**STATE OF ILLINOIS**

**IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT**

**COUNTY OF DUPAGE**

PEOPLE OF THE STATE OF ILLINOIS )

PLAINTIFF, )

)

) CRIMINAL

VS ) No. 01 CF 1864

)

)

MICHAEL ALPHONSO )

DEFENDANT. )

**MOTION IN LIMINE 3**

**REGARDING ESCAPE**

NOW COMES the Defendant, MICHAEL ALPHONSO, by Defendant's attorney, Robert A. Miller, and moves this Court to suppress as evidence herein any and all statements and regarding an alleged attempted escape by the Defendant. In support, the Defendant states as follows:

1. The Defendant was arrested for the offense of Murder, among other offenses.

2. That on September 16, 2004, the Defendant was incarcerated in the Harris County Jail, in Harris County, Texas.

3. That on September 16, 2004, authorities of the Harris County Jail determined that the Defendant had taken a substantial step toward escaping from their facility. (See Discovery page 1786 and 1787)

4. Evidence of escape or attempted escape of an accused is admissible as a fact raising a presumption of guilt of the crime charged (People v. Harris (1972), 52 Ill.2d 558, 288 N.E.2d 385.)

5. At the time of the alleged offense, the Defendant was being investigated for two murders, and had been using a false name in Mexico. Therefore, evidence of an attempted escape would not tend to prove or disprove any material element of the charge now before the Court, and hence, should be excluded. However, contrary to this position the court in People v. Sheridan (1977), 51 Ill.App.3d 963, 10 Ill.Dec. 34, 367 N.E.2d 422, cert. denied (1978), 435 U.S. 975, 98 S.Ct. 1622, 56 L.Ed.2d 68; stated that evidence of escape or attempted escape of an accused is admissible as a fact raising a presumption of guilt of the crime charged notwithstanding the fact that the accused is being held on more than one charge.

6. The fact that defendant is being held on more than one charge should only go to the weight of the inference to be drawn from the fact of the escape attempt since the defendant may offer any proof which would explain the circumstances surrounding his escape or escape attempt" (People v. Wilson (1980), 87 Ill.App.3d 693, 698, 42 Ill.Dec. 729, 733, 409 N.E.2d 344, 348; Sheridan, 51 Ill.App.3d at 967, 367 N.E.2d at 425).

7. The Defendant asserts that admitting such speculative evidence requires a mandatory presumption to satisfy the element of relevance.

8. The Defendant further asserts that the introduction of such evidence shifts the burden to the Defendant to explain whether such evidence is relevant.

9. Thus, under Illinois law, "all mandatory presumptions are now considered to be per se unconstitutional. People v. Pomykala, 203 Ill.2d 198, 271 Ill.Dec. 230, 784 N.E.2d 784 (2003)

10. Use of a mandatory presumption in a criminal case is such a defect in that it impermissibly shifts the burden of proof. People v. Jordan, 218 Ill.2d 255, 300 Ill.Dec. 270 (2006).

9. The Defendant further states that the nature of Defendant's state of mind would be so speculative, that the prejudicial effect of entering such evidence into evidence outweighs its probative value.

WHEREFORE, the Defendant asks that this Court prohibit the State from introducing any as evidence herein any and all statements and regarding an alleged attempted escape by the Defendant.

MICHAEL ALPHONSO, Defendant

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Robert A. Miller, His Attorney

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