No. 126682

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- HAROLD BLALOCK, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-0295. There on appeal from the Circuit Court of Cook County, Illinois , No. 99 CR 4956. Honorable Vincent M. Gaughan, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Harold Blalock, petitioner-appellant, appeals from a judgment denying his motion for leave to file a successive post-conviction petition. The appellate court affirmed that judgment, and this Court allowed leave to appeal. An issue is raised about the sufficiency of the post-conviction pleadings.

ISSUES PRESENTED FOR REVIEW

Harold Blalock's successive post-conviction petition alleges that newly discovered evidence corroborates that his 1999 confession was the product of police torture, and that its use at his trial violated his due process rights.

1. Did Blalock's police torture claim satisfy the "cause" prong of 725 ILCS 5/122-1(f)'s cause-and-prejudice test, where it was corroborated by evidence that did not exist during his initial post-conviction proceedings in 2003?

2. Did Blalock's police torture claim satisfy the "prejudice" prong of 725 ILCS 5/122-1(f)'s cause-and-prejudice test, where his new evidence showed that two officers who interrogated him James O'Brien and John Halloran have been accused of physically abusing dozens of other suspects between 1989 and 2002?

STATUTE INVOLVED

725 ILCS 5/122-1 (Petition in the trial court)

* * *

(f) Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure.

For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.

STATEMENT OF FACTS

On January 23 and 24, 1999, Chicago Police Detectives James O'Brien, John Murray, and John Halloran interrogated 24-year-old Harold Blalock about the shooting death of Veronica Riley (Supp. TR. 6-7, 25, 28, 173; E17, 70-71). O'Brien also interrogated Tara Coleman, a purported eyewitness to Riley's shooting (Supp. TR. 175-77). During those interrogations, Coleman signed a written statement implicating Blalock in the shooting (TR. E14,15, 27-28, 34-35), which she later recanted. After about five hours of interrogation, around 4:00 a.m., Blalock signed a written confession that he fired a gun in Riley's direction (TR. E19-20, E103, 107). He was charged with first degree murder and other offenses (TC. 9-14).

PRETRIAL MOTION TO SUPPRESS ALLEGING POLICE TORTURE

During a jail visit, Blalock told his public defender that the police physically abused him to obtain his statements (C. 131). A few months later, Blalock moved to suppress those statements, arguing that they "were obtained as a result of physical coercion illegally directed against [him] by the detectives." Blalock's motion alleged that O'Brien, Murray, and other "law enforcement officials" "slapped, yelled at, threatened [him,] and cut his finger nails" (TC. 86-87).

At the suppression hearing, Murray testified that he first interrogated Blalock with Halloran, and did so later with O'Brien (TR. A6-14, 24-25). He denied observing or participating in any physical abuse, and testified that he was present for every

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The transcripts and common law records for the trial will be referred to as "TR," "Supp. TR" and "TC." The first successive post-conviction proceedings (which also refers to the initial post-conviction petition, for which no direct appeal was filed) will be "PR," "Supp PR," "PC," and "Supp. PC." The instant successive post-conviction proceedings will be "R" and "C."

interview ("[t]o [his] knowledge") (TR. A22-23, 34-35). The court denied Blalock's motion and proceeded to trial (TR. A36-38).

JURY TRIAL

At trial, the State called convenience store manager Hazem Mizzat, Officer Jeff Carter, and Coleman to testify about the shooting. It also presented Halloran, O'Brien, and Assistant State's Attorney Clarissa Palmero to testify about Coleman's and Blalock's interrogations and pretrial statements.

Blalock and eyewitness Nikki Goodman testified for the defense. Blalock testified that he acted in self-defense when a gunman named Rasu fired at him after an argument, and that the authorities pressured him to make a false statement.

The shooting and initial police investigation

Mizzat testified that on the day of the shooting, he heard "about three" gunshots and dove to the ground. When the shooting stopped, he saw Riley on the floor (Supp. TR. 28-31). Officer Carter was nearby in his car when he heard "[a]bout four or five" gunshots and drove towards 51st Street (Supp. TR. 36-39, 59). After he arrived, he went into the convenience store and saw Riley being attended to by paramedics (Supp. TR. 41-44). Carter's investigation revealed that the shots may have come from a "seventies Chevy Impala" (Supp. TR. 55). Investigators later found green, brown, and camouflage coats with bullet holes in the store, but no firearms evidence (Supp. TR. 45, 150, 160-62, 165-69).

Coleman denies the statement she gave to O'Brien

O'Brien interrogated Coleman, a purported witness to the shooting. He testified that Coleman said Blalock fired a gun at "Rasu" and others from a vehicle

about ten or fifteen minutes after an argument in a barbershop (TR. E14-15, 41). He also said that Coleman identified a two-door Pontiac Sunbird that Halloran removed from Marcus Carpenter's residence as the vehicle Blalock allegedly fired from (TR. E24, 76) not a "seventies Chevy Impala" (Supp. TR. 55).

ASA Palermo testified that O'Brien was present when Coleman gave her an account of the shooting (TR. E86). Palermo said that when she spoke to Coleman alone, Coleman said she was treated "fine" by the police and that her statement was voluntary (TR. E87-88). Palermo spoke to Coleman again at about 1:30 a.m., and drafted the handwritten statement that Coleman signed (TR. E94-100, 116).

According to Coleman's statement, she saw Blalock and three men argue in a barbershop, after which she observed Blalock get into the passenger seat of a small, black two-door Pontiac Grand Am. A few minutes later, Coleman heard gunshots, looked outside, and allegedly saw Blalock shooting a gun out of the window of the same vehicle (TR. E98-99). The State presented Coleman's similar grand jury testimony, as well (TR. E53-61). Neither Coleman's handwritten statement nor her grand jury testimony mentioned that "Rasu" was one of the men fighting with Blalock, nor their personal relationship.

At trial, however, Coleman denied seeing who fired the gunshots, denied speaking to O'Brien or identifying Blalock as the shooter, denied identifying a Pontiac, and recanted ASA Palermo's handwritten statement (Supp. TR. 61, 73-74, 81-104). She also admitted that Rasu was the father of one of her children (Supp. TR. 61, 138-39, 184-85). The parties stipulated that about nine months after the incident, Coleman told another person that Rasu and Banks got into a fight with Blalock at the barbershop (R. F3).

Halloran, O'Brien, and Murray obtain Blalock's inculpatory statement

Twenty-four year-old Blalock was arrested at 9:30 p.m. on January 23, 1999 (TR. E11). At about 4:00 a.m., after several hours of interrogation, Blalock signed a handwritten statement (TR. E107). Halloran, O'Brien, and Murray participated in Blalock's interrogation. Halloran and O'Brien denied that Blalock was ever handcuffed to the wall, although O'Brien described the interrogation room as having "handcuff shackles on the wall" (TR. E17, 70-71).

Murray and Halloran began Blalock's interrogation around 10:00 p.m. (TR. E11, 70). Halloran testified that when he questioned Blalock, they first talked about Blalock's brother, who had been involved in a different shooting (TR. E72, 77). When Halloran asked about Riley, Blalock denied any knowledge of that shooting and said he was at his girlfriend Patricia's house. Halloran paid Patricia a visit and then told O'Brien that she failed to confirm Blalock's alibi. Halloran denied participating in any more interrogations (TR. E72-74, 77, 79-80).

O'Brien testified that he developed his own idea of how the shooting took place before he and Murray interrogated Blalock. According to O'Brien, Blalock made an inculpatory statement after he was informed that the police broke his alibi and that Coleman identified him as the shooter (TR. E18-19, 42).

ASA Palermo testified that Murray was present when she first interviewed Blalock. Palermo said that when she spoke to Blalock alone, he said he was treated "fine" by the police and that his statement was voluntary (TR. E88-90). Palermo left to speak to Coleman again, but returned at about 3:00 a.m. on January 24, 1999, to draft Blalock's handwritten statement, which he signed an hour later (TR. E101-103). Murray was present at that time (TR. E105-106). Blalock was

not given the chance to write out a statement himself (TR. E42-43).

According to Blalock's statement, he was speaking on the phone and talking to Marcus Carpenter in the barbershop when Rasu and Banks entered. They argued about a shooting involving Blalock's brother and Rasu's friend Edward Riley, after which Rasu and Banks left. About a minute later, Carpenter and Blalock exited the barbershop and got into Carpenter's vehicle. Carpenter handed Blalock a handgun (TR. E108-10, 192).

The statement asserted that when Carpenter started driving, Blalock fired three shots at Rasu from the vehicle, and Rasu hit the ground. As the vehicle continued west, Blalock also fired at Banks and saw three women about a few feet away, near the corner store. The women wore blue, red, and "loud" jackets, respectively. Carpenter took the gun back, dropped Blalock off, and Blalock went to Patricia's house. The statement relates that Blalock was treated well by the police, that he was not threatened or promised anything for his statement, and that his confession was free and voluntary (TR. E109-11).

ASA Palermo denied that Blalock told her someone else shot at him, denied calling him a liar, and denied confronting him with Coleman's or Carpenter's statements (TR. E263-65). She admitted she had been working 12-hour shifts, could interview 20 suspects a week at that time, did not take any notes apart from the statement, and did not remember everything that was said (TR. E266-68).

Blalock takes the stand to testify that he acted in self-defense and was pressured into making a false inculpatory statement

Blalock testified that when he left the barbershop after an argument with Rasu, he agreed to take his friends Nikki Goodman and Virginia Taylor to a Chinese

restaurant. Carpenter drove Blalock to 50th and May to pick up his vehicle, a red two-door Cadillac. Blalock drove the Cadillac back to Goodman and Taylor and parked near the convenience store (TR. E195-97).

After Blalock parked, Rasu made his way towards Blalock's car. Blalock felt like something was going to happen, so he started to pull away. When he did, Rasu fired four to seven shots at him. Blalock did not see what type of gun Rasu used (TR. E197-98, E204).

Fearing for his life, Blalock fired his .22 caliber gun back at Rasu. Blalock kept that gun because he was shot 14 times in an incident two years earlier. Blalock and Rasu fired at each other as Blalock drove away down 51st Street. The entire incident took just a few seconds (TR. E198-99).

The police left a message with Blalock's mother the next day, asking that he contact them about his brother being shot (TR. E231). Blalock made an appointment to meet with an investigator, but Detectives O'Brien and Murray, and other police officers, arrested him in front of his child's mother's home before he had a chance to go to the station (TR. E199-200).

Blalock testified that he was arrested and handcuffed to "the thing" at the police station, although he was removed during the interrogations. O'Brien, Murray, and "other detectives" interrogated him; he was sure there were more than two officers present when he was questioned. Blalock initially denied being involved in Riley's shooting (TR. E233-34, 253). Detectives told Blalock that Coleman and Carpenter identified him (TR. E238). Blalock then tried to explain that he acted in self-defense after Rasu shot at him first, but the police and ASA Palermo refused to listen and kept interrupting him (TR. E202, 239-40, 255-56). ASA Palermo

repeatedly said she did not believe him, told him he was lying, and refused to write in the statement that Rasu shot first (TR. E238, 240, 255-56).

Whenever Blalock tried to give his account, the authorities "kept coming back" to what they claimed Coleman and Carpenter were saying, to "get [him] down to pursue the[ir] story" (TR. E243-44, 255). Blalock eventually gave up and told the police the account they were "comfortable with," meaning "the story they wanted to hear." He testified that the police did not tell him exactly what to say, nor did they threaten him to say anything specific in the statement. But they gave him Coleman's story and were "persuading the issue"; they were "pursuing [him] to say what they wanted [him] to" (TR. E202, 243-46, 255).

When Palermo drafted the statement, Murray and "two other[ ]" officers were in the room. Blalock thought it was O'Brien and Halloran, but could not recall (TR. E246, 248). Blalock denied ever being left alone with Palermo, and said she only asked how he was treated after he signed the statement (TR. E241, 255-56).

Nikki Goodman testified for the defense, as well. She had briefly dated Blalock for a couple of weeks some time before the shooting (TR. E185). Goodman corroborated that Blalock left and returned in a different car to take her and a friend to get Chinese food. She testified that as she waited, she became concerned when she saw Rasu on the street he was yelling and seemingly intoxicated so she and her friend walked away. She heard gunshots, then turned and saw Rasu firing a gun at Blalock, and saw Blalock shooting back. As Rasu fired, she saw a lady "hit the wall" by the convenience store (TR. E140-43, 145). She was not sure who fired first (TR. E149, 150-51,153).

The State emphasizes Blalock's statement, and a jury finds him guilty

The State repeatedly referenced Blalock's inculpatory statement in closing and rebuttal arguments, calling it "one of the most significant pieces of evidence in this case" (TR. F7, 8, 9, 10, 11, 12, 13-15, 25, 27, 28, 60, 62, 64, 66, 67). The court instructed the jury on first- and second-degree murder, and on self-defense (TC. 119-20, TR. F77, 84-90). The jury found Blalock guilty of first-degree murder, and the trial court sentenced him to 40 years in prison (TR. F93, G22).

DIRECT APPEAL

On direct appeal, Blalock argued that the trial court erred in not instructing the jury on the mitigation elements for provocation. The appellate court affirmed Blalock's conviction and sentence (Supp. PC. 7-8). *People v. Blalock*, No. 1-00-2769 (1st Dist. 2002) (unpublished order).

PRIOR POST-CONVICTION PROCEEDINGS

On July 10, 2003, private counsel filed Blalock's initial post-conviction petition. It alleged that Blalock was actually innocent based on the affidavit of eyewitness Andre Cross, who corroborated Blalock's self-defense testimony (PC. 19-20, 34-47; Supp. PC2. 1-4). The trial court summarily dismissed the petition, finding that Blalock's actual innocence claim was "barred by the doctrine of *res judicata*," despite relying on the affidavit of a previously unknown witness (PC. 49). Private counsel neglected to file a notice of appeal.

On July 8, 2009, Blalock filed a *pro se* successive petition alleging that private counsel denied him his constitutional right to appeal from his initial post-conviction petition, which prevented him from challenging the trial court's erroneous ruling

(PC. 10, 15-32, 59). The same trial judge denied Blalock leave to file his successive petition (PR. P12), and the appellate court affirmed. *See People v. Blalock*, 2014 IL App (1st) 102685-U, ¶¶ 26-27, 35.

SUCCESSIVE PETITION ALLEGING POLICE TORTURE

On August 15, 2016, Blalock filed a successive *pro se* post-conviction petition and a motion for leave to file that petition (C. 19, 27-28). He alleged that newly discovered evidence corroborated that Officers Halloran, O'Brien, and Murray physically and mentally abused him to obtain his statement (C. 36). In particular, his new evidence showed that O'Brien and Halloran were "engaged over a course of years in the systemic mistreatment of arrested persons under their control." Had this evidence been available to him "when his motion to suppress was heard," he contended, "he would have been able to persuasively demonstrate . . . that his claims of abuse . . . were part of th[at] systemic pattern of similar misconduct." Blalock contended that "fundamental fairness and due process demand" that this new evidence be "heard in . . . court its proper context." Because it was not, his "involuntary confession [] was taken and used as substantive evidence in violation of his constitutional rights" (C. 27-28). He accordingly requested further post-conviction proceedings, a new suppression hearing, and a new trial (C. 58-59).

Blalock's affidavit describes physical abuse by O'Brien and Halloran

In his affidavit, Blalock asserted that he was handcuffed to a ring on the wall. Murray ignored him and left when Blalock asked him to loosen it. About an hour or two later, O'Brien, Murray, and Halloran all came into the room. When Blalock tried to talk about his brother's shooting, they asked him who killed the

lady at the store. Blalock said that he did not know and that he had been watching movies with his girlfriend Patricia, and the detectives left (C. 128).

About thirty or forty minutes later, the officers returned to say that his alibi was "broken." Blalock responded, "whatever I didn't have anything to do with no killing." Halloran told Blalock that a witness placed him at the scene, but Blalock had nothing to say and asked to go home. O'Brien told Blalock he could go home if he said what happened, but Blalock denied knowing anything. When O'Brien told Blalock that everyone they spoke to said that he was the shooter, Blalock denied any knowledge and swore at them. O'Brien then struck him twice in the face with his clipboard (C. 128).

Blalock continued to deny being involved in the shooting. Halloran got mad, told him that "play time" is over, called him a "mother f-cker," and then put both hands on Blalock's neck and choked him. Blalock struggled to free himself as Halloran told him he was a "f-cking gangbanger killing crackhead[,]" and that he would spend the rest of his life in jail if Halloran did not kill him first. Blalock passed out from being choked, and woke up to discover he had urinated on himself (C. 129).

Halloran returned and asked Blalock where the gun was, and Blalock again denied any involvement. Murray entered the room and asked whether he or Carpenter killed the woman. He said he knew Blalock was not a killer, he was just in the wrong place at the wrong time. Blalock said he did not know who killed the woman and asked to go home (C. 129).

Halloran asked whether Blalock would test clean for gunpowder. Blalock gave them permission to "check everything." Halloran grabbed his hand and said,

"this looks like gunpowder here." He then took a "silver thing" off of his key ring and split the nail on Blalock's pinkie finger until it started bleeding. Blalock jumped around in pain, but the officers told him to calm down and left. Blalock wrapped his tee-shirt around his finger to stop the bleeding (C. 130).

Halloran and O'Brien returned about thirty minutes later. Blalock asked to see a doctor, but Halloran refused. Blalock tried to cry out for help but Halloran repeatedly hit, slapped, and kicked him. He bent Blalock's finger back, claiming that Blalock was going for his gun. O'Brien said he would "call [Halloran] off" if Blalock started talking. Halloran grabbed his gun and held it to Blalock's head, and threatened to shoot him if he moved. Blalock told the police to kill him because he was tired of being beaten and harassed (C. 130).

Halloran kept beating Blalock and eventually told Blalock he would charge his brother with murder instead. At that point Blalock gave up and agreed to say "whatever need[ed] to be said" in a "false statement." O'Brien wanted Blalock to tell the assistant state's attorney that he got a gun from Carpenter, and was in the car shooting out the window at Rasu and Banks, and saw three women near a store (C. 130-31).

Blalock's affidavit explains why he did not testify about the abuse at trial

Blalock's affidavit asserted that he told his public defender Frank Madea about this physical abuse during a jail visit, which prompted their unsuccessful motion to suppress his statements. Madea then told Blalock that according to "all of his research," specifically "*People v. Hobley*," it would be "impossible" for Blalock to prove the police tortured him "without medical records, witness[e]s, [and/]or pict[ur]es of injuries." They accordingly decided to "withdr[a]w [his]

testimony" about the abuse (C. 131).

Blalock's post-conviction evidence shows other allegations of misconduct against O'Brien and Halloran

Blalock's petition incorporated post-2009 Torture Inquiry and Relief Commission (TIRC) database reports (C. 151-159); four affidavits from other abuse victims from 2000, 2009, and 2011 (C. 160-180); appellate court decisions from 1994, 1996, 1999, 2007, 2013, and 2015 (C. 34-42); a 2006 Report of the Special State's Attorney (C. 36); a 2001 Chicago Tribune article (C. 192), and internal affairs memos from 1988, 1992, and 1993 (C. 199-201). This evidence cumulatively describes dozens of allegations of physical abuse against Detectives O'Brien and Halloran between 1989 and 2002. The circuit court, though, denied Blalock leave to file his successive petition (C. 205).

THE APPELLATE COURT'S OPINION

The First District appellate court affirmed. *People v. Blalock*, 2020 IL App (1st) 170295. It agreed that Blalock's police torture claim relied on ("at least some") new evidence, but found that he could not show "cause" for why he did not raise this issue in his first petition. *Id.* ¶¶ 27, 34. It concluded that because Blalock knew he had been abused, his claim was "clearly available" to raise in his first petition or at any time "[r]egardless of the availability of the corroborating evidence." *Id.* ¶¶ 25-27.

The appellate court also concluded that Blalock's police torture claim was substantively insufficient. It opined that Blalock needed to prove at this pleading stage that his "statement was, in fact, coerced[.]" *Id.*, ¶ 35. It rejected the notion that "supplying evidence that detectives involved in defendant's interrogation

have been accused of misconduct in other cases" could support a police torture claim. *Id*. It also decided that Blalock did not "consistently" raise his police torture claim and noted that he did not testify about physical abuse at trial. *Id*. The opinion did not mention Blalock's affidavit or the TIRC reports, nor did it discuss the substance of any of his supporting evidence. *Id*.

The appellate court denied Blalock's petition for rehearing, but this Court allowed leave to appeal.

ARGUMENT

Introduction & Case Summary

When Harold Blalock told his public defender that Chicago police officers tortured him to obtain his January 24, 1999 confession, he had no idea that the same officers had been accused of physically abusing dozens of other people. His pretrial motion to suppress his statement was denied; his statement was admitted at his trial; and a jury found him guilty first-degree murder. In 2016, Blalock sought leave to file a successive post-conviction petition alleging that new, previously unavailable evidence corroborated his police torture claim, and that the use of his coerced confession at trial violated his constitutional rights.

The First District appellate court agreed that Blalock's claim relied on new evidence, but denied him leave to file. It reasoned that Blalock's own knowledge that he was tortured rendered his claim "available" to raise at any time, "[r]egardless of the availability of the corroborating evidence." *People v. Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27. In the court's view, Blalock thus failed to show "cause" (725 ILCS 5/122-1(f)) for not raising this issue in his first petition, filed in 2003. *Id.* It also opined that Blalock had to prove his confession was "in fact" coerced at

this preliminary pleading stage, and held that evidence showing the same interrogating detectives had physically abused other suspects could not do so. *Id.*, ¶ 35; *see* 725 ILCS 5/122-1(f) ("prejudice").

That cause-and-prejudice analysis was wrong. Illinois law requires post-conviction claims to be supported with evidence. 725 ILCS 5/122-2. Thus, the unavailability of certain evidence during the initial post-conviction proceedings shows "cause" for why a claim based on those facts could not have been be raised in the first petition. 725 ILCS 5/122-1(f). This is especially important for police misconduct claims, which tend to rest on hidden evidence of abuse discovered many years after a defendant's trial and initial post-conviction proceedings. Both this Court and the State have therefore recognized and the overwhelming majority of published authority holds that a police abuse claim shows "cause" when it is corroborated by new evidence that was not reasonably available "during the initial post-conviction proceedings." *See People v. Wrice*, 2012 IL 111860, ¶¶ 43, 48-49, 85. Because Blalock's police abuse claim was corroborated by evidence that did not exist when he filed his first petition, he made a *prima facie* showing of "cause." *See* Argument I.

For "prejudice," Blalock was not required to conclusively prove his police torture allegation at this preliminary pleading stage. *Blalock*, 2020 IL App (1st) 170295, ¶ 35. Rather, at the leave-to-file stage a defendant only needs make a *prima facie* case of "prejudice." *People v. Bailey*, 2017 IL 121450, ¶¶ 21, 24. For a police torture issue, that means a *prima facie* showing that new evidence of abuse would likely change the result of a suppression hearing. *Id.*; *see People v. Harris*, 2021 IL App (1st) 182172, ¶ 50. And this Court has recognized that evidence of

a pattern and practice of police misconduct similar to a defendant's claim warrants an evidentiary hearing to make that determination. *See People v. Patterson*, 192 Ill. 2d 93, 139-45 (2000). Blalock's new evidence met that standard, as it demonstrated that the same detectives who interrogated him had also physically abused dozens of other suspects, using similar methods, in the same time frame as his interrogation (C. 19-205). *See* Argument II.

The Appellate Court's contrary opinion therefore strays from Illinois law. In fact, its "cause" rationale *i.e.*, that a police torture claim relying on new, previously-unavailable evidence cannot show "cause" would preclude defendants from ever raising a police torture claim in a successive petition, or even their first petition, no matter what evidence of police abuse they later uncover. *Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-30. Its "prejudice" analysis also failed to apply the "*prima facie* case" leave-to-file standard and erroneously disregarded Blalock's affidavit and supporting evidence, which had to be taken as true at this stage. *Id.*, ¶¶ 30-35.

This Court should reject the lower court's incorrect, unreasonable, and unjust interpretation of the Post-Conviction Hearing Act, find that Blalock's police torture claim made a *prima facie* showing of both "cause" and "prejudice," allow Blalock leave to file his successive post-conviction petition, and remand for second-stage proceedings with the appointment of counsel.

I. This Court should find that Harold Blalock's successive post-conviction police torture claim made a *prima facie* showing of "cause" under 725 ILCS 5/122-1(f), because it was corroborated by evidence that did not exist during his initial post-conviction proceedings.

In 2016, Harold Blalock sought permission to file a successive post-conviction petition alleging that the use of his physically coerced statement at trial violated his due process rights. He contended that newly discovered evidence demonstrated that two Chicago police detectives who interrogated him James O'Brien and John Halloran had been accused of torturing dozens of other people in the same time frame as his 1999 interrogation (C. 19-203). The First District appellate court recognized that Blalock's police abuse claim relied on new evidence, yet held that he still failed to satisfy the "cause" prong of the Post-Conviction Hearing Act's cause-and-prejudice test. *People v. Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27.

That ruling was mistaken. The Act's language and purpose proves, and this Court and the State have recognized, that a police abuse claim satisfies the "cause" test when it is corroborated by evidence that was not reasonably available to the defendant during the initial post-conviction proceedings. *See* 725 ILCS 5/122-1(f); *People v. Wrice*, 2012 IL 111860, ¶¶ 40-43, 49. Blalock's claim met that requirement, as it relied on evidence of police abuse that did not even exist when he filed his first petition (C. 19-202). The appellate court's contrary "cause" analysis therefore conflicted with Illinois law, particularly considering that its rationale would unreasonably preclude defendants from ever raising a police torture claim in a post-conviction petition. *See Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27.

This Court should accordingly find that Blalock made a *prima facie* showing of"cause" at this pleading stage. Because Blalock's police torture claim also made

a *prima facie* showing of "prejudice" (*see* Argument II, *infra*), this Court should reverse the appellate court's ruling, allow Blalock leave to file his successive petition, and remand for second-stage post-conviction proceedings with the appointment of counsel.

The Post-Conviction Hearing Act provides a statutory remedy for criminal defendants to establish violations of their constitutional rights at trial. *See* 725 ILCS 5/122-1; *People v. Robinson*, 2020 IL 123849, ¶ 42. The Act gives defendants a right to file their first post-conviction petition, but they must obtain permission to file any successive petitions. *Id.*

Leave to file a successive petition must be granted if the defendant makes a "*prima facie* showing" of the Act's cause-and-prejudice test. *People v. Bailey*, 2017 IL 121450, ¶ 24; *see* 725 ILCS 5/122-1(f). For that determination, all well-pled facts in the petition and supporting documentation must be taken as true (*People v. Robinson*, 2020 IL 123849, ¶ 44) and construed liberally in the defendant's favor (*People v. Sanders*, 2016 IL 118123, ¶ 31). Review is *de novo*. *Robinson*, 2020 IL 123849, ¶ 39.

In this case, as discussed below, **(A)** Illinois law establishes that the "cause" test is satisfied when a police torture claim is predicated on evidence that was not reasonably available during the initial post-conviction proceedings; **(B)** Blalock's petition made a *prima facie* showing of "cause" under that standard; and **(C)** the appellate court's contrary "cause" analysis is incorrect, unreasonable, and unjust.

A. Under the Act, the "cause" test is satisfied when a successive petition's police torture claim is predicated on evidence that was not reasonably available during the initial post-conviction proceedings.

The Act's plain language and purpose prove, and this Court's authority and the majority of published opinions hold, that a police torture claim meets the "cause" test when it is corroborated by newly discovered evidence of police abuse.

(1) The Act's plain language requires post-conviction claims to be corroborated by evidence, so the prior unavailability of such evidence shows "cause."

"The fundamental goal of statutory construction is to ascertain and give effect to the legislature's intent, best indicated by the plain and ordinary meaning of the statutory language." *People v. Palmer*, 2021 IL 125621, ¶ 53. Courts must "view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *People v. Burge*, 2021 IL 125642, ¶ 20.

Section 122-1(f) of the Act states that the "cause" test is satisfied when a defendant "identif[ies] an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." 725 ILCS 5/122-1(f). Section 122-2 of the Act mandates that a post-conviction petition include "affidavits, records, or other evidence supporting its allegations[.]" 725 ILCS 5/122-2.

Read together, these statutory provisions establish that a defendant's "ability to raise a specific claim during [the] initial post-conviction proceedings" rests on their ability to provide (sufficient) corroborating evidence during those proceedings. 725 ILCS 5/122-1(f), 122-2. Indeed, this Court recognizes that the failure include supporting evidence with a post-conviction claim is "fatal" to that claim and warrants summary dismissal. *See People v. Delton*, 227 Ill. 2d 247, 255 (2008) (quotation

omitted).

Thus, if a successive post-conviction claim rests on evidence that was not "reasonably available" when the first petition was filed, that unavailability necessarily impeded the defendant's ability to raise their claim, based on that evidence, at that time. *People v. Pitsonbarger*, 205 Ill. 2d 444, 462, 463 (2002) (A "showing that the factual . . . basis for a claim was not reasonably available . . . would constitute cause"). The Act's plain language therefore establishes that its "cause" test is satisfied when a police torture claim is corroborated by evidence that was not reasonably available during the initial post-conviction proceedings.

(2) The Act's purpose also demonstrates that the discovery of previously-unavailable evidence shows "cause". This is particularly true for police abuse claims that rely on hidden evidence of abuse that is only uncovered many years after trial.

This interpretation of the "cause" provision also reflects "the purpose and necessity for the law, evils sought to be remedied, and goals to be achieved." *See People v. Blair*, 215 Ill. 2d 427, 443 (2005). The Act's purpose is to "provide incarcerated individuals" with "a means of asserting that their convictions were the result of a substantial denial of their constitutional rights." *People v. Hommerson*, 2014 IL 115638, ¶ 12. Its provisions should therefore not be construed in a way that would frustrate that legislative intent. *Id.* Nor should this Court's interpretation of the Act (or any statute) "be divorced from consideration of real-world results," and it "should presume that the legislature did not intend unjust consequences." *See People v. Fort*, 2017 IL 118966, ¶ 35.

Post-conviction police torture claims are fairly unique. They seldom rest solely on the defendant's individual circumstances or the facts of their case, such

as direct proof of injuries or eyewitness accounts of abuse. *See United States v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013) (recognizing that Chicago police developed methods of "torture [] designed to inflict pain and instill fear while leaving minimal marks"). Rather, this Court has long recognized that the factual basis of police torture claims includes evidence that the interrogating officers also abused *other persons*, to show the officers were engaged in a pattern and practice of misconduct similar to the defendant's allegations. *See People v. Jackson*, 2021 IL 124818, ¶ 34; *People v. Patterson*, 192 Ill. 2d 93, 139-45 (2000).

But police misconduct during interrogations (and otherwise) has historically been hidden from the public. As a recent federal investigation into the Chicago Police Department noted, Detective Jon Burge and other officers used "severe interrogation tactics, such as physical force" to "coerce confessions from predominantly black men" in the 1980s and 1990s. *See* Investigation of the Chicago Police Department, United States Department of Justice Civil Rights Division and United States Attorney's Office Northern District of Illinois, p. 19 (January 13, 2017) ("DOJ Report").[2] Yet that pattern of misconduct went hidden for many years, and Burge himself only faced consequences for his long history of torture "decades after the abuse began." *Id.*

A key reason police misconduct remains hidden is "police officers' code of silence." DOJ Report, p. 8. That "code of silence" recognized by the Department of Justice, the "City [of Chicago], police officers, and leadership within CPD and its police officers union" "extend[s] to lying and affirmative efforts to conceal

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[2] *Available at*: https://www.justice.gov/opa/file/925846/download. Courts have taken judicial notice of this DOJ Report. *See People v. Horton*, 2019 IL App (1st) 142019-B, ¶ 70. Internet citations last checked on August 30, 2021.

evidence." *Id.* at p. 8, 74, 75. "This code is apparently strong enough to incite officers to lie even when they have little to lose by telling the truth." *Id.* at p. 75; *see e.g.* p. 36-37 (giving examples of police statements disproved by video), p. 57 (explaining that seven CPD officers "falsif[ied] their reports" about an officer's fatal shooting of Laquan McDonald in 2014); *see also* Safia Samee Ali, *Inspector general report shows at least 16 officers involved in cover-up of Laquan McDonald shooting*, NBC News (Oct. 9, 2019).[3]

Also, even when records of officer misconduct are made, police unions have long fought to keep them from public view. *See City of Chicago v. Fraternal Order of Police*, 2020 IL 124831, ¶¶ 11-21, 45 (ruling only last year that a police union collective bargaining agreement mandating the destruction of misconduct records "violates explicit state law"). And whenever police misconduct is uncovered and civil rights lawsuits are settled (despite these hurdles), both CPD and the City "keep the details of these settlements from the public." DOJ Report, at p. 128.

Due to this obfuscation, as well as the "the sensitive nature of police investigations and the sheer scale of the criminal justice system" in general, many cases involving police torture "went through the court system over years and many of the allegations did not surface until many years later." *People v. Tyler*, 2015 IL App (1st) 123470, ¶162; *see People v. Plummer*, 2021 IL App (1st) 200299, ¶95. It is therefore "unreasonable" to expect defendants to easily discover evidence that certain officers abused other victims. *Id.*; *see Patterson*, 192 Ill. 2d at 109; *People v. Reyes*, 369 Ill. App. 3d 1, 20 (1st Dist. 2006).

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[3] *Available at*: https://www.nbcnews.com/news/us-news/inspector-general-report-shows-least-16-officers-involved-cover-laquan-n1064401

Rather, as this Court has acknowledged, evidence of a pattern of police torture is usually only uncovered through a gradual trickle of cases, affidavits, admissions, governmental reports, and other evidence over many years sometimes decades. *See*, *e.g., People v. Wrice*, 2012 IL 111860, ¶ 40 (abuse allegations from 1982 were corroborated by the 2006 report investigating misconduct "beginning in 1973"). Police torture claims therefore tend to gain strength as time goes by. Indeed, as "more evidence of misconduct is uncovered either through proceedings in other cases, news coverage, the ongoing investigation of counsel where a prisoner is fortunate enough to be represented, or because witnesses have come forward with new information and as patterns of misconduct are established with respect to individual officers or investigatory teams, a petitioner may be able to more closely connect documentation of improper tactics to his own conviction." *People v. Jackson*, 2018 IL App (1st) 171773, ¶ 91.

This reality makes it unlikely that defendants can present a police torture claim corroborated by sufficient or any relevant evidence of police abuse close in time to when that misconduct took place, or before the Act's filing deadline. *Compare People v. Johnson*, 2017 IL 120310, ¶¶ 16, 20 (the filing deadline is 6 months from the denial of a petition for leave to appeal or its filing date, or 3 years if there was no direct appeal) (citing 725 ILCS 5/122-1(c)) *with, e.g.*, *Wrice*, 2012 IL 111860, ¶¶ 39, 41(corroborating report released 24 years after abuse;15 years after defendant's first petition).

Finding the Act's "cause" test satisfied when a police torture claim is corroborated by new evidence is therefore not only required by its plain language, but fulfills the Act's purpose of ensuring that defendants have a vehicle to raise

this constitutional claim. *See also Pitsonbarger*, 205 Ill. 2d at 458 (the cause-and-prejudice test is a "fundamental fairness exception" to procedural default).

"No one wants to reward reliance on the legendary code of silence among law enforcement officers, . . . and so the courts must be vigilant to ensure that the proper information sees the light of day." *Fillmore v. Page*, 358 F. 3d 496, 507-508 (7th Cir. 2004) (citation omitted). This Court should find that a police abuse claim meets the "cause" test when it is corroborated by evidence that was not reasonably available during the initial post-conviction proceedings.

(3) This Court and the State have recognized, and a majority of appellate court authority holds, that police torture claims supported by new evidence meet the "cause" test.

In *People v. Wrice*, 2012 IL 111860, ¶¶ 40-43, 49, both this Court and the State recognized that the discovery of new, previously-unavailable evidence showed "cause" for a police torture claim. *See Wrice*, 2012 IL 111860, ¶¶ 40-43, 49. In that case, Chicago police officers interrogated the defendant in 1982, and he was convicted of several violent offenses. *Id.* ¶¶ 4, 37. In 2007, the defendant filed a successive post-conviction petition alleging that a 2006 Report of the Special State's Attorney corroborated that his confession was physically coerced. *Id.* ¶ 41.

The State initially argued in the appellate court that the defendant did not establish "cause." *People v. Wrice*, 406 Ill. App. 3d 43, 49 (1st Dist. 2010). It contended that he failed to show he was impeded from raising a police torture claim previously, because he had raised police torture claims in his 1991 and 2000 petitions. *Id.* at 52. The appellate court rejected the State's position, finding that the "defendant raised *for the first time* the argument that the Report of the Special State's Attorney significantly corroborates his torture claims." *Id.* at 52 (emphasis

in original). Because that Report was not "release[d] . . . until July 19, 2006," explained the court, the defendant established "cause" for why he could not present a police torture claim based on that evidence in his earlier petitions. *Id*. On appeal before this Court, the State then conceded that these circumstances established "cause," and this Court agreed. *See Wrice*, 2012 IL 111860, ¶¶ 40-43, 49.

Consistent with *Wrice*, the overwhelming majority of appellate court opinions recognize that a police abuse claim shows "cause" when it is corroborated by evidence that was unavailable when the defendant's first petition was filed. *See*, *e.g.*, *Jackson*, 2018 IL App (1st) 171773, ¶ 81 ("Cause" was "clearly shown" by evidence that "c[a]me to light after [the defendant] filed his initial post-conviction petition"); *People v. Weathers*, 2015 IL App (1st) 133264, ¶ 14 (same, for a TIRC report created after the initial petition was filed); *People v. Mitchell*, 2012 IL App (1st) 100907, ¶¶ 60, 63 (same, for a Special Prosecutor's Report on police torture); *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ ¶ 54-55 (same, for a newspaper article); *People v. Whirl*, 2015 IL App (1st) 111483, ¶¶ 50, 52 (same, for other "newly discovered evidence" of police torture); *see also People v. Mitchell*, 2020 IL App (1st) 171970-U ¶¶ 12-14; *People v. Mahaffey*, 2020 IL App (1st Dist) 170229-U ¶ 36; *People v. Martinez*, 2020 IL App (1st Dist) 182323-U ¶ 36; *People v. Hubbard*, 2014 IL App (1st Dist) 122178-U ¶ 56; *People v. Smith*, 2013 IL App (1st Dist) 113193-U ¶ 55; *People v. Hatch*, No. 1-09-3326 (1st Dist. 2011);[4] *see also Plummer*, 2021 IL App (1st) 200299, ¶¶ 93-95 (documents that "were not available until over a decade after defendant's trial" were "newly discovered").

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[4] These unpublished cases illustrate the status of this issue in the appellate court; they are not cited as precedent. *See In re N.G.*, 2018 IL 121939, ¶ 75 (citing unpublished cases for the same purpose).

The *Wrice* analysis also dovetails with this Court's recognition that procedural default should be relaxed when a post-conviction petition's police torture claim is corroborated by new evidence. In *Patterson*, for example, this Court relaxed *res judicata* for a police torture claim raised in the defendant's first petition because it was corroborated by evidence that "did not exist until after defendant's trial." *Patterson*, 192 Ill. 2d at 139-40; *see*, *e.g.*, *Tyler*, 2015 IL App (1st) 123470, ¶¶ 161-62; *Reyes*, 369 Ill. App. 3d at 20.

Appellate counsel is aware of only one contrary published "cause" holding in a police abuse case, though it was not cited by the appellate court below. *People v. Terry*, 2016 IL App (1st) 140555, ¶ 33. The *Terry* court held, contrary to *Wrice*, that the release date of a Special Prosecutor Report did not show "cause" because the petitioner knew he was abused when he filed his first petition. *Id.* Yet the *Terry* decision did not mention or even attempt to grapple with *Wrice*'s "cause" analysis. *Id.* And at any rate, *Terry* held that "even if" the "cause" test were satisfied, the Report was too dissimilar to the petitioners' circumstances to show "prejudice." *Id.*, ¶¶ 35-39. Your Honors should instead apply *Wrice*'s "cause" rationale, which best reflects the Act and the majority of sound judicial authority.

In short, considering the Act's language and purpose, as well as the authority above, this Court should find the "cause" test satisfied whenever a police torture claim is corroborated by evidence that was not reasonably available during the defendant's initial post-conviction proceedings.

B. Blalock's police torture claim made a *prima facie* showing of "cause" because it was corroborated by evidence that was not reasonably available or even in existence during the initial post-conviction proceedings.

The appellate court below correctly recognized that Blalock's successive petition relied on ("at least some") evidence that was not reasonably available to him when his initial petition was filed in 2003. *See Blalock*, 2020 IL App (1st) 170295, ¶¶ 27, 34. That evidence, which described accusations that Detectives James O'Brien and John Halloran physically abused dozens of people between 1989 and 2002, included:

- TIRC database reports (C. 151) (*see* 775 ILCS 50/99 (TIRC statute effective August 10, 2009), *Weathers*, 2015 IL App (1st) 133264, ¶ 1 (referencing a 2012 TIRC report));
- affidavits from Clayborn Smith (2009), George Anderson (2011), and Michael Taylor (2011) (C. 167, 175A, 178); and
- appellate court decisions in *People v. Weathers*, 2015 IL App (1st) 133264 and *People v. Nicholas*, 2013 IL App (1st) 103202.

See Patterson, 192 Ill. 2d at 140 ("[A] series of incidents spanning several years can be relevant to establishing a claim of a pattern and practice of torture").

Because this documentation did not exist "during [Blalock's] initial post-conviction proceedings" in 2003 (nor even when he filed his July 2009 petition), his police torture claim made a *prima facie* showing of "cause" for that evidence. *See* 725 ILCS 5/122-1(f). That alone warrants rejecting the appellate court's "cause" analysis. *See* Part A(3) (listing similar cases).

That said, this Court should also conclude that Blalock's petition made a *prima facie* showing of "cause" for the evidence that existed before 2003, which included:

- Internal affairs complaints (1988, 1992, 1993) (C. 199-201A);

- Malik Taylor's affidavit (2000) (C. 191);
- a Chicago Tribune article (2001) (C. 198); and
- court decisions in *People v. Morales*, 281 Ill. App. 3d 695, 699 (1st. Dist. 1996); *People v. Clemons*, 259 Ill. App. 3d 5 (1st Dist. 1994); *Ewing v. O'Brien*, 60 F. Supp. 2d 813, 815 (N.D. Ill. 1999) (C. 34-42).

As discussed, Illinois courts have relaxed procedural default for police abuse claims after recognizing that it is unreasonable for even defense attorneys much less incarcerated *pro se* prisoners to uncover evidence that certain officers abused other suspects. *See* Part A(2) (citing cases); *cf. Tyler*, 2015 IL App (1st) 123470, ¶162 (relaxing procedural default for abuse claims against O'Brien and Halloran that relied on appellate court opinions, OPS reports, court decisions, and a Chicago Tribune article that existed before the trial).

Indeed, Blalock's petition asserted that O'Brien's and Halloran's "pattern of misconduct was not widely or publicly known" at the time of his 2000 trial; that his corroborating evidence was previously "unavailable" to him; and that it was "newly discovered" (C. 27-28, 32). Those assertions must be taken as true and construed liberally in Blalock's favor at this stage. *Robinson*, 2020 IL 123849, ¶ 44; *Weathers*, 2015 IL App (1st) 133264, ¶ 22. Blalock therefore showed that his pre-2003 evidence was not reasonably available to him when he filed his first petition, and thus also made a *prima facie* showing of "cause."

Finally, this Court has held that police torture evidence that "clearly" existed at trial should still "be considered new" for post-conviction purposes if the defendant "can establish the later discovery of other torture allegations linking defendant's claims" to that evidence. *See Patterson*, 192 Ill. 2d at 140. So even if Blalock cannot show "cause" for his pre-2003 evidence, this Court should still consider it alongside

his post-2003 evidence as far as it shows that O'Brien and Halloran were engaged in a pattern and practice of misconduct. *Id*.

In short, Blalock's police torture claim at a minimum made a *prima facie* showing of "cause" for corroborating evidence that did not exist when his first petition was filed in 2003. This Court should also consider the pre-2003 evidence, either because it was also not reasonably available to Blalock, or because that evidence is relevant to the detectives' pattern and practice of abuse when considered alongside the new evidence.

C. The appellate court's "cause" analysis is incompatible with the Act, internally inconsistent, and fundamentally unfair to police torture victims.

The appellate court's contrary "cause" analysis mistakenly posits that the discovery of new evidence cannot show "cause" for a police torture claim. *Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27. It also makes contradictory findings suggesting that the Act's "cause" requirement turned on whether a police torture claim had been raised and rejected in a prior petition, or on whether some other corroboration was available when an earlier petition was filed, irrespective of any new evidence. *Id*., ¶¶ 27-30. None of those findings comport with the Act or Illinois law.

(1) The notion that a police torture claim can never show "cause" contravenes Illinois law and undermines the Act's purpose.

According to the appellate court, Blalock's police torture claim could not establish "cause" because his knowledge of being abused rendered it "available" to raise at any time, "[r]egardless of the availability of the corroborating evidence." *See Blalock*, 2020 IL App (1st) 170295,¶¶ 25-27. This Court should reject that unreasonable, unjust interpretation of the "cause" test.

(a) The notion that a police torture claim is separate from the evidence comprising its factual basis contravenes Illinois law.

The appellate court's "cause" analysis rests on the mistaken notion that a post-conviction police torture "claim" is somehow distinct from the supporting evidence that comprises the factual basis of that claim. *See Blalock*, 2020 IL App (1st) 170295, ¶¶ 26-27, 34 ("The statute discusses not when the documentation to support a claim becomes available, but whether the claim itself can be made").

But again, there is no post-conviction "claim" under the Act unless the petitioner provides supporting evidence. *See* Part A(1); *Delton*, 227 Ill. 2d at 255. And the factual basis of a police torture claim includes the accumulated evidence of police misconduct against persons *other than* the defendant. *See* Part A(2); *Patterson*, 192 Ill. 2d at 139-45. The unavailability of such evidence during the initial post-conviction proceedings therefore satisfies the "cause" test, as its absence necessarily impeded the petitioner from presenting a police torture claim based on those unavailable facts. *See* Part A; 725 ILCS 5/122-1(f). Indeed, every court opinion holding that new evidence of police torture showed "cause" including this Court's decision in *Wrice* did so even though those respective defendants (presumably) knew about their own abuse when their first petition was filed. *See* Part A(3) (listing cases); *Wrice*, 2012 IL 111860, ¶¶ 40-43, 49.

Nor does the appellate court's cited authority support its position that a police abuse claim corroborated by new, previously-unavailable evidence fails the "cause" test. To the contrary, *Anderson* and *Williams* rejected "cause" for successive post-conviction claims relying on evidence that *was* available when the first petition was filed. *See Blalock*, 2020 IL App (1st) 170295, ¶¶ 28-29 (citing

People v. Anderson, 375 Ill. App. 3d 990, 1002-1005 (1st Dist. 2007) (describing police torture documentation that was available before the first petition was filed); *People v. Williams*, 394 Ill. App. 3d 236, 245-46 (1st Dist. 2009) (defendant should have obtained evidence from trial counsel, or alleged that counsel failed to provide it when asked)). The post-conviction claims this Court rejected in *Orange* likewise did not rely on any new evidence. *Id.* ¶ 29 (citing *People v. Orange*, 168 Ill. 2d 138, 154 (1995) (no prejudice for ineffectiveness claim based on the record; suppression issue that could have been raised on direct appeal was forfeited).

The appellate court's "cause" analysis is also at odds with this Court's decisions relaxing procedural default after finding a defendant's evidence was unavailable irrespective of their knowledge. In *People v. Edwards*, 2012 IL 111711, ¶ 32, for example, this Court held that a co-defendant's affidavit was "newly discovered" even though the defendant "obviously knew" about him, because he could not have been forced to testify at trial. *Id.* ¶¶ 37-38 (recognizing the same can be true for an alibi affidavit if the witness refused to testify, even though a defendant would know their alibi); *see People v. Molstad*, 101 Ill. 2d 128, 134 38 (1984) (rejecting argument that co-defendants' affidavits were "not newly discovered because defendant [ ] knew of the evidence before trial").

The appellate court's conclusion that the discovery of new evidence of police torture cannot show "cause" therefore misunderstands Illinois law and should not be followed.

(b) The notion that a police torture claim can never show "cause" contravenes the Act's purpose.

The appellate court's "cause" analysis also defeats the purpose of the Act and leads to unjust results. Its holding that a police torture claim is "available"

to raise at any time"[r]egardless of the availability of [any] corroborating evidence" means that no defendant could ever show "cause" for not raising this issue in their first petition. *See Blalock*, 2020 IL App (1st) 170295,¶¶ 25-27. Or, in short, no police torture claim can ever be raised in a successive petition. *See* 725 ILCS 5/122-1(f). That alone warrants rejecting the court's analysis. *See Fort*, 2017 IL 118966, ¶ 35 (courts must "presume that the legislature did not intend unjust consequences").

The flaw in the appellate court's rationale logically extends to initial post-conviction petitions, as well. Indeed, if the prior unavailability of corroborating evidence never impedes a petitioner from pursuing a police torture claim including "at trial" or "on direct appeal" (*Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27, 30) that unavailability would not affect a reviewing court's ruling on the merits of that issue. So if a police torture claim is raised and rejected at trial and on direct appeal, that issue would then be forever barred from post-conviction review as *res judicata*. *See Edwards*, 2012 IL 111711, ¶¶ 21-22. Or, if that issue was not raised at trial or on direct appeal, it would still be forfeited on post-conviction review because it "could have been presented to the reviewing court." *Id*. The appellate court's "cause" analysis thus procedurally bars police torture claims from *any* post-conviction review, initial or successive, regardless of any newly discovered evidence showing a pattern and practice of police misconduct.

Even if the appellate court's "cause" analysis does not bar all post-conviction review of police torture claims, its rationale at a minimum obligates defendants to raise a police torture claim in their first petition even if no corroborating evidence is available at that time. *See Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27. But that rule contradicts the Act's requirement that post-conviction claims be supported

by evidence. *See Delton*, 227 Ill. 2d at 255. As discussed, defendants will rarely have sufficient or any corroboration for their police abuse claim by the filing deadline for their first petition, so those claims will be swiftly dismissed. *Id*.; *see* Part A(2); *see also People v. Erickson*, 183 Ill. 2d 213, 227 (1998) (disapproving of the practice of "develop[ing] the evidentiary basis for a [post-conviction] claim in a piecemeal fashion[.]").

Also, by filing these doomed post-conviction claims, defendants would risk being penalized with longer prison sentences. *See* 730 ILCS 5/3-6-3(d) (West 2021) (a good conduct credit revocation hearing is required when a filing is denied as frivolous); *People v. Shevock*, 353 Ill. App. 3d 361, 366 (4th Dist. 2004) (credit revoked after denial of a post-conviction petition). And even after all that, defendants who later discover new evidence of police torture would still not be able to present their claim in a successive petition. *See Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27.

In short, the appellate court's "cause" analysis prohibits defendants from raising a police torture claim in a successive petition based on new evidence. It also bars those claims from *any* post-conviction review, either directly through procedural default, or in effect by requiring defendants to file doomed, uncorroborated police torture allegations in their first petition. That unreasonable interpretation of the "cause" requirement conflicts with the Act's language and purpose, and should not be followed.

(2) The "cause" test does not turn on whether a similar but insufficient claim was raised in the first petition. Nor is it defeated by the prior existence of some different corroboration, irrespective of the newly discovered evidence.

Referencing the "consistency" of the *Wrice* defendant's prior police abuse

allegations, the appellate court also implies that the discovery of new evidence could show "cause," but only if an inadequate police torture claim was raised and rejected in an initial post-conviction petition. *Blalock*, 2020 IL App (1st) 170295, ¶¶ 27, 33-34. It additionally cites *Anderson* to suggest that new evidence cannot show "cause" so long as some other corroboration was available when a prior petition was filed. *Id*., ¶ 29.

Under both propositions, the prior availability of corroborating evidence is key to the "cause" analysis. But that contradicts the appellate court's holding that a defendant's knowledge of being abused means a police torture claim can never show "cause" for a police torture claim, "[r]egardless of the availability of the corroborating evidence." *See Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27.

In any case, the appellate court misunderstands the authority it relied on. *Wrice* explained that the "consistency" of prior abuse allegations is a factor to consider for "the 'prejudice' prong of the cause-and-prejudice test" not the "cause" analysis. *Wrice*, 406 Ill. App. 3d at 53, *affirmed by Wrice*, 2012 IL 111860, ¶ 43. Indeed, Illinois courts do not condition the "cause" test on whether an inadequate police torture claim was raised in an earlier petition. *See*, *e.g.*, *Whirl*, 2015 IL App (1st) 111483, ¶¶ 6-27, 35-40; *Weathers*, 2015 IL App (1st) 133264, ¶¶ 3, 12; *Mitchell*, 2012 IL App (1st) 100907, ¶¶ 9-10, 26, 28, 60 (each finding that new evidence satisfied "cause," where issue was not raised in the first petition).

Nor did *Anderson* hold that the prior existence of some other corroborating evidence defeated "cause" for a police torture claim that relies on new evidence. Rather, it acknowledged that the "unavailability" of the "few" new documents in that case could"establish cause[,]" even though other post-conviction exhibits

were available when the first petition was filed. *Anderson*, 375 Ill. App. 3d at 1005-1006 (concluding they did not show "prejudice," however).

Illinois courts have similarly held that the discovery of new evidence shows "cause" for a police torture claim even if some different corroboration existed previously. *See*, *e.g.*, *Wrice*, 2012 IL 111860, ¶¶ 39-43, 49, 85 (police torture claim corroborated by new evidence showed "cause," even though that issue was raised in an earlier petition based on different evidence); *Almodovar*, 2013 IL App (1st) 101476, ¶¶ 54-55, 68, 75 (police torture claim based on new newspaper article established "cause," even after an evidentiary hearing with other evidence was held on abuse allegations). This Court has similarly relaxed *res judicata* for an initial petition's police torture claim because it relied on new evidence, even where other corroboration "clearly" existed during trial. *Patterson*, 192 Ill. 2d at 139-40; *see Tyler*, 2015 IL App (1st) 123470, ¶ 162.

Nor does any language in the Act show that the "cause" test is conditioned on a similar claim being denied in the first petition, or on the non-existence of any other corroboration at that time. 725 ILCS 5/122-1(f). Either interpretation would improperly require defendants to file doomed, inadequate claims in their first petition, before sufficient corroborating evidence existed. *See* Part C(1)(b) (that requirement conflicts with the Act's evidentiary rules); Part A(2) (police abuse evidence is usually discovered years after it occurs). And doing so would still not allow defendants to present new, later-discovered evidence of misconduct in a successive petition. *Blalock*, 2020 IL App (1st) 170295, ¶¶ 25-27. This Court must reject the *Blalock* court's "cause" analysis.

In sum, the appellate court's position on the Act's "cause" test clashes with

the Act's language, its purpose, and Illinois case law. Consistent with Your Honors' decision in *Wrice*, this Court should instead find "cause" established when a police abuse claim is corroborated by evidence that was not reasonably available during the initial post-conviction proceedings. *See* Part A. Because Blalock's police abuse claim rests on evidence that did not yet exist when he filed his first petition, he made a *prima facie* showing "cause." *See* Part B. As he also made a *prima facie* showing of "prejudice" (*see* Argument II, *infra*), this Court should reverse the appellate court's ruling, allow him leave to file his petition, and remand for second-stage post-conviction proceedings with the appointment of counsel.

II. This Court should find that Harold Blalock's successive post-conviction police torture claim made a *prima facie* case of "prejudice" under 725 ILCS 5/122-1(f). Specifically, he made a *prima facie* showing that new evidence would likely alter the outcome of a suppression hearing, by demonstrating that the detectives who interrogated him were engaged in a pattern and practice of misconduct similar to his allegations.

Harold Blalock's successive petition alleged that new evidence shows that two Chicago police detectives who coerced his statement in 1999 James O'Brien and John Halloran were engaged in a pattern and practice of physically abusing suspects in their custody (C. 26-28, 58). Blalock supported his claim with an affidavit describing that physical abuse (C. 125-31) and incorporated documentation showing that dozens of other persons had accused the same officers of physically abusing them between 1989 and 2002 (C. 60-202). The appellate court nonetheless concluded that Blalock's police abuse claim was inadequate at this early pleading stage. *People v. Blalock*, 2020 IL App (1st) 170295, ¶¶ 30-35.

The lower court's analysis was wrong. Blalock's supporting documentation of O'Brien's and Halloran's pattern and practice of physical abuse made a *prima*

facie showing that new evidence would likely change the result of a suppression hearing (*People v. Harris*, 2021 IL App (1st) 182172, ¶ 50), which made a *prima facie* case of "prejudice." *People v. Bailey*, 2017 IL 121450, ¶¶ 24-25; *see People v Wrice*, 2012 IL 111860, ¶ 84 (the improper admission of a "defendant's physically coerced confession as substantive evidence of his guilt is never harmless error"). The appellate court's contrary determination misunderstands that legal standard and wrongly disregards his affidavit and supporting evidence, which have to be taken as true at this stage. *Blalock*, 2020 IL App (1st) 170295, ¶¶ 30-35.

This Court should reverse the appellate court's holding and find that Blalock's police abuse claim made a *prima facie* showing of "prejudice." Because he also made a *prima facie* showing of "cause" (*see* Argument I, *supra*), this Court should reverse the appellate court's opinion, allow Blalock leave to file his successive petition, and remand for second-stage post-conviction proceedings with the appointment of counsel. *See Wrice*, 2012 IL 111860, ¶ 87.

The Post-Conviction Hearing Act requires defendants to obtain leave to file any post-conviction petition beyond their first. 725 ILCS 5/122-1(f); *Robinson*, 2020 IL 123849, ¶ 22. Leave to file a successive petition will be granted so long as the defendant adequately pleads "cause" and "prejudice." 725 ILCS 5/122-1(f). "Prejudice" is established by "demonstrating that the claim not raised during [the] initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.*

At the leave-to-file stage, petitioners are not required to "establish cause and prejudice conclusively." *People v. Smith*, 2014 IL 115946, ¶ 46. It is just a pleading stage (*Id.*, ¶¶ 29, 33-35) a "preliminary screening" step. *Bailey*, 2017

IL 121450, ¶¶ 24-25. Petitioners therefore need only "adequately allege[ ] facts" (*Smith*, 2014 IL 115946, ¶ 34) and "submit enough in the way of documentation" to make a "*prima facie* showing of cause and prejudice" (*Bailey*, 2017 IL 121450, ¶¶ 21, 24 (citation omitted)).

In making that determination, successive petitions should be construed liberally in the petitioner's favor. *See People v. Sanders*, 2016 IL 118123, ¶ 31. All well-pled facts in the petition and supporting documentation that are not positively rebutted by the record must be taken as true. *Robinson*, 2020 IL 123849, ¶ 44. A post-conviction claim is only positively rebutted by the record if it is "clear from the trial record that no fact finder could ever accept the truth of that evidence, such as where it is affirmatively and incontestably demonstrated to be false or impossible." *Robinson*, 2020 IL 123849, ¶ 60. The mere "existence of a conflict with the trial evidence" is insufficient. *Id.* Courts may not make "[c]redibility findings and determinations as to the reliability of the supporting evidence" at the leave-to-file stage, as those decisions "are to be made only at a third stage evidentiary hearing." *Id.*, ¶ 61.

Satisfying the *prima facie* cause-and-prejudice requirement "does not entitle the defendant to relief." *Bailey*, 2017 IL 121450, ¶ 25 (citation omitted). Rather, it "only gives a petitioner an avenue for filing a successive postconviction petition." *Id.* Review is *de novo*. *Robinson*, 2020 IL 123849, ¶ 39.

In this case, as detailed below, **(A)** Illinois law establishes that a police abuse claim makes a *prima facie* case of "prejudice" when it is corroborated by new evidence of a pattern and practice of similar misconduct, and would thus likely change the result of a suppression hearing; **(B)** Blalock's petition and evidence

made a *prima facie* showing of "prejudice" under that standard; and **(C)** the appellate court's "cause" analysis misapplies Illinois law and erroneously disregarded Blalock's affidavit and supporting evidence.

A. At the leave-to-file stage, a post-conviction police torture claim need only make a *prima facie* case that new evidence would likely change the result of a suppression hearing. That showing is satisfied by evidence that officers were engaged in a pattern and practice of abuse similar to defendant's claim.

The United States Constitution's Fourteenth Amendment guarantees that no State can "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend XIV, § 1. The Fifth Amendment commands that no person will be compelled in any criminal case to be a witness against themself. U.S. Const. amends. V, XIV; *see Malloy v. Hogan*, 378 U.S. 1, 6 (1964). Under either amendment, a physically coerced confession is inadmissible at trial. *See Miller v. Fenton*, 474 U.S. 104, 109 (1985) (citing cases); *People v. Winsett*, 153 Ill. 2d 335, 352 (1992). The admission of a physically coerced confession at trial therefore violates the defendant's due process rights. *See Miller*, 474 U.S. at 110; *People v. Wrice*, 2012 IL 111860, ¶ 58. Indeed, it is "axiomatic that the defendant's constitutional rights have been violated if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity." *Miranda v. Arizona*, 384 U.S. 436, 464 n. 33 (1966).

When a police torture claim is raised in a post-conviction petition, "the circuit court's purpose [i]s not to determine the ultimate issue of whether defendant's confession was coerced." *See Harris*, 2021 IL App (1st) 182172, ¶ 50; *People v. Galvan*, 2019 IL App (1st) 170150, ¶ 68; *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 80 (remanding for new suppression hearings in appeals from post-conviction

evidentiary hearings); *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 52 (same, on appeal from circuit court ruling following a Torture Inquiry Relief Commission Act hearing).

Courts instead ask whether the defendant's new evidence of police torture "would likely have altered the result of a suppression hearing," where the State has the burden to prove the confession was voluntary. *Wilson*, 2019 IL App (1st) 181486, ¶ 52 (citing *Whirl*, 2015 IL App (1st) 111483, ¶ 80); *see People v. Plummer*, 2021 IL App (1st) 200299, ¶ 113; *Harris*, 2021 IL App (1st) 182172, ¶ 50; *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 62; *see also* 725 ILCS 5/114-11 (d) (explaining the State's burden).

If that standard is ultimately met at a post-conviction evidentiary hearing, the defendant will have established a due process violation, satisfying the "prejudice" test. *See* 725 ILCS 5/122-1(f); *Wrice*, 2012 IL 111860, ¶ 84 (the improper admission of a physically coerced statement at trial is a due process violation that "is never harmless error"). The remedy is a new suppression hearing. *Harris*, 2021 IL App (1st) 182172, ¶ 50, *no petition for leave to appeal filed.*

One way to make that prejudice showing is to establish that the defendant's abusing officers participated in a pattern and practice of misconduct similar to the allegations raised, which would impeach their credibility at a suppression hearing. *Harris*, 2021 IL App (1st) 182172, ¶ 50 (citing *People v. Patterson*, 192 Ill. 2d 93, 140-45 (2000) (remanding for an evidentiary hearing to decide whether "those officers' credibility at the suppression hearing might have been impeached" by such evidence)).

A "series of incidents spanning several years can be relevant to establishing

a claim of a pattern and practice of torture." *Patterson*, 192 Ill. 2d at 140. Relevant considerations include whether prior allegations of police abuse involve the same officer or officers, involved similar types of misconduct, and occurred near the time of the defendant's allegations. *See Patterson*, 192 Ill. 2d at 115, 140-45; *Harris*, 2021 IL App (1st) 182172, ¶ 50; *Galvan*, 2019 IL App (1st) 170150, ¶ 68.

Indeed, "any allegation that [a particular officer] coerced a person to provide evidence is relevant to whether [a] defendant[ ] in the case at bar w[as] similarly coerced" by that officer. *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ 67. That certain "detectives may have displayed a 'silent acceptance' of abusive tactics" is also pertinent. *Harris*, 2021 IL App (1st) 182172, ¶ 56.

That said, while "similarity is a critical factor when determining whether evidence of police misconduct in other cases establishes a pattern and practice of certain behavior, . . . the test is not one of exact or perfect identity." *People v. Jackson*, 2021 IL 124818, ¶ 34. Courts need only find there is "sufficient similarity between the misconduct at issue in the present case and the misconduct shown in other cases, such that it may fairly be said the officers were acting in conformity with a pattern and practice of behavior." *Id.*

To illustrate, in a case where the defendant alleged that police detectives punched him, placed a gun to his head and mouth, and hit him with a phone book, evidence that one officer had once punched a different suspect, and put a gun to another suspect's head on another occasion, sufficed to corroborate that claim. *See Harris,* 2021 IL App (1st) 182172, ¶ 58. By contrast, this Court recently found that evidence did not support a witness intimidation claim, where: one exhibit showed a log of police complaints that had nothing to do with "coercion or

intimidation of a witness or suspect," another left "no way to determine" whether an officer engaged in such misconduct, and the last exhibit related to just a single incident where "no findings of wrongdoing" were made. *See Jackson*, 2021 IL 124818, ¶¶ 35-36.

In short, to make a *prima facie* case of "prejudice" for a police torture claim, a defendant must make a *prima facie* showing that new evidence taken as true and construed in the defendant's favor would likely change the result of a suppression hearing. That showing is made if the new evidence demonstrates that a defendant's interrogating officers were engaged in a pattern and practice of misconduct similar to the defendant's claim. Blalock met that standard here.

B. Blalock made a *prima facie* case that new evidence would likely change the result of a suppression hearing, by demonstrating that two detectives who interrogated him were engaged in a pattern and practice of physical abuse.

Blalock's petition contended that "newly discovered" evidence showed that Detectives O'Brien and Halloran were "engaged over a course of years in the systemic mistreatment of arrested persons under their control." Had this evidence been presented "when his motion to suppress was heard[,]" he argued, it would have "persuasively demonstrate[d] . . . that his claims of abuse . . . were part of th[at] systemic pattern of similar misconduct" (C. 27-28, 36). Thus, Blalock's petition taken as true and construed liberally in his favor pled that O'Brien and Halloran physically abused him, and that new evidence of their pattern and practice of physical abuse would likely change the result of a suppression hearing. *See Harris*, 2021 IL App (1st) 182172, ¶ 50.

Blalock "submit[ted] enough in the way of documentation" to support his claim. *Bailey*, 2017 IL 121450, ¶¶ 21, 24. His affidavit states that during his January

1999 interrogation, O'Brien and Halloran handcuffed him to a wall, "split his pinkie finger nail" and bent his fingers back, struck him in the face with a clipboard, choked him to unconsciousness, beat him, "hit, slapped, [and] kicked him," refused to allow him to see a doctor, pointed a gun to his head, threatened to hurt him and kill him, and threatened to charge his brother with murder in another case (C. 36, 126-31). He also explained that he "withdr[e]w" his police torture testimony from his 2000 trial based on defense counsel's advice, due to the lack of available corroborating evidence at that time (C. 131). Thus, taken as true and construed liberally in his favor, Blalock's affidavit alleged that O'Brien and Halloran physically abused him to obtain his statement, and explained why he did not testify about that physical abuse at trial.

Blalock's new post-2003 supporting evidence Torture Inquiry and Relief Commission (TIRC) reports, affidavits, court decisions, and the 2006 Report of the Special State's Attorney further corroborated his claim by showing that O'Brien and Halloran had been engaged in a pattern and practice of similar misconduct in the same time frame as his interrogation. *See also* Argument I(B).

Indeed, the TIRC reports described at least 36 allegations of physical abuse against O'Brien between 1989 and 2002 (C. 150-154), and at least 37 allegations of physical abuse against Halloran between 1991 and 2002 (C. 156-59). Affidavits from George Anderson, Clayborn Smith, and Michael Taylor explained how one or both officers physically abused them in 1991, 1992, and 1994 (C. 160, 168, 176). Blalock's post-2003 appellate court decisions showed these same officers physically abused at least five more detainees Cortez Brown, Jerome Weathers, Antonio Nichols, David Washington, and Maurice Lane in 1990, 1991, and 2002 (C. 34-42).

See People v. Cortez Brown, No. 1-05-0928 (1st Dist. 2007), *compare People v. Brown*, 169 Ill. 2d 132, 145-46 (1996) (relating the facts of the case); *People v. Nichols*, 2013 IL App (1st) 103202. ¶¶ 4-8; *People v. Weathers*, 2015 IL App (1st) 133264, ¶ 3.

The Report of the Special State's Attorney provides additional support (C. 33).[5] It details an investigation into "allegations of torture" and other misconduct "by police officers under the command of Jon Burge at Area 2 and Area 3 police headquarters" between 1973 and 2006. *See Wrice*, 2012 IL 111860, ¶ 41; Report, at "Introduction." It concluded that Burge and several other officers should be indicted for abusing detainees; that there were "many other cases" where detainees were likely abused; and that "a number of those serving under [Burge's] command" likely believed they "could abuse persons with impunity." Report, p. 16. Notably, it named Halloran as one of the officers subpoenaed in relation to the abuses at Areas 2 and 3. *Id*., p. 11, 14.

Considered alongside Blalock's other post-conviction evidence, the Report shows that O'Brien and Halloran worked at Area 3 when Burge was there in the early 1990s, and worked alongside other abusive detectives. *Compare* Report at p. 11, 14 (naming Halloran, Michael Kill, John Paladino, Anthony Maslanka, and Kenneth Boudreau as subpoenaed officers), 16, 290 (finding Maslanka should be indicted) *with* C. 160- 163 (Anderson affidavit: alleging abuse by O'Brien, Halloran, Kill, and Boudreau in Area 3); C. 168-75A, 176-77 (Smith and Taylor

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[5] *Available at*: http://www.aele.org/law/2006LROCT/chicagoreport.pdf This Court can take judicial notice of this public government document, which it also considered in *People v. Wrice*, 2012 IL 111860, ¶¶ 41-42. *See People v. Mata*, 217 Ill. 2d 535, 539-40 (2005) (judicial notice of "public document[s]").

affidavits: Boudreau and Halloran); *Nichols*, 2013 IL App (1st) 103202, ¶¶ 4-7 (O'Brien, Area 3, 1991); *People v. Clemon*, 259 Ill. App. 3d 5, 5-8 (1st Dist. 1994) (O'Brien, Maslanka, Boudreau, Area 3, 1991); *Brown*, 169 Ill. 2d at 145-46 (O'Brien, Maslanka, Paladino, Area 3, 1990). This evidence buttresses the specific allegations of misconduct described in Blalock's appended documentation.

In short, Blalock's new evidence taken as true and construed liberally in his favor demonstrated that O'Brien and Halloran were accused of physically abusing dozens of other detainees between 1989 and 2002. Blalock's January 1999 interrogation fell into the same time frame as that long-running pattern of misconduct. In light of this "series of incidents spanning several years" (*Patterson*, 192 Ill. 2d at 140), it may therefore "fairly be said the officers were acting in conformity with a pattern and practice of behavior" (*Jackson*, 2021 IL 124818, ¶ 34) specifically, the physical abuse of suspects in their custody during Blalock's interrogation.

That conclusion is all the more clear considering that Blalock's evidence described methods of physical and psychological abuse that were similar to his own allegations (C. 125-31). *See also People v. Cannon*, 293 Ill. App. 3d 634, 640 (1st Dist. 1997) (Making a "qualitative distinction" between different types of physical abuse "trivialize[s] established principles for decent law enforcement . . . Minor differences in technique do not alter the nature of the torturer's work.").

Those tactics included:

- being handcuffed to a wall or fixture (TIRC C. 151, 152, 158; Anderson C.160, 162);
- injuring detainees' hands or bending their fingers (TIRC C. 153, 158; Smith C. 175, 176; *Brown*);

- striking with an object (a clipboard) (TIRC C. 151, 152, 156, 157[flashlight, nightstick, phonebook, bat, blackjack, shotgun]; *Brown* [flashlight]; *Weathers* [flashlight]);
- choking or grabbing by the throat or neck (TIRC C. 151-153, 156-158)
- kicking (TIRC C. 151, 152, 156; Anderson C. 161; Smith C. 177; *Nicholas*);
- punching, slapping, or beating (TIRC C. 151-59; Anderson C. 161, 163; Smith C. 168-70, 172, 175; Taylor C. 177; *Brown*; *Weathers*; *Nicholas*);
- rendering detainees unconscious (TIRC C. 153, 158);
- withholding medical care (TIRC C. 152, 158);
- pointing a gun (TIRC C. 151, 156)
- general threats (TIRC C. 153, 156, 157, 158; Anderson C. 160, 162; *Brown*; *Nicholas*);
- threatening with physical harm or death (TIRC C. 152, 153, 156, 158); and
- threatening a family members with criminal charges or other harm (his brother) (TIRC C. 152-53 [children], 158 [mother]; Smith C. 171[girlfriend, baby]).

That these dozens of abuse allegations against O'Brien and Halloran involved similar misconduct further confirms that it may "fairly be said the officers were acting in conformity with a pattern and practice of behavior" during Blalock's interrogation. *Jackson*, 2021 IL 124818, ¶ 34.[6]

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[6] The pre-2003 evidence (*see* Argument I(B)) provides even more substantiation that the same officers abused at least 11 suspects (Mickey Grayer, Andrew Tolefree, Maurice Lane, Emmet White, Jesse Clemon, Iamari Clemon, Damoni Clemon, Clinton Welton, Fred Ewing, Peter Williams, and Harold Hill), in the same time frame as Blalock's 1999 interrogation (1988, 1990, 1991, 1992, 1993, and 1995), using similar methods (beaten, slapped, struck with objects, and choked) (C. 199-201A internal affairs complaints; C. 34-42 pre-2003 appellate court decisions in *Morales, Clemons*, *Ewing*; C. 198 Chicago Tribune article; C. 191 Malik Taylor's affidavit).

Blalock's police torture claim and supporting evidence taken as true and construed liberally in his favor therefore made a *prima facie* showing that his new evidence would impeach his interrogating detectives at a suppression hearing, and would thus likely change the result of that hearing. *See Harris*, 2021 IL App (1st) 182172, ¶ 50. It accordingly made a *prima facie* case of "prejudice."

C. The appellate court's "prejudice" analysis misunderstands Illinois law and erroneously disregarded Blalock's affidavit and post-conviction evidence.

The appellate court's analysis was framed in terms of the "cause" test. *People v. Blalock*, 2020 IL App (1st) 170295, ¶¶ 20-35. It did not expressly engage in any separate "prejudice" analysis, and appears to have conflated those prongs to some degree. *See*, *e.g.*, *id.*, ¶ 34 (discussing *Wrice*'s "consistency" point in relation to the "cause" prong). To the extent that its findings are relevant to "prejudice," it misapplies Illinois law and mistakenly ignores Blalock's supporting evidence.

(1) Illinois law recognizes that new evidence of a pattern and practice of police abuse similar to the defendant's claim makes a *prima facie* showing of prejudice.

The appellate court faults Blalock's *pro se* petition for supposedly failing to prove that his "statement was, *in fact*, coerced[.]" *Blalock*, 2020 IL App (1st) 170295, ¶ 35 (emphasis supplied). But regardless of the issue raised, no petitioner is ever expected to "conclusively" establish their claim at the leave-to-file pleading stage; they only have to make a *prima facie* case of "prejudice." *Bailey*, 2017 IL 121450, ¶¶ 22, 24 (citation omitted). And irrespective of the post-conviction stage, Blalock was not required to conclusively prove that detectives tortured him; he only had to show that his new police abuse evidence would likely change the result of a suppression hearing. *See Harris*, 2021 IL App (1st) 182172, ¶ 50; Part A. The

appellate court's framework for evaluating Blalock's police abuse claim was therefore flawed.

Indeed, despite the court's analysis, "evidence that detectives involved in defendant's interrogation ha[d] been accused of misconduct in other cases" *does* suffice to support a police torture claim. *See Blalock*, 2020 IL App (1st) 170295, ¶ 35; *cf. Almodovar*, 2013 IL App (1st) 101476, ¶ 67 ("any allegation" that an officer coerced a statement is relevant when raising that claim against the same officer).

In fact, this Court and others have held that evidence that the *same detectives* were accused of similar misconduct in other cases warranted further post-conviction proceedings. *See Patterson*, 192 Ill. 2d at 145 (remanding for a hearing where "the officers that defendant alleges were involved in his case are officers that are identified in other allegations of torture"); *Plummer*, 2021 IL App (1st) 20299, ¶¶ 109 (remanding after emphasizing that new evidence implicated "some of the same officers"); *Weathers*, 2015 IL App (1st) 133264, ¶¶ 14, 21-22, 37 (TIRC reports alleging physical abuse by O'Brien and Halloran established "prejudice" for a police torture claim against them); *Mitchell*, 2012 IL App (1st) 100907, ¶ 62 (evidence of an officer's past perjury established "prejudice" for allegation that he perjured himself); *see also Harris*, 2021 IL App (1st) 182172, ¶¶ 58-60; *Whirl*, 2015 IL App (1st) 111483, ¶ 98-104 (ordering new suppression hearings on appeal from third-stage evidentiary hearings).

By contrast, the appellate court's cited authority rejected police torture claims where new evidence of police misconduct *did not* name the same detectives. *See People v. Orange*, 168 Ill. 2d 138, 148, 150-51 (1995) (evidence "d[id] not name any of the persons who interrogated or arrested this defendant"); *People v. Gonzalez*,

2016 IL App (1st) 141660, ¶¶ 60-65 (there was not "any evidence whatsoever" that the officer named in the supporting evidence was involved in defendant's case); *People v. Anderson*, 375 Ill. App. 3d 990, 1007 (1st Dist. 2007) ("neither officer" who interrogated defendant was "mentioned" in any evidence).

Citing *Patterson* and *Wrice*, the appellate court also asserts that Blalock had not "consistently" presented his police torture allegation in every prior court proceeding. *Blalock*, 2020 IL App (1st) 170295, ¶¶ 25, 28-34. But those Courts found this "consistency" factor was but one of many considerations relevant to a police torture claim, not a mandatory requirement. *See Wrice*, 2012 IL 111860, ¶ 43 (citing *Patterson*, 192 Ill. 2d at 145). In any case, Blalock first raised his police torture claim more than 20 years ago in a 1999 pretrial suppression motion, long before he was aware of any other misconduct allegations (TC. 87-88; TR. A1-27).

That lends "consistency" and credibility to Blalock's claim, particularly considering that it must be taken as true and construed liberally in his favor at this stage. *See Patterson*, 192 Ill. 2d at 145 (emphasizing that defendant raised an abuse claim at "his first court appearance"). Indeed, Illinois courts have found police abuse claims showed "prejudice" under similar facts. *See*, *e.g.*, *Whirl*, 2015 IL App (1st) 111483, ¶¶ 6-27, 35-40 (defendant raised a police abuse issue in a suppression hearing, then pled guilty, did not appeal, and did not raise police abuse issue in first petition); *Weathers*, 2015 IL App (1st) 133264, ¶¶ 3, 12 (defendant "never litigated" a police abuse issue in withdrawn suppression motion, and did not raise it in his first petition); *Mitchell*, 2012 IL App (1st) 100907, ¶¶ 8-10, 26, 28, 60 (police abuse issue was raised in a suppression hearing, but not in the initial petition).

The appellate court's suggestion that Blalock failed to show "prejudice" therefore misunderstands Illinois law and post-conviction police abuse claims. This Court should reject that analysis and find that Blalock's new evidence made a *prima facie* showing of "prejudice." *See* Part B.

(2) Blalock's affidavit and supporting evidence, taken as true and construed liberally in his favor, were dispositive of the "prejudice" issue.

As discussed, Blalock supported his petition with his affidavit and new evidence showing O'Brien's and Halloran's long history of physically abusing detainees. *See* Part B. In finding such evidence insufficient, the appellate court notes that Blalock did not testify about police torture at trial and that he told ASA Palermo no one threatened him to make a particular statement. *Blalock*, 2020 IL (1st) 170295, ¶¶ 8, 16, 31-32.

To begin with, however, had Blalock's coerced confession been suppressed and excluded from trial, he would not have been forced to take the stand to explain why that statement was false. It is therefore improper to use Blalock's compelled trial testimony as a basis to conclude that his new evidence of police torture would not likely change the outcome of a suppression hearing in the first place. *See Harrison v. United States*, 392 U.S. 219, 222-23 (1968) (Courts should not consider trial testimony "impelled by the prosecution's wrongful use of [a defendant's] illegally obtained confessions").

In any event, the appellate court fails to acknowledge Blalock's post-conviction affidavit, which explained that he chose to "withdraw" his police torture testimony based on trial counsel's advice, due to the lack of available corroboration at that time (C. 131). That assertion had to be taken as true at this pleading stage. *See*

Robinson, 2020 IL 123849, ¶¶ 45, 61.[7]

In that context, it bears reiterating that Blalock had just raised a police abuse claim before trial. And at trial, while he did not refer to physical abuse, he did testify that his statement was pressured by the authorities. Indeed, while he said he was not "threatened" to "say anything in the statement" specifically (C. TR. 245), he maintained that the authorities fed him Coleman's story, refused to accept his noninvolvement or that he acted in self-defense, and kept "persuading the issue" and "pursuing [him] to say what they wanted [him] to" until he signed the written statement (TR. E202, 243-46, 255).

Under this Court's precedent, any fact-finding or credibility questions that might need to be resolved between Blalock's post-conviction petition and the trial evidence can only be addressed at an evidentiary hearing. *Robinson*, 2020 IL 123849, ¶¶ 45, 6; *cf. People v. Martinez*, 2021 IL App (1st) 190490, ¶¶ 78-79 (post-conviction claim that an officer coerced witness statements was not affirmatively rebutted by the witnesses' trial testimony that the officer did not pressure them; remanding for a an evidentiary hearing). At this preliminary pleading stage, presuming the truth of Blalock's post-conviction allegations, affidavit, and supporting evidence, he made a *prima facie* showing of "prejudice." *See* Part B.

Nor was Blalock's new evidence composed of mere "generalized allegations" of misconduct, as the appellate court suggests. *Blalock*, 2020 IL App (1st) 170295,

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[7] Counsel may have believed that a jury in the year 2000 would not be receptive to uncorroborated testimony about police torture. *See*, *e.g.*, Mari Cohen, *Untangling Truth*, Injustice Watch, https://www.injusticewatch.org/features/ demond-weston-burge/ (Dec. 12, 2017) (Explaining how an abused suspect was "cautioned by his court-appointed attorney at the time not to over-emphasize his torture claims for fear the judge and jury would not believe the word of a black defendant from the South Side against white detectives").

¶¶ 16, 30, 35. Rather, it established that O'Brien and Halloran were specifically accused of physically abusing dozens of other suspects, in the same time frame as Blalock's interrogation, using similar methods. *See* Part B; *cf*. *Blalock*, 2020 IL App (1st) 170295, ¶ 35 (citing *Anderson*, 375 Ill. App. 3d at 1007 (rejecting evidence "without any link to defendant's case" as "generalized"); *Gonzalez*, 2016 IL App (1st) 141660, ¶¶ 60-65 (same, rejecting claim absent "any evidence" the detective named in the supporting evidence was involved in defendant's case)).

Yet the appellate court fails to acknowledge the substance of any of Blalock's supporting evidence. *See Blalock*, 2020 IL App (1st) 170295, ¶ 16 (noting only that Blalocks' evidence showed unspecified "misconduct" in "several other"cases). Its decision even omits any mention of the TIRC reports, which by themselves described nearly 40 allegations of physical abuse against both O'Brien and Halloran (C. 150-59). *Id*. (listing Blalock's evidence, excluding the TIRC reports). Those reports alone justified further proceedings. *See*, *e.g.*, *Weathers*, 2015 IL App (1st) 133264, ¶¶ 14, 21-22, 37 (TIRC reports alleging physical abuse by the O'Brien and Halloran established "prejudice"); Part B.

This Court should therefore reject the appellate court's "prejudice" findings, which misunderstand the applicable law and disregard critical post-conviction evidence. Because Blalock's affidavit and new evidence taken as true and construed liberally in his favor demonstrated that O'Brien and Halloran were engaged in pattern and practice of abuse similar to his post-conviction allegations, his police torture claim made a *prima facie* showing of "prejudice." *See* Parts A, B.

As Blalock also made a *prima facie* showing of "cause" (*see* Argument I, *supra*), this Court should reverse the appellate court's decision, allow him leave

to file his successive petition, and remand for second-stage post-conviction proceedings with the appointment of counsel. *See Wrice*, 2012 IL 111860, ¶ 87.

CONCLUSION

Blalock's successive post-conviction police torture claim relies on corroborating evidence that did not exist when he filed his first petition. That evidence demonstrated that two Chicago police officers who interrogated him had been engaged in a pattern and practice of physically abusing dozens of other detainees, using similar methods, in the same time frame. At this leave-to-file stage, Blalock's pleadings and evidence, taken as true and construed liberally in his favor, therefore made a *prima facie* showing of both "cause" and "prejudice" for his police torture claim. 725 ILCS 5/122-1(f).

Blalock respectfully requests that this Court allow him leave to file his successive petition and remand for second-stage post-conviction proceedings with the appointment of counsel.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 14999 words.

/s/Christopher L. Gehrke
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APPENDIX TO THE BRIEF

Harold Blalock No. 126682

INDEX TO THE RECORD

Successive PC Supp. Common Law Record ("Supp PC1") AC No. 10-2685

Successive PC 2d Supp. Common Law Record ("Supp PC2") AC No. 10-2685

Successive PC Report of Proceedings ("PR") AC No. 10-2685

DA Supplemental Common Law Record ("Supp. C.") AC No. 00-2769

DA Report of Proceedings ("TR") AC No. 00-2769

2020 IL App (1st) 170295
No. 1-17-0295

SIXTH DIVISION
September 11, 2020

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court of
	) Cook County
Plaintiff-Appellee,	)
	)
v.	) No. 99 CR 4956
	)
HAROLD BLALOCK,	)
	) Honorable Vincent M. Gaughan,
Defendant-Appellant	) Judge Presiding.

JUSTICE GRIFFIN delivered the judgment of the court.
Justices Harris and Connors concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Harold Blalock was tried for and convicted of first-degree murder for shooting and killing Veronica Riley. During an interrogation, Blalock confessed to shooting Riley, claiming that he was trying to shoot someone else and shot her accidentally. He filed an unsuccessful appeal and two unsuccessful postconviction petitions. Blalock has since filed a third postconviction petition, which is at issue now. In his current petition, Blalock alleges that his confession was the product of improper physical coercion by detectives. The circuit court denied defendant leave to file this third postconviction petition. We conclude that the circuit court did not err when it denied defendant leave to file the operative postconviction petition and, accordingly, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On January 22, 1999, Veronica Riley was shot and killed outside a convenience store in Chicago. Chicago Police Officer Jeff Carter and his partner were on patrol in the area of the shooting when they heard the gunshots and responded to the scene. The officers found Ms. Riley on the floor of the convenience store. She had been shot in the back, and the bullet caused damage to her lungs and aorta which led to her death.

¶ 4 Tara Coleman spoke to investigators and told them that she was with her young sons at a barbershop near the scene of the shooting on the day Ms. Riley was shot and killed. Ms. Coleman told investigators that defendant Harold Blalock came into the barbershop. Ms. Coleman knew defendant well because they had gone to school together. Soon after defendant arrived, two or three other men came into the barbershop and began arguing with defendant. Those men left the barbershop, and defendant left soon thereafter. Ms. Coleman saw defendant get into the passenger side of a black Pontiac when he left the barbershop. A few minutes later, Coleman heard gunshots. When she looked outside, she saw defendant in the passenger seat of the same black Pontiac he had entered minutes earlier and he had his hands out of the window, holding a gun. Ms. Coleman did not see anyone else in the area with a gun. She identified defendant in a photo array and also in a physical line up. An Assistant State's Attorney took down a handwritten statement from Ms. Coleman, and Ms. Coleman signed each page of her statement averring to its accuracy.

¶ 5 Defendant was interviewed by police officers and gave a handwritten statement. Defendant indicated in his written statement that he got into an argument at the barbershop with men he knew as Rasu and Banks. The argument concerned a prior shooting with which defendant's brother was reportedly involved. After the argument, defendant left the barbershop

with Marcus Carpenter and got into Carpenter's car. Carpenter gave him a gun. As they drove, defendant saw Banks, and defendant fired at him. Banks was near the convenience store where Riley was killed. Defendant saw three women near the store at the time of the shooting. Defendant claimed that he was not trying to kill anyone. Defendant's statement indicates that he was treated well by the police, that he was not threatened or promised anything in return for his statement, and that the statement was given freely and voluntarily.

¶ 6 Once the detectives had Marcus Carpenter's name from defendant's confession, they went to his residence to arrest him. Parked outside of Carpenter's residence was a two-door Pontiac Sunbird. Tara Coleman identified the vehicle from outside Carpenter's residence as the same vehicle that she saw used in the shooting.

¶ 7 Before trial, defendant filed a motion to suppress the inculpatory statements he made to investigators. Defendant alleged that the detectives "slapped, yelled at, threatened [him], and cut his fingernails." He argued that his confession was involuntary as a product of physical coercion and that it should not be permitted to be introduced at trial.

¶ 8 At the hearing on the motion to suppress, Detective John Murray testified that defendant confessed to the shooting after questioning. Detective Murray denied that any improper coercion was involved. Detective Murray testified that after defendant confessed to the detectives, the detectives summoned an Assistant State's Attorney to memorialize the statement. Assistant State's Attorney Clarissa Palermo accompanied defendant while he provided a confession. She administered *Miranda* rights to defendant before he gave the statement, and defendant gave his statement in the presence of Palermo and the detectives. Palermo recorded defendant's statement and then defendant signed it. Detective Murray testified that he never saw anyone abuse or

threaten defendant nor did anyone yell at him. The trial court denied the motion to suppress the inculpatory statements.

¶ 9 At trial, defendant testified that after the argument at the barbershop with Rasu and Banks, he was in his own car, a red Cadillac, when he drove a few friends to a Chinese restaurant. He was parked near the convenience store when he saw Rasu heading towards him on foot. Defendant testified that he tried to drive away, but Rasu was firing a gun at him. Defendant returned fire with a gun he had in his vehicle as he drove away. Defendant kept a gun in his car because he was shot 14 times in an incident two years earlier. Defendant testified that, after the shootout, he left his car in a parking lot with the gun still inside the vehicle. Defendant stated that the car and the gun were both destroyed by a fire while it was parked in that parking lot.

¶ 10 Defendant admitted during his testimony that he did make the confessional statement that was introduced as evidence, but he denied that the statement was an accurate representation of what occurred. He testified that he tried to tell the detectives that he shot in self-defense, but that he eventually relented because the detectives and the Assistant State's Attorney refused to believe him. Because the detectives would not accept his version of the events, defendant gave the statement that he shot at Rasu from Carpenter's car—but he left out of his statement that he was returning fire in self-defense. Defendant testified that the officers did not tell him what to say in the statement, but he testified that he was persuaded into telling the officers what they wanted to hear because they would not believe the version of events he was trying to provide to them. Defendant acknowledged in his trial testimony that no one threatened him to get him to say anything that was included in his statement.

¶ 11 Tara Coleman testified at trial. She testified inconsistently with the statement that she had given investigators shortly after the shooting. Ms. Coleman denied seeing who fired the

gunshots, denied identifying defendant as the shooter, and otherwise recanted the statement she made to the Assistant State's Attorney and the detectives.

¶ 12 Nikki Goodman also testified for the defense. Ms. Goodman said she saw Rasu standing in the middle of an intersection firing a gun at defendant. She saw defendant return fire and drive away. Ms. Goodman testified that Rasu was firing at defendant as defendant drove away, and that she then saw a lady hit the wall outside of the convenience store. She was not sure whether defendant or Rasu fired first. Ms. Goodman also stated that she and defendant briefly dated in the past.

¶ 13 A jury found defendant guilty of first-degree murder. The court sentenced defendant to 40 years in prison. Defendant appealed. On direct appeal, we affirmed defendant's conviction and sentence. *People v. Blalock*, 331 Ill. App. 3d 1126 (2002) (No. 1-10-2685, June 24, 2002) (unpublished order under Ill. S. Ct. R. 23). Defendant did not seek leave to appeal from the Illinois Supreme Court.

¶ 14 Defendant filed a postconviction petition a year after his appeal was unsuccessful. In his postconviction petition, defendant alleged that he was actually innocent, that the State violated *Brady v. Maryland* for not disclosing the existence of a potential eyewitness, and that his trial counsel was ineffective for failing to present mitigating evidence during sentencing. The trial court dismissed defendant's postconviction petition, holding that the petition presented a claim of self-defense—a claim that was already presented to, and rejected by, the jury. Defendant did not appeal the dismissal of his postconviction petition.

¶ 15 Defendant filed a second postconviction petition in 2009. In his second postconviction petition, defendant argued that he was denied effective assistance of counsel in the presentation of his first postconviction petition because his counsel failed to file an appeal. The trial court

denied defendant leave to file his successive petition. Defendant appealed, and we affirmed. *People v. Blalock*, 2014 IL App (1st) 102685-U, ¶ 35. The Illinois Supreme Court denied defendant's petition for leave to appeal. *People v. Blalock*, 21 N.E.3d 715 (Table) (No. 118294) (November 26, 2014).

¶ 16 Defendant filed a third postconviction petition in 2016. His third postconviction petition is the petition now at issue. In his third petition, defendant alleges for the first time since before his trial that his confession was involuntary as it was the result of physical coercion. Defendant alleges that the detectives physically and mentally abused him, in that: they yelled at him, slapped him in the head, beat and kicked him, bent and split his fingernails, and put a gun to his head, among other things. Defendant also points out that the detectives that conducted his interrogation, Detectives James O'Brien, John Halloran, and John Murray, have been accused of misconduct in several other investigations. Defendant attached to his petition affidavits from other alleged victims of these detectives, a report from a Special State's Attorney that investigated allegations against these officers, a *Chicago Tribune* article about the detectives, and police department internal affairs memoranda.

¶ 17 The trial court denied defendant leave to file his third postconviction petition. The trial court held that defendant's claims failed to satisfy the "cause and prejudice test"—the test that courts use to determine whether belated claims made in a successive postconviction petition should receive review (725 ILCS 5/122-1(f) (West 2018)). Defendant now appeals the trial court's denial of his motion for leave to file a third postconviction petition.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues that his claim that his confession was coerced satisfies the "cause and prejudice test" therefore meeting the criteria to go forward on a successive postconviction

petition. Thus, defendant contends, the trial court should not have denied him leave to file a third postconviction petition.

¶ 20 The Post–Conviction Hearing Act provides a method by which defendants may assert that, in the proceedings which resulted in their convictions, there was a substantial denial of their federal or state constitutional rights. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). Postconviction proceedings are not a substitute for an appeal, but rather, constitute a collateral attack on a final judgment. *People v. Davis*, 2014 IL 115595, ¶ 13. A postconviction proceeding allows inquiry only into constitutional issues that were not and could not have been adjudicated on direct appeal. *People v. Williams*, 394 Ill. App. 3d 236, 246 (2009). Therefore, where a petitioner has previously taken an appeal from a judgment of conviction, the ensuing judgment of the reviewing court will bar, under the doctrine of *res judicata*, postconviction review of all issues actually decided by the reviewing court, and any other claims that could have been presented to the reviewing court will be deemed waived. *People v. Edwards*, 2012 IL 111711, ¶ 21; see also 725 ILCS 5/122–3 (West 2018) ("Any claim of substantial denial of constitutional rights not raised in the original or an amended [postconviction] petition is waived.").

¶ 21 Under the Illinois Code of Criminal Procedure, petitioners are entitled to file only one postconviction petition and any subsequent petitions are allowed only with leave of court. 725 ILCS 5/122-1(f) (West 2018). Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. *Id.*

¶ 22 For purposes of deciding whether leave to file a successive postconviction petition should be granted, a petitioner shows "cause" by "identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." *Id.* A

petitioner shows "prejudice" by "demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.*

¶ 23 Successive postconviction petitions are disfavored by Illinois courts. *People v. Edwards*, 2012 IL 111711, ¶ 29. A petitioner must meet a higher burden to go forward on a successive postconviction petition than he must meet at the first stage of original postconviction proceedings. *Id*. at ¶¶ 25-29. We review *de novo* whether a petitioner has sufficiently alleged cause and prejudice so as to be entitled to file a successive petition. *People v. Womack*, 2020 IL App (3d) 170208, ¶ 12.

¶ 24 Defendant argues that his allegations of police misconduct, along with the evidence attached to his petition that the detectives involved in his interrogation have been accused of misconduct in other cases, meet the threshold for going forward on a successive postconviction petition. Defendant contends that he demonstrated "cause" for not raising the issue of a coerced confession in his original postconviction petition because the evidence he has submitted in support of his current petition was not available at the time that he filed his first postconviction petition. Defendant argues that he demonstrated "prejudice" because the confession was introduced as substantive evidence at trial, and the use of a coerced confession against a defendant necessarily deprives that defendant of due process.

¶ 25 As to the "cause" prong of the test to determine whether a successive postconviction petition should be allowed, defendant argues that the evidence he now uses to support his claim was not available when he filed his original postconviction petition. However, defendant did not even make *the claim* that his confession was coerced in his original petition. Defendant's current allegations demonstrate that he was aware of the facts giving rise to his coercion claim when he

filed his original postconviction petition. Despite his awareness of these alleged facts, defendant made no mention of a coerced confession in his original petition. In fact, defendant did not raise the issue at trial, on direct appeal, in his first postconviction petition, or in his second postconviction petition. Defendant did not raise the issue of a coerced confession for 16 years after he was convicted. Nothing prevented defendant from raising such a claim at any of those stages. Regardless of the availability of the corroborating evidence he now uses, the claim itself was clearly available to defendant, but he did not assert it.

¶ 26 Defendant maintains that the "corroborating evidence" was either not yet in existence or that he did not have knowledge of it when he filed his first postconviction petition, so he has established "cause" under the cause and prejudice test. But to establish "cause" in the successive postconviction context, a petitioner is required to "identify[] an objective factor that impeded his or her ability to raise a specific *claim* during his or her initial post-conviction proceedings." 725 ILCS 5/122-1(f) (West 2018) (Emphasis added). The statute discusses not when the documentation to support a claim becomes available, but whether the claim itself can be made. Defendant could have made *the claim* of a coerced confession at any time—he was obviously aware of the facts that might give rise to such a claim. No objective factors impeded defendant's ability to raise the claim of a coerced confession in his direct appeal, or in his first or second postconviction petition. See *People v. Davis*, 2014 IL 115595, ¶ 55.

¶ 27 Defendant is not arguing that the now-available evidence would have corroborated the claims he made in his original petition; he is instead arguing that he would have made different claims. So even though defendant has established "cause" for not providing at least some of the evidence he now relies upon, he has not established any cause for failing to make the claim

altogether. Defendant has not provided any explanation regarding why he did not or could not have argued that his confession was coerced in any of the prior proceedings.

¶ 28 A petitioner does not need to be aware of all possible existing evidence that might support a constitutional claim in order to have been obligated to raise the claim in an initial postconviction petition. *People v. Williams*, 394 Ill. App. 3d 236, 242 (2009). Here, as in *Williams*, "[t]he lack of the supporting documentation did not prevent the defendant from raising these claims in his original postconviction petition." *Id*. at 263; 725 ILCS 5/122-2 (West 2018). Neither the factual nor the legal basis of the claim defendant now raises was unavailable to him when he filed his initial postconviction petition.

¶ 29 As defendant tacitly acknowledges, not only would he have been aware of his own allegations of coercion, much of the evidence he now uses to support his claims was available when he filed his first or second postconviction petition. Defendant could well have supported his current claim of coercion based on evidence that was available at the time. *People v. Anderson*, 375 Ill. App. 3d 990, 1001-05 (2007). Defendant has failed to demonstrate cause for failing to raise the issue of a coerced confession for 16 years following his conviction and he has failed to demonstrate any basis to avoid the application of waiver and *res judicata* principles. *People v. Orange*, 168 Ill. 2d 138, 154 (1995).

¶ 30 In addition, defendant had a hearing on the issue of a coerced confession before trial. The trial court assessed the credibility of the detective that defendant called to testify and, at the conclusion of the evidence, the circuit court found defendant's claim of coercion was "disproved." Defendant appealed his conviction. He could have raised the issue of a coerced confession or the denial of his motion to suppress his confession on direct appeal, but he did not. This issue clearly could have been adjudicated on direct appeal. See *Williams*, 394 Ill. App. 3d at

246. Without something more than generalized allegations of abuse in other cases, the same arguments already raised and rejected by the court and not raised in an appeal do not state an adequate basis for going forward on a successive postconviction petition. *Orange*, 168 Ill. 2d at 154-55; *People v. Blair*, 215 Ill. 2d 427, 445 (2005).

¶ 31 Defendant also testified at trial. The circumstances of his confession were a major topic at trial. But defendant never stated that he was tortured or that he was otherwise coerced into giving the statement that he gave. He instead testified under oath that he made the statement at issue to detectives and that no one threatened him to get him to say what he said. Defendant testified that he made the statement, not because he was tortured, but because the detectives would not accept his narrative, so he told them what they wanted to hear. Defendant testified that, as for his version of events, the detectives were "[not] trying to hear that part of the story there" and that what he told the detectives, "it was a story, I was just, you know, lying about [it], and they [were] going to go along with it." Defendant further testified at trial that he was left alone with the Assistant State's Attorney when she asked him how he was treated by the detectives and when he related to her that he had been treated well by the detectives. Defendant explicitly testified at trial that he was not abused for the purposes of obtaining his statement and that no one threatened him to make him say any part of his statement.

¶ 32 Defendant made clear at trial that the motivation he had for giving the confession was not because he was tortured, but that he gave the statement that he did give because the detectives were not willing to accept his narrative of the events. Because the detectives were not accepting his story, he made up the version that was memorialized. At trial, defendant testified that the statement he gave to police was a fabrication, but he made clear that the reason for the fabrication was to appease the investigators and, according to defendant's own trial testimony,

not because he was abused. Defendant's current claims are rebutted by his own admissions in the record, which defendant made under oath. See *People v. Jefferson*, 345 Ill. App. 3d 60, 75-76 (2003); *People v. Shotts*, 2015 IL App (4th) 130695, ¶¶ 69-71.

¶ 33 Unlike the petitioners in some other cases in which our courts have grappled with belated claims of police coercion in an interrogation, defendant has not been consistent in claiming that he was the victim of police misconduct. See, *e.g.*, *People v. Patterson*, 192 Ill. 2d 93, 145 (2000). Instead, defendant raises the claim now for the first time in 16 years, after having several available proceedings in which he could have raised it. Again, defendant provides no explanation for not raising the issue itself in either his direct appeal or his original postconviction, other than to say that some of the corroborating evidence only became available after his original petition was filed.

¶ 34 Defendant points to our decision in *People v. Wrice*, 406 Ill. App. 3d 43 (2010) (affirmed as modified by *People v. Wrice*, 2012 IL 111860) to support his argument that "cause" has been established for his coercion claim. However, in *Wrice*, the petitioner had alleged consistently in each of his postconviction filings that his confession was the product of police torture. *Wrice*, 406 Ill. App. 3d at 52. Defendant has not. So like in *Wrice*, we agree with defendant that he has established cause for not presenting some of his evidentiary material at a prior time (see *supra* ¶ 27). But defendant has not established cause for failing to raise the claim altogether in several prior filings in the circuit court and in this court.

¶ 35 Defendant's position boils down to a claim that any petitioner who alleges that he was interrogated by the same detectives that are accused of misconduct in other cases has stated a colorable claim for constitutional relief, regardless of the procedural posture of the case. But that is not the standard. Merely supplying evidence that detectives involved in defendant's

interrogation have been accused of misconduct in other cases does not demonstrate that defendant's statement was, in fact, coerced, especially in light of the entire record in this case. See *Anderson*, 375 Ill. App. 3d at 1001-03; *People v. Gonzalez*, 2016 IL App (1st) 141660, ¶ 58. The trial court did not err in denying defendant leave to file a third postconviction petition on his claim that his confession was coerced.

¶ 36 As to defendant's claim for a violation of *Brady v. Maryland*, defendant argues that the State violated the dictates of that case when it failed to disclose to defendant the detectives' history of abuse. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963) the Supreme Court of the United States announced a rule that the suppression of evidence by the government that is favorable to a defendant violates due process. That rule has been expounded upon by Illinois courts and is expressed in Illinois Supreme Court Rule 412 which, among other things, requires the State to "disclose to defense counsel any material or information within its possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce his punishment therefor." Ill. S. Ct. R. 412(c) (eff. Mar. 1, 2001) (West 2018). Defendant argues that the State should have disclosed evidence of the allegations of misconduct against Detectives O'Brien and Halloran before trial because such evidence would have been favorable to his defense.

¶ 37 Defendant acknowledges that our supreme court rejected the same argument he now raises in its decision in *People v. Orange*, 195 Ill. 2d 437 (2001). Defendant nonetheless contends that, in light of recent revelations of widespread police misconduct related to confessions, "that case should no longer be followed." What defendant fails to acknowledge is that we are bound by decisions of the supreme court. See *Yakich v. Aulds*, 2019 IL 123667, ¶ 13 ("circuit and appellate courts are bound to apply this court's precedent to the facts of the

case before them under the fundamental principle of *stare decisis*" and failing to do so is "serious error."); see also *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 72. Furthermore, which is applicable again, defendant did not raise the claim he now raises in his original petition even though the claim itself and at least some of the supporting evidence was discoverable. *Anderson*, 375 Ill. App. 3d at 1011; *Williams*, 394 Ill. App. 3d at 242.

¶ 38 Defendant's Brady claim is essentially that he would have provided different trial testimony had he known about the allegations of misconduct against the detectives—that, had he been provided evidence of the allegations against the detectives, instead of trying to persuade the jury that he fired in self-defense, he would have made the case that his confession was coerced. That is not the purpose of *Brady*. Defendant's trial testimony stands in direct contradiction of the claims he asserts here. Defendant testified that he crafted a fabricated statement to the police because it was what they wanted to hear. And he affirmatively testified that he was not threatened to make any particular statement. The trial court did not err in denying defendant leave to file a third postconviction petition on the basis of a violation of *Brady v. Maryland*.

¶ 39 III. CONCLUSION

¶ 40 Accordingly, we affirm.

¶ 41 Affirmed.

17-0295

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

v.

HAROLD BLALOCK,
Defendant-Appellant.

ORDER

This cause coming to be heard on defendant-appellant's (Inmate# B43538, P.O. Box 1700, Galesburg, Illinois 61402) Motion for Leave to File Late Notice of Appeal from the Order of October 18, 2016, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that defendant-appellant's Motion for Leave to File Late Notice of Appeal from the Order of October 18, 2016 is **ALLOWED**.

IT IS FURTHER ORDERED that the Office of the State Appellate Defender is appointed to represent defendant on appeal.

Enter:

ORDER ENTERED

MAR 13 2017

APPELLATE COURT, FIRST DISTRICT

Justice

Justice

Justice

126682

17-0295

TO APPELLATE COURT OF ILLINOIS

First District
(Appellate Court Number)

PEOPLE OF THE STATE OF ILLINOIS)
)
vs.) (INDICTMENT NO.) 99-CR-04956-01
) (Judge) VINCENT M. Gaughan
Harold Blalock)

LATE NOTICE OF APPEAL

An appeal is taken from the order or judgment described below::

(1) APPELLANT'S NAME: Harold Blalock

(2) APPELLANT'S ADDRESS: Hillcc P.O. Box 1100 Galesburg IL 61402

(3) APPELLANT'S ATTORNEY: PRO SE
ADDRESS: Pro se

(4) OFFENSE: First-Degree Murder

(5) JUDGMENT: Guilty PLEA/FINDING/VERDICT

(6) DATE OF JUDGMENT OF SENTENCE: July 25, 2000

(7) SENTENCE: 40 years truth-N-Sentence

(8) STATE WHY YOU BELIEVE YOUR APPEAL HAS MERIT: Ineffective Assistance of Trail Counsel - Factors in aggravation weee utilized by the court to increase my sentence with out being submitted to the jury - Mis conduct with officers in my interagation failing to disclose Allegations of torture.

(9) STATE WHY YOUR FAILURE TO FILE A NOTICE OF APPEAL WITHIN 30 DAYS WAS NOT DUE TO YOUR CULPABLE NEGLIGENCE: Because The clerk of the circuit Court mail the document to Menard cc and I was transfeed to Hill cc

WHEREFORE, appellant prays the Court to grant the late notice of appeal, pursuant to Supreme Court Rule 606(c).

Harold Blalock
APPELLANT

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CIVIL APPEALS DIVISION

Revised Jan 2002

C: 00220

No. 126682

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- HAROLD BLALOCK, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-0295. There on appeal from the Circuit Court of Cook County, Illinois , No. 99 CR 4956. Honorable Vincent M. Gaughan, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Harold Blalock, Register No. B43538, Hill Correctional Center, P. O. Box 1700, Galesburg, IL 61402

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 30, 2021, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Marquita S. Harrison
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