

No. 3-10-0514-B, *People v. Peterson*

& 33 JUSTICE CARTER, specially concurring:

& 34 I concur with the majority's judgment that reverses the circuit court's ruling, finds the eight excluded statements admissible under Rule of Evidence 804(b)(5), and remands the case for further proceedings. I write separately, however, because I do not join in several aspects of the majority's opinion, two of which I will address.

& 35 First, I do not join in the majority's first footnote (*supra* & 2, n. 1) in which it presumes that its interpretation of the *Taylor* rule was correct in the majority's previous decision (*Peterson*, 2011 IL App (3d) 100513)), and that our supreme court directed this court to vacate our decision in appeal No. 3-10-0514 and to address the appeal on the merits simply because our supreme court can do so. In its supervisory order, our supreme court merely stated the following:

"In the exercise of this Court's supervisory authority, the Appellate Court, Third District, is directed to vacate its judgment in *People v. Peterson*, case No. 3-10-0514, dismissing the appeal for lack of jurisdiction. The Appellate Court is directed to address the appeal on the merits." *People v. Peterson*, No. 112875 (Ill. Nov. 2011) (table).

Nothing in these two sentences can be construed as an approval of the majority's interpretation of the *Taylor* rule in its previous decision or, for that matter, as any explanation as to why our supreme court did what it did.

& 36 In an attempt to support its interpretation of our supreme court's supervisory order, the majority cites to three cases, none of which in fact support the majority's unsubstantiated assumptions. In all three of those cases, our supreme court provided lengthy explanations as to why it was reinstating appeals or finding jurisdiction. *Lyles*, 217 Ill. 2d at 217-20; *McDunn*, 156

Ill. 2d at 302-04; *Moore*, 133 Ill. 2d at 335-41. We were not given any such explanation.

Because we do not know the reason why our supreme court ordered us to vacate our previous decision and address the appeal's merits, I refuse to speculate and do not join in the majority's first footnote.

& 37 Second, I do not join in the *dicta* the majority has included in paragraphs 26 through 28 and the accompanying footnote 7, which merely serves as the majority's commentary on the Will County State's Attorney's actions. What the Will County State's Attorney did in this case and whether those actions were "puzzling" to the majority (*supra* & 28) is irrelevant to the disposition of this appeal.

& 38 We were instructed by our supreme court to address the merits of appeal No. 3-10-0514. Because neither of the two aforementioned matters is necessary to decide the merits of appeal No. 3-10-0514, I refuse to join in those aspects of the majority's opinion.