**STATE OF ILLINOIS**

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

**COUNTY OF DU PAGE**

PEOPLE OF THE STATE OF ILLINOIS, )

PLAINTIFF, )

) CRIMINAL

VS ) No. 01 CF 415

)

JOYEL JOSEPH )

DEFENDANT. )

**AMENDED**

**MOTION FOR NEW TRIAL**

NOW COMES the defendant, JOYEL JOSEPH, by his attorney, Robert A. Miller, Public Defender, pursuant to Illinois Compiled Statutes, Chapter 725, Section 5/116-1, and moves the Court for the entry of an order setting aside the verdict of the Court returned on September 30, 2005, and granting a new trial for the following reasons:

1. That the Court allowed the State to introduce the statement of the deceased Xavier Malayil, that the Defendant was trying to kill him. Said statement was introduced as a spontaneous declaration. No evidence was presented to establish the type of startling event, how much time had elapsed since the startling event, and therefore the foundational requirements for admission were not met.

2. The Court allowed Officer Giancarlo to testify as substantive evidence the out of court statements of Joseph Joseph. Such testimony included the time Joseph Joseph had returned home on February 6, 2005 and the activities occurring in the early morning of February 7, 2005 (opening garage door for the defendant to enter). Defendant contends that such testimony should have only been introduced for impeachment purposes, if admitted at all. Joseph Joseph did not deny making the statement to Officer Giancarlo, but instead stated that he may have provided such statement.

3. The State was allowed to ask Joseph Joseph, Jeisy Joseph and Sundararajan Sadasivan whether the defendant had ever stated that he was defending himself from Xavier Malayil during the homicide. A witness' failure to state a particular fact under circumstances rendering it incumbent or likely to state such a fact, may be shown to discredit the witness' testimony as to such fact. See People v. Morley, 287 Ill.App.3d 499, 678 N.E.2d 1235, 223 Ill.Dec. 104 (1997). The Defendant was not in a position rendering the recitation of exculpatory facts likely.

4. The Court erred in denying the defendant's previously litigated Motion to Suppress Statements, and allowing said statements to be introduced by the State in their case in chief. The defendant hereby incorporates by reference his previously filed and litigated Motion to Suppress Statements as support for this allegation of error.

5. That the verdict is contrary to the law and to the evidence.

6. That the State did not prove the guilt of the defendant beyond a reasonable doubt.

7. That the Court erred in denying defendant's motions for a directed verdict of not guilty at the close of the State's evidence, and at the close of all the evidence.

8. That the Court erred in admitting into evidence improper, irrelevant and incompetent evidence offered by the State over objections of the defendant.

9. That the Court erred when it sustained objections made by the prosecutors to questions asked by defendant's counsel.

10. The Court erred when it overruled objections made by defendant's counsel to questions asked by the prosecution.

Such other grounds and each and every error as may appear from the report of proceedings of the trial, which is not presently available to defendant or his counsel.

JOYEL JOSEPH, Defendant

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

Robert A. Miller, His Attorney

Public Defender

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