2014 IL App (1st) 110585
No. 1-11-0585
Opinion filed March 12, 2014

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 04 CR 14191
	)	
KENNETH HOBSON,	)	The Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court, with opinion.
Presiding Justice Hyman specially concurred, with opinion.
Justice Mason specially concurred, with opinion.

OPINION

¶ 1 Following a bench trial, the trial court found Kenneth Hobson guilty of murder. The appellate court affirmed the conviction. *People v. Hobson*, No. 1-05-3944 (2007) (unpublished order under Supreme Court Rule 23). Hobson filed a postconviction petition in 2008. Court-appointed counsel filed a supplemental postconviction petition. The circuit court dismissed the postconviction petition and its supplement without holding an evidentiary hearing. On this appeal, we find that Hobson made a substantial showing that he received ineffective assistance of trial counsel. We reverse the trial court's decision and remand for an evidentiary hearing.

¶ 2 BACKGROUND

¶ 3 On October 25, 2001, Demond Williams rented a van for Hobson to use for a week. On October 27, 2001, Shaughnessy Tate died from multiple gunshot wounds on a street on the west side of Chicago. Police found two kinds of glass on the street near Tate. On October 29, 2001, Hobson brought the rented van back to Williams. The van had a broken window on the passenger side. Hobson and Williams took the van to a shop, which repaired the window. They reported to police that the glass broke during an altercation with men whose names they did not know. Hobson and Williams then returned the van to the place from which Williams rented it.

¶ 4 Two and a half years later, in May 2004, police arrested Hobson and charged him with murder. Police detective Mike Dyra talked to Travis Weston about the murder. Police spoke with Hobson's sister Valerie Harper, and Rashaan Smith, the father of Harper's children. Weston, Harper and Smith signed statements about the murder and testified before a grand jury, which returned an indictment accusing Hobson of murder. At Hobson's bench trial, the prosecution relied primarily on Williams's uncontested testimony about renting and returning the van, the testimony of Dyra about the statements Harper, Smith and Weston made to police, and the out-of-court statements and grand jury testimony of Harper, Smith and Weston.

¶ 5 Weston testified that he knew nothing about the murder. Police picked him up on a warrant in 2004, and then transferred him to Dyra's custody for questioning. Dyra told Weston that a witness had named Weston as the person who shot Tate. Dyra threatened to charge Weston with murder if he did not sign a statement police wrote out for him to sign.

¶ 6 According to the statement Weston signed, on October 27, 2001, Hobson drove a van with Derrick Rayton and his brother, Jermaine Rayton, Weston, and one other person as passengers. Hobson saw Tate and pulled up next to Tate's car. The Rayton brothers shot through the van's window at Tate. Hobson then drove to Harper's home, where they met Harper and Smith. The Raytons told Smith they shot Tate. Hobson celebrated with the Raytons.

¶ 7 Weston testified before the grand jury in accord with the signed statement. At trial, Weston explained that he signed the false statement and testified falsely to the grand jury because he feared prosecution for murder and punishment for violation of his probation, for which police had a warrant.

¶ 8 Harper testified that the Raytons and Weston came to her home on October 27, 2001. She heard one of the Raytons say, "I shot him," then she heard someone else say, "you shot right through the window." Smith told her they were talking about shooting Tate. Harper testified that during questioning in 2004, police advised her to name the Raytons as the shooters to help Hobson escape prosecution. Harper admitted that she testified to the grand jury that she heard Hobson say, "those stupid asses were shooting and they shot the windows out."

¶ 9 The prosecutor asked Harper about statements she made to police on May 11, 2004. Harper said she told police that she heard someone say, "you are all stupid asses, you shot right through the window." An assistant State's Attorney testified, without objection, that Harper told her Hobson said the Raytons shot through the van's window.

¶ 10 Smith testified that he went to Harper's home on October 27, 2001. Smith saw Hobson there, but Smith did not see the Rayton brothers or Weston. Smith admitted that he spoke to

Dyra in 2003, and he then signed a statement about the murder. Smith testified that police officers "wrote [it] down and made [him] sign it." Prosecutors elicited Smith's testimony, without objection, that according to the statement he signed, he saw Hobson with Weston and the Rayton brothers on October 27, 2001, and they said they shot Tate. Hobson exchanged high fives with the others to celebrate.

¶ 11 An assistant State's Attorney testified that he questioned Smith before the grand jury. In that testimony, Smith said he saw Hobson with a group of men who were talking about how they shot Tate. Smith said he did not hear Hobson say anything, but Hobson "was just really basically going along with what they were saying, high [fiv]ing and everybody all dancing like it was a big joke." At the trial, Smith explained that he lied to the grand jury because he hoped he would receive a lesser sentence on a pending charge if he said what police wanted him to say.

¶ 12 Dyra testified that he did not know about any warrant when he questioned Weston. Dyra swore he did not threaten to charge Weston with murder, and no one told Weston what to say about the events of October 27, 2001.

¶ 13 The trial judge expressly relied on the signed statements of Weston, Smith and Harper as substantive evidence supporting the finding that Hobson committed the murder. The court sentenced Hobson to 35 years in prison and the appellate court affirmed the judgment. *Hobson*, No. 1-05-3944.

¶ 14 Hobson filed a postconviction petition on December 3, 2008. The court appointed counsel to assist Hobson with his petition. Counsel filed a supplemental postconviction petition on April 30, 2010. Hobson argued that he did not receive effective assistance of counsel at trial because Hobson's trial attorney failed to investigate the case and failed to

object to the admission into evidence of prior inconsistent statements as substantive evidence of the content of those statements.

¶ 15 According to the documents attached to the postconviction petition, Hobson's trial attorney could have discovered that when Smith talked to police, he faced a sentence of up to 18 years on charges for drug possession. Two days after he testified before the grand jury about Hobson, he pled guilty to a lesser drug offense and received a sentence that permitted him to leave prison after 90 days. With proper investigation, trial counsel also could have presented evidence that police arrested Weston in 2004 on outstanding warrants for violation of probation, and after Weston testified before the grand jury about Hobson, Dyra released him from custody without enforcing the warrants. If Dyra had followed routine police procedures, he would have found the warrants. Moreover, the officer who arrested Weston in 2004 testified in a later proceeding that he informed Dyra about the warrants before Dyra questioned Weston. The officer's testimony flatly contradicts Dyra's testimony and lends support to Weston's testimony at trial that he lied to the grand jury in exchange for his release without prosecution for murder or violation of probation.

¶ 16 The circuit court granted the State's motion to dismiss Hobson's amended postconviction petition on grounds that Hobson failed to make a substantial showing of ineffective assistance of counsel. Hobson appealed.

¶ 17 In the brief on this postconviction appeal, Hobson's counsel raised only the issue of trial counsel's failure to investigate and present evidence impeaching Dyra and corroborating the trial testimony of Weston and Smith. The brief did not mention trial counsel's failure to object to the substantive use of Smith and Harper's statements to police. This court asked the

parties for briefs concerning the failure to object to the presentation of the prior inconsistent written statements as substantive evidence of their contents.

¶ 18 ANALYSIS

¶ 19 The State argues that this court "stepped outside of its proper role as neutral arbiter" by asking the parties to brief the issue raised in the postconviction petition but not in the initial brief of appellant. Because this case arises on appeal from the dismissal of a postconviction petition at the second stage of postconviction proceedings, we review the dismissal *de novo*. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). We must accept as true all well-pleaded facts not contradicted by the trial court record. *Pendleton*, 223 Ill. 2d at 473. If the allegations of the petition, supported where appropriate by the trial record, affidavits or other evidence, make a substantial showing of a violation of constitutional rights, the trial court must hold an evidentiary hearing on the petition. *People v. Morgan*, 187 Ill. 2d 500, 528 (1999); *People v. Towns*, 182 Ill. 2d 491, 503 (1998); 725 ILCS 5/122-2 (West 2012). To show ineffective assistance of counsel, the petitioner must show that counsel provided objectively unreasonable assistance and that the petitioner suffered prejudice due to counsel's errors. *People v. Edwards*, 195 Ill. 2d 142, 162 (2001); *People v. Enis*, 194 Ill. 2d 361, 376 (2000).

¶ 20 Notably, the *Morgan* and *Towns* courts did not say that the court needed to decide whether the parts of the postconviction petition argued on appeal make a substantial showing of a violation of constitutional rights. Instead, this court must review the entire postconviction petition and all supporting documents, in light of the trial record, to determine whether the petitioner has made a substantial showing of a constitutional violation.

¶ 21 Applying *Morgan* and *Towns*, we reviewed the trial record, the postconviction petition, and the supporting documents. In the petition and the trial record, we encountered allegations not raised in the brief on appeal, but which appeared to make a substantial showing that trial counsel committed unprofessional errors. The record showed that trial counsel failed to object to the substantive use of damaging out-of-court statements made by Harper and Smith. Because "a reviewing court does not lack authority to address unbriefed issues and may do so in the appropriate case, *i.e.*, when a clear and obvious error exists in the trial court proceedings" (*People v. Givens*, 237 Ill. 2d 311, 325 (2010)), we could address the issue on its merits. We chose instead to request supplemental briefs to allow the parties to address the issue. See *People v. Williams*, 239 Ill. 2d 119, 128 (2010); *People v. Green*, 225 Ill. 2d 612, 616 (2007); see also *People v. Feyrer*, 269 Ill. App. 3d 734, 739 (1994). We hold that we did not overstep the proper bounds of an appellate court when, upon discovering that the trial counsel committed an obvious error, we asked the parties to brief the issue. See *People v. Barghouti*, 2013 IL App (1st) 112373, ¶¶ 13-15.

¶ 22 Unprofessional Errors

¶ 23 Hobson argues that his trial counsel failed to investigate the case sufficiently, and trial counsel failed to object to the substantive use of Harper and Smith's damaging signed statements. Prosecutors presented evidence that Harper and Smith signed statements that contradicted their trial testimony, and indicated that Hobson and the Rayton brothers celebrated the shooting of Tate. Under section 115-10.1(c)(2) of the Code of Criminal Procedure of 1963, a prior inconsistent statement not made under oath in a legal proceeding constitutes hearsay, and is not admissible as substantive evidence unless the statement describes "an event or condition of which the witness had personal knowledge." 725 ILCS

5/115-10.1(c)(2) (West 2004). The prosecution sought to use the prior statements as substantive evidence that Hobson drove the van while the Raytons shot through its window at Tate. Because neither Smith nor Harper saw the shooting, they lacked the personal knowledge required to make their prior statements admissible as substantive evidence. See *People v. Simpson*, 2013 IL App (1st) 111914, ¶ 18; *People v. Fillyaw*, 409 Ill. App. 3d 302, 312 (2011); *People v. McCarter*, 385 Ill. App. 3d 919, 930 (2008); *People v. Morgason*, 311 Ill. App. 3d 1005, 1011-12 (2000); *People v. Wilson*, 302 Ill. App. 3d 499, 508 (1998); *People v. Hubbard*, 276 Ill. App. 3d 98, 106 (1995); *People v. Cooper*, 188 Ill. App. 3d 971, 973 (1989).

¶ 24 The State argues that the courts have misinterpreted section 115-10.1(c)(2) and wrongly decided *Simpson*, *Fillyaw*, *McCarter*, *Morgason*, *Wilson*, *Hubbard*, and *Cooper*. The State contends that the statute required only that Smith and Harper have personal knowledge that the Raytons said they shot Tate, and of what Hobson said, but they need not have personal knowledge concerning the truth of the statements of the Raytons and Hobson. Under the State's interpretation of the section, the "personal knowledge" requirement appears to serve no function at all, because even without that section, witnesses could not testify to any out-of-court statements if they did not hear or otherwise witness the speaker making the statement. See Ill. R. Evid. 602 (eff. Jan.1, 2011); *People v. Hobley*, 159 Ill. 2d 272, 310 (1994). We strive not to interpret a statute in a manner that makes any part of it meaningless. *People v. Perry*, 224 Ill. 2d 312, 323 (2007); *Harris v. Manor Healthcare Corp.*, 111 Ill. 2d 350, 362-63 (1986). We find the reasoning of *Simpson*, *Fillyaw*, *McCarter*, *Morgason*, *Wilson*, *Hubbard*, and *Cooper* persuasive, and we follow them. Accordingly, we find that

the trial court should not have used as substantive evidence the statements Smith and Harper signed at the police station.

¶ 25 We see no strategic purpose for trial counsel's failure to object to the substantive use of these damaging statements. We find that trial counsel provided unreasonable assistance when he failed to object to the substantive use of the evidence of Smith and Harper's statements to police. See *People v. Lefler*, 294 Ill. App. 3d 305, 311 (1998).

¶ 26 We also find no strategic purpose or other excuse for trial counsel's failure to find and present evidence that the State elicited the grand jury testimony of Weston and Smith with promises of extreme leniency on charges they faced. Trial counsel did not present evidence that a court could have sentenced Smith to as much as 18 years in prison on drug charges lodged against him before he spoke to police, and after he testified to the grand jury, he pled guilty to a lesser charge in exchange for a sentence that kept him in jail only 90 days. Trial counsel did not present evidence to corroborate Weston's testimony that police had a warrant to arrest him for violating his probation and that police released him from custody after he testified before the grand jury. Because the grand jury testimony apparently helped Weston stay out of prison, the trier of fact might find credible his testimony at trial that he told the grand jury the story police wanted him to tell, even though he actually knew nothing about Tate's murder. The testimony of Weston and Smith in other proceedings indicates that they would have willingly testified about the circumstances that led then to lie to the grand jury if Hobson's trial counsel had only interviewed them. Hobson has made a substantial showing that his trial counsel provided unreasonable assistance when counsel failed to find and present evidence about the charges Smith and Weston faced, and the favorable treatment they

received after they testified before the grand jury. See *People v. Steidl*, 177 Ill. 2d 239, 259 (1997).

¶ 27 Hobson has also made a substantial showing that his trial counsel committed unprofessional errors when he failed to impeach Dyra. See *People v. Makiel*, 358 Ill. App. 3d 102, 106 (2005). Dyra testified that he did not know that the police department had a warrant for Weston's arrest before Dyra questioned him. In support of his postconviction petition, Hobson has presented evidence that police department records show that, at the time of questioning, the police department had a warrant for Weston's arrest. According to Dyra's testimony in another trial, routine police procedures required Dyra to check for outstanding warrants before questioning Weston. Hobson has also presented a transcript of testimony from the officer who arrested Weston, who, in another proceeding, said that he told Dyra about the warrant when he transferred custody of Weston to Dyra. Dyra's mistaken testimony about the warrant, and his knowledge of that warrant when he questioned Weston, casts significant doubt on the veracity of Dyra's testimony as a whole. In particular, the trier of fact might doubt Dyra's testimony that he did not threaten to charge Weston with murder. The trier of fact might find that the corroboration of Weston's testimony about the arrest lent credibility to Weston's further testimony that he lied to the grand jury because Dyra told him police would charge him with murder if he did not tell the grand jury that he saw the Raytons shoot Tate. Hobson's counsel's unprofessional error of failing to impeach Dyra left the trier of fact with little reason to doubt Dyra's testimony and little reason to credit the testimony in court of admitted felons Weston and Smith.

¶ 28 Prejudice

¶ 29 The State claims that Hobson has not substantially shown a reasonable probability that trial counsel's errors had any effect on the outcome of the case. We disagree. The written statements Harper and Smith signed bolstered their grand jury testimony and made their testimony in court more subject to doubt. The failure to support the trial testimony of Weston and Smith, by showing how much the State did for them immediately after they testified to the grand jury, also made the grand jury testimony appear more credible than it would seem to a well-informed trier of fact. And evidence that Dyra testified falsely on the stand would substantially undercut his testimony at trial. Apart from Dyra's trial testimony, the prosecutors relied on only the prior statements of Smith, Harper and Weston, all of whom explained at trial why they signed false statements and testified falsely to the grand jury, and the evidence that Williams rented a van for Hobson two days before the shooting, and Hobson brought the van back to Williams two days after the shooting with a broken window on its passenger side. With better support for the trial testimony of Smith, Harper and Weston, the balance of credibility could shift enough to convince the trier of fact that the State failed to prove Hobson guilty beyond a reasonable doubt. We find that Hobson has made a substantial showing of a reasonable probability that he would have achieved a better result if his trial counsel had not committed unprofessional errors. See *People v. Coleman*, 183 Ill. 2d 366, 398 (1998); *Towns*, 182 Ill. 2d at 519-21.

¶ 30 CONCLUSION

¶ 31 Hobson has substantially shown that his trial counsel committed unprofessional errors by failing to object to substantive use of out-of-court statements by Smith and Harper, and by failing to discover and present at trial available evidence impeaching Dyra and showing the

extent of the favors Smith and Weston received from the State immediately following their grand jury testimony. Hobson has also substantially shown a reasonable probability that he would have achieved a better result at trial if his counsel had not so erred. Accordingly, we reverse the dismissal of Hobson's postconviction petition and remand for an evidentiary hearing on the petition.

¶ 32 Reversed and remanded.

¶ 33 PRESIDING JUSTICE HYMAN, specially concurring.

¶ 34 Ordinarily the issues as framed by the parties suffice to dispose of the appeal. This does not, however, constrain an appellate court from reaching its result on different grounds. But what about an issue developed, decided, and preserved in the trial court that a party does not advance on appeal, either by design or inadvertence? If there is a compelling reason or purpose to take up this issue, should the appellate court do so?

¶ 35 I fully concur with the majority opinion. I write separately to offer additional perspective on the appropriateness of appellate courts to independently raise and resolve an issue central to the case.

¶ 36 Not surprisingly, the perspectives of appellate judges range widely on whether, why, and when to take up an issue not advanced by a party. Nevertheless, the reality is that appellate courts regularly exercise their inherent discretionary authority to examine and reach issues that they, instead of the parties, choose. Appellate courts have long claimed this prerogative in a diverse array of matters, including, by way of example, jurisdictional issues, changes in accepted legal precedent, and "plain" or "basic" error. *Silber v. United States*, 370 U.S. 717, 718 (1962) (*per curiam*) (" 'In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no

exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings.' "); *United States v. Gutierrez-Ceja*, 711 F.3d 780, 784 (7th Cir. 2013) ("When in a criminal appeal the court of appeals notices a plain error, it can reverse even if the appellant had not drawn the error to the court's attention***."). Thus, appellate judges are not obliged to act like potted plants. Nor like automatons, following only the path laid down by the parties without deviation or interruption.

¶ 37 While the discretionary power to reach a new issue should be used with restraint, in criminal matters that restraint should be informed with due regard to the accused's right to a fair trial. See *People v. Dent*, 408 Ill. App. 3d 650 (2011) (recognizing liberty interest in postconviction proceedings). As this court recognized, a reviewing court should intervene "to achieve a just result. *** We may not avert our eyes from what is clearly before us." *People v. Gray*, 247 Ill. App. 3d 133, 147 (1993). See *Wozniak v. Segal*, 56 Ill. 2d 457, 460 (1974) ("It is a very different thing to say that a court is barred from reaching a just result***."); Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994) (dealing with the powers of a reviewing court and the scope of review, which states "In all appeals the reviewing court may, in its discretion, and on such terms as it deems just *** enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief *** at the case may require").

¶ 38 A contrary situation, which is not before us, occurs when the trial court has not heard, or has heard but not ruled, on the issue, or the appellant failed to preserve the issue for appeal, or the parties have had no opportunity for input via either additional briefing, oral argument, or both. Yet, even under these situations, courts have decided self-generated issues. Two

famous examples are *Mapp v. Ohio*, 367 U.S. 643, 673 (1961) (Harlan, J., dissenting) (noting that court overruled precedent without argument or briefing on issue), and *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 82 (1938) (Butler, J., dissenting) (same).

¶ 39 Here, the defendant presented the issue to the trial court, the trial court heard and ruled on the issue, the defendant preserved the issue for appeal, and this court gave the parties notice of the court's interest in the issue and asked for supplemental briefing. All of this assures a fair and just review by fulfilling the fundamental demands of procedural due process. *Reichert v. Court of Claims*, 203 Ill. 2d 257, 261 (2003) ("Requirements of due process are met by conducting an orderly proceeding in which a party receives adequate notice and an opportunity to be heard.").

¶ 40 The benefit of the parties' advocacy by way of supplementary briefing or oral argument, preserves the adjudicatory process. As the United States Supreme Court noted, "[w]e do not say that a court must always ask for further briefing when it disposes of a case on a basis not previously argued. But often, as here, that somewhat longer (and often fairer) way 'round is the shortest way home." *Trest v. Cain*, 522 U.S. 87, 92 (1997). Similarly, the Supreme Court acknowledged that "a court may consider an issue 'antecedent to…and ultimately dispositive of' the dispute before it, even an issue the parties fail to identify and brief," and went further, stating that the court of appeals "acted without any impropriety" by "giving the parties ample opportunity to address the issue" before making its decision. *United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 447, 448 (1993)(quoting *Arcadia v. Ohio Power Co.*, 498 U.S. 73 (1990); see *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 322 (2010) (deciding case based on new issue after court requested rebriefing and reargument).

¶ 41 An available safeguard, should the parties wish to avail themselves of it, is the petition for rehearing, as pointed out by Judge Harold R. Medina, one of the twentieth century's great federal jurists. "When all is said and done, and with due consideration for the pros and cons, the best course to pursue seems to be to go ahead and decide the case the way the court thinks it should be decided, and then wait to see what the lawyers turn up on a petition for rehearing." Harold R. Medina, *Some Reflections on the Judicial Function at the Appellate Level*, 1961 Wash. U. L. Q. 148, 152 (1961)[1].

¶ 42 The State casts undeserved aspersions on the court when it asserts the panel "stepped outside of its proper role as neutral arbiter" when supplemental briefing was requested. In making this accusation, the State condemns this court and virtually every supreme and appellate court in the country for performing their job. Contrary to the State's characterization, the well-established practice permits appellate courts to step *inside* their proper role as impartial, detached decision-makers, faithful and neutral to the law and facts. Neutrality surely would suffer were courts unable to themselves ensure their decisions are objectively correct, rational and fully informed, and consistent with the interests of justice. This is essential to the role of a neutral arbiter. *Hux v. Raben*, 38 Ill. 2d 223, 225 (1967) ("[T]he responsibility of a reviewing court for a just result and for the maintenance of a sound and uniform body of precedent may sometimes override the considerations of waiver that stem from the adversary character of our system."); *W.T. Rogers Co., v. Keene*, 778 F.2d 334, 345 (7th Cir. 1985) ("Even in an adversarial system of justice the judge is not just an umpire. He [or she] has a duty to achieve a just outcome insofar as it is within his [or her] power.").

[1] Available at http://digitalcommons.law.wustl.edu/lawreview/vol1961/iss2/3.

¶ 43 The reviewing court serves as the backstop for justice. It must, if the concept of justice is to remain a hallowed principle and not a hollow buzzword. And if not the court, then with whom does justice ultimately reside?

¶ 44 JUSTICE MASON, specially concurring.

¶ 45 I concur in the judgment of the court that this case should be reversed and remanded for a third-stage evidentiary hearing based upon petitioner's allegations that his defense counsel was ineffective for failing to investigate and present evidence at trial regarding deals the State reached with two of its witnesses on pending criminal charges and evidence regarding Detective Dyra's knowledge of an outstanding warrant on one of those witnesses. Taking the allegations of petitioner's supplemental postconviction petition as true, I agree that petitioner has made a substantial showing of a violation of his constitutional rights sufficient to warrant an evidentiary hearing.

¶ 46 I write separately because I do not concur in the court's reasoning on the additional issue raised *sua sponte*, nor do I concur in the practice of raising such issues *sua sponte*. Although reviewing courts certainly have the authority to request parties to address issues or authorities, competent counsel are in the best position to decide which of several issues raised in the trial court should be pursued on appeal. " '[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties. Counsel almost always know a great deal more about their cases than we do***.' " *Greenlaw v. United States*, 554 U.S. 237, 244 (2008)(quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring in denial of rehearing *en banc*)). As our supreme court recognized in *People v. Givens*, " 'a reviewing court should not normally search the record for unargued

and unbriefed reasons to *reverse* a trial court judgment.' " (Emphasis in original.) *People v.* Givens, 237 Ill. 2d 311, 323 (2010)(quoting *Saldana v. Wirtz Cartage Co.*, 74 Ill. 2d 379, 386 (1978)). Because the evidentiary issue raised by the court *sua sponte* is inherently fact-bound and case-specific and because competent appellate counsel elected not to raise the issue on appeal, I believe that we should be careful not to overstep the bounds of our role as neutral arbiter to request the parties to address issues they have chosen not to raise.