in that written Motion
9 would be deemed waived for purposes of appeal. Now if I were
10 to grant your written motion what happens then is that we
11 would set this matter for trial. Any count or charges or
12 cases that have been dismissed out pursuant to the agreement
13 could possibly be reinstated at the request of the State at
14 that time. If I deny your written Motion, you would still
15 have 30 days from the date of my denial to appeal to a higher
16 court, the Appellate Court, and if you could not afford an
17 attorney, one would be appointed to represent you and and you
18 would be given a written transcript from this morning so you
19 knew what everybody said here today; and those are your
20 appeal rights, here, sir.

21 First of all, do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you have any questions about them.

24 THE DEFENDANT: No, ma'am.

1 THE COURT: Any questions about anything?

2 THE DEFENDANT: No, ma'am

3 THE COURT: Okay. Mr. Martinez, thank you. Good luck,
4 sir.

5 THE DEFENDANT: Thank you.

6 MR. SAMS: And Judge, just for the record, there was a
7 gun that was confiscated as a part of the felony case. It's
8 my understanding that the Defendant nor the homeowner are
9 claiming ownership, so it is going to being destroyed.

10 THE COURT: Okay. Mr. Dixon?

11 MR. DIXON: No objection.

12 THE COURT: All right. So ordered. Thank you, very
13 much.

14 MR. DIXON: Thank you, Your Honor.

15 (Which were all the proceedings
16 had at the hearing of the
17 above-entitled case, at the
18 time and place hereinbefore
19 set forth.)

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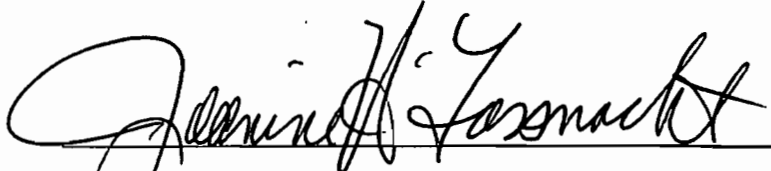
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STATE OF ILLINOIS)

) ss:

COUNTY OF K A N E)

I hereby certify that I reported
stenographically the proceedings had at the hearing of the
above-entitled cause, and that the above and foregoing is a
true and correct transcript of my stenographic notes so taken
to the best of my ability, at the time and place hereinbefore
set forth.


Official Court Reporter
State License No. 84-2232

16th Judicial Circuit of Illinois

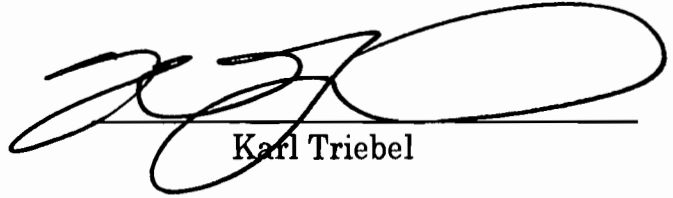
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT

I, KARL TRIEBEL, being first duly sworn upon oath, depose and state that the following is true to the best of my personal knowledge and belief, and that if called to testify I would be competent to testify to the facts stated herein:

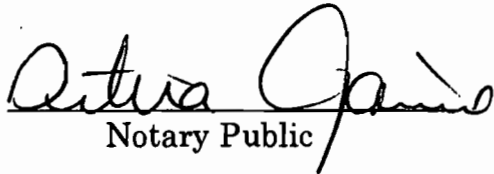
1. I am an Assistant Attorney General in the Statewide Grand Jury Bureau of the Illinois Attorney General's Office. Prior to October 2013, I was an Assistant Attorney General in the Criminal Appeals Division.
2. I represented the State of Illinois before the Illinois Supreme Court in *People v. Martinez*, 2013 IL 113475.
3. Primary responsibility for representing the State before this Court in *Martinez v. Illinois*, No. 13-5967, was transferred to Assistant Attorney General Eric Levin when I moved to the Statewide Grand Jury Bureau.
4. On May 30, 2014, I spoke to an attorney with the Illinois State's Attorney's Appellate Prosecutor, whose office handled this matter in the Illinois Appellate Court. He informed me that the charges at issue in these appeals had previously been dismissed by the Kane County State's Attorney's Office.
5. On that same date, I forwarded this information to Illinois Solicitor General Carolyn Shapiro, Criminal Appeals Division Chief Michael Glick, and Eric Levin.

FURTHER AFFIANT SAYETH NOT.



Karl Triebel

SUBSCRIBED and SWORN to before
me this 20th day of June, 2014.



Notary Public



In the Supreme Court of the United States

ESTEBAN MARTINEZ, PETITIONER,

v.

ILLINOIS, RESPONDENT.

CERTIFICATE OF FILING AND SERVICE

The undersigned, a member of the Bar of this Court, certifies that, in compliance with Rules 29, 33.2, and 44, she caused to be filed an original and ten copies of respondent's **Petition for Rehearing** with the Clerk, Supreme Court of the United States, Washington, DC 20543, and that he also caused to be served one copy of the same to:

Debra Salinger
Office of the State Appellate Defender
203 North LaSalle, 24th Floor
Chicago, Illinois 60601

by depositing the same in the United States mail box at 100 West Randolph Street, Chicago, Illinois 60601, on this 23rd day of June 2014, first-class postage prepaid and addressed.

All parties required to be served have been served



Carolyn E. Shapiro
Counsel for Respondent