**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. 04 CF 2319

)

LAURENCE E. LOVEJOY )

DEFENDANT. )

**SECOND SUPPLEMENTARY MOTION FOR A NEW TRIAL, FOR JUDGMENT N.O.V., FOR A NEW SENTENCING HEARING, AND/OR FOR A SENTENCE OTHER THAN DEATH**

NOW COMES the defendant, LAURENCE E. LOVEJOY, by and through his counsel, ROBERT MILLER, DuPage County 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 jury returned on February 6, 2007, for judgment n.o.v., for a new sentencing hearing, and/or for a sentence other than death, for the following reasons:

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

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

3. 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.

4. That the Court erred in refusing to give certain instructions to the jury, submitted by the defendant, and as reflected by the record.

5. That the Court erred in giving certain instructions over defendant's objections, and as reflected by the record.

6. That the Court erred when it permitted the prosecutor to ask numerous and continuous leading and suggestive questions of each of the State's witnesses over and above the objections made by the defendant's attorney, all to the prejudice of the defendant..

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

8. That the verdict is the result of insufficient deliberation.

9. That the verdict is the result of the passion, bias and prejudice of the jury against the defendant

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

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

12. The Court erred in denying the Defendant's motion for the appointment of a psychologist to evaluate the Defendant's fitness on January 16, 2006.

13. The Court erred in denying the Defendants following Motions In Limine:

A. TO PRECLUDE TESTIMONY RE: STAY AWAY ADMONITION

B. TO PRECLUDE TESTIMONY RE: ERIN JUSTICE'S ALLEGATION TO LADARIOUS BANKHEAD THAT A RAPE HAD OCCURRED

C. TO PRECLUDE TESTIMONY RE: ERIN JUSTICE'S ALLEGATION TO LAWANDA BANKHEAD THAT A RAPE HAD OCCURRED

D. TO PRECLUDE TESTIMONY RE: DEFENDANT'S ALLEGED PHONE CALL TO CANCEL VET APPOINTMENT

E. TO PRECLUDE TESTIMONY RE: VALERIE JUSTICE'S CONVERSATION WITH DEFENDANT CONCERNING THE VET APPOINTMENT

14. That on February 21, 2006, Judge Bakalis erred in denying the Defendant's Motion For Substitution Of Judge For Cause. Defendant, personally, continues to allege that Judge Creswell was biased against the defendant.

15. The Court erred in granting the State's Motion to Admit other crimes evidence, on March 14, 2006.

16. The Court erred in granting the State's Motion to Admit Victim's out-of-court statements to treating medical personnel, on March 14, 2006.

17. The Court erred in granting the State's Motion to preclude evidence of Victims prior allegations, on March 14, 2006.

18. The Court erred in granting the State's Motion to Declare a Forfeiture of the Defendant's Right To Cross Examine the Victim, under the Doctrine of Forfeiture, on March 14, 2006.

19. The Court erred in granting in part and denying in part the State's Motion to preclude evidence that a third party committed the offense, on June 8, 2006.

20. The Court erred in denying the Defendant Laurence Lovejoy's pro se multiple requests for substitute counsel.

21. The Court erred in finding that the Defendant had forfeited his right to proceed pro se, on September 8, 2006.

22. The Court erred in denying the defendant's Motion to Strike State's Notice of Intent to Seek Death on January 9, 2007.

23. The Court erred in denying each and every motion filed by the defense seeking to have the Illinois Death Penalty declared Unconstitutional.

24. The Court erred in allowing State's Expert Tamara Camp testify to an opinion that the alleged foot print of the Defendant was left in blood. Said opinion is contrary to her disclosed opinion, and any conditional opinions were required to be disclosed pursuant to Supreme Court Rules. Such opinions include the following as well as those reflected in the transcript of the proceedings:

A. Allowing and not striking her undisclosed opinion that the negative presumptive

blood result on the tile was not conclusive and that the previous reagent (LCV)

could have consumed any blood that had been present.

B. Allowing the State to rehabilitate Camp via a prosecution pleading from an

unknown source, such pleading being hearsay and its use being a violation of

Crawford v. Washington.

C. Denying a short continuance for the defense to try to contact an expert to rebut Camp's surprise opinion.

D. Denying the defense motion to re-open in order to present available expert testimony which, as shown in an offer of proof, refuted Camp's testimony.

E. Not striking the Notice of Intent to Seek Death despite violation of Supreme Court Rule 416 which requires prosecutors to consult with lab personnel before trial, tender all opinions to the defense and certify compliance with Rule 412

25. The Court erred in allowing the admission through Dr. Harkey of toxicology lab hearsay, which was produced by the lab in anticipation of the instant litigation and is therefore testimonial and not an Illinois hearsay exception, in violation hearsay rules and Crawford v. Washington

26. The Court erred in erroneously allowing the qualification of Leroy Keith as an expert on fabric pattern impressions despite lack of adequate training and experience.

27. The Court erred in denying the defendant's motion to voir dire on Illinois Constitutional provisions, Article I, Section 11, requiring all punishments to be determined in light of the seriousness of the offense and with the objective of restoring the offender to useful citizenship. In addition, the Court erred in denying the defendant's tendered jury instruction on the same provision.

28. The trial court erred by denying Laurence Lovejoy’s motion for a separate sentencing hearing on the issue of whether the crime was exceptionally brutal or heinous, indicative of wanton cruelty

29. The prosecutor erred by stating in opening that there was “no explanation” for the defendant’s footprint found in blood at the crime scene.

30. The prosecution erred by stating in opening, as evidence against Laurence Lovejoy, that Valerie Justice had immediately named Laurence Lovejoy as Erin Lovejoy’s possible murderer; and the prosecution compounded the error by bringing out before the jury that the police had immediately gone to speak with Laurence Lovejoy after speaking with Valerie Justice, and had not gone to speak with anyone else.

31. The trial court erred by refusing to give defendant’s instruction which included the statement that there is a presumption that the murder was not exceptionally brutal or heinous, indicative of wanton cruelty.

32. The trial court erred by refusing to give defendant’s instruction defining reasonable doubt.

33. The trial court erred by refusing to give defendant’s instruction on the testimony of expert witnesses.

34. The trial court erred by refusing to give defendant’s instruction on the testimony of police officers.

35. The trial court erred by granting the State’s motion in limine with respect to Shamika Ballard, before trial and denying the defense’s motion to reconsider during trial.

36. The prosecutor erred in closing argument at the sentencing phase by arguing that if you want mercy you must do mercy unto others; and by stating this sentiment as “the rule.”

37. The prosecutor erred in closing argument at the sentencing phase by arguing that Laurence Lovejoy should be sentenced to death because of the impact of his actions on women whom he had allegedly fought with or molested, other than Erin Justice.

38. The Court erred in denying the defendant's motion to strike the Notice of Intent to Seek Death where the State attempted to list two previously undisclosed experts who allegedly reviewed the opinions of Leroy Keith, long after signing a certificate of compliance pursuant to Rule 416

39. The Court erred in denying the defendant's motion to excuse for cause a potential juror who was a retired deputy sheriff.

40. The Court erred in denying the Defendant's Motion for additional peremptory challenges after the defendant exhausted all allotted peremptory challenges, and the request for excusal for cause of a potential juror was denied.

41. The Court erred in denying the Defendant's Motions to have certain jurors excused for cause for the reasons stated in the record.

42. The Court erred in denying the Defendants attempt to elicit testimony concerning the canine sniff of the Defendant's van the day following the murder, and the fact that said canine did not alert for the presence of blood.

43 The Court erred in denying the Defendant's Motion to Exclude Witnesses by allowing Edreick Justice and Valerie Justice to remain in the courtroom throughout the proceedings while denying the Defendant's sister (Michele Clark) and the Defendant's exwife (Veeda Lovejoy) the opportunity to remain in the courtroom.

44. The trial court erred by denying Laurence Lovejoy’s motion for a mistrial and to restart jury selection after Laurence Lovejoy was present before the jury with a yellow wristband on his arm. Defendant believes that despite his wearing of street clothes, the wrist band, which was clearly visible to jurors, identified the Defendant as a jail inmate.

45. The Court erred in denying the following Motions in Limine, which were made following opening statements:

A. Evidence regarding whether the Defendant and the victim "got along" before her murder.

B. Evidence that the defendant was perceived as "not real kind"

C. Writings by the Victim that she had knowledge of DNA testing

D. Evidence that Valerie Justice had stated the defendant was the first person who "came to mind" as being responsible for the death of Erin Justice.

46. The Court erred in denying the defendant's motions to preclude evidence from

being viewed by the jury that was graphic, more prejudicial than probative,

cumulative, and not otherwise admissible.

47. The court erred by admitting evidence of Erin Justice's last telephone message over objection, which went beyond any permissible victim-impact evidence.

48. The court erred by allowing the State to cross-examine Dr. Dawkins on Laurence Lovejoy's answers on the MMPI .

49. The court erred, and violated Crawford v. Washington, by allowing the introduction via hearsay of the toxicology reports on the analysis of Erin Justice's blood; and this error was particularly harmful with respect to the eligibility phase of the trial.

50. The court erred by initially refusing to let Dr. Dawkins' report and her test results to go back to the jury.

51. The court erred by denying the defendant's request for a continuance during trial due to the defendant's suffering from a migraine headache during the trial. Defendant was unable to meaningfully participate in the trial during that period, and even fell asleep, thereby prejudicing the defense.

52. At various times during pretrial proceedings, the defendant was wrongfully ejected from the courtroom depriving him of his Constitutional Right to be present for all proceedings.

53. The court erred by not dismissing the entire jury pool when it was learned that an excused juror had returned to the jury commission and had discussed jury selection matters, thereby tainting the jury pool.

54. The court erred by not granting the Defendant's personal, pro se pretrial motions, including the allegation that members of the Sheriff's Department had confiscated a communication authored by the defendant and directed to his attorneys, in violation of the defendant's Constitutional Rights.

55. Defendant also claims that his rights under the Due Process Clause, as well as the 4th, 5th, 6th, 8th and 14th Amendment of the United States Constitution were violated as a result of the pre-trial and trial errors.

56. 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.

LAURENCE E. LOVEJOY, Defendant

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

Robert A. Miller, His Attorney

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