**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 2665

)

ASHWANI SHAMLODHIYA )

DEFENDANT. )

**MOTION FOR NEW TRIAL**

NOW COMES the defendant, ASHWANI SHAMLODHIYA, by his attorney, Robert A. Miller, 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 October 29, 2004, and granting a new trial 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. Defendant's final argument on this issue is that, in failing to instruct the jury *sua sponte* on Second Degree Murder, the trial court abused its discretion to do so. See [People v. Garcia, 188 Ill.2d 265, 282, 242 Ill.Dec. 295, 721 N.E.2d 574 (1999)](http://web2.westlaw.com/find/default.wl?DB=578&SerialNum=1999257119&FindType=Y&AP=&RS=WLW4.11&VR=2.0&FN=_top&SV=Split&MT=Westlaw).

5. That the Court erred in allowing the State to publish State's Exhibit 41, 69, 71, 72, 200, 201, 202, 203, 204 & 205 which were a bloody photographs of the victim, and far more prejudicial than probative.

6. That the Court erred allowing into evidence the video of the Defendant's walk-through tour of the crime scene.

7. That the Court erred in sending the video of the Defendant's walk-through tour of the crime scene back to the jury during deliberations, as it unduly emphasized the defendant's untruthful initial version of events.

8. That the Court erred in sending the video of the Defendant's walk-through tour of the crime scene back to the jury during deliberations, which resulted in additional trial evidence, otherwise objectionable, to subsequently be sent to the jury during deliberations in an effort to remain consistent, which unduly emphasized selected portions of the trial.

9. That the Court erred in sending the exhibits and transcripts back to the jury during deliberations over objections of the defendant.

10. That the Court erred in denying the Defendant's previously litigated pre-trial Motion to Suppress Statements and permitted said statements to be introduced in evidence at the Defendant's trial.

11. That the Court erred in denying the Defendant's Motion to Suppress Evidence, and admitted into evidence Defendant's clothing, samples from his body, and such other physical evidence previously litigated in Defendant's Motion to suppress Evidence.

12. That the Court erred in denying the Defendant's Motion to Suppress Evidence Seized pursuant to the various search warrants issued as previously litigated by the Defendant in his pre-trial motion.

13. That the Court erred in allowing the State's law enforcement witnesses to testify as to the Defendant's silence in response to questioning in violation of the Miranda Warnings and the U.S. Supreme Court holding in Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91.

14. That the Court erred in allowing the admission of each and every exhibit that was introduced by the State that was obtained through searches and interrogations addressed in the Defendant's pre-trial motions.

15. That the Court erred in allowing the admission of each and every exhibit that was

introduced by the State that was introduced over the continuing objection of the Defendant for those reasons preserved in the record.

16. That the Court erred in prohibiting the defense from making reference to or admitting into evidence any hearsay statement of the Defendant during the trial of this cause pursuant to the State's pre-trial Motion in limine.

17. That the Court erred in allowing the State's untimely Motion to Substitute from the Honorable Perry Thompson.

18. That the Court erred in denying the Defendant's Motion to Deny the State's request to Substitute Judge as untimely.

19. The Court erred in allowing the admission of the trial testimony of Ashwani Shamlodhiya recorded on April 16, 2004.

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

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

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

23. That the Defendant renews, and incorporates by reference, all pertinent issues identified and argued in the Defendant's previous Motion For Judgment Notwithstanding Verdict Or Alternatively, For New Trial, argued and denied on June 9, 2004.

24. That the Court erred in giving certain jury instructions over defendant's objections, including 7.01, 7.02, 26.05.

25. 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.

ASHWANI SHAMLODHIYA, Defendant

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

Robert A. Miller, His Attorney