

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
ILLINOIS, EASTERN DIVISION

James Marshall v. City of Chicago, et al.

Marshall · No. 1:21-cv-00694 · Decided March 6, 2026

SUMMARY

The United States District Court for the Northern District of Illinois addressed a motion for protective order and a cross-motion to compel concerning inadvertently produced documents from the Cook County Public Defender’s Office. The court held that defendants could not use or disclose the clawed-back documents and ordered destruction and certification of the copies. It denied most waiver arguments but required production of portions concerning communications about the alleged coerced confession or planted evidence, along with a privilege log.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Northern District of Illinois, Eastern Division                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Jeannice W. Appenteng                                                                                                                                                                                                                                                                      |
| JURISDICTION          | United States District Court for the Northern District of Illinois, Eastern Division                                                                                                                                                                                                       |
| DECIDED               | March 6, 2026                                                                                                                                                                                                                                                                              |
| DOCKET                | 1:21-cv-00694                                                                                                                                                                                                                                                                              |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Plaintiff moved for a protective order concerning allegedly privileged documents inadvertently produced by the Office of the Cook County Public Defender. Defendants cross-moved to compel production of the documents.                                                                    |
| STANDARD OF REVIEW    | The court applied Federal Rule of Civil Procedure 26(b)(5)(B) to the claw-back dispute and exercised discretion in assessing privilege-log supplementation and waiver sanctions. It applied the substantial-need and undue-hardship standard of Rule 26(b)(3)(A)(ii) to fact work product. |
| PRECEDENTIAL VALUE    | unknown                                                                                                                                                                                                                                                                                    |
| PARTIES               | James Marshall v. City of Chicago, et al.                                                                                                                                                                                                                                                  |

## TOPICS

discovery dispute

attorney client privilege

work product doctrine

civil procedure

civil rights

## PRACTICE AREAS

civil procedure

civil rights

discovery

evidence

## QUESTIONS PRESENTED

1. Whether defendants were required under Federal Rule of Civil Procedure 26(b)(5)(B) to return, sequester, or destroy the inadvertently produced documents and refrain from using or disclosing them pending resolution of the privilege claim.
2. Whether failure to provide a privilege log waived attorney-client privilege and work-product protection over the subpoenaed documents.
3. Whether Marshall expressly or impliedly waived attorney-client privilege by making statements about his innocence, asserting an ineffective-assistance claim in post-conviction proceedings, or bringing a Brady claim in this action.
4. Whether defendants established substantial need and undue hardship sufficient to overcome work-product protection.
5. Whether documents reflecting communications concerning the alleged coerced confession or alleged planting of evidence had to be produced because Marshall's Brady claim placed those subjects at issue.

## HOLDINGS

1. Once Marshall notified defendants of the privilege claim, Federal Rule of Civil Procedure 26(b)(5)(B) barred defendants from using or disclosing the documents or information while the privilege dispute remained unresolved. Defendants were required to collect and destroy all copies and certify the destruction in writing.
2. The party producing documents in response to a Rule 45 subpoena bears the responsibility for preparing the privilege log. The CCPD, not Marshall, was responsible for logging the documents, and the CCPD's failure to produce a log did not warrant waiver because the record did not show willfulness, bad faith, or fault.
3. Marshall did not expressly or impliedly waive attorney-client privilege merely by stating that he maintained his innocence, recounting that he told counsel he was innocent, or previously asserting an ineffective-assistance claim that, on the record presented, appeared to have been withdrawn or not pursued.
4. Marshall's Brady claim placed his criminal attorneys' knowledge of the alleged coerced confession and alleged planting of evidence at issue. The CCPD therefore had to produce portions of the social-worker documents that reflected communications between Marshall and his attorney concerning those two topics, while communications concerning other topics remained privileged.
5. The limited waiver arising from Marshall's Brady claim extended to fact work product concerning communications with counsel about the alleged coerced confession and alleged planted evidence. It did

not extend to other topics, and defendants did not establish a basis for expanding production based on counsel's death or the social worker's allegedly faded memory.

#### KEY QUOTATIONS

*“Accordingly, since July 22, 2025 at the earliest, defendants were barred from using or disclosing the inadvertently produced documents and the information contained therein.” (Discussion § I)*

*“Accordingly, to the extent the CCPD documents reflect communications concerning these topics, those portions of the documents must be produced. Communications on all other topics, however, are privileged and protected from production.” (Discussion § II.B.2.c)*

*“For the reasons stated above, plaintiff's motion for protective order [145] is granted and defendants' cross-motion to compel [158] is granted in part and denied in part.” (Conclusion)*

#### FACTUAL BACKGROUND

The Cook County Public Defender represented Marshall in the criminal case underlying this civil-rights action. In response to defendants' subpoena, the Public Defender inadvertently produced notes and other documents created by a clinical social worker retained to develop mitigation evidence for Marshall's criminal case. Marshall notified defendants that the production was inadvertent and privileged, but defendants later relied on the materials in a Rule 11 safe-harbor letter. The documents concerned mitigation work and communications relating to alleged police coercion of Marshall's confession and alleged planting of evidence.

#### PROCEDURAL HISTORY

The Cook County Public Defender, which had represented Marshall in the underlying criminal case, inadvertently produced social-worker documents in response to a Rule 45 subpoena during discovery in this civil-rights action. Marshall notified defendants of the privilege claim and sought return, sequestration, or destruction of the documents. Defendants asserted waiver and substantial need and moved to compel. The court granted Marshall's protective-order motion and granted defendants' motion to compel in part and denied it in part.

#### DISPOSITION

other

#### CASES CITED

- Jenkins v. Bartlett, 487 F.3d 482, 491 (7th Cir. 2007)
- United States v. Smith, 502 F.3d 680, 689 (7th Cir. 2007)
- Sioux Steel Co. v. Prairie Land Millwright Services, Inc., No. 16 CV 2212, 2020 WL 2900834, at \*2 (N.D. Ill. June 3, 2020)
- Urban 8 Fox Lake Corp. v. Nationwide Affordable Housing Fund 4, LLC, 334 F.R.D. 149, 156 (N.D. Ill. 2020)
- RBS Citizens, N.A. v. Husain, 291 F.R.D. 209, 218 (N.D. Ill. 2013)

- Belcastro v. United Airlines, Inc., No. 17 CV 1682, 2021 WL 1531601 (N.D. Ill. Apr. 19, 2021)
- LKQ Corp. v. Kia Motors America, Inc., No. 21 CV 3166, 2023 WL 3200236, at \*5 (N.D. Ill. May 2, 2023)
- Muro v. Target Corp., 250 F.R.D. 350, 365 (N.D. Ill. 2007)
- American National Bank & Trust Co. of Chicago v. Equitable Life Assurance Society of United States, 406 F.3d 867, 877 (7th Cir. 2005)
- Cage v. Harper, No. 17 CV 7621, 2019 WL 6911967, at \*1–2 (N.D. Ill. Dec. 19, 2019)
- Lorenz v. Valley Forge Insurance Co., 815 F.2d 1095, 1098 (7th Cir. 1987)
- Patrick v. City of Chicago, 154 F. Supp. 3d 705, 711–16 (N.D. Ill. 2015)
- Powers v. Chicago Transit Authority, 890 F.2d 1355, 1359 (7th Cir. 1989)
- United States v. Buljubasic, 808 F.2d 1260, 1268 (7th Cir. 1987)
- Fujisawa Pharmaceutical Co. v. Kapoor, 162 F.R.D. 539, 541 (N.D. Ill. 1995)
- Guster-Hines v. McDonald's USA, LLC, No. 2024 WL 5457437, at \*3 (N.D. Ill. July 11, 2024)
- Beneficial Franchise Co. v. Bank One, N.A., 205 F.R.D. 212, 216 (N.D. Ill. 2001)
- Matchak v. Joliet Park District, No. 16 CV 5877, 2016 WL 11706697, at \*4 (N.D. Ill. Oct. 21, 2016)
- Silverman v. Motorola, Inc., No. 07 CV 4507, 2010 WL 2697599, at \*1 (N.D. Ill. July 7, 2010)
- Bittaker v. Woodford, 331 F.3d 715, 721 (9th Cir. 2003)
- Cantu v. United States, No. 19-CR-40066-JPG, 2022 WL 16791706, at \*1 (S.D. Ill. Nov. 8, 2022)
- United States v. Palivos, No. 00 CR 1065-5, 2010 WL 3190714, at \*7 (N.D. Ill. Aug. 12, 2010)
- Carvajal v. Dominguez, 542 F.3d 561, 566–67 (7th Cir. 2008)
- Taylor v. City of Chicago, No. 14 CV 737, 2015 WL 5611192, at \*2–6 (N.D. Ill. Sept. 22, 2015)
- Jackson v. City of Chicago, No. 03 CV 8289, 2006 WL 2224052, at \*7 (N.D. Ill. July 31, 2006)
- Cannon v. Polk County/Polk County Sheriff, No. 3:10-CV-224-HA, 2013 WL 1840343, at \*3 (D. Or. Apr. 30, 2013)
- Sandra T.E. v. South Berwyn School District 100, 600 F.3d 612, 622 (7th Cir. 2010)
- Appleton Papers, Inc. v. EPA, 702 F.3d 1018, 1023 (7th Cir. 2012)
- Walker v. White, No. 16 CV 7024, 2019 WL 1953124, at \*7 (N.D. Ill. May 2, 2019)

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